

## ISSUE PAPER #2

# Stormwater Rate Credits

### Issue

It is likely that the County sub-flood control zone district for the Birch Bay Watershed will charge for ongoing stormwater service based on impervious surface area and/or other physical measurements related to contribution of run-off. When is it reasonable (or required) to provide rate credits to stormwater customers and what is a rational basis for such credits?

RCW 86.15.160 (4) authorizes service charges and, by extension, credits, stating that the supervisors may authorize:

A charge, under RCW 36.89.080, for the furnishing of service to those who are receiving or will receive benefits from storm water control facilities and who are contributing to an increase in surface water runoff. The rate or charge imposed under this section shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a (properly sized) permissive rainwater harvesting system.

### Alternatives

When considering how to charge, or credit, different types of customers, it is important to remember that a stormwater rate is a fee for service, not a tax. As such, the level of a customer's charge must substantially relate to that customer's proportionate share of the program's costs. In terms of equity and legal defensibility, it is important to recognize the significance of that type of relationship when defining exemption or credit policies because such policies could potentially move a program away from the rational linkage between service delivered and the amount of the fee.

The following types of rate credits are often considered and sometimes offered by stormwater programs in the region.

- Senior and/or low-income discounts. While it may be a common general policy to grant credits or exemptions to elderly and/or low-income customers, equity considerations under an impervious surface area approach do not give cause for such adjustments. Developed properties owned by senior citizen and/or low-income customers still contribute runoff that places a cost burden on the stormwater system. If the County wishes to pursue a social policy to grant credits or exemptions, a program and its ratepayers should not bear the costs of that policy. To preserve the cost of service approach to rate design and avoid causing stormwater customers to subsidize a general County policy, the General Fund could possibly be used to fund the costs of senior and low income credits or exemptions.
- Publicly owned properties. Under a similar evaluation as senior/low income credits, publicly owned properties do not warrant rate relief. When a cost of service approach is used as the basis for fee evaluation, exemptions and credits should only be granted when the

characteristics of a parcel or improvements to that property cause runoff to differ when compared to similar parcels.

Some jurisdictions do not charge publicly owned land because there is a general sense that charging simply transfers money from one County fund to another. Administratively, this may be a valid perception; however, by not charging public lands, the County may not accurately and equitably allocate what can be viewed as an overhead cost borne to support the departments that use stormwater services because of their land holdings. Effectively, ratepayers would bear the costs of stormwater management utilized by other user-supported services or the general public.

- Tax-exempt properties. Like public properties, tax-exempt properties are also subject to the general criterion for credit or exemption eligibility, that is, the specific parcel must have characteristics or improvements that cause runoff to differ from similar properties in order to be eligible for cost relief. There may be general County or social policies that aim to provide cost relief to these properties; as such, any credit granted should be funded from a source outside the program. As an alternative, cost relief may be granted without General Fund subsidization in cases where the tax-exempt property, most often a school, provides an in-kind service such as topic-specific curriculum in lieu of paying a service charge.
- Undeveloped property. These areas by definition have no impervious area. Therefore it would make sense to exclude undeveloped property from stormwater rates, as it does not contribute to *increased* runoff and is inconsistent with an impervious surface area approach.
- On-site mitigation. In addition to the language requiring credits for qualifying rainwater harvesting, RCW 86.15.176 grants discretion to county legislative bodies in the setting of rates and charges (and, it follows, credits), allowing for the consideration of “the character and use of land and its water runoff characteristics and any other matters that present a reasonable difference as a ground for distinction.” Except for qualifying rainwater harvesting, there is no language requiring that credits be made available.

However, from an equity standpoint, properties with on-site mitigation have a reduced effect on the public system than similar property lacking mitigation. It is also true that meeting County development standards does not reduce costs for the program. It simply keeps the program financially whole. Granting a credit for such activities would actually reduce the amount of resources available for basic services to the remainder of the customer base.

Exceeding standards, that is, providing capacity in addition to that needed by the developing (or developed) property in theory does reduce cost to the program by, in effect, reducing the net service area.

How much of a credit to grant can then be sized according to the extent to which on-site controls exceed the standards.

Therefore, the two criteria to check for may be (1) effectiveness in reducing stormwater runoff and (2) whether these on-site systems are designed to handle a greater amount stormwater than would be required as a condition of development approval. The additional capacity provided by the new development then may become the basis for the service charge credit amount.

### Recommendation

Service fee reductions for senior citizen and/or low income customers should generally be established only if the costs of that policy are to be paid for by the County's General Fund. However, if the County's existing practice is to grant rate reductions for qualifying low-income senior customers in the Countywide flood control zone district or in its sub-flood control zone districts, then we believe it would be reasonable to extend this specific practice to the stormwater rates for the Birch Bay service area.

Regarding publicly-owned property, it is in fact required in RCW 86.15.176 that rates be charged to those served or benefited, *including public entities*. So, publicly owned property should be treated as all other developed property and charged its share of stormwater program costs through the service charge. Tax-exempt properties should be treated as all other properties contributing runoff and assessed the full service charge. Undeveloped property should be exempted from the service charge.

Finally, the stormwater service charge should include a provision for credits for on-site mitigation, with the general criteria being that the stormwater facility requirements built for the sake of obtaining development approval must effectively reduce the program's costs *above and beyond* the required amount called for in granting development approval. The cost of *meeting* County standards should be considered a "cost of doing business," since this only partially neutralizes the impact of developing the property in the first place. A credit should be achievable only *exceeding* minimum requirements.

The distinction between meeting and exceeding standards certainly can be crafted to allow for specific on-site practices to be credit-worthy. For example, credits could be structured to apply to qualifying low impact development (assuming low impact development reduces program costs and is not a County requirement). [Low impact development is an environmentally sensitive approach to developing property and managing surface water runoff.]

One key question in the consideration of rate credits is how much to credit. The case for allowing complete exemptions would imply that the customer is not being served by any of the programs or services offered. This is a very difficult case to make, because usually access to the property is available during storm events and less directly related program

activities, such as water quality management, regulatory compliance and public information, benefit all the program's customers.

The maximum level of credit available should represent that portion of the program cost that is related to managing stormwater flow. These can be characterized as "use" costs. Those remaining program costs can be characterized as "base" costs. They generally do not vary by stormwater flows from individual parcels. Base costs typically include water quality activities, regulatory compliance, and billing/administration. Use costs may include budget categories such as maintenance and some capital improvements.