

**MEMORANDUM**

June 21, 2016

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Amanda Mihill, Legislative Attorney *AMihill*  
*KL* Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Worksession #2:** Expedited Bill 11-16, Stormwater Management – Water Quality Protection Charge – Grants – Credits

Expedited Bill 11-16, Stormwater Management – Water Quality Protection Charge – Grants-Credits, sponsored by Lead Sponsor Council President on behalf of the County Executive, was introduced on April 5, 2016. A public hearing was held on April 26 (see select correspondence at ©15-33).

**Background**

The Committee held its first worksession on Expedited Bill 11-16 on May 5. At that worksession, the Committee received background information on the Water Quality Protection Charge and an introduction to the issues presented in Bill 11-16. Though not reprinted in this memorandum, a copy of the staff memorandum (excluding attachments) is on ©34-3 for the Committee's reference.

The Committee is scheduled to discuss the companion regulation to this Bill, Executive Regulation 12-16, immediately after discussion of this Bill.

**Issues for Committee Discussion**

**1. Credit program – structural maintenance.** As introduced, Bill 11-16 would clarify the eligibility criteria for a property owner to receive a credit. Current law requires the Director of DEP to grant a credit if “the property contains a stormwater management system that is not maintained by the County”. Bill 11-16 would clarify that a property owner can receive a credit for a stormwater management system only if the County does not perform *structural* maintenance (©2, lines 23-27). As Committee members will remember, Paul Chod, on behalf of himself, and Diane Feuerherd, on behalf of Minkoff Development Corporation, object to this portion of Bill 11-16. Mr. Chod and Ms. Feuerherd both spoke in reference to stormwater management ponds located on property known as the Shady Grove Development Park. Mr. Chod believes that his property should not be precluded from receiving a credit because he performs non-structural maintenance (landscaping, grass cutting, and trash removal) and his stormwater facilities treat runoff from surrounding properties. Particularly since, from Mr. Chod's perspective, the County has only had to perform structural maintenance once (©17-23).

At the Committee’s first worksession, Committee members indicated interest in reviewing options to resolve this issue. After careful consideration, the Executive recommends amending Bill 11-16 to allow a property owner to receive a credit for a property that contains a “stormwater management system built as part of a County-approved stormwater management participation project” (©43, lines 43-45). A “stormwater management participation project” would be defined as “a capital improvement project in which both the County and the property owner jointly fund the construction of a regional stormwater management facility intended to benefit properties in addition to those belonging to the property owner” (©42, lines 6-9). The Stormwater Management Participation Project was a CIP project that contains a finite number of properties that would be eligible to receive a credit under this proposal, including the Shady Grove Development Park. (See ©46-47 for further financial analysis from DEP on the effect of this amendment). Council staff notes that under this language, eligible property owners would be eligible to receive a credit, which would be calculated according to the regulation in effect. **Council staff recommendation:** support this amendment.

**2. Credit program – common ownership communities.** As Committee members will also recall, the Council heard from Devin Battley, on behalf of the Lindbergh Park Owners Association. As Council staff understands the issue raised by Mr. Battley, there are stormwater management facilities within this community. Those facilities are considered “onsite stormwater management systems” only for the properties in which the systems are located and therefore only those specific properties receive a credit. However, all of the members of the common ownership community invest in the facilities and Mr. Battley believes that the credit should therefore be dispersed throughout all of the owners in the common ownership community (©24-33). Council staff notes that there is nothing in the law or regulation that would prevent a condominium association from addressing the dispersal of a credit received. Committee members may wish to discuss with DEP staff what implementation or administrative issues would arise if the County dispersed the credit to all owners of a condominium association. Council staff is not amending Bill 11-16, but does recommend the Department continue to work with Mr. Battley to see if there is a way to accommodate his concerns.

**Council staff recommendation: enact Bill 11-16 as amended.**

This packet contains:	Circle #
Expedited Bill 11-16	1
Legislative Request Report	5
Memo from County Executive	7
Fiscal and Economic Impact statements	10
Select correspondence	
Lisa Feldt, County Executive	15
Paul Chod	17
Diane Feuerherd, Minkoff Dev. Corp.	19
Devin Battley	24
Council staff cover memorandum for May 5 T&E worksession	34
Executive amendments	39
DEP Stormwater Management Participation Projects Analysis	46

Expedited Bill No. 11-16  
Concerning: Stormwater Management –  
Water Quality Protection Charge—  
Grants—Credits  
Revised: 4/1/2016 Draft No. 1  
Introduced: April 5, 2016  
Expires: October 5, 2017  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the Request of the County Executive

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### AN EXPEDITED ACT to:

- (1) authorize establishment of a watershed restoration grant program for certain owners of improved aircraft landing areas to offset the cost of the Water Quality Protection Charge;
- (2) clarify the eligibility criteria for a property owner to receive a Water Quality Protection Charge credit;
- (3) expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the Water Quality Protection Charge billed to the property owner; and
- (4) generally amend County law regarding the Water Quality Protection Charge.

### By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Sections 19-29A and 19-35

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



28 [(D)] (B) the property does not contain a stormwater management  
 29 system, but is located in the same drainage area as  
 30 another that contains a stormwater management system  
 31 for which the County does not perform structural  
 32 maintenance and both properties have the same owner.

33 (2) To receive the credit, the property owner must apply to the  
 34 Director of Environmental Protection in a form prescribed by  
 35 the Director not later than September 30 of the year that  
 36 payment of the Charge is due. Any credit granted under this  
 37 subsection is valid for 3 years.

38 (3) The Director of Environmental Protection may revoke a credit  
 39 granted under paragraph (2) if the property owner does not  
 40 continue to take the measures needed to assure that the  
 41 stormwater management system remains in proper working  
 42 condition by correcting any deficiencies discovered by the  
 43 Director during a maintenance inspection. The Director must  
 44 not reinstate a revoked credit until the property owner has  
 45 sufficiently corrected the deficiencies to fully satisfy the  
 46 property owner's maintenance obligations under Section 19-28.

47 [(3)] (4) The owner of an owner-occupied residential property, or any  
 48 non-profit organization that can demonstrate substantial  
 49 financial hardship may apply for an exemption from all or part  
 50 of the Charge for that property, based on criteria set by  
 51 regulation. The owner or organization may apply for the  
 52 exemption to the Director of Finance not later than September  
 53 30 of the year that payment of the Charge is due.

54 \* \* \*

55 (h) A person that believes that the Director of Environmental Protection  
56 has mistakenly assigned a Charge to the person's property or  
57 computed the Charge incorrectly may apply to the Director of  
58 Environmental Protection in writing for a review of the Charge, and  
59 request an adjustment to correct any error, not later than September 30  
60 of the year that payment of the Charge is due. An aggrieved property  
61 owner may appeal the Director's decision to the County Board of  
62 Appeals within [10] 30 days after the Director issues the decision.

63 (i) A person that believes that the Director of Environmental Protection  
64 has incorrectly denied the person's application for a credit or  
65 exemption under subsection (e) may appeal the Director's decision to  
66 the County Board of Appeals within [10] 30 days after the Director  
67 issues the decision.

68 \* \* \*

69 **Sec. 2. Expedited Effective Date:** The Council declares that this  
70 legislation is necessary for the immediate protection of the public interest. This  
71 Act takes effect on the date on which it becomes law.

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## LEGISLATIVE REQUEST REPORT

Expedited Bill 11-16

*Stormwater Management – Water Quality Protection Charge—Grants--Credits*

- DESCRIPTION:** Expedited Bill 11-16 would clarify the eligibility criteria for a property owner to receive a credit against the Water Quality Protection Charge and extend the property owner's timeframe to appeal a Director's decision. It would also authorize establishment of a watershed restoration grant program for the owners of certain improved aircraft landing areas used by the public to offset the cost of the Charge.
- PROBLEM:** The owners of some properties that contain stormwater management systems maintained by the County have become eligible to receive credits against the Water Quality Protection Charge based on criteria that do not require the property owner to maintain the system. Also, the timeframe within which a property owner must request a credit or to challenge the amount of the Charge billed to that property owner is inadequate. The Montgomery County Airpark cannot divert additional air traffic to the County's only nearby private airport without the private airport expanding its airstrip. The private airport does not charge a fee for landing of aircrafts but is assessed the Charge for the impervious surface area of the airstrip, which the owner wishes to expand to receive the additional diverted traffic.
- GOALS AND OBJECTIVES:** To incentivize property owners to treat stormwater runoff from their properties by using and maintaining the most effective stormwater management systems for reducing the discharge of pollutants to the maximum extent practicable; to allow property owners more time to appeal the denial of a request for a credit or adjustment of the amount of the Water Quality Protection Charge billed to the property owner; and to offset the cost of paying the Charge through a watershed restoration grant program for certain owners of improved aircraft landing areas that are used by the public.
- COORDINATION:** Department of Environmental Protection
- FISCAL IMPACT:** See Fiscal Impact Statement.
- ECONOMIC IMPACT:** See Economic Impact Statement
- EXPERIENCE ELSEWHERE:** To be researched.

SOURCE OF INFORMATION: Vicky Wan, Department of Environmental Protection, 240-777-7722

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

March 24, 2016

TO: Nancy Floreen, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation Regarding Stormwater Management – Water Quality Protection Charge

The purpose of this memorandum is to transmit for introduction an expedited bill that modifies the Water Quality Protection Charge grant and credit programs. I am also attaching a Legislative Request Report and Fiscal and Economic Impact Statements for the bill. Because the changes are also included in the Executive Regulations governing the Charge program, I am also transmitting for informational purposes, the proposed regulations which makes conforming changes consistent with this bill.

The bill amendments are as follows:

1. Establish a watershed restoration grant program for certain owners of improved aircraft landing areas to offset the cost of the Water Quality Protection Charge - The only private airport in Montgomery County that is exempt from county property taxes under Section 8-302 of the Tax-Property Article, Maryland Code, allows for the public use of its airstrip for aircraft landing free of service charges and that airstrip is assessed a Water Quality Protection Charge. To offset the cost of paying the Charge, a property that meets the above definition can apply for a grant through the watershed restoration grant program.
2. Clarifies the eligibility criteria for a property owner to receive a credit – This section previously was ambiguous. Clarifying language has been added to clarify the intent that a credit will only be provided to property owners that

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maintain stormwater management systems which the County does not have cost liabilities in performing structural maintenance.

3. Credit revocation – Currently a property owner can still be granted a credit even if a stormwater management system is found to be in non-working condition under Section 19-28, Inspection and Maintenance of Stormwater Management Systems. Language is added to allow DEP the ability to revoke a credit if the property owner does not correct deficiencies to satisfy the property owners' maintenance obligations under Section 19-28.
4. Extend the property owner's timeframe to appeal a Director's decision – Currently a property owner has 10 days after a Director issues the decision to appeal. This extends the timeframe to 30 days to give those property owners additional time to properly prepare a response.

The amendments to the accompanying Regulations are as follows:

1. Eligibility – Creates a credit eligibility section that clearly states that the stormwater management system must be maintained by the property owner exclusively and in accordance to the maintenance requirements under Section 19-28 of the Code for the property owner to be eligible to receive a credit.
2. Credit Awards –
  - i. Changes the credit award from being dependent on the type of stormwater management facility to now be based on the proportion of the volume of water treated by the stormwater management system.
  - ii. Increases the maximum credit for a nonresidential or multifamily residential property to 100 percent for treatment of adjacent properties.
  - iii. Change the maximum credit for complete onsite treatment of stormwater to 60 percent based on the county's impervious surface of 60 percent privately owned and 40 percent publically owned.
3. Credit revocation – Adds language to allow DEP the ability to revoke a credit if the property owner does not correct deficiencies to satisfy the property owners' maintenance obligations under Section 19-28.
4. Timeframe to appeal a Director's decision – Increases the timeframe for a property owner to appeal a Director's decision from 10-days to 30-days.

Nancy Floreen, Council President  
March 24, 2016  
Page 3

5. Watershed Restoration Grant – Adds language to allow a grant program for certain owners of improved aircraft landing areas to offset the cost of the WQPC.

If you have any questions about this bill, please contact Lisa Feldt, DEP Director at 240-777-7781.

Attachments: (5)

Bill XX-16  
Legislative Request Report  
Fiscal Impact Statement  
Economic Impact Statement  
Draft Executive Regulation XX-16

c: Joseph Beach, Director, Department of Finance  
Jennifer Hughes, Director, Office of Management and Budget  
Marc Hansen, County Attorney  
Lisa Feldt, Director, Department of Environmental Protection  
Bonnie Kirkland, Assistant Chief Administrative Officer

**Economic Impact Statement  
Expedited Bill XX-16, Stormwater Management  
Water Quality Protection Charge Grants and Credits**

**Background:**

This legislation would make the following changes to the Water Quality Protection Charge (WQPC):

- 1) Provide a grant to offset the cost of the WQPC to the owners of improved aircraft landing areas exempt from County property taxes under Section 8-302 of the Tax-Property ("TP") Article, Maryland Code;
- 2) Clarify the eligibility criteria for a property owner to receive a WQPC credit; and
- 3) Expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the WQPC billed to the property owner.

**1. The sources of information, assumptions, and methodologies used.**

The source of information is the Department of Environmental Protection (DEP) 2015 Water Quality Protection Charge Billing database. DEP revenue reduction assumes that the airport's runway configuration does not change.

**2. A description of any variable that could affect the economic impact estimates.**

Revenue-reduction estimates related to the WQPC grant program may fluctuate in future fiscal years depending on the amount of impervious surface area and the amount of the WQPC. However, even with an increase in impervious surface area, the revenue impact is expected to be minimal. Any revenue reductions due to grants are offset by adjustments to the WQPC in order to generate sufficient revenues to pay for the required stormwater management expenditures and to meet the debt service coverage ratio. Based on data provided by DEP, estimates of the revenue reduction related to the grant program increase from \$3,800 in FY17 to \$5,600 by FY22.

**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

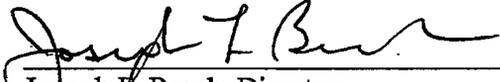
DEP estimates that the cost of the WQPC incurred by the airport is approximately \$4,500 in FY17. Therefore, the estimated difference in the cost of the WQPC and the grant of \$3,800 is \$700 costs borne by the aircraft landing area. Because of the small difference between the cost and the grant, Expedited Bill XX-16 would have no economic impact on employment, spending, saving, investment, incomes, and property values in the County.

**4. If a Bill is likely to have no economic impact, why is that the case?**

Expedited Bill XX-16 would have no economic impact as stated in paragraph 3.

**Economic Impact Statement  
Expedited Bill XX-16, Stormwater Management  
Water Quality Protection Charge Grants and Credits**

5. **The following contributed to or concurred with this analysis:** David Platt and Rob Hagedoorn, Department of Finance; Vicky Wan and Patty Bubar, Department of Environmental Protection.

  
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Joseph F. Beach, Director  
Department of Finance

3/17/16  
Date

**Fiscal Impact Statement**  
**Expedited Council Bill XX-16, Stormwater Management**  
**Water Quality Protection Charge Grants and Credits**

**1. Legislative Summary.**

This legislation would make the following changes to the Water Quality Protection Charge (WQPC):

- a) Provide a grant to offset the cost of the WQPC to the owners of improved aircraft landing areas exempt from County property taxes under Section 8-302 of the Tax-Property ("TP") Article, Maryland Code;
- b) Clarify the eligibility criteria for a property owner to receive a WQPC credit; and
- c) Expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the WQPC billed to the property owner.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

For Item 1a: Bill XX-16 is limited to owners of improved aircraft landing areas exempt from County property taxes under Section 8-302 of the Tax-Property ("TP") Article, Maryland Code. Currently there is one property in the county that meets this definition. The proposed bill would reduce the WQPC revenues by 40 equivalent residential units (ERUs), or approximately \$3,600 in FY16.

For Item 1b: No fiscal impact as a result of this change as this is inserting clarifying language for eligibility criteria.

This change does not alter the current policy of providing a credit only to those properties with facilities that are in proper working condition for which the Department of Environmental Protection (DEP) does not have responsibility to repair or generally manage.

The updated language also allows DEP to revoke a credit application if a facility was found to be deficient during the normal inspection process.

For Item 1c: No fiscal impact as a result of this change. This is expanding the current timeframe from 10 days to 30 days for a property owner to appeal the denial of a request for a credit or an adjustment.

This bill does not have a fiscal impact on expenditures.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

For Item 1a: Assuming the airport's runway remains the same, the revenue reduction estimates related to the grant program is:

FY16: \$3,600

FY17: \$3,800

FY18: \$4,200

FY19: \$4,600  
FY20: \$5,000  
FY21: \$5,500  
FY22: \$5,600

Any revenue reductions due to credits and/or grants is offset by adjustments to the WQPC in order to generate sufficient revenues to pay for the required stormwater management expenditures and to meet the debt service coverage ratio.

- 4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.**

Not applicable.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

- 6. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.**

Not applicable.

- 7. An estimate of the staff time needed to implement the regulation.**

The additional time is not expected to be significant and can be absorbed by existing DEP staff.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not Applicable.

- 9. An estimate of costs when an additional appropriation is needed.**

Additional appropriation is not needed.

- 10. A description of any variable that could affect revenue and cost estimates.**

Not Applicable.

**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not Applicable.

**12. If a bill is likely to have no fiscal impact, why that is the case.**

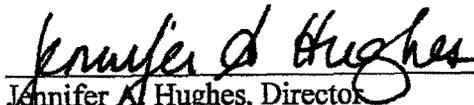
Not applicable.

**13. Other fiscal impacts or comments.**

Not applicable.

**14. The following contributed to and concurred with this analysis:**

Vicky Wan, Department of Environmental Protection  
Patty Bubar, Department of Environmental Protection  
Matt Schaeffer, Office of Management and Budget  
Alex Espinosa, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer D. Hughes, Director  
Office of Management and Budget

3/21/16  
Date

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**Testimony on Behalf of County Executive Isiah Leggett on Expedited Bill 11-16,  
Stormwater Management – Water Quality Protection Charge – Grants and Credits**

**April 26, 2016**

Good afternoon. My name is Lisa Feldt. I am the Director of the Department of Environmental Protection. Thank you for the opportunity to testify on behalf of County Executive Leggett regarding Expedited Bill 11-16 for Stormwater Management – Water Quality Protection Charge Grants and Credits.

The Department continues to make progress in meeting the watershed restoration requirements of the MS4 Permit issued by the state of Maryland, including the restoration of impervious surface areas to the maximum extent practicable. The Water Quality Protection Charge is the main source of funding for these efforts.

As you are aware, the Water Quality Protection Charge was the subject of a lawsuit last year in which a County Circuit Court ruling called into question the validity of the Water Quality Protection Charge as a tax under the Environment Article of the Maryland Code. The issue has been resolved by explicitly reaffirming the designation of the Water Quality Protection Charge as an excise tax authorized under the County's general taxing authority to levy excise taxes. Concurrent with the lawsuit, other issues were raised regarding the general Water Quality Protection Charge as well as the credit program. The proposed legislation and accompanying regulations achieves a balanced approach to address the issues that have been raised.

There are three principles that guided the reevaluation of the credit program. First, we want to be fair and equitable; Second, we want program criteria that are consistent and easy to administer, and; Third, the credit program should be tied to the management of stormwater runoff that meets current stormwater guidelines set by the State.

The proposed legislation and draft regulations base the credit on the water quality volume treated, consistent with current stormwater standards, rather than by the type of stormwater facility. The accompanying regulation also proposes to align the credit percentages with the county's impervious surface demographics. The county's impervious surface is 60% privately owned and 40% publically owned. The proposed changes provide for a maximum credit of 60 % for treatment of water volume from onsite properties to account for the fact that, there is still 40% of impervious surface in the county that needs to be treated. At the same time, we are proposing to increase the maximum credit to 100% to give recognition to those properties that, in addition to treating their own stormwater runoff, treat the runoff of adjacent properties.

The next modification is not a change but rather a clarification of the eligibility criteria for a property owner to receive a Water Quality Protection Charge credit. The intent is for credits to be provided only to property owners that maintain stormwater management systems for

which the County does not have cost liabilities for performing structural maintenance. The regulations propose clarifying language regarding this intent which is based on the need for the county to maintain sufficient funds to continue providing this maintenance.

An additional change being proposed is to authorize the establishment of a watershed restoration grant program for certain owners of improved aircraft landing areas to offset the cost of the Water Quality Protection Charge and remove outdated language under the grant program that was available to homeowners' associations. Currently, the only private airport in Montgomery County that is exempt from county property taxes under Section 8-302 of the Tax Property Article, Maryland Code, allows for the public use of its airstrip for aircraft landing free of service charges. This property is assessed a Water Quality Protection Charge. Given the property does provide a public service, the owners can apply for a grant through the watershed restoration grant program to offset the cost of paying the charge. In addition, the legislation proposes to clean up the grant program language by removing an outdated provision authorizing grants to offset the cost of paying the Charge billed to homeowners' associations for roads owned by those associations that are used openly and freely by the public. In 2015, the General Assembly amended Section 4-204 of the Environmental Article so that those roads for which homeowners' associations could receive a grant would no longer be subject to the Water Quality Protection Charge. Consequently, there is no longer a need for a grant program to offset payment of the Charge in those situations.

Finally, this bill will expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the Water Quality Protection Charge. Under the current law, a property owner has 10 days after a Director issues a decision to appeal that decision. This proposal extends that timeframe from 10 days to 30 days to give property owners adequate time to prepare a response.

The County Executive appreciates the opportunity to comment on the proposed Bill. I would be happy to address any questions the Council may have.

TESTIMONY OF PAUL N. CHOD  
*In Opposition to Bill 11-16*

Good afternoon and thank you for allowing me to speak with you today regarding Bill 11-16. As you know, I am a commercial property owner and developer.

I've spoken several times with you about the Water Quality Protection Charge and the need for greater review of the way the Charge is calculated and how the credits are applied. In November of 2015, I testified before the County Council regarding Bill 45-15, and in February of 2015, submitted a memorandum to summarize recommendations to review and amend this legislation. In October of 2015, I prepared a redline copy of the Charge provisions (Section 19-35 of the County Code and COMCOR 19.35.01.05) and provided it to the County. I am attaching copies of each here, to incorporate as part of my written testimony.

All of our properties in the County incorporate private stormwater management facilities that treat not only our properties but also surrounding properties:

- The two stormwater detention ponds at Shady Grove Development Park (SGDP) treat 150 acres; SGDP owns 41 of those acres (27% of the drainage area). For properties owned by others and treated by our ponds, the County collects \$39,392, Gaithersburg collects \$29,940, and Rockville collects \$32,102, for a total of \$101,434 annually.
- The 5 ponds and numerous biofilters at Seneca Meadows Corporate Center in Germantown treat a drainage area of about 336 acres (207 of those acres, about 60%, belong to our neighbors); the County collects a total Charge of \$133,278 from neighboring properties treated by our Seneca Meadows Corporate Center stormwater facilities each year.
- And, at The Shops at Seneca Meadows in Germantown, we've implemented the modern ESD to completely treat stormwater runoff at our new retail center at a significant cost of several hundred thousand dollars.

We continue to maintain all of our stormwater management systems as required by DPS and DEP with the understanding that our private systems were adequate for this purpose, fully compliant with the regulations when installed, and entitled to a full credit.

Bill 11-16 unfairly amends credit eligibility (Section 19-35(e), also attached) by only allowing a credit if the County does not perform structural maintenance in stormwater facilities. Bill 11-16 as written may remove all credits at SGDP. This is an unfair and unreasonable preclusion that the County Council must reject. Our properties were required to transfer the structural maintenance to the County under a Declaration of Covenants in 1991 after I-270 was widened; the SHA, County and SGDP all incurred additional costs for altering the stormwater ponds due to the highway widening. We still remain obligated to continually perform other maintenance in order to ensure that the facilities function properly and prevent the County from having to perform any other work. Under this amendment, the DEP may deny me, and many other property owners, a credit – even though we have invested substantially (and continue to do so) in order to collect and treat stormwater from the region. This is an unfair, broad and burdensome preclusion, especially considering the \$172,670 collected by the County in 2015

from properties treated by my stormwater management facilities at SGDP and SMCC and not owned by us.

In the 25 years since executing the Declaration of Covenants at SGDP, the County has performed just one structural maintenance at SGDP. A couple of years ago, the DEP replaced the end portion of a stormwater pipe that existed in a County easement. We had a proposal to do the work for \$18,000 before the County inspector reminded us that it was the County's responsibility to do it. The County collected more than twice that cost from our neighboring properties in 2015. That certainly allowed the Charge to cover the cost of whatever stormwater management services were provided to the ponds by the County. Going forward, Bill 11-16 will fail to treat us fairly like that.

Although the Bill appears to raise the credit to 100%, I believe that this amendment to Section 19-35(e) renders the credit provision meaningless. The DEP will continue to collect the Charge without administering a fair credit for private stormwater management; this is made clear in the Fiscal Impact Statement, where the DEP states that raising the credit to 100% will have no fiscal impact. Unfortunately, after our multiple attempts to meet with the DEP and others, Bill 11-16 is not designed to address the unfairness of the Charge and credit system.

I recommend that the County Council REJECT the proposed amendment to Bill 11-16, and specifically retain the existing language contained in Section 19-36(e) and require the DEP to set forth, in its regulations subject to review and public comment, the bases for denying and granting a credit. Further, should any credit be rejected because the County did some structural maintenance, allow the property owner receiving the credit two options: (1) to offset cost of structural maintenance against the Charge revenues received from adjacent properties served by the stormwater management facilities constructed by the owner; or (2) to pay the cost of maintenance over what was received from these other properties.

Thank you, I appreciate your time, and I hope to continue to work with you.

TESTIMONY OF DIANE E. FEUERHERD, ESQ.  
ON BEHALF OF MINKOFF DEVELOPMENT CORPORATION  
*In Opposition to Bill 11-16*

Good afternoon and thank you. My name is Diane Feuerherd, and I am counsel for Minkoff Development Corporation, a commercial property owner and developer with several properties that have private stormwater management facilities.

Over the past three years, through a number of meetings, writings and even legal action, Minkoff Development Corporation has urged this Council to review and amend the Water Quality Protection Charge provisions, to fairly address how private stormwater management contributes to the County's overall goals of redressing stormwater runoff and pollution. We believe the way that this Charge is calculated fails to take into account the long term and annual costs incurred by the property owners (of time, money, land and continued maintenance).

We OPPOSE Bill 11-16, because it is a step backwards and attempts to jeopardize existing (albeit limited) credit for private stormwater management, rather than address the inequity in the Charge and credit system.

First, Bill 11-16 limits credit eligibility to preclude any and all stormwater management facilities that the County purports to structurally maintain. Minkoff Development's Shady Grove Development Park has an easement and covenants with the County, that the County would perform structural maintenance on the ponds, but only at the County's discretion. SGDP could be one of these excluded properties, despite the fact that maintenance by Minkoff Development has been continual and the need for the County's structural maintenance on these ponds is "essentially nonexistent," *Chod v. Board of Appeals*, Case No. 398704-V (emphasis added), and the ponds serve a drainage area that is three-times the size of its own property.

Property owners who have invested land and resources to construct these facilities have spent over a million dollars, and they actually continue to perform regular maintenance (including landscaping, grass cutting and trash removal), which is necessary to insure that the facility continues to function properly to help prevent the need for structural maintenance. Minkoff Development performs annual maintenance on its ponds and other stormwater management facilities, in order to collect and treat stormwater from its own properties, as well as surrounding properties. It receives no financial contribution from others. After requiring these property owners to install private stormwater management facilities, continually maintain them, it would be patently unfair to preclude them from receiving any credit based upon the County's paper promise to do structural maintenance at some point in the future and only at its discretion. The annual Charge pales in comparison to the amount invested in these facilities; Minkoff Development Corporation and like-minded commercial property owners deserve a credit.

We recommend that the County Council REJECT the proposed changes to Section 19-35(e)(1) and COMCOR 19.35.01.05, concerning credit eligibility. I understand that the DEP does not want to award a credit to a property owner based on a stormwater management facility that he or she fails to maintain; but this concern is already addressed by the addition of Section

19-35(e)(3), to enable the DEP to revoke a credit for maintenance failure.

Second, we oppose the amendments to the credit regulation, COMCOR 19.35.01.05, which remove from the regulation, and therefore from further public comment or review, the criteria for awarding a credit. By punting the credit system and structure to a forthcoming "Water Quality Protection Charge Credit Procedures Manual provided by the Department [DEP]," we are prevented from reviewing and commenting on the substantial changes that Bill 11-16 seeks to make to the existing credits. This delegation of authority, without standards, is improper.

For instance, the amendment appears to substantially narrow the credit to properties using the environmental site design standard *only*, to be laid out further in this forthcoming manual. ESD is a new standard and all properties developed before 2000 could be precluded but we are unable to ascertain the level of change without this manual. Nonetheless, Minkoff Development strongly OPPOSES this amendment, property owners should be awarded a full credit if they constructed a stormwater management facility that abided by the requirements at the time it was constructed.

Although we welcome the credit increase to 100%, which would award a full refund for private stormwater management that serves surrounding properties, it appears that this change, coupled with the limited credit eligibility, is without material effect. One would expect that an increase in credits, to reduce the amount of Charge ultimately collection, would be detailed in the Fiscal Impact Statement as a decrease in annual revenue. To the contrary, the Fiscal Impact Statement for this bill states that there is no anticipated change. We believe that is an indication that the 100% credit will be meaningless.

We recommend that the County Council REJECT the proposed amendment to COMCOR 19.35.01.05, which would have the DEP alone develop a Manual without comment from the public, and require the credit system to be "set by regulation" as required by Section 19-35(e)(1). We further recommend that the T&E Committee, in review of Bill 11-16 specifically inquire of the bill's proponents (1) why it is fair to take a step backwards and bar any and all credit from property owners who have invested substantial resources towards private stormwater management based on the County's structural maintenance easement over time; (2) why the increase to 100% is projected to have no fiscal impact; and (3) why the DEP's proposed credit system is not yet developed, so to be included as part of this regulation and subject to public review, as the statute requires.

Thank you.

Minkoff Development Corporation  
Proposed "Redline" to Credit Regulation  
May 2, 2016

19.35.01.05 Credits

~~A. Eligibility. If a property contains a stormwater management system, the system must be maintained by the property owner exclusively and in accordance with the maintenance requirements of Section 19-28 of the Code for the property owner to be eligible to receive a credit against the Water Quality Protection Charge.~~

B. Credit Awards.

- (1) ~~The Director must award a credit of 50 percent, based on the volume of water treated by a combination of environmental site design and other stormwater management systems, if the system met the requirements in place at the time of construction and continues to be maintained in accordance with the maintenance requirements of the Department of Environmental Protection. Or, the Director must award a credit of 80 percent, based on the volume of water completely treated by environmental site design practices if the system met the requirements in place at the time of construction and continues to be maintained in accordance with the maintenance requirements of the Department of Environmental Protection. — not to exceed 60 percent as specified in the application and the Water Quality Protection Charge Credit Procedures Manual provided by the Department based on the proportion of the total volume of water treatment provided by the stormwater management system relative to the environmental sit design storage volume required under State law. The volume of treatment required will be based on the environmental site design storage volume (ESDv) requirements specified in the 2000 Maryland Stormwater Design Manual, as amended.~~
- (2) A nonresidential property or a multifamily residential property must be credited for treatment of off-site drainage from other properties located within the same drainage area as that property not to exceed 100 percent of the Charge billed to the property owner, ~~if the stormwater management system located on the nonresidential property or multifamily residential property treats the required on-site environmental site design storage volume while at the same time providing additional storage volume for off-site drainage.~~ The total credit will be determined by applying the percent credit of off-site property to the impervious area of that off-site property and then adding that computation to the credit for the on-site impervious area, not to exceed 100 percent of the total Charge billed to the property owner ~~as specified in the application and the Water Quality Protection Charge Credit Procedures Manual provided by the Department.~~

- (3) The owner of a property that does not contain a stormwater management system must be credited if that property is located within the same drainage area as another property that contains a stormwater management system ~~for which the County does not perform structural maintenance~~ and both properties have the same owner. However, a property owner must not receive a credit based on a calculation that exceeds the total impervious area on the property for which the credit is issued.

#### C. Application Schedule.

- (1) To receive the credit, the property owner must apply to the Director of Environmental Protection in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due.
- (2) Once approved, the credit is valid for three years. To renew the credit, the property owner must reapply to the Director in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due.

#### D. Credit Revocation.

- (1) The Director of Environmental Protection may revoke a credit granted under this Section if the property owner does not continue to take the measures needed to assure that the stormwater management system remains in proper working condition by correcting any deficiencies discovered by the Director during a maintenance inspection.
- (2) The Director must not reinstate revoked credit until the property owner has sufficiently corrected the deficiencies to fully satisfy the property owner's maintenance obligations under Section 19-28 of the Code.
- (3) If a stormwater management system, treating off-site drainage from other properties located within the same drainage area as that property, is found to require structural maintenance by the Department of Environmental Protection, the Director shall not revoke the property owner's credit, but offer to the property owner the option of reducing the credit in an amount equal to the cost of maintenance that exceeds the total Charge collected from other properties located within the same drainage area, but not to exceed the Charge assessed to the property owner.

#### E. Appeals.

- (1) If the Director denies or revokes the credit, the property owner may seek reconsideration of the Director's decision by submitting a written request for reconsideration with supporting reasons to the Director within 30 days after the date of the Director's written decision.

(2) If the Director does not approve the request for reconsideration, the property owner may appeal the Director's final decision within 30 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.

# Email Viewer

Message Details Attachments Headers Source

[HTML](#)

From: "Devin Battley" <DBattley@battley.com>  
Date: 6/1/2016 3:55:18 PM  
To: "Nancy Floreen (Councilmember.floreen@montgomerycountymd.gov)"  
<Councilmember.floreen@montgomerycountymd.gov>  
Cc: "George Leventhal (councilmember.leventhal@montgomerycountymd.gov)"  
<councilmember.leventhal@montgomerycountymd.gov>, "Roger Berliner  
(councilmember.berliner@montgomerycountymd.gov)"  
<councilmember.berliner@montgomerycountymd.gov>, "Tom Hucker  
(councilmember.hucker@montgomerycountymd.gov)"  
<councilmember.hucker@montgomerycountymd.gov>, "county.council@montgomerycountymd.gov"  
<county.council@montgomerycountymd.gov>, "oig@montgomerycountymd.gov"  
<oig@montgomerycountymd.gov>  
Subject: Letter from the DEP

Dear Councilmembers,  
I must say that I am very disappointed by this letter from Lisa Feldt.  
This WQPC law is just another example of the Asset Forfeiture legislation you give us.  
Also, the timing, delivery, and delay in responding is criminal in nature.  
Do you realize what you steal from us, the citizens?  
BTW, if you are interested I can give you information about a number of Our County's criminal attacks  
against me and other landowners here in MOCO.  
Otherwise, if you are interested, about anything, I can answer any of your questions.  
So I ask you, Do you want to what is right or wrong?  
Please reply,  
Thanks,  
Devin Battley

-----Original Message-----

From: OfficeScan@battley.com [mailto:OfficeScan@battley.com]  
Sent: Wednesday, June 01, 2016 12:50 PM  
To: Devin Battley  
Subject: Message from "RNP0026736434E9"

This E-mail was sent from "RNP0026736434E9" (Aficio MP 4002).

Scan Date: 06.01.2016 12:49:30 (-0400)  
Queries to: OfficeScan@battley.com

Close

24



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Lisa Feldt  
Director

May 26, 2016

Devin Battley  
7830 Airpark Road  
Gaithersburg, MD 20879

RE: Request for Reconsideration of Water Quality Protection Charge Credit Application for Lindberg Park

Dear Mr. Battley:

I have reviewed your November 9, 2015 request for reconsideration of my decision to deny the request for 50 percent credits against the Water Quality Protection Charges ("WQPC" or "Charge") billed to all of the Lindbergh Park property owners, including the Charges billed to you for the lots associated with Account Nos. 01-02889584, 01-02889573, and 01-02890594. I apologize for the delayed official response. I understand that my staff has been in contact with you during the past few months and you have met with my staff, as well as the County Attorney to discuss the issues to try to come to a resolution.

Of the three properties noted above, for which the documentation you submitted from the Department of Assessments and Taxation identifies you as the owner, only the parcel associated with Account No. 01-02889584 contains a stormwater management system. Based on the County's computations, you were properly credited for 44 percent of the Charge billed to you for that property. However, under the proposed changes to existing regulations, your property can be eligible for up to 100 percent credit if the stormwater facility provides management of stormwater for both onsite and offsite properties.

In your November 9<sup>th</sup> letter you indicate that "property owner" is not a defined term in either the statute or the regulation that governs implementation of the WQPC. Consequently, you suggest that the limited credits granted resulted from an interpretation of unwritten rules. I have been advised by the County Attorney's Office that non-technical terms such as "property" and "owner" need not be statutorily defined to be given legal effect. They need only be interpreted according to their plain, ordinary, and literal meaning. In order to bill property owners or award credits under Section 19-35 of the County Code, the County relies on the information documented in public records such as deeds and tax accounts that clearly identify each holder of legal title to specific parcels of land.

Your letter also cites a provision of the Maryland Homeowners Association Act—Section 11B-104 of the Real Property Article, Maryland Code—which governs the application of local building codes and zoning laws to properties located in a community governed by a homeowners' association and prohibits local governments from discriminating against those properties by placing special burdens and restrictions on them. Leaving aside the fact that your properties do not fall under the governance of a homeowners' association, those properties have not been singled out and made subject to any special



Devin Battley  
May 26, 2016  
Page 2

burdens or restrictions because they are part of a development. Like any other privately owned developed property in the County, your properties were assessed a Charge because they contain impervious surfaces.

The fact that the business park in which your properties are located is subject to a declaration is unrelated to how the properties you own individually are assessed or credited under County Code Section 19-35 and COMCOR § 19.35.01. The documentation you provided does not indicate that the Lindbergh Park properties are subject to a condominium regime, where legal title to common areas would be held by all association members as tenants-in-common. In addition, the tax maps relied upon by the County indicate that all of the properties within the business park that contain on-site stormwater management systems are owned individually, not collectively by the members of the Lindbergh Park Owners Association. The proposed regulation will allow the owners of the ponds to receive up to a 100 percent credit for treating offsite runoff. Based on the Charges billed to those properties for levy year 2015, that would amount to a credit of as much as \$16,800 for all of those properties combined, which could easily offset the association's annual stormwater pond maintenance budget of \$525.

Finally, you raise the Montgomery County Circuit Court's ruling in *Paul N. Chod v. Board of Appeals for Montgomery County* (Civil No. 398704-V, entered July 23, 2015) as justification for a 100 percent credit against the Charge billed to each of your three Lindbergh Park properties. The court in that case decided that the WQPC, as applied to the property owned by a developer, was not consistent with the requirements of a stormwater remediation fee under Section 4-202.1 of the Environment Article, Maryland Code. The County responded by re-adopting the WQPC as an excise tax under the County's pre-existing general taxing authority to impose excise taxes. The questions raised in the *Chod* case are not pertinent to your complaint because the issue in that case was not whether the owner of a property that does not contain a stormwater management system is entitled to a credit for stormwater runoff that is treated by a stormwater management system located on someone else's property.

For the foregoing reasons, I am denying your request for reconsideration. In accordance with COMCOR § 19.35.01.07 (F), you may appeal this final decision as provided in Chapter 2A, Article I, of the County Code. As always, please feel free to contact Vicky Wan, Manager of the Water Quality Protection Charge, at 240-777-7722 or via e-mail at [vicky.wan@montgomerycountymd.gov](mailto:vicky.wan@montgomerycountymd.gov) with questions or concerns.

Sincerely,



Lisa Feldt  
Director

LF:ww



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Lisa Feldt  
Director

October 30, 2015

Ron Godsey  
C/O MTM Management  
26223 Ridge Road  
Damascus, MD 20872

RE: Water Quality Protection Charge Credit Application for Lindberg Park

Dear Mr. Godsey:

We have reviewed the application submitted on behalf of the property owners requesting credits against the Water Quality Protection Charge (WQPC) billed to the tax accounts for properties located within Lindberg Park. In accordance with Section 19.35.01.05 (A) of the Code of Montgomery County Regulations (COMCOR), credits are awarded based on the volume of water treated by a combination of environmental site design and other stormwater management systems if the property contains a County approved stormwater management system and the system is maintained in accordance with the maintenance requirements of the Department of Environmental Protection.

Of the nineteen property tax accounts for which credit requests were submitted, fourteen of the accounts were for properties that did not contain an onsite stormwater management system. The owners of the properties associated with the other five tax accounts received a credit based on the information you provided and the type of onsite stormwater management system that the properties contain. The volume of water treated entitles each of the properties containing a stormwater management system to a credit against the WQPC shown on their annual property tax bills as follows:

1. Tax Account Number 02889595 -44 percent
2. Tax Account Number 02889584 -44 percent
3. Tax Account Number 02890606 -50 percent
4. Tax Account Number 02653791 -50 percent
5. Tax Account Number 02821313 -50 percent

This credit will apply for the 2015 tax levy year (July 1, 2015 to June 30, 2016) and to the WQPC billed for the two subsequent years, during which time the County may conduct periodic inspections, as authorized by the credit application submitted on behalf of the property



12

27

Ron Godsey  
October 30, 2015  
Page 2

owners, to ensure that the onsite stormwater management systems for which the credit is granted are being maintained in accordance with the County's maintenance requirements. The property owners may locate their updated tax bills online at [www.montgomerycountymd.gov/propertytax](http://www.montgomerycountymd.gov/propertytax).

In accordance with COMCOR § 19.35.01.05 (D), any property owner whose request for a credit is denied may seek reconsideration of my decision by submitting to me a written request for reconsideration with supporting reasons within 10 days after the date of the denial.

Thank you for implementing measures to help address stormwater pollution. Please feel free to contact Vicky Wan, Manager of the Water Quality Protection Charge, at 240-777-7722 or via e-mail at [vicky.wan@montgomerycountymd.gov](mailto:vicky.wan@montgomerycountymd.gov) with questions or concerns.

Sincerely,



Lisa Feldt  
Director

LF:vw

Lindbergh Park Owners Association  
C/O Devin Battley  
7830 Airpark Rd  
Gaithersburg, MD 20879

November 9, 2015

Ms. Lisa Feldt

Montgomery County Department of Environmental Protection  
255 Rockville Pike, Suite 120  
Rockville MD 20850

RE: WQPC credit application from LPOA. Request for reconsideration

Dear MS. Feldt,

I am replying to your letter of October 30<sup>th</sup> to Ron Godsey concerning our application for WQPC credits. We are very disappointed by your grant of limited credits. I request reconsideration of the disposition of our appeal by the DEP. These credits do not apply fairly to all the property owners in Lindbergh Park. (list attached as schedule A)

MOCO COMCOR 19.35.01 WQPC does not define 'property owner' therefore your interpretation is an unwritten rule. We are all owners in the properties of a common ownership community. This aspect is in the law Sec. 19-35 WQPC, but not your regulations. Also, this interpretation of the law is in direct conflict with fairness standards in Maryland law;

MD. REAL PROPERTY Code Ann. § 11B-104 (2015) (b) Local laws, ordinances, or regulations. – A local government may not enact any law, ordinance, or regulation which would:  
(1) Impose a burden or restriction on property which is part of a development because it is part of a development;

This failure to give us complete credits for the creation of our storm water controls and our investments in these facilities is totally unfair. This is a double penalty. We are being forced to pay for what we have already paid for. Are we allowed to fill in our facilities and put this valuable land to another use? The program for WQPC is not being administered in accordance with the State enabling law standards—they don't fairly consider the contributions that the property owner has made for SW management nor the work which the County has done, or not done, on the property in imposing the tax. This is certainly a situation of financial and physical double jeopardy.

Since we made our original application in January 2015, we do find it distressful that we did not get our response until October 30<sup>th</sup>. Don't you have a 60 day mandate to respond?

With this response you have provided for credits of 44% - 50% for limited properties. Can you please explain why you did not grant the 80% credits that these properties are eligible for as explained in an email from Walter Wilson that was sent on October 16<sup>th</sup>? (attachment 1 ) Also,

even in your narrow and defective determination of properties that will receive credit you omitted property account # 02889573. This property is clearly eligible under your rules.

In reality our credits for the WQPC should be 100%. This is based on the court decision 'Paul N. Chod v, Board of Appeals for Montgomery County (Civil No, 398704-V, entered July 23, 2015) Can you please respond to this decision and provide us with the credits that this decision warrants?

I have also received an email from George Leventhal in which he supports my position in this appeal. (attachment 2)

Therefore we request a 100% credit for all properties in the Lindbergh Park Community.

Our request is not limited to the specific points I have made in this letter. We have issues to resolve and we reserve the right to bring up these issues as necessary and at any time.

Sincerely,

  
Devin Battley

President, Lindbergh Park Owners Association

Schedule A

Real Property Data Search ( w2)

Guide to searching the database

Search Result for MONTGOMERY COUNTY

Name	Account	Street	Own Occ	Map	Parcel
BATTLE DEVIN L	01 02889584	LINDBERGH DR	N	GU31	0000
BATTLE DEVIN L	01 02889573	LINDBERGH DR	N	GU31	0000
7400 G LLC	01 02915228	7400 LINDBERGH DR	N	GU31	0000
ALEMEH LLC	01 02915230	7400 LINDBERGH DR	N	GU31	0000
ANGELO KENNETH F &	01 02915241	7400 LINDBERGH DR	N	GU31	0000
ANGELO KENNETH F &	01 02915252	7400 LINDBERGH DR	N	GU31	0000
FAYYAD RICHARD	01 02915217	7400 LINDBERGH DR	N	GU31	0000
FAYYAD RICHARD	01 02915208	7400 LINDBERGH DR	N	GU31	0000
FAYYAD RICHARD M	01 02915194	7400 LINDBERGH DR	N	GU31	0000
MODJARRAD AMIR A E	01 02915161	7400 LINDBERGH DR	N	GU31	0000
MODJARRAD AMIR A E	01 02915172	7400 LINDBERGH DR	N	GU31	0000
MODJARRAD AMIR A E	01 02915183	7400 LINDBERGH DR	N	GU31	0000
MONTGOMERY COUNTY	01 03348411	7401 LINDBERGH DR	N	GT33	0000
BARUCH CRAIG A ET	01 02915308	7404 LINDBERGH DR	N	GU31	0000
BARUCH CRAIG A ET	01 02915310	7404 LINDBERGH DR	N	GU31	0000
BARUCH CRAIG A ET	01 02915321	7404 LINDBERGH DR	N	GU31	0000
BARUCH CRAIG A ET	01 02915332	7404 LINDBERGH DR	N	GU31	0000
HOBBS INVESTMENTS	01 02915274	7404 LINDBERGH DR	N	GU31	0000
HOBBS INVESTMENTS	01 02915263	7404 LINDBERGH DR	N	GU31	0000
PARNN LLC	01 02915296	7404 LINDBERGH DR	N	GU31	0000
PARNN LLC	01 02915285	7404 LINDBERGH DR	N	GT33	0000
MONTGOMERY COUNTY	01 02653825	7405 LINDBERGH DR	N	GT33	0000
MONTGOMERY COUNTY	01 03349521	7405 LINDBERGH DR	N	GU31	0000
KIANG LEE S ET AL	01 02653905	7410 LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03270004	7411B LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03270015	7411C LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03270028	7411D LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03269995	7411A LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270072	7411J LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270046	7411E LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270061	7411H LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270037	7411G LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270050	7411F LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270046	7411E LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270083	7411M LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270117	7411K LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270894	7411L LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270128	7411P LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270130	7411I LINDBERGH DR	N	GT33	0000
SUNSHINE LINDBERGH	01 02653883	7420 LINDBERGH DR	N	GT38	0000
7419 LINDBERGH DR	01 02653791	7421 LINDBERGH DR	N	GT33	0000
SUNSHINE LINDBERGH	01 02653682	7500 LINDBERGH DR	N	GU31	0000
SECURITY STORAGE C	01 02821313	7501 LINDBERGH DR	N	GT33	0000
KAP LINDBERGH PARK	01 02843876	7517 LINDBERGH DR	N	GU31	0000
SUNSHINE LINDBERGH	01 02653871	7530 LINDBERGH DR	N	GU31	0000
MORLEY LAND PTNSHP	01 02653660	7560 LINDBERGH DR	N	GT31	0000
LINDBERGH DRIVE LL	01 02890606	7561 LINDBERGH DR	N	GU31	0000
BATTLE DEVIN L	01 02890694	7571 LINDBERGH DR	N	GU31	0000
SG ENTERPRISES LLC	01 02653780	7581 LINDBERGH DR	N	GU31	0000
JAL DEVELOPMENT LL	01 02841322	7600 LINDBERGH DR	N	GU31	0000
MACDONALD HOLDINGS	01 02841344	7600 LINDBERGH DR	N	GU31	0000
MIKKELSON ROBERT G	01 02841333	7600 LINDBERGH DR	H	GU31	0000
MILLETTE GILLES &	01 02841286	7600 LINDBERGH DR	N	GU31	0000
RLP INVESTMENT PRO	01 02841300	7600 LINDBERGH DR	N	GU31	0000
ROXY LLC	01 02841311	7600 LINDBERGH DR	H	GU31	0000
SG ENTERPRISES LLC	01 02841297	7600 LINDBERGH DR	N	GU31	0000
VB&G LLC	01 02841355	7600 LINDBERGH DR	N	GU31	0000
LINDBERGH INC	01 02653778	7601 LINDBERGH DR	N	GU31	0000
APPLIED DEVELOPMEN	01 02653847	7610 LINDBERGH DR	N	GU31	0000
JAI DURGA ENTERPRI	01 02653835	7820 LINDBERGH DR	N	GT31	0000
SANDY SPRING NATIO	01 02889595	7653 LINDBERGH DR	N	GU31	0000

# Attachment 1

## Devin Battley

---

**From:** Wilson, Walter <Walter.Wilson@montgomerycountymd.gov>  
**Sent:** Friday, October 16, 2015 3:00 PM  
**To:** Devin Battley; Wan, Vicky; 'Ron Godsey'  
**Cc:** Shofar, Steven; Morgan, Michael  
**Subject:** RE: Lindbergh Park - Storm Water

If multiple tax accounts are assigned to a specific property that contains a stormwater management system, as in the case with a condominium regime, then whatever credit is due is awarded to all of those accounts. However, the credit that may be awarded under any particular scenario is capped at 80 percent of the Water Quality Protection Charge billed to each account.

Walter E. Wilson  
Associate County Attorney  
Office of the County Attorney  
101 Monroe Street, 3rd Floor  
Rockville, Maryland 20850  
240-777-6759

**CONFIDENTIALITY NOTICE:** The contents of this email may be confidential under the attorney-client privilege, the work-product doctrine, or other applicable law. If you have received this email in error, you may not copy, distribute, or use its contents, and you are requested to delete the email from your system immediately and notify the sender at 240-777-6700. Thank you.

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**From:** Devin Battley [mailto:DBattley@battley.com]  
**Sent:** Friday, October 16, 2015 2:27 PM  
**To:** Wilson, Walter; Wan, Vicky; 'Ron Godsey'  
**Cc:** Shofar, Steven; Morgan, Michael  
**Subject:** RE: Lindbergh Park - Storm Water

Dear Mr. Wilson,

We have an association that is governed by the rules of the Maryland Condominium Act.

Here is what is on your web site.

## Multi-family Residential and Non-Residential Property Owners:

- A reduction of up to 50% of the charge will be awarded based on the volume of water treated by a combination of environmental site design and other stormwater management systems; or 80% reduction based on the volume of water treated, if the property is completely treated by environmental site design practices alone. (Not sure what this means? Email us at [WQPC.Credits@montgomerycountymd.gov](mailto:WQPC.Credits@montgomerycountymd.gov))
- Only one application needs to be completed for the condominium regime (e.g. condo association). If the stormwater practice applies to all property owners within the condominium, then a list of tax accounts qualified for the credit must be included.
- **Deadline:** The credit application is due by September 30th in order to be applied towards your current tax bill.
- Having trouble? Contact DEP at [WQPC.Credits@montgomerycountymd.gov](mailto:WQPC.Credits@montgomerycountymd.gov)

Are you telling us that our Association is not subject to the Condominium Act?

Devin Battley,  
President JPOA

## Attachment 2

### Devin Battley

---

**From:** Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>  
**Sent:** Friday, November 06, 2015 12:43 PM  
**To:** Devin Battley  
**Cc:** Feldt, Lisa; Levchenko, Keith; #CCLLeventhal Staff  
**Subject:** Fw: Credit Application Response /WQPC/Lindbergh Park  
**Attachments:** Lindberg -Response.pdf

**Importance:** High

Dear Devin,

Thank you for keeping me informed regarding your dispute with DEP over credits for your investment in Lindberg Park's storm water facilities. DEP is developing a list of issues that need to be resolved regarding Water Quality Protection Charges, which it expects to provide the County Council early in 2016. The County Council can then consider any other changes we think should be made.

As we have discussed, you have persuaded me that we should consider granting a credit to joint owners of a common ownership arrangement for their investment in storm water facilities that serve the shared property, even if the specific facility does not lie on the property owner's specific plot. I will make this sure we take a serious look at this issue when we consider revisions to the Water Quality Protection Charge next year.

All the best,  
George

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**From:** Devin Battley <DBattley@battley.com>  
**Sent:** Tuesday, November 3, 2015 8:47 AM  
**To:** Leventhal's Office, Councilmember  
**Cc:** County Council  
**Subject:** FW: Credit Application Response /WQPC/Lindbergh Park

Dear George,

Thank you for meeting with me last week.

Please see the attached letter.

Now I only have a few days for an appeal.

As I predicted there are errors and omissions in this decision.

Besides all the properties that have ownership in the facilities, a contiguous property was omitted.

This law and this process proves that this program is all about collecting money and not about giving proper credit for storm water management.

Sincerely,  
Devin Battley  
President LPOA

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**From:** Wan, Vicky [Vicky.Wan@montgomerycountymd.gov]  
**Sent:** Monday, November 02, 2015 3:29 PM  
**To:** Devin Battley  
**Subject:** Credit Application Response

**MEMORANDUM**

May 3, 2016

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*  
Keith Levchenko, Senior Legislative Analyst *KL*

SUBJECT: **Worksession:** Expedited Bill 11-16, Stormwater Management – Water Quality Protection Charge – Grants - Credits

Expedited Bill 11-16, Stormwater Management – Water Quality Protection Charge – Grants-Credits, sponsored by Lead Sponsor Council President on behalf of the County Executive, was introduced on April 5, 2016. A public hearing was held on April 26 (see correspondence at ©78-112).

Expedited Bill 11-16 would:

- authorize establishment of a watershed restoration grant program for certain owners of improved aircraft landing areas to offset the cost of the Water Quality Protection Charge;
- clarify the eligibility criteria for a property owner to receive a Water Quality Protection Charge credit;
- expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the Water Quality Protection Charge billed to the property owner; and
- generally amend County law regarding the Water Quality Protection Charge.

A companion regulation, Executive Regulation 12-16, attached for informational purposes, is on ©15-26. A draft of the Water Quality Protection Charge Credit Procedures Manual, which is referred to in the Regulation, is on ©27-61. Committee members should note that while some of the testimony that was presented at the public hearing and in written correspondence was directed at the proposed regulation, that regulation is not pending before the Committee. Therefore, any issues raised with regard to the regulation are not addressed in this packet. The DEP is currently accepting public comments on Executive Regulation 12-16 and will transmit the Regulation to the Council once the comment period has closed and DEP has reviewed comments received.

### Background: Water Quality Protection Charge

In 2001, the Council approved Bill 28-00, which created the stormwater management fund (called the Water Quality Protection Fund). This fund is supported by the annual Water Quality Protection Charge. In 2013, the Council enacted Expedited Bill 34-12, which subjected all properties not otherwise exempt under State law to the Water Quality Protection Charge (including, for the first time, many commercial properties); allowed property owners to obtain credits for undertaking certain water quality protection measures on their properties; and authorized financial hardship exemptions for certain owner-occupants of residential properties. The charge is based on an equivalent residential unit (ERU), defined as 2,406 square feet (which was the calculated statistical median of the total horizontal impervious area of developed single-family detached residences in the County at the time the fund was established). Beginning in 2013, DEP implemented the rate structure described in the chart below.

Property Classification	Description	Rate (per ERU)
<b>Single Family Residential Properties</b>		
Tier 1	0-1,000 sq. ft. impervious area	33% of an ERU
Tier 2	1,000-1,410 sq. ft. impervious area	50% of an ERU
Tier 3	1,410-3,412 sq. ft. impervious area	100% of an ERU
Tier 4	3,412-3,810 sq. ft. impervious area	150% of an ERU
Tier 5	3,810-5,815 sq. ft. impervious area	200% of an ERU
Tier 6	5,815-6,215 sq. ft. impervious area	250% of an ERU
Tier 7	6,215+ sq. ft. impervious area	300% of an ERU
<b>Multifamily Residential Properties</b>		
Multifamily	0+ sq. ft. impervious area	Assessed based on actual imperviousness that is converted to an ERU number
<b>Nonresidential Properties</b>		
Nonresidential	0+ sq. ft. impervious area	Assessed based on actual imperviousness that is converted to an ERU number
<b>Nonprofit Properties</b>		
Tier 1	0-6,910 sq. ft. impervious area	150% of an ERU
Tier 2	6,910-54,455 sq. ft. impervious area	900% of an ERU
Tier 3	54,455+ sq. ft. impervious area	2,300% of an ERU
<b>Agricultural Properties</b>		
Agricultural	Impervious area includes only houses and is assessed as single family residential tier classification	See single family residential tier classification above.

The Council sets the ERU rate each year by resolution. The FY16 rate is \$88.40. The FY17 operating budget assumes an increase to \$95.00 (the Council will set this in mid-May as part of the budget action.). Overall, for FY17, the Water Quality Protection Fund is assumed to raise about \$34 million from the charge. Revenue from the County's excise tax on disposable shopping bags

also goes to the Water Quality Protection Fund. The FY17 budget assumes \$2.3 million in revenue from this source.

In addition to stormwater facilities inspections, maintenance and repair the WQPC covers many other Countywide costs, such as storm drain maintenance, street sweeping, education and outreach, water quality monitoring, billing/account maintenance, office lease costs, DEP staffing, the Park and Planning chargeback, and many other charges. These costs are recovered through Water Quality Protection Fund revenues and are built into the ERU rate set by the Council each year. To the degree some properties pay a partial charge or perhaps even no charge a slightly higher charge must be spread across all other properties which do pay into the Fund.

### **Background: NPDES MS4 Permit**

Revenue from the Water Quality Protection Fund is used to fund the activities required under the County's National Pollutant Discharge Elimination Systems Municipal Separate Storm Sewer System (NPDES MS4) Permit. A portion of the Water Quality Protection Fund is also appropriated to the Montgomery County side of M-NCPPC for its water quality activities required to meet separate permits. As the Committee knows, the cost implications for implementation of the current permit are substantial. Two years ago, DEP estimated the permit costs to be about \$305 million through 2015 and nearly \$1.9 billion through 2030. Additional background information on the NPDES MS4 Permit can be found in a memorandum from Senior Legislative Analyst Keith Levchenko on ©62-77.

### **Issues for Committee Discussion**

**1. Credit program – structural maintenance.** Bill 11-16 would clarify the eligibility criteria for a property owner to receive a credit. Current law requires the Director of DEP to grant a credit if “the property contains a stormwater management system that is not maintained by the County”. According to DEP, the intent behind this language is that credits are provided only if property owners **structurally** maintain systems and the County does not have cost liability for performing structural maintenance. Bill 11-16 would specify that the Director of DEP must grant a credit only if the property contains a stormwater management system for which the County does not perform structural maintenance.

Paul Chod, on behalf of himself, and Diane Feuerherd, on behalf of Minkoff Development Corporation, object to this portion of Bill 11-16. Mr. Chod and Ms. Feuerherd, both speaking in reference to stormwater management ponds located on property known as the Shady Grove Development Park. Mr. Chod believes that his property should not be precluded from receiving a credit because he performs non-structural maintenance (landscaping, grass cutting, and trash removal) and his stormwater facilities treat runoff from surrounding properties. Particularly since, from Mr. Chod's perspective, the County has only had to perform structural maintenance once.<sup>1</sup>

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<sup>1</sup> Aside from Mr. Chod's objection to having to provide structural maintenance in order to receive credits, Mr. Chod contends that his Shady Grove property should get a 100% annual credit since his Shady Grove property's stormwater management facilities (which meet the stormwater treatment standards in place when they were built) treat his property's stormwater as well as a substantial amount of offsite stormwater. DEP agrees that the offsite stormwater

The DEP estimates that since 2009, the County has spent roughly \$21,000 on inspection and maintenance on the ponds at the Shady Grove Development Park. Part of the reasoning behind allowing credits only for properties in which the County does not perform structural maintenance is because while several years may go by in which the County does not incur significant costs, at some point, the County will indeed incur significant costs, such as dredging the pond or other such activities or repairs. The DEP staff estimates that major maintenance on stormwater ponds is required approximately every 20-30 years and costs on average \$649,000.

**Options for Committee consideration.** One option to address Mr. Chod's concern is for the County to cede structural maintenance of the ponds at Shady Grove Development Park to Mr. Chod. If that were to happen, Mr. Chod would then be eligible to receive an annual credit. One related issue to this option is whether a property owner who performs structural maintenance should be eligible to receive a structural maintenance credit (in addition to the annual WQPC credit), taking into account revenues generated from off-site properties that drain into the property owner's ponds. Committee members may wish to explore this with DEP staff. If Committee members support this approach, the following language could be added to Bill 11-16:

The Director may establish, by regulation, structural maintenance credits for property owners who are responsible for structural maintenance of stormwater management facilities on their properties which treat water from off-site properties.

If a property owner does not structurally maintain their stormwater facilities, then the difference between that property and an "off-site" property is the fact that the owner of the pond has to perform nonstructural maintenance. In this case, perhaps the property owner could receive a credit or grant to perform this function. Committee members may wish to also explore this option with DEP staff.

**2. Credit program – common ownership communities.** The Council also heard from Devin Battley, on behalf of the Lindbergh Park Owners Association. As Council staff understands the issue raised by Mr. Battley, there are stormwater management facilities within this community. Those facilities are considered "onsite stormwater management systems" only for the properties in which the systems are located and therefore only those specific properties receive a credit. However, all of the members of the common ownership community invest in the facilities and Mr. Battley believes that the credit should therefore be dispersed throughout all of the owners in the common ownership community. Council staff has asked DEP staff to be prepared to discuss this issue at the worksession, including the feasibility of dispersing the credit as requested by Mr. Battley.

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should be taken into account, and that the new legislation and pending regulation will allow for consideration of this point. However, DEP contends that Mr. Chod's stormwater management facilities do not treat (by current stormwater management standards) 100% of the volume of stormwater generated on his site or on the neighboring properties and therefore the credit should be less than 100%. This issue is not discussed in detail in this memorandum because this is an issue that will be addressed during the Committee's eventual review of the regulation.

This packet contains:

	<u>Circle #</u>
Expedited Bill 11-16	1
Legislative Request Report	5
Memo from County Executive	7
Fiscal and Economic Impact statements	10
Executive Regulation 12-16	15
Proposed Water Quality Protection Charge Credit Manual	27
Levchenko memorandum	62
Select correspondence	
Lisa Feldt, County Executive	78
Paul Chod	80
Diane Feuerherd, Minkoff Dev. Corp.	99
Alicia Stanley, Davis Airport	104
Devin Battley, Lindbergh Park Owners Assoc.	105
Lisa Alexander, Audubon Naturalist Society	112



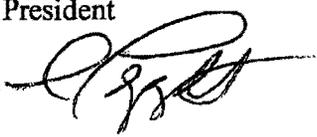
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

**MEMORANDUM**

June 16, 2016

TO: Nancy Floreen, County Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Modification to Expedited Bill 11-16 - Stormwater Management – Water Quality Protection Charge

Please find attached for County Council approval a modification to the proposed expedited bill that I submitted to the Council on March 24, 2016. The original proposed legislation:

- Allows a property that meets the definition under Section 8-302 of the Tax-Property Article to apply for a grant through the Watershed Restoration Program to offset the cost of paying the Water Quality Protection Charge.
- Clarifies the eligibility credit for a property owner to receive a credit such that a credit will only be provided to property owners that maintain stormwater management systems which the County does not have cost liabilities in performing structural maintenance.
- Adds language to allow the Department of Environmental Protection (DEP) the ability to revoke a credit if a stormwater management system is found to be in non-working condition.
- Extends the property owner's timeframe to appeal a Director's decision.

County Council held a public hearing on the proposed legislation on April 26, 2016. During the public hearing, several issues were raised by property owners regarding the proposed changes. A key issue raised in testimony from Mr. Paul Chod was that the proposed bill unfairly amends credit eligibility by only allowing credit if the County does not perform structural maintenance. This was considered unfair given Mr. Chod's perspective that the property owner made several investments in order to collect and treat stormwater from the region.

Nancy Floreen, County Council President  
June 16, 2016  
Page 2

The T&E Committee held a working session on May 5, 2016 to review the legislative and regulatory changes. Prior to the Committee meeting, DEP met with several property owners to discuss their issues. DEP considered several options to address the issues raised. As we considered legislative changes, we focused on the point raised by Mr. Chod that under the proposed legislation, he is not eligible to apply for a credit given that the County performs structural maintenance on the stormwater facilities on his property.

The revised legislation and regulation would allow a property owner to be eligible for a credit, even if the county performs structural maintenance. The property would be eligible if the facility was built as part of the County's Stormwater Management Participation Capital Improvement Project where the county participated, with developers in funding the construction of regional stormwater management facilities, and such construction would benefit other properties in addition to the developers. The County provided funds to those projects for portions of additional storage capacity and features beyond the developer's legal requirements and that will serve off-site developments. Most projects were located in fast developing areas where they were needed to prevent stream degradation.

This option addresses the fairness issue and recognizes that the stormwater management facilities that were built to provide additional storage capacity and features beyond the legal requirements and that serve off-site developments can be considered separately from properties that built stormwater management in order to meet permitting and building requirements. This option also allows adherence to the fundamental principle of ensuring the County maintains sufficient funds to continue providing maintenance for stormwater management facilities, while addressing a relevant concern raised to the Council.

If you have any questions about this proposed change, please contact Lisa Feldt, DEP Director, at 240-777-7781.

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Attachments: Bill No. 11-16, with revisions

c: Lisa Feldt, Director, Department of Environmental Protection  
Joseph Beach, Director, Department of Finance  
Jennifer Hughes, Director, Office of Management and Budget  
Marc Hansen, County Attorney  
Bonnie Kirkland, Assistant Chief Administrative Officer

Expedited Bill No. 11-16  
Concerning: Stormwater Management –  
Water Quality Protection Charge –  
Grants—Credits  
Revised: \_\_\_\_\_ Draft No. \_\_\_\_  
Introduced: \_\_\_\_\_  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

### AN ACT to:

- (1) authorize establishment of a watershed restoration grant program for certain owners of improved aircraft landing areas to offset the cost of the Water Quality Protection Charge;
- (2) clarify the eligibility criteria for a property owner to receive a Water Quality Protection Charge credit;
- (3) expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the Water Quality Protection Charge billed to the property owner; and
- (4) generally amend County law regarding the Water Quality Protection Charge.

### By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Sections 19-21, 19-29A and 19-35

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



28 [(A) the property contains a stormwater management system  
29 that is not maintained by the County;

30 (B) the owner participates in a County-approved water  
31 quality management practice or initiative;]

32 [(C)] (A) the property contains a stormwater management system  
33 for which the County does not perform structural  
34 maintenance that either treats on-site drainage only or  
35 both on-site drainage and off-site drainage from other  
36 properties located within the same drainage area; [[or]]

37 [(D)] (B) the property does not contain a stormwater management  
38 system, but is located in the same drainage area as  
39 another that contains a stormwater management system  
40 for which the County does not perform structural  
41 maintenance and both properties have the same owner;  
42 or

43 (C) The property contains a stormwater management system  
44 built as part of a County-approved stormwater  
45 management participation project.

46 (2) To receive the credit, the property owner must apply to the  
47 Director of Environmental Protection in a form prescribed by  
48 the Director not later than September 30 of the year that  
49 payment of the Charge is due. Any credit granted under this  
50 subsection is valid for 3 years.

51 (3) The Director of Environmental Protection may revoke a credit  
52 granted under paragraph (2) if the property owner does not  
53 continue to take the measures needed to assure that the  
54 stormwater management system remains in proper working

55 condition by correcting any deficiencies discovered by the  
 56 Director during a maintenance inspection. The Director must  
 57 not reinstate a revoked credit until the property owner has  
 58 sufficiently corrected the deficiencies to fully satisfy the  
 59 property owner's maintenance obligations under Section 19-28.

60 [(3)] (4) The owner of an owner-occupied residential property, or any  
 61 non-profit organization that can demonstrate substantial  
 62 financial hardship may apply for an exemption from all or part  
 63 of the Charge for that property, based on criteria set by  
 64 regulation. The owner or organization may apply for the  
 65 exemption to the Director of Finance not later than September  
 66 30 of the year that payment of the Charge is due.

67 \* \* \*

68 (h) A person that believes that the Director of Environmental Protection  
 69 has mistakenly assigned a Charge to the person's property or  
 70 computed the Charge incorrectly may apply to the Director of  
 71 Environmental Protection in writing for a review of the Charge, and  
 72 request an adjustment to correct any error, not later than September 30  
 73 of the year that payment of the Charge is due. An aggrieved property  
 74 owner may appeal the Director's decision to the County Board of  
 75 Appeals within [10] 30 days after the Director issues the decision.

76 (i) A person that believes that the Director of Environmental Protection  
 77 has incorrectly denied the person's application for a credit or  
 78 exemption under subsection (e) may appeal the Director's decision to  
 79 the County Board of Appeals within [10] 30 days after the Director  
 80 issues the decision.

81 \* \* \*



**Description and Justification of Stormwater Management Participation Projects (CIP 808440)**

A CIP project where the county participated, with developers, in funding construction of regional stormwater management facilities, including wet and dry ponds and other protective devices, where such construction would benefit other properties in addition to the developers. The County provides funds for portions of additional storage capacity and features beyond the developers' legal requirements and that will serve off-site developments. The County then accepts contributions from developers in the area as deemed appropriate by the County. Most participation projects are located in fast developing areas where they are needed to prevent stream degradation.

- Capacity: Designs are based on existing County and State requirements.
- Service Area: Countywide
- Plans and Studies: Facility sites are typically first identified in the Preliminary Stormwater Management Investigations project (808439). Construction plans and all necessary permits for individual projects are obtained by the developer. This program provides an efficient and relatively low-cost method of constructing regional stormwater management facilities.
- Other: Each participation agreement is structured so that the County will reimburse the developer for a portion of the project cost after designated levels of construction are completed. A waiver of the onsite stormwater management requirements is granted to developers, served or planned to be served by such facilities, once DEP has approved a SM waiver request and collected fees. Significant time and cost savings have occurred from the County entering into participation projects as compared to alternative County actions either to construct a public off-site stormwater management facility or to repair future flood, erosion and water quality damages.

In FY87, the County established a separate revenue source for Stormwater Management Waiver Fees within the Capital Projects Fund, into which all FY87 and later waiver fees are deposited.

This CIP project was closed out effective July 1, 2008.

## **DEP Analysis based on LY16 Charges**

Based on County CIP books from 1985-2001, there are 54 projects that were planned. Of those, 44 projects were completed. So the universe of participants is reduced from the budgeted 54 projects to actual 44 projects.

There are a total of 263 properties (30 owners) within the 44 projects that will be charged a total of \$162,052.92 for the WQPC in 2016.

1. Of the 30 owners, 27 are private owners and 3 are public entities (Montgomery county, MNCPPC, and Town of Poolesville).
2. Of the 44 projects, 15 of them are now owned by Montgomery County, MNCPPC, or Town of Poolesville therefore narrowing the number of projects eligible for credit to 29 projects.

A detailed analysis of these facility's water quality treatment performance was not completed therefore it is unknown whether these facilities will be eligible for 100% credit. However, if they were, the revenue loss would not exceed \$162,052.92 or no more than \$0.70 on the rate.

What we do know is that one property list on this owner (Shady Grove Development Park) will be eligible for approximately 40% credit or \$14,442. However, that credit is already included in the budget analysis, making the inclusion of that budget neutral.

Excluding Shady Grove from the revenue loss (since they are already budgeted), the worst-case would be \$150,611 or no more than \$0.65 on the rate.