

# STORMWATER PARTNERS NETWORK OF MONTGOMERY COUNTY

March 1, 2022

## Written Comments for Montgomery County's Fiscal Year 2023 Capital Budget and FY23-28 CIP

**Submitted by:** Eliza Cava, Co-Chair, Stormwater Partners Network of Montgomery County (SWPN) and Director of Conservation, Audubon Naturalist Society

Dear Montgomery County Council,

We, the undersigned Stormwater Partners Network of Montgomery County,<sup>1</sup> provide the following feedback and recommendations to Montgomery County's FY23-28 Capital Budget. As a Network, our mission is to advocate for clean water, protecting and improving our watersheds in ways that are equitable and ecologically sensitive, improving community resilience to stormwater impacts such as storm-driven flooding, and connecting communities to their backyard waterways. Our vision is that Montgomery County's waterways are clean, pollution-free, and resilient to the climate crisis, providing healthy, equitable, safe, and thriving green spaces for communities, families, and wildlife.

The Network has historically worked towards implementing stronger regulatory measures to strengthen our stormwater management and infrastructure, increase infiltration of water on site instead and decrease stormwater runoff into our precious local waterways. We also support the work and needs of Montgomery Parks, particularly resource stewardship, and the work of the County to meet climate and equity goals. We ask the Council to consider and carefully review our budget requests as presented in our testimony, and to go further and actively seek the funds needed to implement and continue to protect our natural resources.

### **I. Fully Fund Stormwater, Forest, and Climate Requests**

As a baseline, we ask that Council fully fund the CIP Budget items for DEP and Montgomery Parks:

- **DEP - Facilities Planning for stormwater \$6.41M**

This request is necessary so that DEP can continue to conduct project planning in-house, using experienced engineering and environmental staff to prioritize projects and set milestones.

- **DEP - Countywide Stormwater Management Retrofits: \$83.08M**

DEP has revised their planning for capital spending for the majority of credits needed under the new MS4 permit several times over the last few years. The agency has had the luxury of time to do these revisions, as the Maryland Department of the Environment delayed issuance of the new

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<sup>1</sup> The Stormwater Partners Network is composed of organizations and individuals who support our mission and vision. A full list of our current organizational membership (23 civic and environmental organizations in or serving Montgomery County) can be found on our website, [www.stormwaterpartnersmoco.net](http://www.stormwaterpartnersmoco.net).

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permit for several years. Now that the new permit is finally active and will cover the next five years, DEP needs to accelerate its project delivery of stormwater management retrofit projects. Under the current approach, these projects will be delivered using a multi-contractor strategy, with planning and individual contract management done in-house and community outreach also led by the agency. SWPN strongly supports this new contracting approach and thanks the Department for soliciting our feedback and briefing our Steering Committee and membership numerous times over the last 4 years as they developed it.

We worked with DEP to ensure important provisions in this overall contracting approach: 1) the use of new GIS maps to target stream restoration projects only where upland stormwater management had already been conducted<sup>2</sup>; 2) to target upland restoration in areas draining into existing stream restoration projects to help protect those projects from excessive storm flow; 3) a required cap (50%) on the total amount of required credits that can be achieved through stream restoration<sup>3</sup>; 4) a minimum percentage of high-quality green infrastructure, called “LID” by the Department.

- **DEP - Stormwater Management Facility: Major Structural Repairs: \$24.93M**

Ongoing repair and maintenance of existing stormwater management facilities is just as important as constructing new stormwater management projects and planting forests.

- **DEP - Wheaton Regional Dam Flooding Mitigation: \$3.78M**

This unique project, a relatively small part of the stormwater portfolio, is an important element in the County’s response to major flooding problems and will provide lessons learned for other projects and plans in the future. There will likely need to be an additional follow-on, part 2 of this project in the future, to continue to protect neighborhoods and Sligo Creek from flooding.

- **DOT - Storm Drains Programs: \$33.9M**

Flood mitigation is also addressed in Department of Transportation PDFs **Storm Drain General, Storm Drain Culvert, Outfall Repairs, and Facility Planning: Storm Drain**. The significant increases in these requests are a direct result of the stronger impacts of climate change and meant to begin implementing the county’s Climate Action Plan. Historically, these projects have been eligible for funding under the Water Quality Protection Charge. In recent CIP budgets, DOT has attempted to seek funding through other sources, such as state revolving funds, instead of relying

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<sup>2</sup> Mapping tools available at <https://www.montgomerycountymd.gov/water/restoration/equity.html>

<sup>3</sup> Stormwater Partners Network has considered the extent to which stream restorations, or stream repairs, are part of the County’s work portfolio. Our members do not have consensus on several important issues around stream restoration, as we have detailed in comments to MDE signed by many of our members on the MS4/Stormwater permit. However, we all encourage the County agencies that perform stormwater management to ensure that if stream restorations are undertaken, they be done with extraordinary care, caution, and forethought to ensure that they result in benefits to the ecology of the local stream valley and riparian system, as well as downstream beneficiaries of reduced sediment pollution such as the Potomac River and Chesapeake Bay. And, they should be tightly coupled with extensive upland retrofits, ideally before restoring the stream valley. See SWPN Letter on Montgomery County MS4 Permit. January 2021. Available at: <https://stormwaterpartnersnetwork.squarespace.com/current-recent-campaigns/2021/1/26/stormwater-partners-network-comments-on-montgomery-county-draft-stormwater-permit>.

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on WQPC dollars. Those requests did not prove successful, and so DOT is returning to WQPC funds sources at the same time as they are budgeting for substantially higher future capital costs to address climate change.

While we are very supportive of the importance of these projects, it is worth noting that managing for increased storm volume affects both water *quality* and water *quantity* issues. We address the interlinked nature of these concerns later in this letter. The need to better manage water *quantity* (i.e., flooding) as our climate changes raises the question of raising and expanding the purposes of the WQPC (see Section II below for more detail on this issue). We also hope that these projects may be eligible for federal infrastructure dollars, and that the County will do all storm drain planning in close collaboration across departments.

As the county proceeds with infrastructure retrofits, upgrades, and new installations, we strongly urge you to require analyses that evaluate our changing precipitation patterns due to climate change. Designing infrastructure based on old data using outdated standards will result in underperformance of the system, which we are already witnessing with the increase in flood events. We hope that in the future, the County will learn from all these projects and incorporate those lessons-learned into a comprehensive long-term flood response strategy (see below for more detail).

- **Parks – Stream Protection: SVP Projects: \$14.5M**
- **Parks – MS4 requirements: \$8.8M**

SWPN congratulates Parks and DEP for overcoming past obstacles to collaboration and developing a new memorandum of understanding and procedure for transferring MS4 credits generated but not needed by Parks on M-NCPPC lands to DEP for its Phase I MS4 permit. This collaboration took some time in coming and is a testament to the leadership of the two Departments at the top and throughout their divisions. While our Network has varying opinions on the practice of stream restoration overall (see footnote 3), we generally support Parks managing projects for the lands that it owns and has stewardship responsibility for.

- **Parks - Reverse cuts to requested capital budget**

SWPN notes that while the capital budget requests increased stormwater funding for Parks, other budget categories for the agency were cut \$19.4 million, or 7.3%, from the request that the Parks Department deemed the minimum to adequately support our parks and reduced the requested allocation of Montgomery County general obligation bonds for the parks by 16%. These cuts reflect a decreasing priority for the parks at a time we believe the relative value of our parks to the quality of life of county residents is increasing. SWPN strongly values the role of parks whether they be urban or rural, managed for visitation or managed for natural resources. Montgomery County residents are blessed with an incredible park system and this system needs to be maintained for all present and future residents to continue to enjoy.

Furthermore, restoring funding to Parks and expanding investment in trees and natural infrastructure is essential for our resilience to higher temperatures resulting from climate change.

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Extreme temperatures will increase in the future, posing severe health risks especially to the most vulnerable populations.

## **II. Stormwater Management Needs Additional Funding, Collaboration, and Prioritization**

Montgomery County has done great work meeting regulatory requirements and thresholds for stormwater management as required by the Maryland Department of the Environment. However, these requirements are not enough to protect our local streams, lakes, wetlands, riparian zones, and watersheds. The new stormwater permit from the state, which covers the next five years, and this budget is designed to meet, requires only **half** the rate of stormwater management installation as the last permit required. While the health of some streams has improved, many are still in decline. Additional stressors due to urbanization and climate change make it even harder for streams and wetlands to function properly. In the summer, climate change drives more explosive storms that overwhelm the kinds of projects installed to date; and in the winter, more and more salt ahead of unpredictable snowstorms leads to toxic salinity conditions in streams--we are seeing that right now. The County needs to do more stormwater work, faster and more ambitiously, and must be funded accordingly.

### **Raise the Water Quality Protection Charge (WQPC)**

Stormwater Partners Network believes that the Water Quality Protection Charge (WQPC) needs to begin rising more than the cost of baseline program delivery, but to increase our ambition as a county to truly return our watersheds to health.

Montgomery County was early to develop a stormwater fee, and it remains higher than many other suburban jurisdictions. However, just across the border in Washington, DC, residents and businesses pay substantially higher fees to maintain and improve watershed health. An average-size house in DC, with 1,000 square feet of impervious surface, pays \$252.84/year in stormwater fees. In Montgomery County, an average-sized house, with 2.4 *times* the impervious surface, pays less than half as much.<sup>4</sup> Property owners in both jurisdictions pay more as their homes and impervious coverage get larger – that is what makes the fee structure equitable, as more impervious coverage means more stormwater pollution.

We recognize that stormwater fees are sometimes politically challenging issues to take on. Nonetheless, Montgomery County residents enjoy their natural amenities, including parks, forests, and protected stream valleys, and are proud of being environmentally protective. We know that climate change is bringing bigger, more intense storms to the mid-Atlantic. Residents eager to maintain the levels of environmental services and nature protection that we currently have, need to be educated and led by leaders who recognize that these services and protections

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<sup>4</sup> In DC, residents currently pay \$2.67 per ERU per month as a DOEE Stormwater Fee, plus a separate Clean Rivers Impervious Area Charge to DC Water which is \$18.40 per ERU per month. The ERU is the Equivalent Residential Unit, a statistical median of the amount of impervious surface area in a single-family residential property. In DC, it is approximately 1,000 square feet of impervious surface. In Montgomery County, 1 ERU = 2,406 square feet of impervious surface, and is charged \$113.50 per year.

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have costs that are increasing as the need increases. Stormwater Partners Network stands ready to support the County Council and Executive Branch in educating residents about the importance of stormwater management fees and demonstrating the important green infrastructure projects these fees go to pay for.

### **Increase the Stormwater Waiver Fee**

One item that we would like to see changed in the budget and could be a potential long-term source of revenue is increasing the cost of stormwater waivers (or, more accurately, increasing their precision so that waiver charges match the actual replacement cost of incomplete on-site stormwater management). According to our research, waivers are currently granted very frequently but are difficult to track due to limitations in DPS' data systems. We need to know how much volume of water is being waived, and where, in order to accurately address the issues of both water quality in streams and nuisance lot-to-lot flooding. Currently, the fees from stormwater waivers do not correspond appropriately to the volume of runoff generated from a developed property and are not overall equal to the management and environmental protection costs of the stormwater impacts originating from those properties. Calculating stormwater waiver fees more precisely could bring an added source of valuable stormwater revenue while acting as a disincentive for impervious cover without raising the annual WQPC rate. While this might raise rates on some property owners, it could lower them on others. Some nearby jurisdictions that do have higher stormwater waiver fees continue to see high economic growth and development, indicating that any additional fees would be easily borne by the market.

### **Prepare for and create a plan of how and where federal infrastructure bill funding will be allocated for county stormwater plans**

This information is very hard to gather, which makes it difficult to plan. Council should work with OMB to incorporate new information regarding federal infrastructure dollars as soon as possible, and use any freed/offset funds not to return to the general fund but to expand upon environmental protection and stormwater management work.

### **III. Integrate Planning for Water *Quantity* with Water *Quality* across Departments (in other words, Prepare for More Flooding)**

Climate change has brought and will continue to bring more and bigger floods into the near and distant future. These floods will be disruptive, dangerous, damaging, and deadly, and we need to respond early and aggressively to mitigate their risks to communities and ecosystems.

Historically, flooding has been addressed on a case-by-case basis in response to specific complaints. With more and more neighborhoods exposed to rising waters, such an ad-hoc approach will quickly become too piecemeal and expensive to meet the needs of the entire county. Instead, the county needs to begin creating an integrated flood management plan that spans departments, incorporates both water quality and water quantity issues, and exceeds MS4 permit requirements while planning for an uncertain future.

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We understand that DEP is developing a proposal for a plan like this, and hope to see it presented as part of the Operating Budget package. Projects developed as a result of this flood management plan should be incorporated into and prioritized in Capital budgets as soon as possible, and through dedicated amendments if they are ready in between budget cycles.

All relevant agencies should be involved - the Departments of Environmental Protection, Transportation, and Permitting Services, the Office of Emergency Management and Homeland Security, M-NCPPC, and WSSC will all have roles to play. We echo the calls of the Climate Action Plan Coalition (CAP Coalition) that a position with the role of stormwater “czar” who is empowered by Council and the Executive to look across Departments for opportunities to creatively problem-solve should be appointed and supported.

This cross-departmental group, in addition to reviewing the science of climate change, future flood predictions, opportunities to use land use and zoning tools, insurance programs, building code changes, and health and safety regulations, should also consider whether another source of revenue above and beyond the WQPC is needed to be dedicated to flood management.

We appreciate County Council considering our testimony. If you have any questions, please contact SWPN Co-Chairs Eliza Cava ([eliza.cava@anshome.org](mailto:eliza.cava@anshome.org)) or Jeanne Braha ([jbraha@rockcreekconservancy.org](mailto:jbraha@rockcreekconservancy.org)).

Sincerely,

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