Seneca Creek Watershed Partners

IN FAVOR of HB 942

Seneca Creek Watershed Partners, an all-volunteer non-profit (www.senecacreekwp.org), appreciates the work of Delegates Tarrasa, Lehman, Ruth and others to respond to concerns that stream restorations are often destructive to local streams and related habitat. We have experienced 'stream restorations' in the Seneca Creek watershed with results viewed by many as devastating.

We strongly recommend that HB942 be brought out of committee to a vote. HB942 has the potential to help protect Maryland's streams and riparian habitat while still protecting the Chesapeake Bay.

Seneca Creek Watershed Partners is one of 33 groups that form the STORMWATER PARTNERS NETWORK OF MONTGOMERY COUNTY which has submitted testimony on HB 942 (Informational Only, March 1, 2023). We at Seneca Creek Watershed Partners want to highlight the following from that testimony as it reflects our position. We have also provided additional recommendations:

"…**we all agreed to encourage 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.**

Our membership also agreed that they should be tightly coupled with extensive upland retrofits, ideally before restoring the stream valley. We appreciate that HB942 shares our concerns and attempts to address many of them.

● §5–203.2.(B)(1) **requires the use of best available science in any decision-making on stream restoration** by the Maryland Department of the Environment (MDE). **We support these goals.**

● §5–203.2.(B)(2)(I) directs the Department to incentivize the use of alternatives to stream restoration, such as the use of upland projects, by providing more credits for these types of projects**. We support this approach to maximizing out-of-stream-valley projects and disincentivizing the use of stream restorations, ideally such that they will be used only when most appropriate and when other upland approaches have been exhausted.**

● §5–203.2.(B)(2)(II)1. Requires that any stream restoration being undertaken "**for the purpose of providing credits for wetland or stream impacts or losses resulting from future activities, be located in the same watershed as the wetland or stream for which mitigation is required.**" This clause is clearly meant to apply to mitigation banks, currently being developed and used across the state for such purposes as offsetting impacts to wetlands and streams from the proposed I-270 and I-495 expansions,

as well as other large-scale construction projects. These types of mitigation banks are permitted by the U.S. Army Corps of Engineers, in partnership with MDE. Under the Mitigation Rule, the Army Corps is already directed to prioritize mitigation within the same watershed where impacts occur, but has great latitude to define the scale of watershed to be used as well as to use their best judgment if they find in-watershed mitigation to be impractical. As written, this clause of HB942 will therefore be unlikely to change policies of MDE and the Army Corps in mitigation permitting**. The bill's sponsors could consider requiring that the Department and the Army Corps require that the applicant mitigate their impacts in the same HUC-12 or, at largest, HUC-10 sub-watersheds where the impacts occur."**

In addition to agreeing with the above, Seneca Creek Watershed Partners takes a decisively positive stand on the following elements of HB942.

● §5–203.2.(B)(2)(III) requires a ten-year monitoring period to ensure stated goals are achieved before issuing any mitigation or pollution reduction credits… **Seneca Creek Watershed Partners strongly agrees that a ten-year monitoring period is warranted. We ask that the bill include control of invasive plants within the ten-year monitoring period. After ten years, trees and other plants should be of sufficient size to compete with invasive plants. Without monitoring and removing invasive plants, many stream restoration sites become heavily infested with invasive plants. Disturbed soil and increased sun at stream restoration sites are perfect conditions for invasive plants to out-compete new stream restoration plantings.** With better monitoring and measurements pre- and post-restoration of biological uplift (see next paragraph), it will be possible over time to see which techniques and companies obtain the best results which should lead to better stream restoration practices.

● §5–203.2.(B)(2)(II)2**.** Requires net biological uplift of instream biology as a stated goal. **The City of Gaithersburg recently undertook a stream restoration in the Seneca watershed. The city did not conduct a pre-project biological assessment but relied on an outdated report from 2011 which said the stream was "unsuitable for colonization by macroinvertebrates". We asked someone experienced in macroinvertebrate monitoring to check the stream in the month that the City was voting to approve the project. He found macroinvertebrate species present indicating a stream in moderate condition. The City also claimed that "no wildlife would be harmed" during the stream restoration which is not believable as more than 3 acres of mature trees (many 100 years+) and associated woodland/riparian plants were destroyed or removed along with a substantial amount of soil from the area. Before the 'restoration' it was not unusual to hear frogs and see dragonflies, and various species of turtles and forest interior dwelling species of birds (FIDS) in the area which is no longer the case. With time as the area heals it would be very useful to assess the project's impact. There is currently no requirement for there to be a systematic assessment of the area's biology pre- and post-restoration. The language of the bill refers to instream biology, but all potentially impacted plant and animal communities -- terrestrial, riparian or aquatic -- should also have some level of assessment.**

● §5–203.2.(B)(2)(II)3. Requires that stream restoration projects "minimize tree removal and protect remaining trees, including the critical root zones of trees." **Seneca Creek Watershed Partners support this clause**. **The ten-year monitoring allows time to see if critical root zones have indeed been protected during stream restoration work as root damage generally doesn't appear immediately. Trees impacted by heavy equipment compacting soil decline over a period of years before dying.**

Stream restorations may reduce sediment and nutrients due to bank erosion, but they can be hugely disruptive to the ecology of a stream valley and divert resources from upland retrofits and impervious

surface removal, both of which address the root cause of stream bank erosion and could eliminate the need for stream restoration projects. Ideally upland control of stormwater should be required prior to installing a stream restoration to help ensure that ever-increasing storm flows won't just blow out the new channel.

Seneca Creek Watershed Partners agrees with the Stormwater Partners Network that if stream restorations are done, they should be done with extraordinary care and planning to ensure that they result in benefits to the ecology of the local stream valley and riparian system, as well as downstream benefits to the Potomac River and Chesapeake Bay. In current practice 'stream restorations' at times not only do not benefit a stream's ecology, they can also be extremely destructive. Without pre- and post-restoration measurements, it is not possible to know their actual impact, including to what degree there is a benefit to the Potomac and the Bay. HB942 is needed before millions more in public funds are spent and acres of mature woodlands and stream valleys are bulldozed and re-engineered as stormwater conveyance systems.

Thank you for carefully considering the language of HB942 to provide protection to the streams and woodland habitats of Maryland.

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