

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES

STAFF REPORT

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

Proposed Amendment to the Public Facilities Manual Regarding the Use of Underground Detention Facilities in Residential and Mixed-Use Developments

Authorization to Advertise	<u>February 17, 2015</u>
Planning Commission Hearing	<u>March 25, 2015</u>
Board of Supervisors Hearing	<u>April 28, 2015, 4 p.m.</u>
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STAFF REPORT

A. ISSUE:

Board of Supervisor's (Board) authorization to advertise public hearings on a proposed amendment to the PFM. The amendment is a revitalization initiative to streamline the plan review process for the use of underground stormwater detention facilities in residential and mixed-use developments by eliminating the need to process a Board waiver, and to clarify a developer's maintenance escrow requirements. .

B. RECOMMENDED ACTION:

Staff recommends that the Board authorize the advertisement of two options to the proposed amendment as set forth in the Staff Report dated February 17, 2015.

C. TIMING:

Board of Supervisors authorization to advertise – February 17, 2015
Planning Commission Public Hearing – March 25, 2015
Board of Supervisors Public Hearing – April 28, 2015 at 4 p.m.
The proposed amendment will become effective at 12:01 a.m. on the day following adoption.

The proposed amendment has been prepared by the Department of Public Works and Environmental Services (DPWES) and coordinated with the Office of Community Revitalization (OCR) and the Office of the County Attorney. The PFM amendment has also been recommended for approval by the Engineering Standards Review Committee (ESRC).

D. Source:

The Department of Public Works and Environmental Services.

E. Coordination:

The proposed amendments have been prepared by DPWES and coordinated with the Department of Planning and Zoning, the Office of Community Revitalization and the Office of the County Attorney. The proposed amendment has been recommended for approval by the Engineering Standards Review Committee.

F. BACKGROUND:

Underground detention facilities are pipes or other structures constructed underground for the purpose of capturing and detaining stormwater runoff from a

site. Stormwater runoff is conveyed to the underground detention facility by pipes and channels and is slowly released at a controlled rate, which decreases the peak flow from the site and mitigates the potential of downstream flooding and erosion problems. Detention ponds have historically been used to control a site's stormwater runoff; however, they are land intensive features that are not consistent with the character of development envisioned in the urbanizing areas of the County. When projects are located in urbanized areas with higher population densities and pedestrian oriented development patterns, the use of underground detention facilities can be a viable stormwater management alternative to address the increase in stormwater runoff from a site.

Pursuant to § 6-0303.6 of the PFM, underground detention facilities are allowed in commercial and industrial developments, where private maintenance agreements are executed and the facility is not located in a County storm drainage easement. Underground detention facilities, however, may not be used in residential developments, including rental townhouses, condominiums and apartments, unless specifically waived by the Board in conjunction with the approval of a rezoning, proffered condition amendment, special exception, or special exception amendment. Underground detention facilities are privately owned and maintained and all costs associated with them are assumed by the property owner(s). Accordingly, the PFM requires that any residential project owner seeking a waiver provide for adequate funding for maintenance of the facility. Historically, the amount of the required funding is sufficient to cover a 20-year maintenance cycle and a 20-year portion of the facilities' replacement cost, which is provided to a homeowners' or condominiums' association in an escrow fund.

The proposed amendment implements one of the County's revitalization initiatives. On February 14, 2014, the Office of Community Revitalization (OCR) presented information to the Board's Revitalization Committee that included incentives aimed at encouraging investment and development, particularly in revitalization areas and districts. One of the revitalization incentives identified for implementation by DPWES was to streamline the plan review process by eliminating the waiver process to allow the use of underground detention in residential and mixed-use developments, including reviewing the associated escrow from a developer to help fund any maintenance burden on prospective homeowners.

On September 16, 2014, a framework of the proposed amendment was presented to the Board's Revitalization Committee. At that time, two conceptual options were put forward by DPWES staff. After discussion, the Committee directed staff to move the amendment forward with both options for the Board to consider. The proposed amendment reflects a refinement of these two options.

G. PROPOSED AMENDMENTS

The following two amendment options are presented for consideration by the Board, although staff recommends the adoption of Option 2:

Option #1: For any development having less than 50 units, the Board would continue to process waiver requests for the use of underground detention facilities in conjunction with the approval of a rezoning, special exception, proffer condition amendment, or special exception amendment (RZ/SE/PCA/SEA) application in residential and mixed use developments. “By-right” residential and mixed use developments having less than 50 units would also require Board approval for the use of underground detention facilities. For any development greater than 50 units, underground detention facilities in residential and mixed-use developments would be subject to approval by the DPWES Director without the need for a waiver. Based on a review of Board-approved waivers for use of underground detention facilities in residential developments, staff has determined that there is a significantly lower maintenance and replacement cost to home owners in residential developments with 50 or more units as compared to the cost to home owners in residential developments with less than 50 units. In short, in larger residential developments, maintenance and replacement costs are low—if not negligible--when viewed on a per unit basis. Accordingly, there is little necessity of setting aside an escrow fund to deal with such costs because property owners can manage the costs relatively easily when they occur. In contrast, for smaller developments, the per unit maintenance and replacement costs are significantly larger. When such costs are incurred in smaller developments, a financial burden to individual unit owners is created unless an escrow exists to offset these costs.

Option #2: The Director would approve the use of underground detention facilities in all residential and mixed-use developments. This option, recommended by staff and the ESRC, completely eliminates the need to process a waiver for underground detention facilities. Option 2 aligns the PFM regulations with similar regulations of the following municipalities where there are no restrictions on underground detention in residential areas:

- Arlington County: no restrictions in residential areas
- Prince George’s County: no restrictions in residential areas
- Montgomery County: no restrictions in residential areas

Both amendment options codify the developer’s escrow requirements for maintenance and replacement costs for underground detention facilities. To avoid the complexity of lifecycle determinations for various material types, the replacement cost portion of the escrow has been simplified to equate to 40 percent of the total facility replacement cost rather than relating the developer’s replacement cost to a prorated yearly portion of the estimated replacement cost. The escrow amount for maintenance remains unchanged and continues to include a 20-year maintenance cycle cost.

The PFM provision for underground detention facility use in commercial and industrial developments would remain unchanged. Currently such facilities are allowed by right, and no escrow is required for maintenance and replacement costs.

H. REGULATORY IMPACT:

The proposed amendment is a revitalization incentive that, if adopted, would streamline the review process for approving the use of underground detention facilities in residential or mixed use developments. Specifically, the amendment revises the PFM to:

1. Retain a Portion of the Current Board Waiver Process for Developments with Less than 50 Units/Lots (Option 1 only) and Expand the Use to By-right Developments

Option 1 retains the current process whereby the use of underground detention in residential areas is subject to approval by the Board via a waiver in conjunction with the approval of a RZ/SE/PCA/SEA application only in residential or mixed use developments, but limits the waiver process to only those developments with less than 50 units. Option 1 also revises the PFM to expand the allowable use of underground detention facilities to by-right developments, although such use would also be subject to Board approval via the waiver process.

Option 2 also expands the use of underground detention facilities to by-right development, but any such use would be subject to Director approval.

2. Revise the Process to Allow Designers to Propose Underground Facilities Directly on the Plan for the Director's Approval

Option 2 provides flexibility and makes it easier to use underground detention facilities by allowing designers to propose facilities directly on plans without the requirement to obtain advance approval from the Board via a waiver. This reduces project processing times and potential risks associated with a formal waiver process. This process streamlining applies to Option 1, but only where a development has 50 units/lots or more.

3. Clarify the Developer's Requirement to Provide Funds for Maintenance and Eliminate the Need for Maintenance Funds for Residential and Mixed-Use Developments with 50 or More Units

Under the current PFM provisions, any property owner seeking a residential waiver shall provide adequate funding for maintenance. The amendment codifies the current practice that funds shall be provided in an amount sufficient to cover a 20-year maintenance cycle and it also includes a 40 percent replacement cost, rather than a twenty-year portion of the replacement cost.

In addition, the amendment eliminates the need for maintenance and replacement funds from the developer for developments with 50 units or more (unless a modification is required). The elimination of such funding acknowledges that developments of this size have the financial resources to fund facility maintenance without placing a financial burden on the prospective owners of the facility. Escrows are not currently required for underground detention facilities in privately owned and maintained commercial and industrial developments, and this requirement remains unchanged with the proposed amendment.

4. Clarify the Current Process for a Product Modification

The amendment adds text to the PFM to clarify the current process where a “product modification” is required in cases when the underground facility deviates from standard PFM materials or configurations. The modification request must include details of the proposed underground detention facility including, but not limited to, design computations, material specifications, technical details, structural calculations, procedures for installation and maintenance, and estimated maintenance costs when required. In such instances, escrow funds from a developer would still be required in all residential developments, even those greater than 50 units.

A comparison table of the current provisions versus proposed amendment options (Options 1 and 2) is shown on Attachment C.

G. FISCAL IMPACT:

The proposed amendment has no anticipated fiscal impact to the County.

H. ATTACHMENTS:

Attachment A- Proposed PFM Amendment -Option 1

Attachment B- Proposed PFM Amendment -Option 2

Attachment C- Comparison of Current Requirements versus Amendment Options