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HB 942

March 3, 2023

TO: Members of the Environment & Transportation Committee

FROM: Nina Themelis, Interim Director of Mayor's Office of Government Relations

RE: House Bill 942 – Wetlands & Waterways Program – Authorizations for Stream Restoration Projects

POSITION: OPPOSE

Chair Barve, Vice Chair Stein, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **opposes** House Bill (HB) 942.

HB 942 would require the Department of the Environment (MDE) to revise certain criteria, standards, and requirements for wetlands and waterways authorizations for certain stream restoration projects on or before a certain date; require MDE to provide certain notice and hold a certain public information meeting under certain circumstances; and generally relating to wetlands and waterways authorizations for stream restoration projects.

Baltimore City and nine other large jurisdictions in Maryland currently hold Phase 1 Municipal Separate Storm Sewer System Permits (MS4 permits). These permits are issued on a 5-year cycle and dictate the amount of impervious surface restoration or mitigation each permit holder must achieve during the permit period. A variety of practices may be used to achieve permit compliance, with corresponding credits applied based on the type of practice and amount of drainage area the practice treats. Selection of practices is influenced by topography, local soil conditions, availability of land, the amount of impervious surface, and natural and man-made drainage systems. Stream restoration projects are just one of the Best Management Practices (BMPs) that may be used to mitigate the impacts of stormwater runoff. All of the Maryland approved BMPs, including stream restorations, and their corresponding credits, are based on science and are consistent with the Chesapeake Bay Program modeling tools[1].

[1] [1] All practices identified in the MDE-approved Urban Stormwater and Alternative BMP code list, identified in Appendix B of MDE's 2014 stormwater guidance, that are completed and in compliance with Maryland State regulations, must be regularly inspected and maintained according to state law. Stormwater point source and non-regulated source credits are calculated using assessment tools, such as the Stormwater Credit Calculator, https://mde.maryland.gov/programs/Water/WQT/Documents/Guidance%20PDFs/Stormwater_Alternative_FAQ.pdf .

Stream restoration projects are proposed on degraded streams, as supported by geomorphic evidence, biologic integrity of fair or worse, hydrologic evidence of floodplain disconnection, and evidence of significant depth of legacy sediment. It is not disturbance for the sake of disturbance. MDE does not allow for high functioning portions of urban streams to be used for stream restoration projects. The Bay Program does not credit simple stabilization projects (structural armoring of the back channel for the sole purpose of infrastructure protection). Only practices with natural design elements are creditable. These nature-cased elements aid in the restoration of the habitat in both the channel and floodplain, increasing the ecosystem services of the riparian area.

Most stream restoration projects include an evaluation of potential upland BMP installation. The opportunities are limited due to land ownership, access, and ability to intercept stormwater runoff. The types of upland BMPs that would be implemented for MS4 permit compliance (impervious surface restoration) would be designed for qualitative control (retaining the volume of the first inch of rainfall which is considered the most polluted); these BMPs would not be sufficient to provide quantitative control to reduce the continued degradation of the streams during 2 to 10-year storms.

The inference of the destructive nature of stream restoration projects referred to in HB 942 is predominately related to the impacts of forests. Stream restoration projects, especially those that are not simply stabilizing the stream channel but consider the geomorphology of the stream channel and the habitat of the riparian buffer, will result in the removal of some tree canopy during construction. It is important to note, however, that addressing stream conditions such as scouring, stream bank erosion and undercutting, and connecting a more natural stream channel to its floodplain, helps to support a healthy forest environment. The forest assessments and mitigation efforts for stream restoration projects follow the state's forest conservation requirements and the MS4 Accounting Guidance document.

In spite of these facts, HB 942 would put in place punitive measures for any waterways and wetlands permit issued by MDE **solely** for stream restoration projects that are being done as part of an MS4 permit. In addition to these measures, an MS4 permit stream restoration project would have to be monitored for ten years after its completion before receiving any MS4 credits, the equivalent of two MS4 permit cycles. Maryland's MS4 Accounting Guidance document already states that before credits are granted, the restoration project will need to meet post-construction monitoring requirements, exhibit successful vegetative establishments, and have undergone initial maintenance. Currently, post-construction monitoring is 5 years. Increasing the monitoring to 10 years will have a financial impact.

It is for all of these reasons that the Baltimore City Administration respectfully requests an **unfavorable** report on HB 942.