

MEMORANDUM

June 24, 2016

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

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

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): enact Bill 11-16 with an amendment to make properties with a stormwater management system built as part of a stormwater management participation project eligible for a credit, to be calculated according to the implementing regulation.

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 ©32-52) and Transportation, Infrastructure, Energy and Environment Committee worksessions were held on May 5 and June 23.

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.

The Council is scheduled to act on the companion regulation to this Bill, Executive Regulation 12-16, immediately after action of this Bill.

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)
Single Family Residential Properties		
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
Multifamily Residential Properties		
Multifamily	0+ sq. ft. impervious area	Assessed based on actual imperviousness that is converted to an ERU number
Nonresidential Properties		
Nonresidential	0+ sq. ft. impervious area	Assessed based on actual imperviousness that is converted to an ERU number
Nonprofit Properties		
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
Agricultural Properties		
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 FY17 rate is \$95.00. 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 ©16-31.

Issues/Committee Recommendations

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 32-42).

As Councilmembers 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 (©34-39).

At the Committee's first worksession, Committee members indicated interest in reviewing options to resolve this issue. After careful consideration, the Executive recommended 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” (©3, 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” (©2, 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 ©60-61 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. **Committee recommendation (3-0):** 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 (©41-50). 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. The Committee did not recommend amending Bill 11-16, but did ask the Department continue to work with Mr. Battley to see if there is a way to accommodate his concerns.

3. Additional issue raised by Minkoff. After the Committee worksession on Bill 11-16, Ms. Feuerherd, on behalf of Minkoff Development Corporation, submitted additional language for the Council’s consideration (©62-63). As Ms. Feuerherd noted, under current law and Bill 11-16 as introduced, a property owner could obtain a credit if the property had a stormwater management system or was located in the same drainage area as a property with a stormwater management system and the properties had the same owner (see ©3, lines 32-41). Under the Committee’s recommended bill, a property owner would also be eligible for a credit if a property has a stormwater management system built as part of a stormwater management participation project. This language does not take into consideration that some of these projects, such as the Shady Grove Development Park, are not single properties, but actually a collection of contiguous properties with a single owner. In the case of the Shady Grove Development Park, as Ms. Feuerherd notes, the 2 ponds are located on 2 of the 9 properties that make up the Park. The intent of DEP’s recommended language transmitted on June 16 is for the entire Park to be eligible for a credit. Therefore, Council staff concurs with Ms. Feuerherd and recommends the following amendment on ©3, after 45 (new language is highlighted):

- (C) the property contains a stormwater management system built as part of a County-approved stormwater management participation project; or
- (D) the property does not contain a stormwater management system, but is located in the same drainage area as a property containing a stormwater management system built as part of a County-approved stormwater management participation project and both properties have the same owner.

This packet contains:	<u>Circle #</u>
Expedited Bill 11-16	1
Legislative Request Report	6
Memo from County Executive	8
Fiscal and Economic Impact statements	11
Levchenko memorandum	16
Select correspondence	
Lisa Feldt, County Executive	32
Paul Chod	34
Diane Feuerherd, Minkoff Dev. Corp.	38
Alicia Stanley, Davis Aiport	40
Devin Battley, Lindbergh Park Owners Assoc.	41
Lisa Alexander, Audubon Naturalist Society	51
Stormwater Partners Network	52
Executive amendments	53
DEP Stormwater Management Participation Projects Analysis	60
Proposed amendment by Minkoff Dev. Corp.	62

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Expedited Bill No. 11-16
Concerning: Stormwater Management –
Water Quality Protection Charge –
Grants—Credits
Revised: 6/23/2016 Draft No. 2
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

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

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 19-21, 19-29A, and 19-35

Boldface	<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:

1 **Sec. 1. Sections 19-21, 19-29A, and 19-35 are amended as follows:**

2 **19-21. Definitions.**

3 In this Article, the following words and phrases have the following
4 meanings unless the context indicates otherwise:

5 * * *

6 Stormwater management participation project: A capital improvement
7 project in which both the County and the property owner jointly fund the
8 construction of a regional stormwater management facility intended to
9 benefit properties in addition to those belonging to the property owner.

10 * * *

11 **19-29A. Watershed restoration grants program.**

12 * * *

13 (c) The Director of Environmental Protection may also establish a
14 supplemental grant program to offset the cost [to eligible
15 homeowners' associations] of paying the Charge assessed under
16 Section 19-35 [for those private roads which are:

- 17 (1) open to the public without restriction;
- 18 (2) not parking lots; and
- 19 (3) eligible to receive State highway user revenue] to an owner of
20 an improved aircraft landing area that is exempt from County
21 property taxes under Maryland Code, Tax-Property Art.
22 §8-302.

23 **19-35. Water Quality Protection Charge.**

24 * * *

25 (e) (1) A property owner may apply for, and the Director of
26 Environmental Protection must grant, a credit equal to a
27 percentage, set by regulation, of the Charge if:

- 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 * * *

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

85 *Approved:*

86

Nancy Floreen, President, County Council

Date

87 *Approved:*

88

Isiah Leggett, County Executive

Date

89 *This is a correct copy of Council action.*

90

Linda M. Lauer, Clerk of the Council

Date

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

8

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.

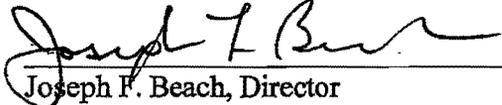
DEP estimates that the cost of the WQPC incurred by the airport is approximately \$4,500 in FY17. Therefore, the estimated difference in the cost of the WQPC and the grant of \$3,800 is \$700 costs borne by the aircraft landing area. Because of the small difference between the cost and the grant, Expedited 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.



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.

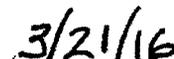
Not applicable.

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 A. Hughes, Director
Office of Management and Budget



Date

T&E COMMITTEE #1
January 21, 2016

Update

MEMORANDUM

January 19, 2016

TO: Transportation, Infrastructure, Energy and Environment (T&E) Committee
FROM:  Keith Levchenko, Senior Legislative Analyst
SUBJECT: Discussion: Update – MS4 Permit

Attachments:

- Excerpt: Restoring Our Watersheds - Montgomery County's 2010-2015 MS4 Watershed Restoration Achievements (August 2015) (Executive Summary Only ©A-11)

Meeting Participants:

Montgomery County Department of Environmental Protection (DEP)

- Lisa Feldt, Director
- Patty Bubar, Deputy Director
- Steven Shofar, Chief of Watershed Management
- Jim Stiles, Manager, Watershed Construction and Contract Management
- Pam Parker, Manager, Watershed Planning and Monitoring
- Amy Stevens, Manager, Stormwater Facility Inspection and Maintenance

T&E Committee Chair Berliner asked DEP to provide an update on the County's National Pollution Discharge Elimination System Municipal Separate Storm Sewer System Discharge (NPDES-MS4) Permit.

DEP has been asked to discuss its accomplishments and lessons learned¹ over the past five years under the most recent permit (which expired in February 2015), some approaches it plans to pursue under the next permit, and the status of the next permit and DEP's negotiations with Maryland Department of the Environment (MDE). DEP's presentation slides were not available as of the time of this memorandum but will be provided to Committee members as soon as they are available.

¹DEP's most recent NPDES-MS4 Annual Report (covering FY14 and dated March 2015) is available on the DEP website at: <https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/AnnualReport-FY14-3-13-15-Final.pdf>. DEP also prepared a supplement to the Annual Report (dated August 2015) focusing on its watershed restoration achievements to date. This report is available on the DEP website at: <https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/MoCo-RestorationAchievements-080715REV2.pdf>

NPDES-MS4 Permit Status

DEP is the lead department coordinating a multi-department/agency effort to meet the requirements of the five-year MS4 permit² issued to the County by MDE on February 16, 2010. This permit expired in February 2015. However, expired permits are assumed to remain in effect pending issuance of a succeeding permit by MDE.

However, clouding this issue somewhat is the fact that this now expired permit has been under legal challenge. In April 2015, the Court of Special Appeals affirmed a Circuit Court decision to remand the permit back to the Maryland Department of the Environment (MDE).³ The Court of Special Appeals agreed with the Circuit Court that the permit did not “afford an appropriate opportunity for public notice and comment and because it lacks crucial details that would explain the County’s stormwater management obligations.” Pending the outcome of this court case, MDE is appealing the case to the Court of Appeals and has not moved forward with a next generation permit for Montgomery County, pending the outcome of this case.

Some background information on the now expired MS4 Permit and its funding is provided below.

NPDES-MS4 Permit Requirements

The County’s Coordinated Implementation Strategy (CCIS)⁴ (dated January 2012) provides the planning basis for the County to meet the following goals, as required in the County’s (now expired) NPDES-MS4 Permit:

1. Meet Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) approved by EPA.
2. Provide additional stormwater runoff management on impervious acres equal to 20 percent of the impervious area for which runoff is not currently managed, to the maximum extent practicable (MEP). *This requirement continues to be the primary driver of DEP’s CIP expenditures, and progress in meeting this goal is discussed in more detail below.*
3. Meet commitments in the Trash Free Potomac Watershed Initiative 2006 Action Agreement, which include support for regional strategies and collaborations aimed at reducing trash, increasing recycling, and increasing education and awareness of trash issues throughout the Potomac Watershed.
4. Educate and involve residents, businesses, and stakeholder groups in achieving measurable water quality improvements.

² The County’s MS4 permit is available on the DEP website at:

https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/MOCO_MS4_Permit.pdf

³ Maryland Department of the Environment, et al. v. Anacostia Riverkeeper, et al., 222 Md. App. 153 (2015).

⁴ The County’s Coordinated Implementation Strategy (January 2012) is available on the DEP website at:

<https://www.montgomerycountymd.gov/DEP/Resources/Files/ReportsandPublications/Water/Countywide%20Implementation%20Strategy/Countywide-coordinated-implemented-strategy-12.pdf>

5. Establish a reporting framework that will be used for annual reporting, as required in the County's NPDES-MS4 Permit.
6. Identify necessary organizational infrastructure changes needed to implement the Strategy.

While DEP has made substantial progress over the past five years, DEP has not achieved the 20 percent impervious area control goal (#2 above).

Watershed Restoration Requirements

The most recent permit's 20% requirement for stormwater management noted above translates to an additional 3,777 acres of impervious area restoration to be completed by the County. As noted in the County's August 2015 Watershed Restoration Achievements report:

at the end of the third generation MS4 permit term (February 16, 2015), the County had, completed restoration treating 1,726 acres of impervious area or its equivalent, with restoration work treating another 197 acres under construction (acres or projects referred to as "inconstruction"). Restoration projects to treat an additional 2,431 acres were under contract for design (acres or projects referred to as "in-design").

While the County had not completed work on the entire 3,777 acre goal in the permit, it had 4,354 acres at some stage of work (in design, in construction, or completed). About 70 percent (3,085 acres) is being addressed through capital projects (such as stream restoration projects and stormwater management retrofits). The next biggest categories are: agency partnerships (642 acres), new development/redevelopment (305 acres), and management programs (such as street sweeping and catch basin cleaning (249 acres).

This effort represents a major ramp-up in work (and costs) over the past five years. While the work with MDE on the next generation permit is stalled (pending the outcome of the legal case noted above), DEP will be proceeding with this ongoing work.

What will be interesting to see in the coming years is whether (and by how much) water quality improvements occur in the project areas (and whether the associated TMDLs are met). These results, in turn, can inform future permit priorities to ensure the County's large investment in funding is allocated where it can have the biggest impact on water quality.

Cost Implications

As previously discussed by the Committee, the cost implications for implementation of the MS4 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.

Over the past decade, the DEP budget (not counting the Division of Solid Waste Services) has become dominated by water quality-related efforts. In FY16, the Water Quality Protection Fund budget is \$23.3 million compared to \$2.2 million in the General Fund, or 91 percent.

Water Quality Protection Fund and Charge

DEP's MS4 work (both operating and capital) is budgeted within the County's Water Quality Protection Fund. This self-supporting fund draws its revenue primarily from the Water Quality Protection Charge (WQPC) (an estimated \$32.6 million in FY16) as well as revenue from the County's bag tax (an estimated \$2.4 million in FY16).

The Fund and charge were created in 2001, when the Council approved Bill 28-00.

Three years ago, the Council enacted Bill 34-12 and approved Executive Regulations 17-12AM and 10-13. The bill and regulations included a number of changes to the charge, such as: broadening the charge to include all non-residential properties, establishing a 7 tier rate structure for residential properties, establishing credits for on-site stormwater management practices, and establishing a hardship exemption for residential properties and non-profit organizations. A three-year phase-in period for those properties that experienced an increase in assessments as a result of the legislation was also included.

This past November, at the County Executive's request, the Council enacted legislation (Bill 45-15, Stormwater Management - Water Quality Protection Charge - Curative Legislation) to designate the Water Quality Protection Charge as an excise tax (rather than a fee) to address concerns raised in a Circuit Court opinion (currently under appeal by the County).⁵

DEP is also considering additional substantive changes to the Water Quality Protection Charge itself. Legislation is expected to be transmitted to the Council within the next few months.

Attachment

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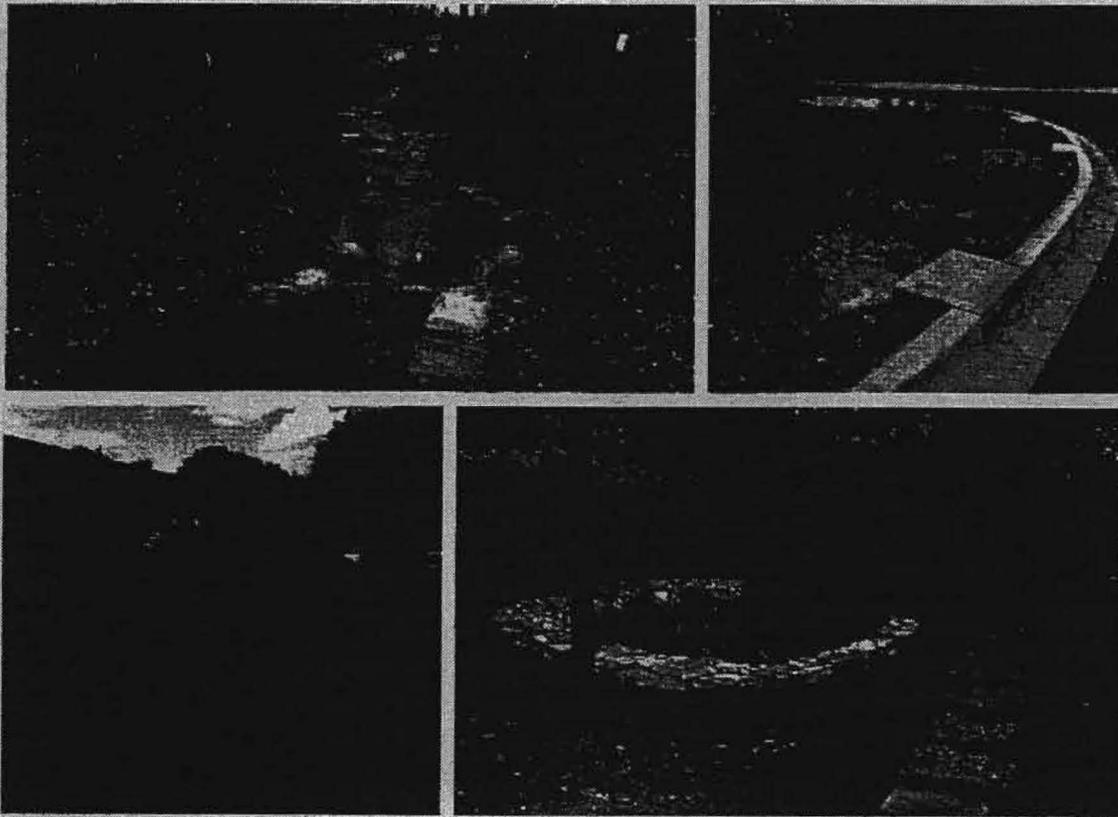
⁵ Paul N. Chod v. Board of Appeals for Montgomery County (Civil No.35398704-V, entered July 23, 2015).

August 2015

RESTORING OUR WATERSHEDS

Montgomery County's 2010-2015 MS4 Watershed Restoration Achievements

Supplement to the Montgomery County Annual Report
for FY14 NPDES Municipal Separate Storm Sewer System Permit



DEPARTMENT OF
**ENVIRONMENTAL
PROTECTION**

Working together for a cleaner, greener county.

Published by the Montgomery County
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for the Maryland Department of the Environment

20

Executive Summary

Stormwater discharges from Montgomery County's storm drain system are regulated under a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit. The purpose of this document is to be a final summary of Montgomery County's (the County) progress towards meeting the MS4 permit's watershed restoration requirement through the end of the third generation permit term on February 15, 2015. This document is a supplement to the fiscal year 2014 MS4 annual report. Montgomery County Department of Environmental Protection (DEP) has primary responsibility for the majority of the permit requirements, including watershed assessment and restoration managed by DEP's Watershed Management Division (WMD).

In addition to completing implementation of restoration efforts to fulfill the second generation MS4 permit restoration requirement, under the third generation MS4 permit the County was also tasked with restoring an additional 20% of impervious surface area that was not treated to the maximum extent practicable (MEP).

This restoration requirement translated to an additional 3,777 acres of impervious area restoration to be completed by the County. Progress towards meeting this requirement was achieved by tracking impervious acres treated by restoration projects, and impervious acre equivalent credit for alternative urban BMPs, as allowed by Maryland Department of the Environment (MDE). Alternative urban BMPs include practices such as street sweeping, stream restoration, and catch basin cleaning.

Progress Towards the Restoration Requirement

At the end of the third generation MS4 permit term (February 16, 2015), the County had completed restoration treating 1,726 acres of impervious area or its equivalent, with restoration work treating another 197 acres under construction (acres or projects referred to as "in-construction"). Restoration projects to treat an additional 2,431 acres were under contract for design (acres or projects referred to as "in-design"). The County's progress in relationship to the restoration requirement is illustrated in Figure 1.

Progress Towards Restoration Requirement (Acres)

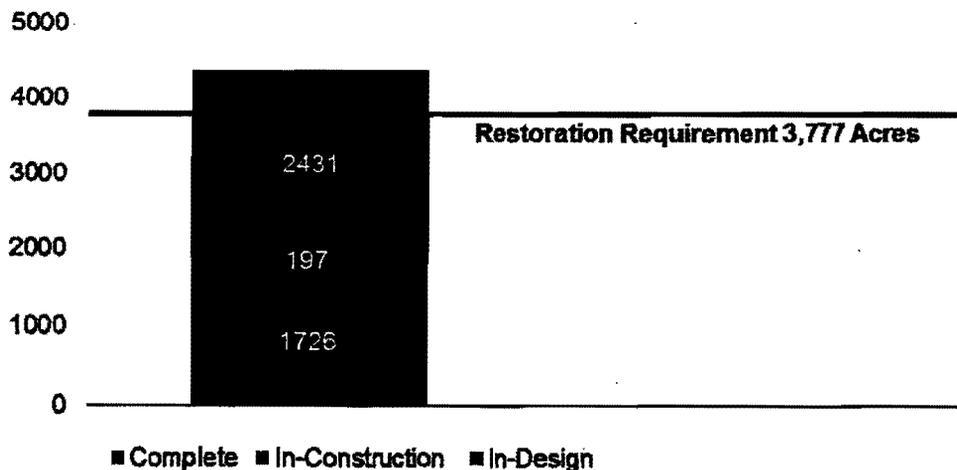


Figure 1 Montgomery County Progress towards the MS4 Permit Watershed Restoration Requirement

DEP's accomplishment of restoring 1,726 acres of impervious area or its equivalent represents completing 46% of the MS4 permit's restoration requirement. Once the in-construction projects are complete this percentage will increase to 51%. Of the projects in-design, 1,854 acres, representing 76% of the 2,431 acres in-design, will need to be realized in order to meet the 20% restoration requirement. The remaining projects will continue to be developed for the next generation MS4 Permit, or can serve as back up inventory for projects in design that may not be feasible to construct.

DEP's progress towards meeting the restoration requirement demonstrates the County's strong commitment to improving water quality and conservation of the environment. The restoration requirement of the third generation MS4 permit represented a significant increase over the second generation MS4 permit requirement. In response, DEP developed a proactive adaptive management approach to take on the intensive and diverse efforts needed for success. The following sections provide context and summarize the efforts undertaken by DEP to progress towards the restoration requirement.

MS4 Permit Background and Accelerating the Watershed Restoration Program

PERMIT BACKGROUND

The County has been subject to an MS4 permit since 1996. The first generation MS4 permit requirements (1996-2001) focused on assessing local watersheds, on identifying locations and extent of stormwater management and receiving stream problems, compiling an inventory of projects to address those problems, and stream physical and biological monitoring. The second generation permit (2001-2006, continued in effect until 2010 due to permit negotiations and legal challenges) included an impervious area restoration requirement to restore 10% of impervious areas not already treated to the MEP. The second generation permit also saw the addition of five municipalities and one special tax district as co-permittees. The third generation MS4 permit (2010-2015)¹ increased the restoration requirement to restore an additional 20% of the impervious areas not already treated to the MEP and added Montgomery County Public Schools (MCPS) as a co-permittee.

In order to comply with the MS4 permit requirements, DEP collaborates with numerous County agencies. These include the Division of Solid Waste Services (DSWS), Department of Permitting Services (DPS), Department of Transportation (DOT), Department of General Services (DGS), and MCPS. DEP also has an established Memorandum of Understanding (MOU) with DGS and is finalizing an MOU with MCPS to increase opportunities for watershed restoration.

STRATEGY DOCUMENTS

DEP had a well-established watershed restoration program in place prior to the third permit cycle; however, the third generation MS4 permit required expansion and acceleration of that existing program. To address the new requirements, the County developed the Implementation Plan Guidance Document that detailed the recommended methods and techniques for preparing individual watershed implementation plans and documented the best available science underlying the technical assumptions used in developing the plans to allow the County

¹ Although it officially expired on February 15, 2015, the permit is administratively continued pending final action, if any, by MDE in response to a decision by the Maryland Court of Special Appeals in Maryland Department of the Environment, et al. v. Anacostia Riverkeeper, et al. to remand the permit to MDE for further proceedings.

to make cost-effective implementation decisions and achieve MDE regulatory approval. The Implementation Plan Guidance Document also prompted the refinement of a BMP coding process, the MS4 permit area, and impervious cover subject to the MS4 permit.

Following the Guidance, watershed implementation plans were developed for most of the County's watersheds where a full range of restoration opportunities were identified and quantified in terms of planning level implementation cost and anticipated pollutant load reduction potential.

DEP then developed the Montgomery County Coordinated Implementation Strategy (the Strategy) in June 2009 that considered implementation across all of the watersheds in an integrated and phased manner. The Strategy laid out a framework for meeting the watershed restoration requirements, Chesapeake Bay Total Maximum Daily Load (TMDL) restoration goals, and setting cost-effective approaches which reflected direct stakeholder input. Finally, the Strategy facilitated project identification and implementation planning by setting priorities among potential projects.

BUDGET, CAPACITY, AND FUNDING

Implementation of the plan laid out in the Strategy required an increased Capital Improvement Program (CIP) budget for funding watershed restoration projects. From 2009 to the latest CIP budget passed for FY15-20, the amount of funding for the watershed restoration program has increased by a factor of ten (Figure 2).

The budget increases translated to a direct increase in number of Water Resources Engineering (WRE) vendors and tasks orders issued for design of restoration projects. In addition, DEP also augmented its project management capacity via a consultant contract coupled with doubling internal staff capacity.

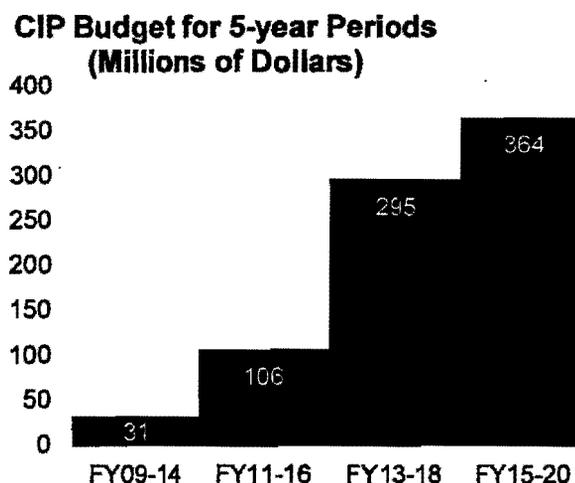


Figure 2 Capital Improvement Program Budgets

The main funding mechanism for the CIP is the Water Quality Protection Charge (WQPC), which went into effect in 2002 and is included as part of the Montgomery County property tax bill. In 2011, the County issued bonds secured by the WQPC to finance the construction and related expenses of watershed restoration projects as approved in the CIP. The issuance of the bonds allowed the capital costs of complying with the increased restoration requirement to be spread over the lifetime of the bonds (and the useful life of the facilities).

Data Management and the Restoration Requirement

DATA MANAGEMENT

The increased restoration requirement of the third generation MS4 permit and increased level of effort to implement watershed restoration projects created a critical need for enhanced data management. In response, DEP has undertaken numerous data management initiatives to specifically support meeting the additional 20% watershed restoration requirement. These efforts include starting a SharePoint site, using Microsoft Project Server (MPS), developing a Business Intelligence System and Dashboard, maintaining and updating the Restoration Sites

Database and developing a new structured query language (SQL database), improving and updating the storm drain layer, and streamlining the drainage areas delineation process.

The County MS4 permit SharePoint site facilitates file hosting and sharing between DEP, project management contractors, WRE contractors, and construction contractors. The SharePoint currently stores content such as task orders, schedules, plans, budgets, designs and reports creating a single repository for restoration project documents. In 2012, DEP began implementing an MPS to monitor CIP project schedule performance. The MPS provides projections of when projects will be ready for construction and completion. Information from the MPS is linked with the Business Intelligence (BI) system and Dashboard. The BI system is designed to analyze data from multiple tables and databases relating to the County's MS4 program to measure and report on specific programmatic performance metrics. The BI system reports six metrics specific to the restoration program including: schedule performance, impervious area restoration progress, program costs, and construction cost estimation accuracy. The metric reports generated by the BI system are easily accessed through an internet-based dashboard interface (the Dashboard).

The Dashboard provides DEP staff and project managers with up-to-date insight into the restoration program's progress towards meeting the 20% restoration requirement (Figure 3). The BI system and the Dashboard have played an important role in continuing adaptive management of the program. The Dashboard can be used to quickly find inefficiencies and identify problems early, serving as a platform for open communication and resource management. Enhanced capabilities are also currently under development by DEP to allow for resource modeling and restoration scenario evaluation using the Dashboard.

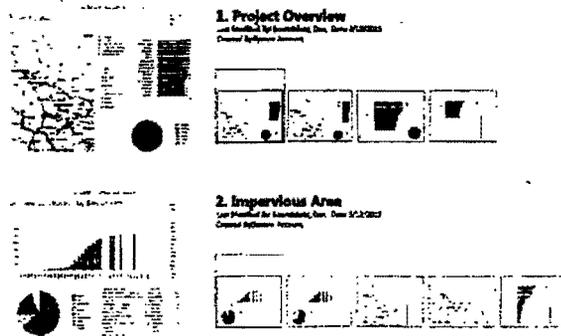


Figure 3 Planning and Compliance Dashboard Screen

DEP also maintains an ESRI ArcGIS Restoration Sites Database that tracks all potential restoration opportunities. In addition to the Restoration Sites Database, the County initiated efforts to create a new SQL database in response to increasing reporting needs and anticipated future permit needs. The purpose of developing the new SQL database is to increase capacity, function, stability and quality of the existing data and improve data organization. The new SQL database represents a significant effort in improving data functionality intended to contribute to the success of the restoration program.

Data management has also involved processing data for storm drain mapping and drainage area delineations. Mapping storm drains is a challenge due to data inconsistency; however, in 2014, DOT began coordinating a large effort to make extensive improvements to the County's storm drain data and to aggregate all the disparate datasets in one central location. DEP maintains open lines of communication with DOT on this effort. On-going construction of new storm drain systems and BMPs requires drainage area delineations to be constantly updated. During the third generation MS4 permit, DEP increased its efforts to delineate drainage areas for newly inventoried BMPs and to perform data quality assurance and control for existing drainage delineations. The number of existing BMP recorded and drainage areas delineated more than doubled from 2011 to 2015.

RESTORATION REQUIREMENT

Determination of the third generation MS4 permit restoration requirement (to restore an additional 20% of uncontrolled impervious areas as of 2009) required the calculation of the impervious cover controlled to the MEP at the end of 2009. As improved information on the area of impervious cover controlled to the MEP became available through new data and more advanced analysis, DEP worked to define the acres represented by the restoration requirement to reflect the most accurate information.

Efforts by DEP to improve the accuracy of the restoration requirement include updating BMP drainage area delineations, verifying existing facilities, incorporating existing roadside swales, and crediting large lot disconnections. Table 1 below illustrates the restoration requirement calculation highlighting how the accuracy of determining the County MS4 impervious area controlled to MEP in 2009 was improved since the Strategy. The restoration requirement of 3,777 acres is 20% of 18,884 acres, which is the County MS4 impervious area under or uncontrolled as of 2009.

Table 1 Restoration Requirement Calculation

	Description	Area (acres)
A.	Impervious Area Subject to Third Generation MS4 Permit	25,119
B.	County MS4 Impervious Area Controlled to MEP in 2009	
	Per The Strategy (2009)	3,661.0
	Updated BMP Tracking and Drainage Area Delineations	691.2
	MEP Verification of Existing Facilities	1,597.3
	Incorporating Existing Roadside Swales	278.3
	Crediting Disconnected Large Lots	7.4
	TOTAL	6,235.2
C.	County MS4 Impervious Area Under/Uncontrolled (2015 Revision) (A-B)	18,884
	Restoration Requirement (2015 Revision) (20% of C)	3,777

*See Section C.ii. for comparison of final restoration requirement and original estimate in the Strategy

Restoration Projects and Accounting for Credit

The County pursued watershed restoration through six unique delivery methods to make progress towards meeting the third generation restoration requirement of 3,777 acres. These methods included CIP projects, RainScapes and Water Quality Protection Charge (WQPC) Credits, complementary restoration projects, management programs, new development and redevelopment, and agency partnerships. The relative contribution of each delivery method is illustrated in Figure 4. The CIP projects form the foundation of the County's restoration program, contributing 70% of the 4,354 acres of impervious credit either completed, in-construction or in-design.

DEP has taken a watershed-based approach to applying green infrastructure at many scales across the County. The U.S. EPA describes green infrastructure as using "vegetation, soils, and natural processes to manage water and create healthier urban environments. At the scale of a city or county, green infrastructure refers to the patchwork of natural areas that provides habitat, flood protection, cleaner air, and cleaner water. At the scale of a neighborhood or site, green infrastructure refers to stormwater management systems that mimic nature by soaking up and storing water." (U.S. EPA, 2015)

Most County restoration projects fall within the realm of green infrastructure, as described by EPA. Stream restoration, reforestation and impervious cover removal contribute to the County's network of green corridors and patches that provide habitat, filter pollutants and absorb stormwater runoff. Even stormwater pond retrofits help to improve water quality and enhance habitat.

In addition to its more traditional, larger-scale restoration and retrofit projects, the County has worked to progressively increase its implementation of green infrastructure at the neighborhood and site scale. Environmental Site Design (ESD) practices have been and will continue to be implemented on public and private properties countywide through a variety of delivery methods.

Within the CIP, Green Streets and Government Facilities and Schools focus on implementation of ESD practices along roads and on publicly owned lands. These ESD practices account for 148 acres of the total CIP impervious area credits. RainScapes and WQPC Credits both incentivize installation of ESD practices on residential, institutional, and commercial properties. These programs have contributed 38.8 acres of impervious area credits. Finally, ESD practices that contribute 68.7 acres of impervious area credits have been or are being implemented through Agency Partnerships. The 256 acres treated by ESD practices may comprise only 6% of the 4,354 acres of impervious area credits the County achieved during this permit cycle, but they represent a commitment by DEP to increase ESD implementation in the future.

Impervious area equivalent credits were calculated in accordance with the MDE 2011 Draft Guidance Document, the MDE 2014 Final Guidance Document, and the Maryland Stormwater Design Manual as applicable for each delivery method and project type. Impervious area

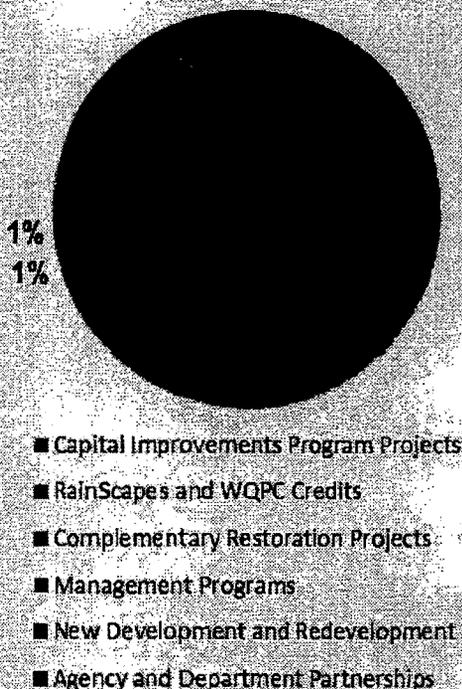


Figure 4 Relative Contribution of Total Impervious Area Credits by Delivery Method

Executive Summary

equivalent credit for individual trees and conservation landscaping is based on a technical memo developed by the Center for Watershed Protection.

Table 2 provides a summary of impervious acre credits by delivery method and applicable subcategory and also shows a breakdown of complete, in-construction, and in-design acres. The following sections briefly describe the delivery methods.

Table 2 Summary of Impervious Acre Credits by Delivery Method and Status

	Complete	In-Construction	In-Design	Total
Capital Improvement Projects	663.6	152.2	2268.8	3084.6
Stream Restoration	88.7	57.5	510.2	656.4
Green Streets	19.1	0.6	91	110.7
Government Facilities	3.2		34.1	37.3
Stormwater Retrofits	552.6	94.1	1633.5	2280.2
RainScapes and WQPC Credits	38.8			38.8
RainScapes	15.8			15.8
WQPC	23.0			23.0
Complementary	6.1	19.7	8.5	34.3
Reforestation	6.0	19.7	8.5	34.2
Impervious Surface Removal	0.1	0.03		0.1
Management Programs	248.6			248.6
Street Sweeping	162.6			162.6
Catch Basin Cleaning	86.0			86.0
New Development and Redevelopment	305.2			305.2
MCPS	12.8			12.8
M-NCPPC	3.3			3.3
Private	53.4			53.4
New BMPs Treating Existing Impervious	235.7			235.7
Agency Partnerships	463.5	25.5	153.3	642.3
ICC	252.7	16.9	58.8	328.4
WSSC	23.2	8.6	94.5	126.3
DGS	0.9			0.9
MCPS	0.7			0.7
DOT	50.0			50.0
USAGE	136.0			136.0
Total	1725.8	197.4	2430.6	4353.8

CAPITAL IMPROVEMENT PROGRAM PROJECTS

There are four types of projects undertaken by DEP through the CIP including stream restoration, green streets, projects at government facilities and County schools, and stormwater retrofits. CIP projects require the largest investment of financial and other resources in comparison to other delivery methods.



Stream restoration involves the rehabilitation of degraded stream channels and is considered green infrastructure. Restoration is intended to reduce streambank erosion and sedimentation, enhance riparian and in-stream habitat conditions, and improve water quality conditions.



Green Streets projects consist of designing and constructing ESD stormwater treatment facilities within existing street rights-of-way and is another green infrastructure method. These projects capture stormwater runoff in neighborhoods with minimal existing stormwater controls and install a combination of rain gardens, swales, permeable pavement, curb extensions with bioretention areas, and tree boxes.



Government Facility and County School projects improve stormwater management and treatment on properties owned by the County government and Montgomery County Public Schools (MCPS) by retrofitting sites with new ESD facilities.



Stormwater retrofits involve upgrading outdated stormwater infrastructure to meet accepted current standards. Third generation MS4 permit retrofit projects focused on stormwater ponds since they are the oldest type of stormwater infrastructure and have the greatest potential for water quality improvements and impervious area treatment.

One important factor contributing to the significant number of acres still in-design is that CIP projects were programmed in the approved FY13-18 budget assuming design and permitting occurring within a 15-month period and construction occurring immediately after final design. As implementation progressed, it became evident that the 15-month design and permitting phase was a challenge with the project design and permitting taking from 18 months for small, simple projects to up to three years or more for larger and more complicated projects. In response, DEP decided on a strategy to issue task orders to design all work necessary to meet the permit requirements before the end of the permit term. This strategy demonstrates DEP's commitment to adaptive management and meeting the restoration requirement.

RAINSCAPES AND WQPC CREDITS

The "RainScapes and WQPC Credits" delivery method is an important component of the watershed restoration program because individual residents, property owners, and community groups become engaged in helping support the County stormwater efforts.

DEP's RainScapes program promotes environmentally friendly landscaping and small scale stormwater control and infiltration projects on residential, institutional, and commercial properties by offering technical and financial assistance to property owners (Figure 5). Through RainScapes Rewards, RainScapes Neighborhoods, and RainScapes for Schools, the program has supported implementation of rain gardens, tree plantings, permeable pavement retrofits, dry wells, water harvesting with rain barrels and cisterns, and conservation landscaping.



Figure 5 RainScapes Project

Impervious area restoration from WQPC credits represent impervious areas treated by stormwater management practices located on private property, not already credited through RainScapes. DEP is made aware of, and is able to track credit for, these stormwater management practices through the property owners' application to receive a WQPC credit reducing the WQPC amount the property owner is required to pay.

COMPLEMENTARY RESTORATION PROGRAMS

Complementary restoration projects include reforestation and impervious surface removal usually completed in combination with larger retrofit or restoration projects in their vicinity. These projects demonstrate the County's commitment to treat additional impervious areas even at small scales as the opportunities present themselves.

Reforestation projects establish the next generation of native trees and understory (smaller trees and shrubs), helping improve the environment and improving stormwater management. Impervious surface removal projects address underutilized impervious surfaces replacing them with pervious surfaces or incorporating them into a new ESD practice.

MANAGEMENT PROGRAMS

Street sweeping and catch basin cleaning are two road maintenance management programs overseen by DOT and DEP that contribute to watershed restoration. Street sweeping removes debris and abrasives from road surfaces, helping to keep drainage systems clean and preventing pollutants from entering the waterways (Figure 6). Catch basins, located along the curb line to allow stormwater to enter the storm drain system, need to be cleaned to remove sediment, debris, and trash. Through these programs 623 tons of debris was collected during FY14.



Figure 6 Street Sweeping

NEW DEVELOPMENT AND REDEVELOPMENT

Throughout the course of the third generation MS4 permit, many areas of impervious cover that were not controlled to the MEP at the end of 2009 have become controlled to the MEP as a result of new development and redevelopment activities. The new development and redevelopment delivery method accounts for these newly controlled areas. DEP carried out four desktop analyses to determine the impervious area that received treatment as a result of new development and redevelopment in four categories including MCPS redevelopment, M-NCPPC property acquisition, private redevelopment, and newly added BMPs.

AGENCY PARTNERSHIPS

DEP actively seeks opportunities to partner with other agencies and departments responsible for completing construction projects throughout the County to optimize watershed restoration. During the third generation MS4 permit, DEP established six specific partnerships that have resulted in significant contributions towards meeting the restoration requirement.

These partnerships include the Maryland State Highway Authority Intercounty Connector, through which 40 restoration projects including stream restorations, green streets and stormwater retrofits were funded and constructed. Partnering with the Washington Suburban Sanitary Commission (WSSC), DEP tracks credits from stream restoration projects throughout the county undertaken by WSSC to improve the sewer infrastructure. DEP works with DGS on County-managed properties undergoing development or redevelopment by DGS to fund some aspects of the construction effort to provide water quality treatment for impervious area in addition to what is required by the new construction on the site. In addition to the MCPS CIP projects, DEP partners with MCPS on MCPS construction projects to contribute funds to pay for the stormwater facilities outside of the project area. In addition to the CIP-funded green streets, DEP collaborated with and supported funding for DOT-led green streets projects and worked with DOT to prioritize outfall stabilizations throughout the County. DEP also partnered with the U.S. Army Corps of Engineers (USACE) in the management/restoration of the Anacostia River watershed, tracking credits from stream restoration projects.

PUBLIC OUTREACH

As the number of watershed restoration projects increased, so did the need for public outreach. Whether they are small scale rain gardens or large scale stream restoration projects, DEP proactively communicates its restoration project intentions to stakeholders and nearby residents throughout the process. On average, throughout a project's design, construction, and completion, six public meetings are held which may include an open forum style meeting with a presentation, a site walk, or attending and presenting at a Homeowners Association Board meeting. DEP developed a watershed restoration outreach standard operating procedure (SOP) to provide staff guidance and consistency on how to effectively reach out to the public. DEP has also developed a public outreach database that tracks outreach efforts for the watershed restoration program as well as outreach supporting other third generation MS4 permit requirements.

The number of public outreach meetings saw a five-fold increase from FY2011 to FY2014 with the total number of people reached through attending meetings increasing four-fold from 200 to over 800. In the future, as restoration projects shift increasingly towards small-scale ESD practices, public outreach efforts will continue to increase as smaller scale practices are more integrated into neighborhoods, have more potential impact on nearby residents, and therefore require increased coordination with the public to produce a project that is accepted by the communities.

Lessons Learned and Next Steps

The additional 20% restoration requirement of the third generation MS4 permit resulted in remarkable growth of DEP's watershed restoration program. The lasting impact of this growth will continue to improve water quality and benefit the environment into the future as lessons learned allow DEP to more efficiently and effectively restore the County's watersheds.

During the third generation MS4 permit term, several of DEP's restoration projects received awards and several grants (Figure 7).

Completing more restoration at a faster rate required increased funding. DEP received the necessary financial support from an increased CIP budget made possible by the County's forward-thinking approach to financing through issuing WQPC bonds. Capacity building was also necessary; so, in addition to increasing internal staff, DEP retained consultants to support the restoration program and to facilitate project progress.

DEP also created improved efficiency within the restoration program by expanding its data management efforts. DEP recognizes the value of investing in on-going data management. Improved knowledge of project performance and programmatic progress leads to better decision making and better restoration outcomes. DEP continues to prioritize improved data management as a critical component of the restoration program and DEP's adaptive management strategy.

DEP learned that each restoration delivery method is valuable and poses unique challenges requiring creative solutions. Permitting and public outreach remain the primary drivers of the duration of the design and permitting phase of CIP projects. Smaller-scale implementation will continue to expand as the direct contact with County residents and property owners is extremely valuable in building support for DEP's work. Leveraging partnerships will also continue to be a focus as these efforts proved mutually beneficial in meeting partners' objectives, reducing DEP's costs, and speeding project delivery. Reflecting back, DEP found that project delivery timeframes, on the order of years, were challenged by the restoration requirement timeframe of the five-year permit cycle. This was particularly true for the third generation MS4 permit term where early-phase permit activity required planning and strategic program development prior to project design, permitting, and construction.

The importance of communication with stakeholders and public outreach was magnified during the implementation of restoration projects. DEP greatly values stakeholder input and recognizes that effective communication results in overall improved project outcomes.

Through adaptive management across all project types, DEP is committed to continued improvement of its watershed restoration program to generate efficiencies, develop stakeholder support, and speed project delivery.

Select Program Honors

Awards

- *Stoney Creek Stormwater Management Pond at National Institute of Health*
National Recreation Award April 2014
American Council of Engineering Companies (ACEC) Engineering Excellence Awards Competition
Engineering Excellence Honor Award in Design 2013-2014
ACEC of Metropolitan Washington
- *Arcola Avenue Green Street Project*
Achievement Award Winner 2012
National Association of Counties

Grants

- Department of Natural Resources Chesapeake and Atlantic Coastal Bays Trust Fund
- National Fish and Wildlife Foundation Grant
Smart integrated stormwater management system demonstration partnership with Washington Council of Governments

Figure 7 DEP Restoration Project Awards and Grants

a

**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.

Mihill, Amanda

Subject: FW: your views on WQPC for tomorrow

From: Paul Chod

Sent: Wednesday, June 22, 2016 5:26 PM

To: 'Floreen's Office, Councilmember' <Councilmember.Floreen@montgomerycountymd.gov>

Cc: defeuerherd@mmcanby.com

Subject: RE: your views on WQPC for tomorrow

Hi Jocelyn:

Thank you for your email. We have had the opportunity to briefly review the packets for Items 2 (Expedited Bill 11-16) and 3 (Executive Regulation 12-16) set for the T&E Committee hearing tomorrow, and we appreciate Councilmember Floreen's invitation to share our thoughts on this issue.

First, we were pleased to see that the DEP reconsidered the exclusion of properties like Shady Grove Development Park (SGDP) from credit consideration, and, as we understand from Director Feldt, the proposed changes to Bill 11-16 will remove this bar for SGDP due to the County requirement to do structural maintenance there.

Second, we continue to oppose and question how the credit is calculated. It seems odd, like the cart leading the horse, that the focus now is on calculating the amount of the Charge and Water Quality Protection Fund (including the credit back to property owners), *before* discussing what activities these charges actually fund. As noted on page 2 of Item 3's Packet, considering and reviewing what should be funded by the WQPF is tentatively scheduled later this year and is not part of this discussion – but it should be. And we all know that the County is collecting far more WQPC fees than they are spending. That is why Nancy asked for a list of the work that was done.

Expanding the credit to 100% for treatment of offsite drainage, as Council Staff readily admits, is only "theoretical." How many property owners can expect to actually receive a 100% credit? We believe this change continues to be meaningless, because even though we maintain (and the DEP requires us to maintain) stormwater management facilities according to the standards in place at the time of construction, now our credit eligibility is based on a different standard – Environmental Site Design, which applies only to new and renovated construction only. Applying the ESD standard on existing property is unrealistic and cost prohibitive. We do not get credit for doing the work that the County required us to do when we developed our properties. We believe that even though regional ponds (like those at SGDP) serve larger drainage areas including neighboring properties, this ESD standard prevents them from ever obtaining the 100% credit, especially when the volume of rain to be contained keeps changing. Changes to the building codes do not adversely affect us like that.

According to both packets, the DEP will only give us a 40% credit at SGDP. This ignores, entirely, our treatment of off-site drainage (even Council Staff acknowledges, in his memorandum in Item 3 Packet, that our ponds do provide treatment, even though I cannot agree with the statement that it is limited to 40% at the ESD level). We treat rain volume from our 41 acres, and 110 acres belonging to our neighbors.

Even focused on SGDP alone, these regulations continue to be unfair. I've been told by the DEP that the ponds provide Water Quality Volume for 98.72% required under today's ESD standards. Yet, for treatment of all but nearly 1 percent of the volume, the DEP's proposed credit is 40% -- this is a 1/3 reduction from the maximum of 60%, and we receive nothing for the adjacent properties we treat but do not own. This does not make sense and I hope it further illustrates how unfair and impractical this calculation is.

We continue to believe that property owners should be held to the same standards as they were, and now are, for construction and maintenance of SWM facilities -- the standards in place at the time of construction. We did provide everything the County required at that time.

Thank you for your consideration.

Paul N. Chod, President

Minkoff Development Corporation

20457 Seneca Meadows Parkway

Germantown, Maryland 20876

Email: paulchod@minkoffdev.com

Phone: 240-912-0200

Fax: 240-912-0162

From: Floreen's Office, Councilmember [<mailto:Councilmember.Floreen@montgomerycountymd.gov>]
Sent: Wednesday, June 22, 2016 3:35 PM
To: Paul Chod <paul@minkoffdev.com>
Subject: your views on WQPC for tomorrow

Mr. Chod,

10

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.

11

Hello,

My name is Alicia Harvey Stanley – I'm the manager at Davis Airport in Laytonsville.

We want to thank the council for considering this grant proposal. As one of only two public use airports in the county, it's important for all of us to have this resource for both emergency relief reasons, and because aviation is good for commerce. Our facility is also used at no charge to calibrate police cars, train firefighters, and host scouting events.

Personally, we bought the airport as a family business because of a love of aviation. We're very proud of the work we've done to make it safe while preserving its rural character. A general aviation airport is not a money making venture, and the runways are not income producing. The state exempts public use airports from property tax as an incentive for people to keep them open, but the addition of the WQPC was more than the income from tie down tenants could carry. We have been unable to make improvements that would bring the runway up to current safety standards because it would increase the fee even more.

We appreciate the efforts that are being made to help us, from the council to the DEP to the Executive Office, and everyone in between. It is my hope that you will vote for the grant and help us to preserve Davis Airport and a resource that serves the common good.

Thank you.

HO

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



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 Lindbergh 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 9th 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

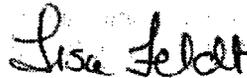
burdens or restrictions because they are part of a development. Like any other privately owned developed property in the County, your properties were assessed a Charge because they contain impervious surfaces.

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 with questions or concerns.

Sincerely,



Lisa Feldt
Director

LF:ww

12



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

44

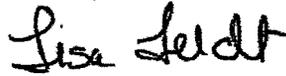
Ron Godsey
October 30, 2015
Page 2

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.

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 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 30th 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 30th. 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 16th? (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 02916206	7400 LINDBERGH DR	N	GU31	0000
FAYYAD RICHARD M	01 02916194	7400 LINDBERGH DR	N	GU31	0000
MODJARRAD AMIR A E	01 02916181	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	GU33	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
HOBBBS INVESTMENTS	01 02915274	7404 LINDBERGH DR	N	GU31	0000
HOBBBS INVESTMENTS	01 02915263	7404 LINDBERGH DR	N	GU31	0000
PARNN LLC	01 02915286	7404 LINDBERGH DR	N	GU31	0000
PARNN LLC	01 02915285	7405 LINDBERGH DR	N	GT33	0000
MONTGOMERY COUNTY	01 02653825	7405 LINDBERGH DR	N	GT33	0000
MONTGOMERY COUNTY	01 03349621	7410 LINDBERGH DR	N	GU31	0000
KIANG LEE S ET AL	01 02653305	7411B LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03270004	7411C LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03270015	7411D LINDBERGH DR	N	GT33	0000
7411 LINDBERG DR	01 03270026	7411A LINDBERGH DR	N	GT33	0000
7411 LINDBERGH DRI	01 03268985	7411J LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270072	7411E LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270046	7411F LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270061	7411H LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270037	7411I LINDBERGH DR	N	GT33	0000
S & S GROUP LLC	01 03270050	7411G LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270106	7411M LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270083	7411K LINDBERGH DR	N	GT33	0000
VEIRS MICHAEL & M	01 03270117	7411N 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	7411 LINDBERGH DR	N	GT33	0000
SUNSHINE LINDBERGH	01 02653893	7420 LINDBERGH DR	N	GT33	0000
7419 LINDBERGH DR	01 02653791	7421 LINDBERGH DR	N	GU31	0000
SUNSHINE LINDBERGH	01 02653682	7500 LINDBERGH DR	N	GT33	0000
SECURITY STORAGE C	01 02821313	7501 LINDBERGH DR	N	GU31	0000
KAP LINDBERGH PARK	01 02643376	7517 LINDBERGH DR	N	GU31	0000
SUNSHINE LINDBERGH	01 02653871	7530 LINDBERGH DR	N	GT31	0000
MORLEY LAND PTNSHP	01 02653860	7560 LINDBERGH DR	N	GU31	0000
LINDBERGH DRIVE LL	01 02890506	7561 LINDBERGH DR	N	GU31	0000
BATTLE DEVIN L	01 02890594	7571 LINDBERGH DR	N	GU31	0000
SG ENTERPRISES LLC	01 02653780	7581 LINDBERGH DR	N	GU31	0000
JAL DEVELOPMENT LL	01 02841322	7500 LINDBERGH DR	N	GU31	0000
MCDONALD HOLDINGS	01 02841344	7500 LINDBERGH DR	N	GU31	0000
MIKKELSON ROBERT G	01 02841333	7600 LINDBERGH DR	N	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	N	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 02853836	7620 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

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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)
- 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

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

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 we me last week.

Please see the attached letter.

Now I only have a few days for an appeal.

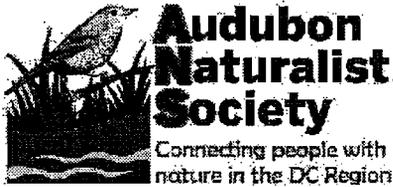
As I predicted there are errors and omissions in this decision.

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

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



Council President Nancy Floreen and Councilmembers
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

May 3, 2016

Re: Bill 11-16, to amend the Water Quality Protection Charge

Dear Council President Floreen and Councilmembers,

Audubon Naturalist Society has long partnered with Montgomery County to protect and restore our streams. We were early advocates of establishing our Water Quality Protection Charge, and have promoted its evolution over time to support the mandates in the County's stormwater (MS4) permit. All built areas of the County depend upon the maintenance of a large inventory of stormwater facilities. These facilities include ponds and filters, and green infrastructure facilities such as rain gardens and tree plantings that capture and infiltrate runoff.

We write today to express our support for the elements of Bill 11-16 related to WQPC credits for facility maintenance. We also urge the County to maintain the small but important additional fee reduction for Environmental Site Design (ESD) stormwater facilities – a.k.a. green infrastructure devices like rain gardens and green roofs. Bill 11-16 would revise the County's framework for providing stormwater fee credits for stormwater management facilities on a given site. The bill would change the credit award (the fee reduction) 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 storm water management system. The Bill would also allow owners of private airports that meet certain criteria, to apply for grants to offset the fees from the Water Quality Protection Charge.

We support the change toward granting credit based on the proportion of volume of water treated, and additionally request that site owners who adopt and maintain ESD practices be given higher fee reduction credits than owners of stormwater ponds and other conventional facilities. Granting higher fee credits to ESD facilities is based on two facts: 1) ESD practices capture and reduce runoff through infiltration and other means that promote water quality, not merely treat and release it; and 2) ESD practices often bring higher total benefits, such as increase in tree canopy cover, to the County and local community, than do conventional stormwater ponds.

We support Bill 11-16 because it embodies three principles of sound stormwater program management and funding:

- (1) Stormwater management is a System – comprised of a large and diverse network of facilities.
- (2) Everyone must do their fair share, including paying into the WQPC, to support this system.
- (3) Ongoing inspection and maintenance of this system must be performed according to sound protocols.

Thank you for considering our views on this matter.

Lisa Alexander
Executive Director

Council President Nancy Floreen and Councilmembers
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

May 4, 2016

Re: Expedited Bill 11-16, to amend the Water Quality Protection Charge

Dear Council President Floreen and Councilmembers,

We, the undersigned members of the Stormwater Partners Network, are watershed, civic, and environmental organizations who support a well-funded, effective stormwater management program in Montgomery County. Since 2006, the Stormwater Partners Network has worked with the Council, Department of Environmental Protection, Montgomery Parks, and other agencies to support clean water funding. The Water Quality Protection Charge (WQPC) funds key programs, including the maintenance of a large inventory of stormwater facilities. These include stormwater ponds, and green infrastructure facilities such as rain gardens that capture and infiltrate runoff.

We write today to express our support for the elements of Bill 11-16 related to WQPC credits for facility maintenance. We also urge the County to maintain the existing higher WQPC credits for Environmental Site Design (ESD) facilities – devices like rain gardens and green roofs. Bill 11-16 would revise the County’s framework for providing stormwater fee credits for stormwater management facilities on a given site. The bill would change the credit award (the fee reduction) 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 storm water management system.

We support the change toward granting credit based on the proportion of volume of water treated, and also based on whether an owner performs structural maintenance. We also urge that you maintain (and not drop as Bill 11-16 proposes), the current approach of offering more credit – e.g. a greater fee reduction – to owners who adopt and maintain ESD practices, over and above the credits offered for conventional stormwater facilities (e.g. ponds). Granting higher fee credits to ESD facilities is based on two facts: 1) ESD practices capture and reduce runoff through infiltration and other means that promote improved stream health, not merely treat and release runoff; and 2) ESD practices often bring higher total benefits, such as increase in tree canopy cover, to the County and local community, when compared with conventional stormwater ponds.

Apart from our request to maintain the higher WQPC credits for ESD facilities, we support Bill 11-16, because it embodies three principles of sound stormwater program management and funding:

- (1) Stormwater management is a System – comprised of a large and diverse network of facilities.
- (2) Everyone must do their fair share, including paying into the WQPC, to support this system.
- (3) Ongoing inspection and maintenance of this system must be performed according to sound protocols.

Thank you for considering our views on this matter.

Ken Bawer
Watts Branch Watershed Alliance
Maryland Native Plant Society

Kit Gage
Friends of Sligo Creek

Ginny Barnes
West Montgomery County Citizens Association

Jennie Howland
Muddy Branch Alliance

James Graham
Neighbors of Northwest Branch



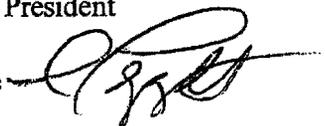
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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.

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

Boldface	<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

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.

Mihill, Amanda

From: Diane E. Feuerherd <DEFeuerherd@mmcanby.com>
Sent: Thursday, June 23, 2016 12:51 PM
To: Mihill, Amanda
Subject: Expedited Bill 11-16 - Language concerning adjoining properties of the same owner
Attachments: 2016.06.23 MDC redline WQPC Credit (Exec. Reg. 12-16), re adjoining properties of same owner.pdf; 2016.06.23 MDC redline Expedited Bill 11-16 as amended.pdf

Dear Ms. Milhill,

I represent Minkoff Development Corporation (Paul Chod) and observed today's T&E Committee Meeting concerning Expedited Bill 11-16 and Executive Regulation 12-16. I am writing to you about the recent amendments concerning credit eligibility. Attached please find proposed redline language. Please also include the below as an explanation.

Prior to this, a property owner could obtain a credit, if the property either had a stormwater management system OR it was located in the same drainage area as a property with a stormwater management system and both property had the same owner. (See Section 19-35(e)(1)(D) ("the property does not contain a stormwater management system, but is located in the same drainage area as another that contains a stormwater management system and both properties have the same owner.")). This was important, as often a single owner can have several adjoining properties and construct and invest in one stormwater management system to serve all of them. And, even though that stormwater management system was located on just 1 property, it is fair and equitable that the property owner receive a credit, at least for all of his or her properties treated. At the Shady Grove Development Park, the two ponds are located on only 2 of the nine properties; the remaining properties are eligible to receive the credit based on the fact that they were properties within the same drainage area as this stormwater management system and held by the same owner.

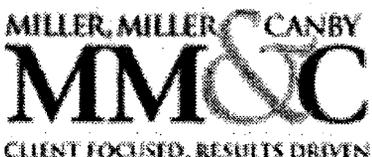
Under the recent amendments to Bill 11-16, credit eligibility has been clarified to allow for a property containing a County-approved stormwater management participation project, including the two ponds at Minkoff Development's Shady Grove Development Park. The DEP Analysis contained in the T&E Packets (for Items 2 and 3 today) estimated that the credit will be applied to the entire Shady Grove Development Park. (See "DEP Analysis based on LY16 Charges"). However, we see that the language in the Bill could be read as, unintentionally, limiting the credit to the property holding the pond only, and precluding those surrounding properties owned by Minkoff Development. (See Bill 11-16, Section 19-35(e)(1)(B)).

We are proposing the additional language in the attached redline to the bill and accompanying regulation to clarify and confirm that a property owner receives a credit for all of the properties that it owns within the same drainage area and served by the credit-eligible stormwater management system.

Thank you for your consideration.

Sincerely,

Diane E. Feuerherd
Attorney



200-B Monroe Street * Rockville, MD 20850
T: 301.762.5212 * F: 301.762.6044

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 Or the property does not contain a stormwater management system, but is located in the same drainage system as a property containing a stormwater management system built as part of a County-approved stormwater management participation project and both properties have the same owner. her must apply to the in a form prescribed by \$0 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