

RESOLUTION No. 888-2013A

WHEREAS, both houses of the Maryland General Assembly adopted HB 987 during the 2012 legislative session; and

WHEREAS, the Bill was signed into law on May 2, 2012; and

WHEREAS, the provisions of HB 987 were codified at § 4-202.1 of the Environment Article of the Annotated Code of Maryland; and

WHEREAS, the provisions of this law require Carroll County to establish a "Watershed Protection and Restoration Fund";

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Carroll County does hereby establish a fund to be known as "Watershed Protection and Restoration Fund";

BE IT FURTHER RESOLVED, that the Board of County Commissioners of Carroll County does hereby direct that all resources associated with this fund be used in support of capital and operating costs in furtherance of effective stormwater management.

RESOLUTION No. 888-2013B

WHEREAS, both houses of the Maryland General Assembly adopted HB 987 during the 2012 legislative session; and

WHEREAS, the Bill was signed into law on May 2, 2012; and

WHEREAS, the provisions of HB 987 were codified at § 4-202.1 of the Environment Article of the Annotated Code of Maryland; and

WHEREAS, the County has identified specific programmatic improvements necessary to advance compliance activities in accordance with the existing National Pollutant Discharge Elimination System (NPDES) permit (99-DP-3319) issued in 2005; and

WHEREAS, the County has determined that the resources to support the capital costs associated with the aforementioned programmatic improvements as enumerated in the County's Six-year Community Investment Plan will be provided through a combination of grants, bond sales, and direct allocations from the General Fund; and

WHEREAS, the County has identified the necessary staff costs, support costs, and other operational costs associated with implementation and maintenance of stormwater management services in accordance with the County's NPDES permit requirements; and

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DEPARTMENT OF THE
COUNTY ATTORNEY

WHEREAS, the County has recommended that the resources necessary to fund the operational costs associated with the aforementioned programmatic improvements will be provided through direct allocations from the General Fund; and

WHEREAS, the Board of County Commissioners of Carroll County ("the Board"), through the adoption of Resolution No. 888-2013A, established a fund to be known as "Watershed Protection and Restoration Fund"; and

WHEREAS, this fund is to be used in support of effective stormwater management and furtherance of the objectives of the aforementioned NPDES permit;

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby direct budget staff to place the proceeds from all applicable bond sales, grant funds received, as well as the necessary approved General Fund allocations into the "Watershed Protection and Restoration Fund" to support capital costs; the Board further directs budget staff to place the necessary approved General Fund allocations in support of stormwater management operational costs, as previously identified, into the "Watershed Protection and Restoration Fund"; the Board further directs that these budgetary practices take place beginning in the Fiscal Year 2015 budget and continue as an annual process thereafter.

RESOLUTION No. 888-2013C

WHEREAS, both houses of the Maryland General Assembly adopted HB 987 during the 2012 legislative session; and

WHEREAS, the Bill was signed into law on May 2, 2012; and

WHEREAS, the provisions of HB 987 were codified at § 4-202.1 of the Environment Article of the Annotated Code of Maryland; and

WHEREAS, the provisions of this regulation require Carroll County to establish a "Watershed Protection and Restoration Fund"; and

WHEREAS, Resolution 888-2013A established this Fund; and

WHEREAS, the provisions of this law require that local governments establish a program to account for best management practices that reduce the quantity or improve the quality of stormwater discharged from the property, a program to exempt properties that are able to demonstrate a substantial financial hardship, and an appeals process;

WHEREAS, Resolution 888-2013B directs County staff to identify operating and capital resources sufficient to implement stormwater management services in furtherance of the County's compliance activities associated with the County's NPDES permit (99-DP-3319); and

WHEREAS, Resolution 888-2013B directs County Budget staff to place the necessary resources, as identified, into the "Watershed Protection and Restoration Fund"; and

WHEREAS, Resolution 888-2013B directs County staff to perform these procedures on an annual basis;

NOW, THEREFORE, BE IT RESOLVED that any applicable reductions for eligible best management practices and waivers for hardship be funded through the "Watershed Protection and Restoration Fund" established through the adoption of Resolution 888-2013A, or recognized and accounted for through an alternative strategy to be developed as a component of future implementation activities.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Carroll County ("the Board") that the resources, as identified by staff, shall hereafter be known and referred to as "the stormwater remediation allocation";

The Board further directs staff to perform an analysis on an annual basis to recommend the stormwater remediation allocation necessary to fully support the planned and programmed stormwater remediation activities for the fiscal year;

The Board further directs staff, on an annual basis, to compare necessary stormwater remediation allocations to the resources projected to be available in the "Watershed Protection and Restoration Fund" for the fiscal year to ensure that the funding resources are sufficient. Should the results of this annual analysis yield a positive fund balance, the Board further directs that these excess allocations shall be declared surplus and shall be re-allocated to other stormwater management projects and services in the fiscal year or carried over to future years.

The Board further commits to continue stormwater services funding commitments under the County's NPDES permit (99-DP-3319);

RESOLUTION No. 888-2013D

WHEREAS, both houses of the Maryland General Assembly adopted HB 987 during the 2012 legislative session; and

WHEREAS, the Bill was signed into law on May 2, 2012; and

WHEREAS, the provisions of HB 987 were codified at § 4-202.1 of the Environment Article of the Annotated Code of Maryland; and

WHEREAS, the provisions of this law require Carroll County to establish a "Watershed Protection and Restoration Fund";

WHEREAS, Resolution 888-2013A established this Fund; and

WHEREAS, the provisions of this regulation also require that Carroll County establish a stormwater remediation allocation for property in an amount that is based on the share of stormwater management services related to the property and provided by the county or municipality; and

WHEREAS, Resolution 888-2013B directs County staff to identify operating and capital resources sufficient to implement stormwater management services in furtherance of the County's compliance activities associated with the County's NPDES permit (99-DP-3319); and

WHEREAS, Resolution 888-2013B directs County Budget staff to place the necessary resources, as identified, into the "Watershed Protection and Restoration Fund"; and

WHEREAS, Resolution 888-2013B directs County staff to perform these procedures on an annual basis;

WHEREAS, the State of Maryland Department of Assessments and Taxation levies a tax upon individual properties for both improved and unimproved values; and

WHEREAS, the extent of the tax is proportionate to the improvement value on a given parcel; and

WHEREAS, there is a relationship between and among the degree of development, the amount of impervious surface, and the amount of tax levied upon the improved portion of individual assessments; and

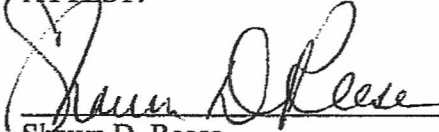
WHEREAS, the capital costs funded through the General Fund allocations and the operating costs funded through the General Fund allocations are generated through real estate assessments based upon the previously articulated assessment methodologies from the Maryland Department of Assessments and Taxation; and

WHEREAS, Resolution 888-2013C requires Carroll County to perform, an annual assessment to determine whether there are sufficient resources in the "Watershed Protection and Restoration Fund" to cover the "Annual Stormwater Remediation Allocation";

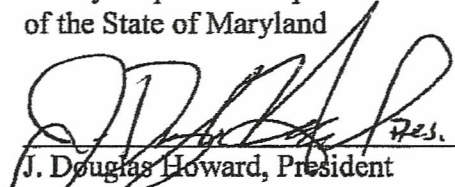
NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Carroll County finds that the mandates of the Environmental Article, §4-202.1, of the State Code, as amended, requiring the establishment of a "Watershed Protection and Restoration Fund", the development and implementation of a stormwater management remediation allocation based upon the share of stormwater management services related to the property and provided by the county and a program to recognize best management practices and other eligible allocation reductions is hereby satisfied.

THE COUNTY COMMISSIONERS OF
CARROLL COUNTY, MARYLAND,
a body corporate and politic
of the State of Maryland

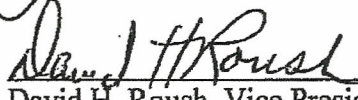
ATTEST:



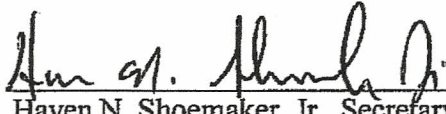
Shawn D. Reese
County Clerk



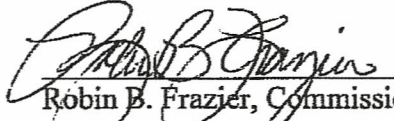
J. Douglas Howard, President (SEAL)



David H. Roush, Vice President (SEAL)



Haven N. Shoemaker, Jr., Secretary (SEAL)

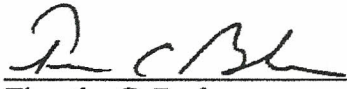


Robin B. Frazier, Commissioner (SEAL)



Richard S. Rothschild, Commissioner (SEAL)

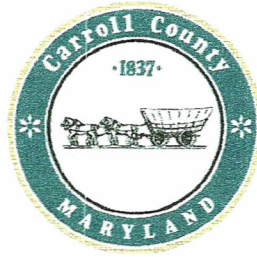
Approved for legal sufficiency:



Timothy C. Burke
County Attorney

Board of County Commissioners

Doug Howard, *President*
David H. Roush, *Vice President*
Haven N. Shoemaker, Jr., *Secretary*
Robin Bartlett Frazier
Richard S. Rothschild



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Board of Carroll County Commissioners

Summary of Board Concerns

as related to passage of Resolution # 888-2013 A-D

concerning compliance with Environmental Article, §4-202.1

(The Stormwater Remediation Fee / aka The Rain Tax)
(as referenced within Stormwater Ordinance)

PREAMBLE

The Maryland Departments of the Environment and Planning along with the legislature, in their efforts to comply with the Federal Clean Water and Clean Air Acts continue to pass laws, policies, and regulations that are harmful to the human environment in Carroll County. Carroll's "human environment" includes both our natural and physical environment and the relationship of Carroll County citizens with that environment, including, but not limited to direct, indirect and cumulative negative effects on the aesthetic, historic, cultural, economic, social, and health values of Carroll County and its citizens. Actions by the State are interfering with the efficiency of our commerce and the liberties of our people. The State's actions which include ultimatums make little or no attempt to limit inequity on matters related to environmental costs.

Additionally, The Maryland Departments of the Environment and Planning continue to make claims that lack validity on matters related to compliance with the Federal Clean Water and Clean Air Acts. Either intentionally or unintentionally, MDE and MDP have failed to employ valid economic and scientific methods and have promulgated legislation, regulations and policies that are detrimental to our citizens, freedoms, our property rights, our economy, and in violation of Carroll County's local Environmental Principles and Governing Principles including, but not limited to those as excerpted below.

CARROLL COUNTY ENVIRONMENTAL PRINCIPLES (EXCERPTS):

We believe an economy based on free market principles produces innovative technologies and solutions that can conserve natural resources and promote full human and natural environmental quality

The Board of County Commissioners has the following environmental goals:

1. Maintain and improve human and natural environmental quality and encourage economic prosperity while preserving the County's rural character
2. Promote land use, planning and development concepts and practices that support citizens' health, safety, well-being, individual rights and the economic viability of Carroll County

CARROLL COUNTY

a great place to live, a great place to work, a great place to play

3. Maintain safe and adequate drinking water and other water supplies including efforts to protect and restore the Chesapeake Bay.

CARROLL COUNTY GOVERNING PRINCIPLES (EXCERPTS):

2. Mandates: This Board of County Commissioners will work with our State Delegation and the local cities and towns to resist unfunded mandates; excessive regulation; and the passing on of additional expenses from the federal or state government.
5. Economic development: This Board of County Commissioners will support small business development consistent with the rural and suburban fabric of our communities. This Board will streamline approval processes; eliminate unnecessary regulation; and promote a business friendly climate for small and locally owned businesses.
8. Capital Expenditures: This Board will require industrial strength financial reviews on all future capital expenditures, including close scrutiny of all assumptions; rigorous life cycle cost projections; and early evaluation of feasible alternatives.

STATEMENT OF POLICIES, CONCERNS AND ISSUES

1. Whereas the State of Maryland receives funding from the Federal Government to achieve compliance with the Federal Clean Air and Clean Water Acts and is thereby bound by federal requirements, both regulatory and statutory;
2. Whereas MDE and MDP policies do not comply with standards required by the Federal Data Quality Act that requires *"federal agencies to issue information quality guidelines ensuring the quality, utility, objectivity and integrity of information that they disseminate and provide mechanisms for affected persons to correct such information"*;
3. Whereas policies of the MDE and MDP do not comply with Section 101(b) of the National Environmental Policy Act (NEPA) that states *"it is the continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy" to avoid environmental degradation, preserve historic, cultural, and natural resources and "promote the widest range of beneficial uses of the environment without undesirable and unintentional consequences"*;
4. Whereas the MDE and MDP have relied on computer models that lack transparency and sub-watershed accuracy regarding the assumptions contained in their modeling algorithms and calculations and have applied these models in ways that exceed their intended purpose and resolution;
5. Whereas the State has not proven a connection demonstrating Carroll County runoff is degrading the quality of the Bay;
6. Whereas applying a new stormwater runoff fee would amount to double jeopardy for property owners and development that already comply with runoff abatement regulations requiring stormwater to be contained within an owner's property either through grading or stormwater management ponds;

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7. Whereas MDE and MDP in developing their policies fail to recognize that applying fees based on the square footage of impervious surface on a property is scientifically invalid and can in no way be
8. correlated to the amount of storm-water runoff, given exigent factors including but not limited to topology, subterranean geology, quantity and quality of surrounding soil permeability, vegetation, intensity of rainfall, aggregate rainfall levels and structures that impede or block movements of storm water and/or ground water;
9. Whereas the MDE continues to assert they are operating under mandate of the EPA, yet the courts, in *Virginia Department of Transportation v. EPA*. Judge Liam O'Grady noted that since the parties agree that *stormwater is not a pollutant*, the EPA cannot issue regulations directing states (and doubtless homeowners as well) what they must do with it. "*EPA may not regulate something over which it has no statutorily granted power... as a proxy for something over which it is granted power...*";
10. Whereas less than 4% of all land area in Carroll County can be characterized as impervious;
11. Whereas Carroll County has been extremely responsible in reducing stormwater runoff by employing development templates with very high percentages of permeable surfaces by utilizing "larger-lot" development that substantively absorbs and filters runoff from most improvements;
12. Whereas rainwater and stormwater can have a beneficial effect to both mankind and wildlife by recharging wells, recharging streams and ponds, nourishing wildlife, and promoting vegetative growth, crop growth; and forest growth;
13. Whereas the MDE and MDP have not established appropriate affordable abatement priorities for their mandates based on a valid cost benefit analysis that would enable the citizens of Carroll County and the state of Maryland to make a properly informed decision as to which abatement options would have the greatest positive impact on Bay water quality as evidenced by the fact the State has not prioritized more severe contributors to Bay water quality such as large scale urban development that channels high percentages of untreated stormwater directly into drains, and contributes high concentrations of trace pollutants such as lead, asbestos, oil, grease, and animal feces;
14. Whereas Carroll County farmers are already employing Best Management Practices (BMP's) to reduce runoff and pollutants, and Carroll has preserved more than 65,000 acres via its nationally recognized Agricultural Preservation programs;
15. Whereas the MDE and MDP have not successfully addressed the most likely source of Bay water quality remediation which are the adverse impacts caused by the Conowingo dam allowing deposit of millions of pounds of accumulated sludge into the upper Bay during tropical storms, smothering the SAV (Submerged Aquatic Vegetation) in the Bay and killing the oyster beds that serve as a natural bay filtration system for the Bay, rendering other Bay cleanup activities ineffective;
16. Whereas the MDE and MDP have used flawed, misleading models when comparing nitrate loads and other pollution from septic systems to waste water treatment by (a) failing to properly include ex-filtration / infiltration (i.e. leakage) of failing underground sewer lines that release raw sewage directly into the ground; (b) failing to properly account for millions of gallons of raw sewage overflows annually from wastewater treatment plants directly into Bay tributaries; and (c) other relevant variables.
17. Whereas the MDE's de facto, ad hoc approach to Bay cleanup of attempting to do everything-everywhere-at any price has clearly proven to be a failed strategy based on the facts that (a) the oyster harvest north of the Chesapeake Bay Bridge has fallen to zero compared to two-million bushel

Summary of Carroll County Board Concerns
With Environmental Art. 4-202.1

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a year 30 years ago; and (b) 30 years of programs have yielded miniscule improvements to Bay Water;

18. Whereas Article 43 of the Maryland Constitution requires the "*diffusion of knowledge and virtue*"; and Article 6 requires "*That all persons invested with the legislative or executive powers of government are the trustees of the public, and, as such accountable for their conduct,*" it becomes incumbent on elected and appointed public officials to make decisions based on sound, valid scientific and economic facts and principles in order to serve the public trust;
19. Whereas The Equal Protection Clause of the 14th Amendment to the United States Constitution states that "no state shall ... deny to any person within its jurisdiction equal protection of the laws" and whereas HB987 (the "rain tax") targets only 9 of 23 counties plus Baltimore City while failing to apply to counties abutting the Chesapeake Bay that ostensibly have a greater effect on Bay Water quality; the State Legislature, MDP, and MDE have violated the United States Constitution by failing to provide equal treatment to all property owners sharing common and equal interests and concerns;
20. Whereas the failure of the MDE, MDP, and State Legislature to apply sound, valid, articulable and verifiable scientific and economic facts and principles has created a regulatory environment for Carroll County citizens that can only be characterized as arbitrary and capricious;
21. Whereas the state inappropriately removed money from the Bay Restoration Fund (BRF) to balance the general fund, used inaccurate, unsound modeling as a basis to promulgate the flush tax and stormwater fee and now has pending plans to require GPS tracking of private automobiles as described in the 2012 MDOT Transportation Plan that is based on exaggerated claims of anthropogenic components of global warming and sea level rise;
22. Whereas Secretary Summers has publicly stated Maryland has already exceeded federal requirements for compliance with the federal Clean Water Act;
23. Whereas Congress has recognized and directed that the state has an obligation to respect the important role local government has in planning and policy making, the State's actions violate federal regulations including but not limited to those contained in the Clean Water Act which require the state to cooperate with local governments such as Carroll County so as not to damage the fundamental elements of our human and natural environment and must use a government to government dialogue to reach consistency between federal plans and actions and local plans and policies;
24. Whereas in accordance with the policies, concerns, and issues clearly denoted above, it is self-evident the State of Maryland, operating under the auspices of the Federal Clean Air Act and Federal Clean Water Act has yet to properly consider the effects of its policies on the human environment in Carroll County and on Carroll County governing policies.

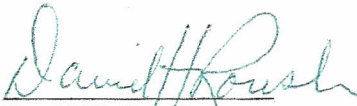
Notwithstanding the above, whereas the County values its relationship with the State, and fully intends in good faith to address Chesapeake Bay Water Quality issues, in a manner consistent with Carroll County Principles and Policies.

Summary of Carroll County Board Concerns
With Environmental Art. 4-202.1

June 27, 2013
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Agreed this 27th day of June, 2013

THE BOARD OF COUNTY COMMISSIONERS OF CARROLL COUNTY


David H. Roush


Haven N. Shoemaker, Jr


Robin Bartlett Frazier


Richard S. Rothschild