

IMPLEMENTATION POLICIES

ISSUE & BACKGROUND

This issue paper outlines potential issues or concerns that could arise during the rate implementation process to be considered by Whatcom County for incorporation into the adopting ordinance. For example, should the County try to phase-in any rate impacts? What types of rate exemptions are being considered? What happens if a rate payer challenges the charge? Are there specific elements within a typical rate ordinance that County staff should incorporate into their proposed rate ordinance? Specific considerations related to these questions will be addressed in the following sections.

PHASE-IN RATE IMPACTS

Single family residential rates for the Lake Whatcom stormwater utility are projected to range from \$100 - \$200 per year. Individual charges to non-single family residential properties will vary greatly based on the amount of impervious surface and the number of parcels owned. These individual charges will range from around \$200 - \$30,000 per year with most annual charges less than \$1,000. The question to consider is whether or not charging the full annual rate starting at year 1 will create undue hardship for rate payers. Phasing-in the full annual charge over time would lessen the impact of the new utility fee on rate payers.

Operating & Capital Funding

Initial operating and capital costs to be funded by the fee are estimated to be \$817,600. While we would not generally recommend phasing up to rates at these projected levels, concerns expressed for (1) non-single family residential customers and (2) the ability of the County to meet proposed service levels in year 1, lead us to recommend consideration of a 2-year phase-in of the proposed rates.

We recommend against providing a special discount in the form of a phased-in rate to individual customers or customer groups, at the expense of other customers or customer groups. For example, we do not recommend that non-single family residential customers receive a phased-in rate while single family customers pay the full rate. We also generally recommend against providing special discounts to select customers, for which there is no cost basis — meaning there is no correlation to a reduced cost of providing service (except for senior/disabled, low-income discounts, which are allowed by Washington State law).

Recommendation: Phase operating and capital costs and the resulting rates at 50% year 1 and 100% year 2.

Reserve Funding

We further recommend that the County phase-in the reserve funding policy over several years. The advisory committee recommended a 33% operating reserve target for the entire \$2.4 million operating program, which equates to roughly \$800,000. (This is not to be confused with the \$817,600 figure mentioned previously.) If the County funds the target over a ten-year period, there would be a

rate impact of approximately 10% (\$80,000/year collected for ten years), while a five-year period would equate to a 20% rate impact during that time (\$160,000/year collected for five years).

Recommendation: Phase reserve funding at 10% per year.

RATE EXEMPTIONS

Several rate exemptions are being considered as part of the funding study including:

- Forestland or timberland as defined by RCW 36.89.080: (3) Rates and charges authorized under this section may not be imposed on lands taxed as forestland under chapter 84.33 RCW or as timberland under chapter 84.34 RCW: required by State law.
- Senior/Disabled low-income parcel owners: allowed by State law. The senior/disabled exemption is recommended to be consistent with County policy and other stormwater fees within the county.
- Parcels protected from development that are preserved as native forest or are being actively restored to a native forest condition to improve water quality. This is consistent with Lake Whatcom Management Program goals and other Lake Whatcom Management Program areas (e.g., Lake Whatcom land preservation program).
- Private and public roads. The Environmental Protection Agency (EPA) defines stormwater systems to include public streets, which are used to convey runoff. Private streets are subject to similar development standards in the Watershed. In addition, the County Road Fund directly pays into the Stormwater Fund to address county road impacts on stormwater.

RATE APPEALS PROCESS

Many authorizing ordinances contain language providing for rate appeals. Most contain the following or similar terms. If the property owner or person responsible for paying for the stormwater fee believes that an assigned fee is incorrect, such a person may request in writing that the fee be recomputed. However, filing of such a request does not extend the period for payment of the charge. Such requests shall be made within a specified time period, such as thirty days of the mailing of the billing in question. The property owner would have the burden of proving that the service charge adjustment should be granted.

Decisions on requests for fee adjustment would be made by the Public Works Director or his/her designee on information submitted by the applicant and by the Public Works Department within a specified time period, such as sixty days of the adjustment request, except when additional information is needed. The applicant would be notified in writing of the director's decision. If the applicant's request is denied by the director, the customer would be able to submit an appeal of the denial of the first appeal in writing to the Hearing Examiner. The Hearing Examiner would review appeals and base his/her decision on information provided by the customer and by Public Works staff or may review the property directly, in person. The Hearing Examiner's decision would be final.

If an adjustment is granted which reduces the service charge for the current year, the applicant would be refunded the amount overpaid in the current year. If the Public Works Director finds that a service charge bill has been undercharged, then either an amended bill would be issued which reflects the increase and service charge or the undercharged amount would be added to the next year's bill.

OTHER KEY COMPONENTS OF A RATE ORDINANCE

The County may want to reference and define the following items when creating the rate ordinance:

- Define an equivalent service unit (ESU) (proposed value is 4,200 impervious square feet);
- Define if ESUs will be rounded to the closest whole value or to the closest tenth;
- Define the applicable ESU per single family impervious footprint thresholds;
- Incorporate an annual fee escalator for inflation—absent any other action—linked to a relevant index. Some jurisdictions reference the Consumer Price Index (CPI);
- While single family parcels are placed into rate tiers based on assumed impervious area (based on sampling), the rate ordinance should allow for all parcels to be charged based on actual measured impervious area, such as the following:
 - “All parcels can be charged based on measured or estimated impervious area, with a minimum of one (1) ESU, unless a parcel qualifies for the Small ESU rate.”
- Clearly define any terms required to calculate the parcel charge such as the following:
 - ‘Impervious surface’ means a non-vegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include but are not limited to roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

INITIAL PARCEL GROUPING FOR SINGLE FAMILY

In the proposed rate structure, single-family parcels greater than two acres are all slotted into the “Large” impervious footprint tier, while single-family parcels less than or equal to two acres are slotted into the “Medium” impervious footprint tier.

Based on impervious measurements from approximately 150 parcels from each group (~300 in total), the average “Large” lot had significantly more impervious area than the average “Medium” lot, which is the primary justification for assessing a higher fee.

We recommend the following thresholds for parcels when actual impervious area is available, whether from additional measuring by the County or because of the appeals process:

- **Small footprint: 0-2,500 impervious square feet:** Any parcel with less than 2,501 s.f. *gross* parcel area or less than 2,501 impervious s.f. should be placed in the Small footprint tier.
- **Medium footprint: 2,501 to 8,400 impervious square feet:** Any parcel with less than 8,401 s.f. *gross* parcel area should also be placed in the Medium footprint tier (assuming it exceeds the Small tier threshold).
- **Large footprint: 8,401 and more impervious square feet**