

T&E COMMITTEE #2
May 4, 2011

Worksession

M E M O R A N D U M

May 2, 2011

TO: Transportation, Infrastructure, Energy & Environment (T&E) Committee

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Worksession: FY12 Operating Budget: Department of Environmental Protection (DEP) and FY12 Water Quality Protection Charge Rate Resolution Follow-Up Issues**

The Executive's recommendation for DEP is attached on ©1-10. The following officials and staff are expected to attend this worksession:

- Robert Hoyt, Director, Department of Environmental Protection (DEP)
- Steve Silverman, Director, Department of Economic Development
- Eric Coffman, Senior Energy Planner, DEP
- Steven Shofar, Chief of Watershed Management, DEP
- Meosotis Curtis, Watershed Management, DEP
- Gladys Balderrama, Manager, Administrative Services, DEP
- John Greiner, Senior Management and Budget Specialist, OMB

Note: DEP staff are arranging for a representative from the Maryland Clean Energy Center to attend the meeting to provide information on the Center's work to date and need for additional County funding.

Attachments to this packet include:

- Excerpts of the County Executive's Detail on Recommended Budget Adjustments (©1-2)
- Latest Bag Tax Fiscal Assumptions (©3)
- Bag Tax Fiscal Impact Statement (March 4, 2011) (©4-7)
- PHED Committee May 2 Packet Excerpt (©8-12)
- April 30, 2011 Memorandum from DEP Director Robert Hoyt to Council Staff (©13-16)

Follow-Up Issues

The T&E Committee discussed the DEP budget on April 26. Several follow-up items remain as described below.

Funding for the Maryland Clean Energy Center

According to the Maryland Clean Energy Center website, the Center, *"...was created in 2008 to encourage the transformation of the energy economy with programs that catalyze the growth of business, increase related "green collar" jobs, and make clean energy technologies, products and services affordable, accessible, and easy to implement for Maryland residents."*

Montgomery County has provided \$500,000 to the Clean Energy Center over three years. FY11 represents the final year of the County's three year start-up funding commitment. The FY11 amount provided was \$286,200.

The County Executive's FY12 Recommended Budget transmitted on March 15 assumes no funding for the Maryland Clean Energy Center. However, on April 26, the County Executive transmitted recommended budget adjustments that included \$140,000 for the Center in FY12 with the caveat that the Center will need to provide a progress report on its FY12 accomplishments and that future County funding in FY13 and beyond will be contingent on the Center raising matching funds from outside sources.

At the April 26 meeting, T&E Committee Chairman Berliner asked DEP to arrange for Maryland Clean Energy Staff to update the committee on the Center's efforts to date and to explain the need and justification for the \$140,000 now recommended by the County Executive.

Bill 8-11, Carryout Bag Excise Tax

The Council is scheduled to vote on the Bag Tax on May 3, 2011. The T&E Committee recommended approval of the Bag Tax legislation (2-1, Floreen opposed) with some amendments. If approved, revenues from the tax would go into the Water Quality Protection Fund.

As part of his package of recommended budget adjustments transmitted on April 26, The County Executive recommended adding \$561,640 in bag tax revenues to the Water Quality Protection Fund (see ©2). This is the same amount as assumed in the fiscal impact statement for the bill (see ©7). **Council Staff supports this recommendation (assuming the bag tax is approved in its current form on May 3).**

The County Executive also recommends adding \$533,580 in expenditures.¹ These expenditures would include the following:

- \$234,000 in administrative costs to implement and manage the bag tax (the same as assumed in the original fiscal impact statement for the bill). **The assumptions include a new permanent office services coordinator position in the Department of Finance to implement and provide administrative support for this tax. Council Staff believes consideration should be given to this position being a term position instead and that the need for a permanent position be**

¹ The difference between the revenues (\$561,640) and expenditures (\$533,580) is \$28,060 which would go to fund balance to help maintain the fund balance policy level of 5% of total revenues.

reviewed at this time next year after the tax has been implemented.

- \$249,580 in outreach and education and reusable bag purchases. The original fiscal impact statement only assumed \$120,000 for these efforts. The revised dollar amount assumes a broad anti-littering campaign. DEP provided the following information on this work:

“Outreach activities that target source control are considered to be more effective in controlling trash than traps and other trash collection devices. The enhancement would include targeted public outreach and education comprising, but not limited to, ongoing reusable bag distribution to the county’s low-income and senior populations, dedicated staff, production and development of media campaigns, media buys, etc. It would also include collaboration with the Alice Ferguson Foundation to partner on Regional Anti-Litter Campaign for Trash-free Potomac.”

- \$50,000 for enhanced streetsweeping efforts (annualized to \$100,000 in FY13 and beyond).

Use of Water Quality Protection Fund for M-NCPPC Costs

At the Planning, Housing, and Economic Development (PHED) Committee worksession on April 11, the PHED Committee conceptually supported utilizing Water Quality Protection Fund dollars to cover costs incurred by M-NCPPC staff related to water quality efforts. The PHED Committee asked Council Staff to work with M-NCPPC and DEP staff to follow up on this issue and to present options to the Council that are consistent with County law governing the use of Water Quality Protection Fund dollars and with County policy with regard to how DEP currently charges costs to the Fund.

The results of this work were presented to the PHED Committee on May 2. (see packet excerpts on ©8-12). In total, Council Staff suggested that \$1,509,300 could be charged to the Fund from the Parks Department and \$360,400 could be charged from the Planning Department.²

DEP has expressed concern with both the concept of M-NCPPC charging to the Fund as well as the specific work to be charged to the Fund (see memorandum from DEP Director Bob Hoyt on ©13-16) for both legal and policy reasons. **The PHED Committee recommended approval of charging the Water Quality Protection Fund as described above.**

Council Staff suggests the T&E Committee also weigh in on this concept and consider the following issues:

- DEP is focusing its Water Quality Protection Fund efforts on meeting the County’s NPDES-MS4 permit requirements. The M-NCPPC activities (while potentially legally eligible for Fund dollars) are intended to address M-NCPPC permit requirements but not the County’s permit requirements.

² The estimated impact of the M-NCPPC charges to the Fund is about an \$8 to \$9 increase to the annual equivalent residential unit (ERU) rate in the Water Quality Protection Charge. The FY11 approved ERU rate is \$49. The FY12 rate recommended by the County Executive (not including the potential M-NCPPC charges) is \$62.00. Single family homes pay the cost of one ERU per year. Townhouses pay 1/3 of an ERU. Multi-family homes and associated non-residential properties pay an annual charge based on actual imperviousness.

- In his memorandum, the DEP Director notes a \$300 million funding requirement to meet the NPDES-MS4 permit over the next four years. This commitment will require substantial increases in the ERU rate. Any additional costs charged to the Fund by M-NCPPC will mean even higher increases.
- If the use of Fund dollars is expanded to include water quality efforts beyond the County's NPDES-MS4 permit, other departments and agencies (such as the Department of Transportation, Permitting Services, MCPS, and WSSC for instance) could make similar arguments to M-NCPPC for utilizing Water Quality Protection Fund dollars. **Council Staff is particularly concerned with the charging of Planning Department staff time to the Water Quality Protection Fund. While these costs may be legally acceptable (at least according to Council Legal Staff), Council Staff believes including these tangential charges extends the reach of the Water Quality Protection Fund well beyond any original or current intent for the use of the Fund.**
- A broader question, beyond what level of chargeback to the Fund is appropriate from M-NCPPC, is whether the division of work as it exists now between DEP and M-NCPPC is the most efficient way to handle water quality issues. **Council Staff suggests this question be taken up after the budget.**

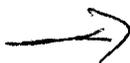
Council Staff also believes that, as with the charging of DOT storm drain maintenance to the Fund (recommended by the County Executive in FY12), a memorandum of understanding clearly laying out the requirements and priorities of M-NCPPC's work associated with the Fund is needed.

Attachments

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The County anticipates collection of \$100,000 in Shady Grove Transportation Management District fee revenues in FY12. To implement the TMD the fee revenues will be used for various activities including professional services, web design and updates, etc. (\$90,000) and printing, promotional items, and event expenses (\$10,000).

Environmental Protection



RESTORE: SUPPORT FOR MARYLAND CLEAN ENERGY CENTER

140,000



The County Executive recommends continued support for the Maryland Clean Energy Center. The County provided up to \$286,000 in support for Center personnel costs in FY10 and FY11 under a Memorandum of Understanding. That support was scheduled to terminate in FY12 as the Center became self-sufficient and was not included in DEP's recommended FY12 operating budget. However, the anticipated outside support is still being developed, and the Center has asked for continued County support. The County is requiring as a condition of its support that (1) the Center provide a formal progress report (with performance measures) on its FY12 accomplishments (including its efforts to secure outside resources), and (2) that any County support in FY13 and beyond be contingent on the Center raising a matching amount from outside sources.

Health and Human Services

RESTORE: PARTIAL FUNDING FOR THE DEVELOPMENTALLY DISABLED BUDGET CONTRACT

238,140

This amendment will assure adequate funding for continuation of services to medically fragile developmentally disabled individuals. The Kennedy Institute program serves developmentally disabled individuals with severe to profound developmental disabilities and severe behavioral issues. FY11 funds are \$324,020. Redirected developmental disabilities funds of \$47,000 would bring FY12 funding to \$285,140, at 12% reduction from FY11.

NDA - Community Grants

RESTORE: MONTGOMERY COUNTY COALITION FOR THE HOMELESS, INC.

48,460

Restore funds for a full-time Case Manager for daytime operations at Home Builders Care Assessment Center. The FY11 amount is \$51,010; recommended amount is a 5% reduction.

NDA - Municipal Tax Duplication

INCREASE COST: REVISED SPEED CAMERA REVENUES TO MUNICIPALITIES

162,210

The County Executive recommends an adjustment to the March 15 CE Recommended municipal speed camera amount of \$235,220, for a total of \$397,430. In order to efficiently and effectively deploy speed detection cameras within municipalities, the Executive has negotiated Memorandum of Agreements (MOA) with Chevy Chase View, Kensington, Poolesville, Barnesville, and Laytonsville for sharing speed camera revenues collected in the municipalities. Under approved amendments to State Law, municipalities are authorized to deploy their own speed cameras. However, since the County has an existing program it was more efficient and served broader public safety purposes to deploy these cameras under the auspices of the County's speed camera program provided the municipalities received the same amount of revenues (net of expenses) they would be due as if they operated these cameras on their own. The following distributions would be made pursuant to the MOA: Chevy Chase View (\$90,060); Kensington (\$188,360); Poolesville (\$43,060); Barnesville (\$47,920); and Laytonsville (\$28,030).

NDA - State Property Tax Services

INCREASE COST: REIMBURSE STATE FOR PROPERTY TAX ASSESSMENTS

5,203,000

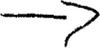
The County Executive recommends adding \$5,203,000 to reimburse the State for the cost of property tax assessments. House Bill 72 (Budget Reconciliation and Financing Act) requires the counties and Baltimore City to reimburse the State for 90% of the costs of real and business personal property valuation and related information technology expenditures in fiscal 2012 and 2013 and 50% of the costs thereafter.



Non-Tax Supported

RESOURCE AMENDMENTS

Environmental Protection



COLLECTION, ADMINISTRATION, AND USE OF BAG TAX REVENUES

561,640



The County anticipates collecting \$561,640 in FY12 through the establishment of a 5 cent tax on plastic and paper bags provided by retail outlets. Receipts from the bag tax will be deposited in the Water Quality Protection Fund. The Executive recommends using these funds in FY12 for start-up costs such as setting up and administering a website for collecting the bag tax (to be handled by the Department of Finance), a new Office Services Coordinator position in Finance (personnel costs plus operating expenses such as a computer and telephone) to administer the website and the collection and posting of bag tax receipts (the position will start in January, 2012, when the tax takes effect), as well as DEP expenses for publicizing and explaining the tax, the purchase and distribution of free reusable bags for seniors and low-income residents, and other outreach efforts. In addition, \$50,000 of the FY12 bag tax receipts will be used for enhanced streetsweeping services. Five percent of the receipts will be held in reserve to comply with the Water Quality Protection Fund's 5% fund balance policy.

Total Non-Tax Supported Resources

561,640

EXPENDITURE AMENDMENTS

Environmental Protection



ADD: COLLECTION, ADMINISTRATION, AND USE OF BAG TAX REVENUES

533,580



The County anticipates collecting \$561,640 in FY12 through the establishment of a 5 cent tax on plastic and paper bags provided by retail outlets. Receipts from the bag tax will be deposited in the Water Quality Protection Fund. The Executive recommends using these funds in FY12 for start-up costs such as setting up and administering a website for collecting the bag tax (to be handled by the Department of Finance), a new Office Services Coordinator position in Finance (personnel costs plus operating expenses such as a computer and telephone) to administer the website and the collection and posting of bag tax receipts (the position will start in January, 2012, when the tax takes effect), as well as DEP expenses for publicizing and explaining the tax, the purchase and distribution of free reusable bags for seniors and low-income residents, and other outreach efforts. In addition, \$50,000 of the FY12 bag tax receipts will be used for enhanced streetsweeping services. Five percent of the receipts will be held in reserve to comply with the Water Quality Protection Fund's 5% fund balance policy.

Total Non-Tax Supported Expenditures

533,580

Bag Tax Projected Revenue and Expenditures

	FY12 Prorated for six months	FY13	FY14	FY15	FY16	FY17
Revenue						
	\$ 561,640	\$ 1,078,350	\$ 833,650	\$ 694,700	\$ 564,060	\$ 423,050
Bag Tax fund reserve (5%)	\$ 28,060	\$ 53,920	\$ 41,680	\$ 34,740	\$ 28,200	\$ 21,150
Revenue available to program expenditures	\$ 533,580	\$ 1,024,430	\$ 791,970	\$ 659,960	\$ 535,860	\$ 401,900
Expenditures						
Administrative:						
Bags OE DEP	\$30,000	\$0	\$0	\$0	\$0	\$0
Admin cost Finance: Online Tax System (OE)	\$190,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000
Admin cost Finance - OSC position(PC)	\$40,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
Admin cost Finance: OSC Operating expenses (OE)	\$4,000	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
Subtotal	\$264,000	\$136,200	\$136,200	\$136,200	\$136,200	\$136,200
Water Quality Protection:						
Outreach and Education including Source Control: Professional Services - DEP (OE)	\$234,580	\$658,230	\$430,770	\$343,760	\$249,660	\$115,700
Enhanced Streetsweeping: Non-Professional services - DEP (OE)	\$35,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Alternative Community Services Litter Collection - Charges from DOCR - (PC)		\$130,000	\$125,000	\$80,000	\$50,000	\$50,000
Subtotal	\$269,580	\$888,230	\$655,770	\$523,760	\$399,660	\$265,700
Total expenditures	\$533,580	\$1,024,430	\$791,970	\$659,960	\$535,860	\$401,900

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

March 4, 2011

TO: Valerie Ervin, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Council Bill XX-11, Taxation – Carryout Bag Tax

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Bill XX-11 would impose an excise tax of 5 cents on all carryout bags (with the exceptions described below) provided to customers in retail establishments, and would require that those retail establishments collect the tax and remit it to the County, less 1 cent per bag that the retailer may retain to offset the administrative cost of collecting the tax. "Carryout bags" are defined as paper or plastic bags provided by the retailer and used to carry purchases from the premises. Several types of bags are excluded from the tax: bags provided by a pharmacist containing prescription drugs; newspaper bags; bags used for garbage, pet waste, or yard waste disposal; bags provided by a restaurant for taking away prepared food or drink; and bags provided at the point of sale at a stand for a farmers market or other seasonal event.

The 5 cent bag tax is to be levied on each carryout bag the retail establishment provides to the customer (with the exclusions noted above). The taxes collected must be remitted to the County, less the 1 cent per bag retained by the retailer, on a monthly basis when cumulative bag tax collections exceed \$100 per month. For lower collection rates, remittances are not required until the cumulative tax collected since the last remittance exceeds \$100.

Bill XX-11 also specifies requirements for customer receipts provided by the retailer when the bag tax is assessed and for recordkeeping by the retail establishment, as well as interest and penalties if the tax is not remitted as required. Any violation of this bill would be punishable as a Class A civil violation.

FISCAL AND ECONOMIC SUMMARY

Fiscal Impact

Revenues: The number of carryout bags currently used in Montgomery County in one year is estimated to be 82,950,000. This figure was derived using figures from the District of Columbia's

Office of the Director

bag tax program and adjusting them for the number of retail establishments in Montgomery County. The District's first year bag tax collections of \$2.1 million translate into 52,500,000 bags (@ 5 cents per bag). Using figures from the U.S. Bureau of the Census, the ratio of the 2009 population of Montgomery County to that of the District is 1.62, and the ratio of retail trade establishments in Montgomery County to the number of such establishments in the District is 1.57. It was assumed that a comparable factor (1.58) represents the ratio of carryout bags used in the County in a year to the number used in the District. Multiplying the District's 52,500,000 bags by 1.58 yields an estimate of 82,950,000 for the number of carryout bags currently used per year in Montgomery County.

The attached spreadsheet shows how bag tax revenues have been estimated; assuming that the number of bags needed is 82,950,000. It is conservatively assumed that consumers will reduce their use of retailer-provided carryout bags by 50% during FY12, when the bag tax takes effect (the District found that bag usage fell by 80% during the first year). The remaining 50% of the bags will be provided by the retailer and will be taxed at 5 cents per bag, with the retailer allowed to retain 1 cent per bag for administrative costs. It is assumed that initially 15% of the potential bag tax revenue would be lost due to startup and collection issues, leaving the County with revenue of about \$562,000 for the 6 months of FY12 that the tax will apply.

In subsequent years, consumers are expected to increasingly avoid the need for carryout bags, resulting in the bag reduction percentage growing from 50% in FY12 to 60% in FY13 and reaching 85% in FY17. Likewise, the percentage of revenue lost to startup and collection factors is expected to fall from 15% in FY12 to 12% by FY17.

The net result is that revenue to the County from the bag tax is expected to rise to nearly \$1.08 million in FY13 (the first full year of the tax) and to fall steadily in subsequent years to about \$423,000 by FY17 as consumers use fewer and fewer non-reusable carryout bags.

Costs: The cost to the County to implement and administer the bag tax includes the development and maintenance of a web site for collecting the tax, publicity and education to be provided before and after implementation of the tax (including making free reusable bags available to seniors and others), and the addition of a position in the Department of Finance to administer the tax and the associated website. These costs are estimated to total \$354,000 in FY12 (which includes development of the web site) and \$236,200 in FY13 (the first full year of the tax), with somewhat lower amounts in the succeeding years (see the attached spreadsheet).

Net Fiscal Impact: In FY12, when the bag tax will only be in effect for 6 months and a number of large one-time startup costs will be incurred (e.g. for web site design and implementation), the net revenue produced by the tax is estimated at \$207,640. In FY13 (the first full year of the tax), projected net revenue from the tax will be \$842,150. Net revenue is projected to decline in each succeeding year as consumers use fewer and fewer non-reusable carryout bags, reaching \$216,845 in FY17. All revenue from the bag tax is to be deposited into the Water Quality Protection Fund, where it will be used to support the County's many programs and initiatives to improve water quality in the County's lakes, streams, and rivers.

Economic Impact

Bill XX-11 establishes a carryout bag tax of 5 cents for each carryout bag that a retail establishment provides to a customer, 1 cent of which may be retained by the retailer to cover administrative costs. This tax is based on the customer's economic activity, i.e., retail purchases of goods, and the cost of the tax is borne by the customer, not by County taxpayers. The economic cost to the consumer is contingent on the consumer's choice to use reusable bags or other means to carry purchases from the point of sale, rather than non-reusable plastic or paper bags. Retailers may incur operating costs to reprogram their checkout stations, train employees, upgrade their accounting systems, perform necessary recordkeeping, and send their tax collections to the County, some or all of which would be offset by the 1 cent out of the 5 cent tax per bag retained by the retailer.

Plastic bags are a persistent and consistently-found item in the litter stream, and in 2009 County agencies spent approximately \$3.3 million on litter prevention and removal programs. The goal of imposing this tax is to defray the costs of cleanup and to encourage the use of environmentally friendly options. This bill will shift the cost of cleanup from County taxpayers to the retail customers using such bags.

The following persons contributed to and concurred with this analysis: John Greiner, Office of Management and Budget; Ansu John and Bob Hoyt, Department of Environmental Protection; Robert Hagedoorn and David Platt, Department of Finance.

JFB:jg

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Bob Hoyt, Director, Department of Environmental Protection
- Ansu John, Department of Environmental Protection
- Jennifer Barrett, Director, Department of Finance
- Robert Hagedoorn, Department of Finance
- David Platt, Department of Finance
- Marc Hansen, County Attorney, County Attorney's Office
- Walter Wilson, County Attorney's Office
- John Greiner, Office of Management and Budget
- John Cuff, Office of Management and Budget

ESTIMATED FISCAL IMPACT OF THE BAG TAX

	FY12	FY13	FY14	FY15	FY16	FY17
REVENUE						
Number of Bags	82,950,000	82,950,000	82,950,000	82,950,000	82,950,000	82,950,000
Bag Reduction Based on Consumer Behavior	50%	60%	70%	75%	80%	85%
Bags Subject to Tax	41,475,000	33,180,000	24,885,000	20,737,500.00	16,590,000.00	12,442,500.00
Projected Gross Bag Revenues @ \$0.05 per Bag	\$2,073,750	\$1,659,000	\$1,244,250	\$1,036,875	\$829,500	\$622,125
Less Retailer Share of Revenue @ \$0.01 per Bag	(\$414,750)	(\$331,800)	(\$248,850)	(\$207,375)	(\$165,900)	(\$124,425)
Less Revenue Lost to Startup and Collection Factors	(\$311,063)	(\$248,850)	(\$161,753)	(\$134,794)	(\$99,540)	(\$74,655)
Montgomery County Share of Revenue	\$1,347,938	\$1,078,350	\$833,648	\$694,706	\$564,060	\$423,045
GROSS PROJECTED COUNTY REVENUE*	\$561,641	\$1,078,350	\$833,648	\$694,706	\$564,060	\$423,045
COSTS						
Publicity/Bag Distribution/Education	\$120,000	\$100,000	\$95,000	\$80,000	\$70,000	\$70,000
Administrative Costs, Finance: Online Tax System	\$190,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000
Administrative Costs, Finance: OSC for Administrative Support**	\$40,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
Administrative Costs, Finance: Operating Expenses for OSC***	\$4,000	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
TOTAL COST	\$354,000	\$236,200	\$231,200	\$216,200	\$206,200	\$206,200
Net Fiscal Impact	\$207,641	\$842,150	\$602,448	\$478,506	\$357,860	\$216,845

*Five months in FY12, full year for FY13-17.

**Half a year in FY12.

***Operating expenses include computer, telephone, etc.



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Reductions

On April 11, the PHED Committee discussed the reductions to the Administration Fund and Parks Fund that would be necessary to meet the Executive recommended level of funding. The Committee generally agreed with the reductions recommended by Staff for the Planning Department and Department of Parks and wanted to reconsider the list of reductions once Staff was able to identify the amount that would be appropriate for payment from the Water Quality Protection Fund. Attached on © 44 to 45 is a memorandum from Council Legislative Attorney Jeff Zyontz presenting his analysis of the M-NCPPC staff time that he believes could be charged to the Water Quality Protection Fund under state law. He notes that the County Government only charges Staff time directly associated with programs required under a National Pollutant Discharge Elimination System (NPDES); however, Maryland law allows a broader range of activities to be funded.

The Executive-recommended budget included targets for the Administration Fund and the Park Fund but did not specify how the reductions should be allocated among Administration Fund Departments (Planning, Commissioners' Offices, and Central Administrative Services). Originally, the Planning Board decided to allocate them in equal percentages across departments, but later determined that \$94,000 they allocated to the Commissioners' Offices should instead be shared by the Planning Department and Department of Parks (\$47,000 each). In the Staff memorandum for the April 11 meeting, Staff recommended shifting the Planning Department \$47,000 reduction to the Department of Parks, since it would be better able to absorb this reduction. After recalculating all the reductions, Staff now recommends shifting \$22,000 to the Department of Parks so that the Planning Department has a \$25,000 reduction and the Department of Parks has a \$69,000 reduction.

Planning Department Reductions

The chart presented below summarizes the Council Staff recommendations for reductions to meet the Executive-recommended level of funding for the Planning Department. **At this funding level, the Planning Department would be able to complete the workprogram presented to the Council at the Semi-Annual Report meeting,** but would not have any staffing cushion to deal with unexpected issues that may arise. At the April 11 meeting, the Committee agreed conceptually with the Staff recommendations, but asked Staff to do further work to determine the amount that could be charged to the Water Quality Protection Fund (WQPF). The Committee also recognized that estimates of compensation reductions could change, depending on the Council's cross-agency compensation decisions¹. For the purposes of this calculation, Staff has estimated the savings of reducing the Other Post-Employment Benefits (OPEB) at one-half the amount included in the M-NCPPC budget. As noted above, Staff recommends shifting \$22,000 of Commissioners' Office reductions, rather than the \$47,000 earlier recommended by Staff. Included in this list are potential reconciliation list items that are described in greater detail below.

¹ It appears unlikely that the Council will make any final compensation decisions before it reviews the M-NCPPC budget and meets with the Prince George's County Council.

PLANNING REDUCTIONS	
Total Reduction recommended by Executive (including \$47,000 reduction reallocated by Planning Board from Commissioners' Office)	\$2,237,700
Compensation	-\$496,150
Furlough	-\$175,000
1/2 of OPEB	-\$254,150
Freeze 8 vacancies	-\$680,000
WQPF	-\$360,400
Reduce Admin. Fund Transfer to DR Special Revenue Fund	-\$250,000
Commissioners' Office (Transfer \$22,000 of Commissioners' Office Reduction to Department of Parks)	-\$22,000
Further reductions needed to reach Exec Target	\$0
Potential Reconciliation Items	
Expedite TPAR from 8/12 to 4/12 with consultant services	\$150,000
BRT Option 2 (Focus on 5 or 6 corridors to be studied in detail - consultant funds)	\$150,000
BRT Option 3 (Detailed review of 16 corridors - consultant funds)	\$375,000
Funding to fill 4 vacancies	\$340,000

In the table that follows, the Planning Department has provided a description of potential reconciliation list items discussed by the Committee, as well as their request to be able to fill an additional 4 vacancies. Included in the list is the cost to expedite the Transportation Policy Area Review (TPAR) analysis. This issue is addressed in the memorandum from the Planning Board Chair on © 52-53. Staff questions whether it is worth \$150,000 to expedite TPAR by 4 months (from August until April). Also included is the cost of a more detailed analysis of Bus Rapid Transit (BRT) routes. The 3 options proposed by the Planning Board are described on © 53. Finally, the Planning Department has asked that the Committee consider adding funding for 4 vacant positions on the reconciliation list.

Department of Parks Reductions

The chart presented below summarizes the Council Staff recommendations for reductions to meet the Executive-recommended level of funding for the Department of Parks. As with the Planning Department, the Committee agreed conceptually with the Staff recommendations, with the same directions for further analysis as for the Planning Department. The Department has calculated that \$1.51 million is appropriate to be charged to the WQPF.

The Staff recommendation does not require the Department to layoff any existing employees assuming they are able to take the compensation, furlough and OPEB reductions listed below.

DEPARTMENT OF PARKS REDUCTIONS	
Total Reduction recommended by Executive (including \$47,000 reduction reallocated by Planning Board from Commissioners' Office)	\$10,214,580
Compensation	-\$2,242,100
Furlough	-\$570,000
1/2 of OPEB	-\$846,100
Misc. adjustments with no service impact identified by Parks	-\$638,800
Reduce CIP Current Revenue	-\$250,000
Reduce Debt Service Associated with Germantown TC Park	-\$516,000
Charge personnel to the WQPF	-\$1,509,300
Commissioners office (absorb \$22,000 allocated to the Planning Department)	\$22,000
CIP chargebacks	-\$577,400
Set Park Lapse to be the same as FY11 (Increase from 5% assumed in FY12 budget to 7.5%)	-\$1,430,670
Supplies and Materials	-\$903,200
New positions	
OBI	-\$528,000
Seasonal Maintenance Support (\$553,500 total request)	-\$225,500
Additional Reductions needed to meet Executive Target	-\$490
Potential Reconciliation List:	
1. Restore core seasonal/weekend workers	\$225,500
2. Critical Maintenance and inspection -Tier 1	\$227,200
3. Critical Maintenance and inspection -Tier 2	\$227,200
3. Specialized trade workers for critical repairs	\$276,200
4. Maintenance for unfunded/newly developed parks	\$300,000

MEMORANDUM

April 28, 2011

TO: Marlene Michaelson
FROM: Jeff Zyontz, ^{JZ}Legislative Attorney
SUBJECT: M-NCPPC Expenditures within the scope of the Water Quality Protection Charge (WQPC)

The scope of the WQPC is found in County Code Section 1-35(f):

- (f)Funds in the stormwater management fund may be applied and pledged to pay debt service on debt obligations to finance the construction and related expenses of stormwater management facilities as approved in the Capital Improvements Program. Funds in the stormwater management fund must only be used for:
- (1) construction, operation, financing, and maintenance of stormwater management facilities, and related expenses, including debt service payments related to construction and related expenses of stormwater management facilities;
 - (2) enforcement and administration of this Article; and
 - (3) any other activity authorized by this Article or Maryland Code, Environment Art., §4-204.

Maryland Code, Environment Article §4-204 allows the fund to be used for implementing stormwater management programs, including:

- (i) Reviewing stormwater management plans;
- (ii) Inspection and enforcement activities;
- (iii) Watershed planning;
- (iv) Planning, design, land acquisition, and construction of stormwater management systems and structures;
- (v) Retrofitting developed areas for pollution control;
- (vi) Water quality monitoring and water quality programs;
- (vii) Operation and maintenance of facilities; and
- (viii) Program development of these activities.

Currently, the Department of Environmental Protection only uses the fund for programs required under its NPDES permit. Currently, the charge is \$49 for every household every year. DEP estimates that permitting activities alone will require a charge of \$230 over the next several years. The DEP Director acknowledges that the scope of the WQPC is broader than his Department's permit activities.

Parks Department

The Parks Department must comply with 2 water quality permits: 1) industrial site (maintenance yards); and 2) small separate storm sewer systems. Beyond these permits, the Department maintains streams, lakes, ponds, and stormwater management facilities. All these activities are within the scope of the WQPC; however, some 50 percent of this activity is not directly related to activities required by a water quality permit.¹ The total dollar amount (salaries and contracts of all qualified activities) equals \$1,509,300. It would require a \$6.29 increase in the WQPC to pay for this activity.²

Planning Department

None of the water quality work in the Planning Department is directly related to compliance with a water quality permit; however, their planning and water quality related activities are within the scope of the WQPC. The qualifying water quality efforts total \$360,400.³ It would require a \$1.50 increase in the WQPC to pay for this activity.

¹ Of the 14.9 workyears devoted to water quality activity by the Parks department (excluding administrative overhead), 5.1 workyears are associated with the permit for small separate systems and 2.35 workyears are associated with the permit for maintenance yards. The remaining 7.45 workyears protect water quality but are not associated with a permit.

² The DEP Director reported that every \$1 increase in the WQPC per home equivalent would yield \$240,000 in revenue.

³ The Planning Department produced numbers by tiers. The first tier, \$255,830, unquestionably qualifies for WQPC funding. It includes forest conservation efforts in stream valley buffers (establishing easement, monitoring, and enforcement effects). The second tier, \$104,600, includes a portion of the environmental work on master plans and forest conservation efforts abutting stream valley buffers. A good argument can be made that the second tier activities also qualify for WQPC funding.

MEMORANDUM

April 30, 2011

TO: Marlené Michaelson, Senior Legislative Analyst
County Council

FROM: Robert G. Hoyt, Director
Department of Environmental Protection (DEP)

SUBJECT: M-NCPPC Submissions and Water Quality Protection Charge (WQPC)

Per your request, we have reviewed the materials submitted by M-NCPPC on the use of WQPC funds for M-NCPPC activities.

As we stated in our recent meeting with you, DEP uses the WQPC almost solely to fund only those activities that are required by the County's MS4 permit¹. As background, DEP is the lead agency for the County's MS4 permit, which imposes strict requirements on the County to monitor and control stormwater runoff from previously developed areas and includes Montgomery County Public Schools as a co-permittee. (DEP performs MS4 compliance activities for MCPS through an MOU.) DEP's implementation strategy, which has been submitted to the State, estimates that compliance with the MS4 permit will cost over \$300 million through the next four years. M-NCPPC has its own MS4 permit issued by the State, which is a general permit and imposes far less onerous requirements.

Specifically, the County's MS4 permit requires the County to: (1) Monitor water quality and biological health of all our watersheds; (2) Inspect and maintain stormwater management facilities (e.g., stormwater ponds); (3) Modify planning, zoning and public works ordinances and other local codes to remove obstacles to implementing Low Impact Development (LID); (4) Restore 4,300 acres of impervious surfaces by implementing LID techniques, creating or retrofitting stormwater structures, and/or restoring stream beds and banks; (5) Implement the Trash Free Potomac Treaty; (6) Identify and eliminate illicit discharges (illegal connections to storm sewers); (7) Conduct public education and outreach campaigns to change behaviors that lead to stream pollution and litter; (8) Make progress toward achieving water quality goals; (9) Develop an implementation plan that outlines how requirements will be satisfied; and, (10) Report annually on progress.

¹ – The one exception is that a small portion (approximately 1 work year) of the SPA program is currently funded through the WQPC and is not specifically required by the MS4 permit, but is required by County law.

DEP reviewed M-NCPPC's submission for: (1) consistency with the approach taken in the CE's recommended budget of using the WQPC for only MS4 required activities; (2) whether the listed expense is related to stormwater management (not just water quality generally) as required by State law; and, (3) for its accuracy in describing DEP's activities.

M-NCPPC's submission listing the Parks Department's expenses puts them into three categories. We have the following comments on each category:

Maintenance and Management of Streams, Lakes, Ponds, Non-tidal Wetlands, and Stormwater Management Facilities - maintenance and management of recreational lakes and ponds are not stormwater related and are not required by the MS4 permit. Therefore, funding their maintenance and management through the WQPC would not only be inconsistent with our approach, it would also raise the legal question of whether using WQPC funds is authorized by State law, which limits the use of the funds to "implementation of stormwater management programs." State law does not, as M-NCPPC's submissions appear to assume, allow any activity relating to water quality irrespective of its connection to stormwater management to be funded through the WQPC. As for the stormwater management facilities in county parks, DEP is required through an MOU with M-NCPPC to inspect and perform the necessary structural maintenance related to those facilities. In the Executive Branch, non-structural maintenance of stormwater ponds is paid for by each department through the general fund.

NPDES Permit for Industrial Sites -- 12 Park Maintenance Yards -- In the Executive Branch, compliance with industrial NPDES permits including general maintenance and cleaning interceptors are paid for by the departments through the general fund. If the Executive Branch departments (e.g., DOT, DGS and others) took a similar approach and funded these activities through the WQPC, the impact to the WQPC would obviously be significant. It should also be noted that not all of the actions listed by M-NCPPC related to their industrial NPDES permit are stormwater related. For example, interceptors drain to wastewater treatment plants and not storm sewers, so again, there is a legal question as to whether funding their maintenance is beyond the scope authorized by State law.

NPDES Municipal Permit for Small, Separate, Storm Sewer Systems - MS4 - A number of the functions listed are not specifically required by the MS4 general permit issued to M-NCPPC and a number of them are tasks already performed by DEP including biological monitoring, stream restoration, public outreach and training, and illicit discharge monitoring. DEP has the lead role in the County for these activities and is also the lead in maintaining ESD BMPs.

We also reviewed M-NCPPC's submission for Department of Planning's expenses. None of these activities are required by M-NCPPC's MS4 general permit and not all are stormwater related. As stated above, State law limits the use of the funds to "implementation of stormwater management programs." State law does not, as M-NCPPC's submissions appear

to assume, allow any activity relating to water quality irrespective of its connection to stormwater management be funded through the WQPC. This point was made by our attorney at the meeting. Additionally, we have the following comments on each category:

Special Protection Areas – DEP does fund its SPA related work through the WQPC.

Stream Protection - NRI review, forest conservation, conservation easements, and stream buffers, although water quality related, are not required by M-NCPPC's MS4 general permit and are not specific stormwater management programs (thus raising the legal question as to whether their costs can be funded through the WQPC).

Water Quality Planning Aspect of comprehensive Master Plans – This activity is not required by M-NCPPC's MS4 permit and therefore, covering it through the WQPC would be inconsistent with DEP's approach.

Forest Conservation Abutting Stream buffers – As stated previously forest conservation, although water quality related, is not a stormwater management program and raises the same legal question.

On the issue of M-NCPPC's description of DEP activities, we believe the following is a more comprehensive description: DEP is the lead agency for Montgomery County for stream monitoring and maintains the countywide monitoring database. DEP established the monitoring program in 1994 and is responsible for maintaining and monitoring stations throughout Montgomery County including many stations in M-NCPPC's parkland. In fact, we estimate that 70 percent of DEP's 270 monitoring stations are within Park boundaries. DEP develops the monitoring methods and maintains the data's quality. Monitoring of the entire County is done in five-year cycles.

DEP is also the lead agency for stream restoration and stormwater retrofits. Much of the stream restoration performed by the County is within property maintained by Parks. We estimate that approximately 75 percent of the 20 miles of stream restoration is performed within Park boundaries. DEP is also the lead for the County's illicit discharge program and samples a considerable number of outfalls within Park boundaries and covers area both within Parks and outside of Parks.

DEP would like to make two final points: (1) We support the Council staff's recommendation to identify any areas where the County's resources can be leveraged as M-NCPPC implements its permit and DEP implements the County's permit. This review should also factor in the approach taken with MCPS through the MOU requiring DEP to satisfy Schools' MS4 obligation; and, (2) Any decision to increase the WQPC should be made comprehensively with a complete understanding of what can legally be charged to the WQPC, the tremendous economic burden that the WQPC will be bearing by "simply" funding the

Marlene Michaelson
April 30, 2011
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County's MS4 requirements over the next 4 years (estimated to be over \$300 Million), and that the WQPC is included as a line item on property tax bills.