


AGENDA ITEM #7D,E
June 19, 2018

Introduction

MEMORANDUM

June 15, 2018

TO: County Council

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Agenda Item 7D: Introduction** - Special appropriation to the County Government's FY19 Capital Budget and Amendment to the FY 19-24 Capital Improvements Program (CIP), Conservation of Natural Resources: SM Design/Build/Maintain Contract (Source: Long Term Financing)

Agenda Item 7E: Introduction – Amendments to the FY19-24 CIP – Conservation of Natural Resources: Misc. Stream Valley Improvements, SM Retrofit – Roads, SM Retrofit: Countywide

PURPOSE: To introduce resolutions to implement a compromise between the County Executive and the County Council regarding the FY19-24 Stormwater Management CIP

NOTE: Draft resolutions for Items 7D and 7E will be included in an addendum Council Packet on Monday, June 18.

Attachments

- Memorandum from the Executive dated June 14, 2018 transmitting a Stormwater Management CIP amendment (©1-3)
- Memorandum from the Executive dated June 1, 2018 noting his veto of several capital project FY19 appropriations (©4-5)
- Design/Build/Maintain Compromise Provisions (©6)
- List of suspended Stormwater Management Projects (©7-8)

On June 14, the County Executive transmitted an FY19-24 CIP amendment for consideration by the Council (see ©1-3). This proposal follows an Executive veto (see ©4-5) of several Stormwater Management CIP projects.

A public hearing is scheduled for July 10, 2018 at 1:30 PM.

Background

Council Action on the FY19-24 CIP

On May 24, the Council approved the FY19-24 Conservation of Natural Resources – Stormwater Management CIP with the following changes to the County Executive’s recommendations:

- The Council approved \$2.0 million in additional expenditures (funded with long-term financing paid for with Water Quality Protection Fund (WQPF) revenue) in the FY19-24 Parks CIP (Stream Protection: SVP project) to provide for several stream restoration projects which will provide a total of 44 acres of retrofit credit under DEP’s MS-4 permit.
- The Council approved the total expenditures and funding assumptions in the FY19-24 CIP at the levels recommended by the County Executive minus the \$2.0 million provided to Parks as noted above.
- The Council did not approve the Executive’s recommended new SM Public/Private Partnership project. Instead, the Council (by a 5-4 vote; Councilmembers Floreen, Katz, Leventhal, Rice opposed) reallocated the expenditures and funding recommended in this new project to several ongoing Stormwater Management projects. *NOTE: The Council ultimately approved reallocating \$13.9 million of the \$43.2 million recommended in the deleted project to three ongoing projects.*

Instead of pursuing a single Design/Build/Maintain (DBM) contract to achieve the approximately 530 acres of impervious acreage credit by 2024 (as assumed in the deleted new project), the Council majority supported the approach of continuing design and construction work under current contracting methods on ongoing work which was previously suspended while in design (see list on ©7-8) to achieve sufficient impervious acreage credit to meet the 5% retrofit requirement for the next MS-4 permit as assumed under the Executive recommendation.

Executive Veto (see ©4-5)

On June 1, the County Executive sent a memorandum to the Council noting his veto of the FY19 appropriations for several projects: Misc Stream Valley Improvements, SM Retrofit – Roads, and SM Retrofit: Countywide.

Council and Executive staff have discussed the assumptions and implications of the veto. Because the Stormwater Management CIP was recommended by the Executive to be reduced substantially from the FY17-22 Approved CIP (from \$345.5 million to \$102.5 million) because of lower expected impervious acreage retrofit requirements in the next MS-4 permit and because the Executive assumed that new projects would be handled through a new design/build/maintain project, these three projects did not need appropriation authority added in FY19. **In fact, instead, these projects together were recommended by the Executive to have their total appropriations reduced substantially (by \$60.5 million in appropriation).**

While the Council’s action on May 24 added \$13.9 million in additional appropriation overall to these three projects, the projects would all still experience total appropriation

reductions in FY19. Given this, the meaning of the Executive veto was unclear to Council Staff. Subsequent to the veto, Executive staff indicated that the veto in fact resulted in higher total appropriations for these three projects.

In his memorandum of June 14 (see ©1-3) while transmitting a compromise proposal (discussed below) the Executive also confirmed his position that his veto resulted in increased appropriations in several projects. Council legal staff are concerned about the implications of this position and support the Council overriding the veto to clarify that the Council is the sole authority that can increase appropriations. *NOTE: The veto issue will be addressed in a separate Council Staff memorandum to the Council also to be provided by addendum.*

Compromise Provisions

Because a veto override requires six votes and the Council's vote on this issue was a 5-4 action, Council Staff has been working with Executive staff on a potential compromise approach that the Executive and a super-majority of the Council could support. A draft document presenting the major elements discussed to date is attached on ©6.

The Executive's transmittal would assume that DEP moves forward with a single new DBM contract for approximately 500 acres of work to be completed over the FY19-24 contract period for the next MS4 permit.

However, several elements would be changed on the project description form (PDF; draft transmitted by the Executive attached on ©3) from what the Executive previously recommended. These include:

- The project's FY19 appropriation would be \$20 million instead of the \$43.2 million previously assumed by the Executive. The \$20 million appropriation is assumed to cover the first phase of work identified by the contractor. Future phases of work would require additional appropriations through future Council action.
- Quarterly status reports would be required to be submitted to the Council.
- DEP would be required to meet regularly with an advisory group which would provide input and feedback on project issues.

In addition to these PDF changes, Council staff have discussed with Executive staff a number of modifications regarding the structure and content of the Request for Proposals (RFP) for the DBM contract. Some of the more substantive items include:

- Contract bids would be required to include 10 to 12 existing projects in design but previously suspended by DEP. Bidders would also be required to review all of DEP's suspended projects and note why projects were not selected.
- At least 60 percent of the projects included in contract bids would have to be "green infrastructure" projects.
- At least 5 percent of the project acreage or 10 percent of the project costs would have to be from low impact development (LID) projects.

- DEP must approve or disapprove projects proposed by the contractor and can add or substitute projects (subject to availability of funding in the project).

FY19 Capital Budget and FY19-24 CIP Actions for Introduction

While the above compromise approach can move forward for consideration regardless of whether a veto override occurs, the specific appropriation actions required to implement the compromise would differ depending on whether the veto is overridden or sustained. *NOTE: The appropriation actions presented below assume the veto override occurs; which is different from what the Executive assumes in his June 14 transmittal.*

Item #7E (which includes a special appropriation and CIP Amendment) would create a new Design/Build/Maintain Contract project with \$46.3 million in expenditures funded with: long-term financing (paid with Water Quality Protection Fund Current Revenue), State aid, and Water Quality Protection Fund Current Revenue. The new appropriation needed in FY19 would be \$6.129 million. The balance of the \$20 million appropriation for FY19 would be provided through transfers from existing projects per Item #7F below.

Item #7F (which includes appropriation transfers and CIP amendments) would reduce the expenditures in the three ongoing projects: Misc Stream Valley Improvements, SM Retrofit – Roads, and SM Retrofit: Countywide to levels previously recommended by the County Executive. while also transferring \$13.871 million of appropriation to the new Design/Build/Maintain Contract project to bring that project's FY19 appropriation up to the \$20 million amount discussed earlier.

Attachments

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

Isiah Leggett
County Executive

June 14, 2018

TO: Hans Riemer, President
County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Storm Water Management

I understand that the Council may be willing to consider a compromise approach for a storm water management project that addresses the Council's desire to ensure appropriate oversight of the project, while recognizing the role of the Executive Branch in the implementation of programs and projects. In that spirit, I propose the following, which is reflected in the attached project description form and which is similar to the approach discussed between Council and Executive staff.

The project would be referred to as a Design/ Build/ Maintain (DBM) project with an appropriation of \$20 million rather than the original \$43.2 million I had proposed in the March 15 CIP amendments. This smaller appropriation would allow work needed for the future MS4 Permit to begin while allowing the Council to review program implementation at critical stages. Most importantly, it would ensure that we continue to meet important environmental goals, including the requirements of our MS4 permit. The project approach will also allow us to scale up our operations if the State's permit requirements are greater than those we've assumed.

I realize that some on the Council are concerned that, as a result of my veto of the Council FY19 appropriation, there remains a larger appropriation level in the remaining projects. I would propose that the Council, through its transfer authority, move \$20 million of those appropriations to this new DMB project. The remaining appropriation would remain in the existing projects to be acted on next May when the Council can reappropriate funds it deems necessary. (The Charter allows such an action at the time of budget action in May). And all County contracts are subject to appropriation and satisfactory performance.

The Council staff recommendation also suggested that language be added to the PDF to require regular status updates on the program from Executive staff, as well as, ensuring that DEP staff meet regularly with an advisory group regarding the projects. These provisions in the PDF are acceptable to me as well. Additionally, DEP staff have met with Council Members and received a great deal of input regarding the structure and content of the Request for Proposals for the DBM contract that will be issued. We have acceded to the vast majority of the requests and believe they have strengthened the program.

I know that we share the important environmental goals that this program is designed to achieve. I believe this compromise meets all of our objectives while moving us forward to those critically important goals.

Thank you for your consideration.



SM Design/Build/Maintain Contract (P801901)

Category Conservation of Natural Resources **Date Last Modified** 06/14/18
SubCategory Stormwater Management **Administering Agency** Environmental Protection
Planning Area Countywide **Status** Ongoing

Total	Thru FY17	Est FY18	Total 6 Years	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	Beyond 6 Years
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EXPENDITURE SCHEDULE (\$000s)

Planning, Design and Supervision	12,250		12,250	1,830	2,160	2,410	2,430	2,430	990	
Construction	34,050		34,050		6,560	6,360	6,710	7,210	7,210	
TOTAL EXPENDITURES	46,300		46,300	1,830	8,720	8,770	9,140	9,640	8,200	

FUNDING SCHEDULE (\$000s)

Long-Term Financing	27,265		27,265	1,830	8,720	5,130	4,360	4,450	2,775	
State Aid	11,500		11,500			2,500	3,000	3,000	3,000	
Current Revenue: Water Quality Protection	7,535		7,535			1,140	1,780	2,190	2,425	
TOTAL FUNDING SOURCES	46,300		46,300	1,830	8,720	8,770	9,140	9,640	8,200	

APPROPRIATION AND EXPENDITURE DATA (\$000s)

Appropriation FY 19 Request	Year First Appropriation	FY19
Appropriation FY 20 Request	Last FY's Cost Estimate	
Cumulative Appropriation	Transfer	20,000
Expenditure / Encumbrances		
Unencumbered Balance		

PROJECT DESCRIPTION

This project provides for the use of a Design/Build/Maintain (DBM) contract for the design and construction of new and/or upgrades of existing under-performing stormwater management facilities or stream restorations throughout the County to meet the requirements of the County's Municipal Separate Storm Sewer System (MS4) Permit. Compliance with the MS4 Permit requires the control of impervious surfaces not currently treated to the maximum extent practicable. Any stormwater management facility type(s) or stream restoration, deemed creditable per the Maryland Department of the Environment regulations, can be implemented per this project.

PROJECT JUSTIFICATION

This project is needed to comply with the County's MS4 permitting requirements in a cost-effective manner, to implement the County's adopted water quality goals (Chapter 19, Article IV), and to protect habitat conditions in local streams.

OTHER

The Montgomery Parks Department of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery Department of Environmental Protection (DEP) have agreed that M-NCPPC will serve as the lead agency for implementing stream restoration projects including long term monitoring and maintenance, that are located wholly or mostly on parks property in support of the County's MS4 permit. Previously, DEP had begun design work on the following stream restoration projects which meet these criteria: Clearspring Manor, Glenallan, Stoneybrook (Beach Drive to Montrose Avenue), and Grosvenor (Beach Drive to Rockville Pike). In FY18, DEP will provide all design work for these projects to M-NCPPC for design completion, permitting, and construction under M-NCPPC's Stream Protection: SVP (P818571) project. M-NCPPC has agreed that all MS4 credits generated from these projects will be credited towards the County's future MS4 permit with delivery of the restored impervious acres no later than Dec. 31, 2023. M-NCPPC will provide appropriate updates at key project milestones to ensure that impervious acreage credits are achieved in the timeframe required, in addition to providing the long-term monitoring and maintenance required for the County to maintain the impervious acreage credit. These projects are currently estimated to have a combined cost of \$2.4M and will provide approximately 44 acres of credit. Parks will provide updated schedule and cost information on all projects in FY 19 for construction allocation funding beginning in FY 20, based on MDE's Water Quality Revolving Loan Fund cycle timeframes. M-NCPPC and DEP will immediately begin developing a Memorandum of Understanding that details how projects completed by M-NCPPC, funded with WQPF dollars, with MS4 credits going to DEP will be handled. M-NCPPC will document all MS4 credits created through these projects in accordance with MDE requirements to obtain State approval for the permit credits. M-NCPPC recognizes that stream restoration projects with relatively small segments located on parks property may be selected by the County's DBM contractor. If selected by the County's contractor and approved by DEP with concurrence by M-NCPPC, the contractor will need to obtain a Park Permit and comply with all M-NCPPC requirements.

DEP will provide quarterly program status updates to the Council under this contract. The annual work program will be based on permit requirements, an assessment of priority needs, community input including feedback from a stormwater program advisory group, and partnership agreements.

FISCAL NOTE

This project assumes the award of Maryland Water Quality Revolving Loan Funds (Long-Term Financing) over the six-year period, which would replace Water Quality Protection Bonds as the primary source of funding for the program. Expenditures in the out years include expected costs to meet the requirements of the County's next MS4 permit. The scope of the next MS4 permit is subject to negotiation with the Maryland Department of Environment.

DISCLOSURES

Expenditures will continue indefinitely. The County Executive asserts that this project conforms to the requirement of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

COORDINATION

Maryland National Capital Park and Planning Commission, Department of Permitting Services, Maryland Department of the Environment



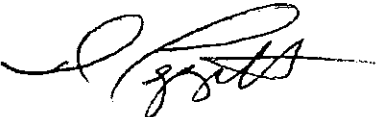
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

Isiah Leggett
County Executive

June 1, 2018

TO: Hans Riemer, President
County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Veto of Line-Item in CIP Budget for Montgomery County's Clean Water
And Permit Compliance Program

I am in receipt of the Capital Improvements Program for the two-year period beginning this July 1 as approved by the County Council on May 24, 2018. In accordance with the provisions of the County Charter, I am exercising my veto of the line-item appropriation for Montgomery County's Clean Water and Permit Compliance Program. I am vetoing the FY 19 appropriations for Projects P807359 (Misc Stream Valley Improvements), P801300 (SM Retrofit – Roads), and P808726 (SM Retrofit Countywide) on which Council took action as part of its rejection of my proposed Design/Build/Maintain (DBM) approach to future stormwater management projects.

This is the first line-item veto of my nearly 12 years as County Executive. In fact, it is the first such veto since 1993. I do not take this action lightly.

While I appreciate the good judgement and support for needed reform from four Councilmembers, it remains incomprehensible to me how the five members of the Council in the majority, who purportedly have the best interests of our County taxpayers and environment in mind, were able to take an action so clearly against greater efficiencies and effectiveness in an important taxpayer-funded County program.

The County Charter specifies a clear division of responsibilities between the legislative and executive branches. The Council is responsible for passing laws, approving budgets, and exercising oversight of programs. The Executive is responsible for running the County government, including implementing programs in the most efficient and cost effective manner. By taking the action it did, the Council crossed that line in the Charter and attempted to micro-manage the implementation of a County program.

Hans Riemer, Council President
June 1, 2018
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So the Council majority's action is wrong vis-à-vis the Charter. It is also wrong on the substance. It hurts our environmental efforts. It prevents needed changes. It ensures that County taxpayers will pay more and more in stormwater management fees – and get less and less in return.

As you know, Montgomery County has been the pioneer for Maryland's MS4 program. We have led the region in reducing stormwater pollution from impervious areas such as parking lots, rooftops and buildings. Through the activities undertaken by the Department of Environmental Protection (DEP), as well as many other County agencies that address stormwater management issues, over 5,000 acres or close to 30% of impervious surface have been controlled in the County, over 8,600 trees have been planted producing enough oxygen to help over 4,300 families breathe better, and over 30 miles of streams have been restored creating improved habitats for wildlife and beautifying neighborhoods. I am proud of the accomplishments of the County and the leadership it has provided for other jurisdictions.

Those accomplishments notwithstanding, in 2015, the County failed to meet the requisite number of treated impervious acres under our 2010 MS4 Permit. The current contracting approach relies on separate contracts for design, construction and maintenance, and the work is tasked on a project-by-project basis. This model has led to inefficiencies, delays, and therefore, greater costs. I also felt it was necessary to step back from the repeated increases of the Stormwater Management Charge that have taken place at an average rate of 16 percent per year. This type of increase is not sustainable for a taxpayer funded program.

As I have said before, my proposal for achieving the requirements of the County's MS4 permit was specifically designed to move this vital environmental program forward in a more efficient and cost-effective way while allowing us to hold the line on property tax bills. That is why the CIP I submitted for the MS4 Program did not propose increasing the Stormwater Management Charge for FY19 or FY20 while still allowing us to meet our environmental goals through a different contracting approach.

My new DBM contracting proposal centered on having a large volume of impervious acre restoration with design, construction and maintenance achieved under one contract. This allows for a life-cycle approach for stormwater management facilities and also requires the contractor to share in the risk. This reform is critical for the County's ability to meet its future MS4 permit requirements and achieve its larger environmental and green infrastructure objectives. This was not "privatization." DEP will continue to have control over the projects undertaken, oversight and community engagement.

I regret that you and the Council majority have made this veto necessary. Playing politics with a critical environmental issue, doubling down on a costly and inefficient status quo, and kicking the proverbial can down the road will never be confused with effective governance.

Potential Design/Build/Maintain Contract Project Provisions

Project Description Form

- Change the name of the project from SM public/Private Partnership to SM Design/Build/Maintain Contract project.
- Add language to the PDF noting that the Executive will provide quarterly program status updates to the Council.
- Add language to the PDF noting formation of a stormwater program environmental advisory group which will meet regularly with DEP and provide input and feedback on project issues.
- Reduce the FY19 appropriation from \$43.2 million (previously recommended by the CE) to \$20 million; to cover the first phase of work to be done. Subsequent phases of work will require new appropriations from the Council.

Contract Scope and Conditions

- Assume approximately 500 acres of retrofit work to be done via the DBM contract over the 2019-2024 period. (NOTE: As noted above only the first phase of work will be appropriated at this time)
- Require contract bids to meet the following conditions:
 - Include at least 10 -12 projects already under design but suspended by DEP. The contractor must also provide feedback to DEP regarding any suspended projects NOT selected for inclusion in the first phase work plan.
 - Assume at least 60% of projects (or project acreage) will meet the “green infrastructure” definition; consistent with Maryland Department of the Environment best practices.
 - Assume 5% of acreage or 10% of costs will be LID work
 - All projects must
 - be in the MS4 area
 - be eligible for water quality credits (including both impervious area and nutrient and sediment impacts for Total Maximum Daily Load calculations)
 - be eligible for Department of Natural Resources grants and Water Quality Revolving Loan funds
 - address existing infrastructure problems (e.g., pond retrofits must address existing repairs needed)
 - Not involve Parks property
- Include preferences in the RFP for:
 - projects with long-term environmental benefits (versus projects that have a more limited short-term benefit)
 - projects meeting the green infrastructure definition; consistent with Maryland Department of the Environment best practices.
 - projects addressing high priority watersheds
- DEP will remain the lead entity regarding neighborhood outreach and coordination (with the contractor required to provide support, as needed, to DEP).
- DEP must approve or disapprove projects proposed by the contractor and can add or substitute projects (subject to availability of funding in the project).

Suspended Projects

TABLE B

Project name	Type	IA Credit	Status Detail	44 Projects Total Earned Per Invoice
Quail Valley 1 SWM Retrofit	Pond	3.15	36-In Final Design	\$129,887
Washington Science Center	Pond	12.79	36-In Final Design	\$117,760
BelPre Manor	Multiple	8.70	36-In Final Design	\$113,608
Derwood Station South	Pond	7.41	34-In Permit Design	\$87,300
Flower Valley	Pond	5.49	34-In Permit Design	\$87,300
Germantown MARC	LID	6.35	36-In Final Design	\$87,300
Germantown Park - 10917, 10985	Pond	5.21	36-In Final Design	\$55,655
Germantown Park - 10972	Pond	0.70	36-In Final Design	\$59,046
Germantown Park - 10981	Pond	1.92	36-In Final Design	\$59,046
Germantown Park - 11111	Pond	1.94	34-In Permit Design	\$59,046
Germantown Park - 11156	Pond	3.24	36-In Final Design	\$55,655
Germantown Park - 11178	Pond	4.11	36-In Final Design	\$59,046
Germantown Park - Stream	Stream	8.96	36-In Final Design	\$59,046
Goshen Estates	Pond	34.43	34-In Permit Design	\$60,746
Longmeade Crossing	Multiple	11.70	36-In Final Design	\$113,608
Old Farm Creek SR	Stream	18.18	36-In Final Design	\$178,955
Pine Knolls	Pond	16.01	34-In Permit Design	\$75,450
Plumgar II Regional SWM Retrofit	Pond	22.77	36-In Final Design	\$66,010
Quail Ridge	Pond	4.32	36-In Final Design	\$70,895
Seneca Park SWM Retrofit Wheatfield Dr	Pond	6.53	36-In Final Design	\$66,010
Seneca Park Whetstone SWM Retrofit - 10826	Pond	3.37	36-In Final Design	\$66,010
Stedwick Pepco SWM Retrofit	Pond	11.05	36-In Final Design	\$66,010
Strawberry Knoll Bay Filter	Pond	6.72	36-In Final Design	\$129,887
Thomas Choice	Pond	13.54	36-In Final Design	\$104,613
Townes of Gloucester	Pond	8.01	34-In Permit Design	\$73,415
Williamsburg Square - 11099	Pond	4.98	34-In Permit Design	\$43,195
Williamsburg Village Regional	Pond	15.75	34-In Permit Design	\$87,300
Clearspring Manor	Pond	15.52	34-In Permit Design	\$105,557
Clearspring Manor Stream Restoration	Stream	8.02	34-In Permit Design	\$105,557
Germantown View	Pond	7.74	36-In Final Design	\$72,897
Glenallan Tributary	Stream	17.25	34-In Permit Design	\$173,490

Greencastle Woods 2	Pond	14.12	34-In Permit Design	\$73,415
Grosvenor Tributary Stream Restoration	Stream	80.00	34-In Permit Design	\$383,330
Gunners Branch Stream Restoration	Stream	52.28	34-In Permit Design	\$292,875
Judson Henderson Valleywood LID	LID	16.79	36-In Final Design	\$555,842
Manors of Paint Branch	Pond	6.99	34-In Permit Design	\$73,415
Plum Gar Stream Restoration	Stream	10.50	34-In Permit Design	\$116,209
Sligo Estates - Ballantrae - McDonald Knolls	LID	7.82	34-In Permit Design	\$289,821
Stoneybrook Stream Restoration	Stream	47.50	36-In Final Design	\$290,546
Willow Ridge	Pond	9.68	34-In Permit Design	\$70,895
Woodrock	Pond	33.21	34-In Permit Design	\$75,450
Bel Pre Stream Restoration	Stream	27.00	34-In Permit Design	\$164,555
Cannon Road Green Streets	LID	5.90	34-In Permit Design	\$256,057
Springbrook-Homestead Estates Green Streets	LID	17.10	34-In Permit Design	\$364,432
		624.75		\$5,696,140