

# STAFF REPORT

- PROPOSED COUNTY CODE AMENDMENT
- PROPOSED PFM AMENDMENT
- APPEAL OF DECISION
- WAIVER REQUEST

Proposed Amendments to the Public Facilities Manual regarding Storm Drainage Pro Rata Share Provisions, Chapter 6 (Storm Drainage) and proposed revisions to the Pro Rata Share Agreement form (countywide)

Authorization to Advertise	<u>December 2, 2014</u>
Planning Commission Hearing	<u>January 7, 2015</u>
Board of Supervisors Hearing	<u>January 27, 2015</u>
Prepared by:	<u>Stormwater Planning Division 703- 324-5500</u>
	December 2, 2014

## STAFF REPORT

### A. ISSUE:

Proposed Amendment to the Public Facilities Manual (PFM) regarding Storm Drainage Pro Rata Share Provisions, Chapter 6 (Storm Drainage) and proposed revisions to the Pro Rata Share Agreement form. The proposed amendment is necessary to replace the current 27 watershed-based pro rata share rates with a single countywide rate for assessment purposes and implement credits for on-site stormwater management and/or best management practices. Proposed revisions to the Pro Rata Share Agreement form are necessary for it to conform to the proposed PFM amendment.

### B. RECOMMENDED ACTION:

Staff recommends that the Board of Supervisors adopt the proposed amendment to the PFM and the proposed revisions to the Pro Rata Share Agreement form.

### C. TIMING:

Board of Supervisors authorization to advertise – December 2, 2014

Planning Commission Public Hearing – January 7, 2015

Board of Supervisors Public Hearing – January 27, 2015

Effective Date – July 1, 2015

### D. SOURCE:

Department of Public Works and Environmental Services (DPWES)

#### E. COORDINATION:

The proposed amendment to the PFM and proposed revisions to the Pro Rata Share Agreement form have been prepared by the Department of Public Works and Environmental Services and coordinated with the Office of the County Attorney. The proposed PFM amendment has been recommended for approval by the Engineering Standards Review Committee.

#### F. BACKGROUND:

In 1972 the Virginia General Assembly enacted enabling legislation that allowed local governments to collect assessments for pro rata share costs for downstream improvements. Fairfax County subsequently adopted its first pro rata share program in 1973. The current pro rata share program enabled under Virginia Code Ann. § 15.2-2243, titled the "Uniform Pro-rata Share Assessment Program," was subsequently adopted by the Board of Supervisors on December 16, 1991. The PFM amendments needed to implement the program were adopted by the Board of Supervisors on July 29, 1992.

The Uniform Pro-rata Share Assessment Program includes storm drainage improvement projects in 27 of the County's 30 major watersheds. Assessment rates, established in each of the 27 watersheds, are based on projects contained within the County's general drainage improvement program and the watershed's projected impervious area at ultimate build-out. Ultimate build-out for the Uniform Pro-rata Share Assessment Program was based on the County's land use comprehensive plan or zoning whichever represented the greatest percent imperviousness. This resulted in the current program establishing 27 different assessment rate structures with three watersheds having no rate established. The 27 rates are updated on a bi-annual basis to account for changes in both inflation and the total estimated cost of the County's general drainage improvement program. The estimated cost of the County's general drainage improvement program is updated as projects are removed or included.

Under the existing program, the pro rata share assessment for a given development and/or redevelopment site is dependent on the rate established for the watershed in which the site is located. Likewise, the funds that are collected may only be utilized for the construction of the specific drainage improvement projects located within that watershed. Equity in the collection and use of pro rata share funds across the major watersheds is a significant concern. Depending on the watershed in which a given development and/or redevelopment site is located, the developer's pro rata share assessment, which is derived from the watershed-based rates, can vary dramatically for the same impervious cover increase. Western portions of the County that were previously not built-out have typically seen more newer development than the older already developed eastern portions of the County. This results in a disproportionate accumulation of assessments that are collected between older and newer areas of the County. In older developed areas/watersheds where more degradation is evident due to increases in impervious area and lack of adequate stormwater management

infrastructure fewer funds for improvements have accumulated. Newer developed areas/watersheds that tend to have more adequate stormwater management infrastructure in place and not yet experienced the same level of degradation accumulate more funding for improvements.

Administering 27 different assessment rates is cumbersome and inefficient for the County to manage and can overly complicate the pro rata share assessment calculation. For example, if a development and/or redevelopment span more than one major watershed, the assessment calculation must be based on multiple pro rata share assessment rates. Further, the assessments collected must be tracked in separate accounts to ensure the pro rata share funds are allocated to drainage improvements in the respective watersheds they were collected.

The proposed PFM amendment abolishes the current 27 different watershed-based rates and replaces them with a single countywide rate structure for assessment purposes across all 30 major watersheds within the County. The single countywide rate will be updated on an annual basis to account for changes in both inflation and the total estimated cost of the County's general drainage improvement program. Restrictions causing the inequities in both the collection and use of pro rata share funds will be eliminated. All assessments collected will be aggregated and used for any eligible project within the County. The reduction of 27 rates to a single rate and the reduction in the frequency of updates from bi-annual to annual will improve the efficiency of administering the program and simplify the pro rata share assessment calculation.

The current Uniform Pro-rata Share Assessment Program contains limited provisions for providing credit for the installation of on-site stormwater management and/or best management practices. Developers seeking credits must submit a detailed engineering/cost study that demonstrates a cost reduction in a pro rata share project. This is a significant disincentive because the resources needed to demonstrate the cost reduction would likely exceed any credits achieved. The new state stormwater regulations, effective July 1, 2014 under the County's new Stormwater Ordinance, increase requirements for water quality and provide incentives for reducing the volume of stormwater runoff. These inherent features of the new regulations will provide the basis for awarding credits and serve as an incentive to achieve reductions in pro rata share assessments.

The proposed PFM amendment includes new provisions to implement credits for on-site stormwater management and/or best management practices. The credits are designed to reduce the pro rata share assessment in a way that recognizes the positive effect that the new regulatory requirements have on improving water quality and reducing the volume of stormwater runoff. The maximum water quality credit is currently estimated to be a 42% reduction in the assessment and can be achieved if the stormwater management requirement for water quality treatment is provided on-site or within the common plan of development. Similarly, a water quantity credit for reducing the volume of stormwater runoff leaving the site through on-site practices such as infiltration, stormwater re-use or other means of retention can further reduce the assessment. The maximum water quantity credit is currently estimated to be a 58% reduction in the

assessment. Depending on how significantly on-site stormwater management and/or best management practices address the quality and quantity of stormwater runoff, credits can potentially reduce the pro rata share assessment to zero. It is anticipated that development and/or redevelopment providing on-site stormwater management and/or best management practices in full compliance with the regulations will at a minimum receive the maximum water quality credit of 42%.

Discounts in the pro rata share assessment achieved through the use of credits recognizes that the greater the level of stormwater treatment provided on-site, the fewer County stormwater projects will need to be implemented and therefore less pro rata share funding is required. Assuming treatment levels using on-site stormwater management and/or best management practices meet full compliance for water quality, the resulting discounted rate per impervious acre increase is equivalent to the current rates averaged across all County watersheds. Consequently, the average revenue anticipated by implementing the proposed single countywide rate will be similar to what is collected under the current watershed-based rates.

Individual pro rata share agreements are a condition of plan approval. The Pro Rata Share Agreement form is currently formatted to accommodate a pro rata share assessment specific to the watershed within which the new development or redevelopment is located. The proposed revisions to the Pro Rata Share Agreement form reflect the changes needed to be consistent with the single countywide rate proposed in the PFM amendment and include some minor editorial changes.

There has been an increase in the number of Low-Impact Development (LID) stormwater practices implemented through the County's capital improvement program and by industry since LID practices were adopted into the PFM in 2007. The current pro rata share program was adopted prior to 2007 and the advent of LIDs consequently it contains no provisions for the inclusion of Low-Impact Development (LID) stormwater practices into the County's pro rata share program for off-site drainage improvements. As a result, these practices are currently not eligible for pro rata share funding in the existing program. Moreover, large tract developments have given way to smaller in-fill development or redevelopment. Often, these newer types of development are approved and permitted one single lot at a time but occur at many locations across the County. Although smaller, the widespread nature of these types of developments has an overall cumulative effect to the increase in volume and velocity of stormwater runoff. Accordingly, these increases adversely affect the quality of our stream networks across the County. Staff recommends including these practices into the County's general drainage improvement program making them eligible for pro rata share funding. Individually, LIDs provide smaller areas of treatment; however these are distributed systems that when combined or aggregated their treatment can mitigate increases in the volume and velocity of runoff caused by development countywide and their use are strongly encouraged by the new stormwater regulations.

Impervious area estimated at ultimate build-out is used in the rate calculation for pro rata share assessments. The impervious area estimated for ultimate build-out in the current pro rata share program was limited to methods available back in the 1990's.

Using modern GIS technology to assist in estimating future impervious area has revealed that the earlier methods over-estimated future impervious area. Staff recommends using the latest GIS technology in the calculation of the single countywide pro rata share assessment rate.

The proposed amendment to the PFM and revisions to the Pro Rata Share Agreement form are enabled under Va. Code Ann. § 15.2-2243.

G. PROPOSED AMENDMENT:

The amendment to Chapter 6 of the PFM incorporates the following provisions:

- A rationale for the removal of the restriction that pro rata share contributions collected in a given major watershed must fund off-site storm drainage improvements in the major watershed it was collected. Instead, collected pro rata share payments, aggregated countywide, will fund off-site storm drainage improvements countywide.
- A definition of the County's general drainage improvement program.
- A change in the status of pro rata share credits. Credits are no longer at the County's discretion. Credits are mandatory when on-site stormwater management and/or best management practices are installed.
- A methodology to reduce pro rata share assessments through the use of a crediting system. Credits to reduce the pro rata share assessment are based on the extent that on-site stormwater management and/or best management practices address water quality and water quantity. The percent reductions associated with the credits will be updated on an annual basis.
- The establishment of a single countywide pro rata share assessment rate and elimination of the 27 watershed-based pro rata share assessment rates in the calculation of the pro rata share assessment.
- An update of plan types that are submitted to the county for calculation of the pro rata share assessment and where payment of the pro rata share assessment is a condition of plan approval.
- A restriction on pro rata share assessments received prior to the effective date of the Board of Supervisors' adoption of the PFM amendment creating a single countywide rate. Funds collected prior to July 1, 2015 will continue to be kept in separate accounts until such time as they are expended for the watershed improvement program.
- A deletion of the provision regarding the disposition of pro rata share agreements that existed prior to July 1, 1990. This provision was acted upon as part of the implementation to the current program and therefore no longer applies.

H. REGULATORY IMPACT:

Minimal. The proposed amendment to PFM Chapter 6 simplifies both existing County procedures for establishing the pro rata share assessments and credits with minimal changes. Revisions to the Pro Rata Share Agreement form simplify the procedures used with the existing form.

I. ATTACHED DOCUMENTS:

Attachment A – Proposed amendment to Chapter 6 of the PFM

Attachment B – Proposed revisions to the Pro Rata Share Agreement form