

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING AND CLARIFYING THE COUNTY'S STORMWATER FUNDING, OPERATION, AND MANAGEMENT POLICY

WHEREAS, Collier County is responsible for many public Secondary and Tertiary stormwater system facilities in unincorporated Collier County; and

WHEREAS, the effective management of the County's stormwater systems is to provide drainage and flood protection for existing and future development, to minimize degradation of the quality of receiving waters and surrounding natural areas, and to promote groundwater aquifer recharge areas; and

WHEREAS, the Board recognizes the need to provide adequate levels of funding to support management, planning, operation, construction, maintenance, repairs to and replacements of the above-referenced stormwater facilities, including compliance with the County's obligations regarding the National Pollutant Discharge Elimination System (NPDES) Program; and

WHEREAS, this Resolution is to amend and clarify the County's stormwater funding policy regarding management, planning, operation, construction, maintenance, repairs to and replacements of the above-referenced County stormwater facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

Funding of Stormwater Management

1. To the greatest extent authorized by law, all of the County's applicable officers and employees are hereby directed that the dollar amounts of the County's ad valorem tax revenue dedicated to the County's Stormwater Utility will be deposited into Fund 325 and Fund 324. Definitions of terms are noted in Attachment "A" which is made a part of this Resolution.
2. The Stormwater Utility primarily funds the stormwater program designed to improve the overall flood protection capability and water quality improvement capacity of identified deficient sections within the existing secondary system of Collier County
3. Tertiary System projects are proposed only when determined by staff to be the most cost effective and efficient means to resolve a Secondary System deficiency or when the Board of County Commissioners decides there is a specific health, safety or welfare concern regarding the Secondary System or Tertiary System. Additionally, County Stormwater Utility funds cover expenditures necessary for compliance with the County's "NPDES Phase II MS4 General Permit." Funds to pay for capital projects and maintenance projects funded from Fund 325 shall be allocated in each budget adopted by the Board of County Commissioners based on the Annual Update and Inventory Report

(AUR). Such projects shall be primarily focused on the County's Secondary System and be directed to increasing the cubic feet per second flow capacity for flood control and acre feet storage for water quality and aquifer recharge.

4 Improvements to the secondary system will, in many cases, resolve the current drainage problems within neighborhoods as the localized tertiary systems are able to more effectively be conveyed to the primary system and outfalls with less backflow onto neighborhood lands.

5. Public funding in the County Stormwater Utility should not be used to fund problems with the tertiary system where such drainage problems are the direct result of action of the developer, the Homeowner Association or the individual property owner to alter their stormwater facilities approved when the property was developed. However, the County or Water Management District might have the need to fund or provide the proportional support for tertiary system improvements where action of the governmental entity created or contributed to the deficiency. Rather than setting a preset proportionate funding for tertiary improvements, each separate issue will be addressed by the Board, upon analysis by staff and input by the affected property owners on the funding split, if any, based on contribution to the deficiency.

Purpose of Funding Policy

6. This stormwater funding policy is intended to meet the demands of Collier County's rapid land development and population growth, and to promote, protect, and improve the health, safety and welfare of individuals by safe, reliable and economical administration, management, planning, construction, maintenance, repairs, replacements, and operation of the County's Secondary Stormwater System; and to fund the County's Tertiary Stormwater Systems when needed to facilitate operation of the functionally related County Secondary System.

7. Collier County Resolution No. 2005-115 provides for funding of "Fund 325 -- The Stormwater Capital Improvement Fund," for implementation of the County's Stormwater Capital Improvement Program, by depositing proceeds from 0.15 mills or the Board approved dedicated millage of ad valorem tax revenues into Fund 325 until and including Fiscal Year 2025.

8. This Resolution is consistent with the dictates of Ordinance No. 74-50, as amended, "Water Resources Management" (Article II of Chapter 90 of the County's Code of Laws and Ordinances); Article II of Chapter 62 of the Code of Law and Ordinances, "Flood Damage Protection" (Ordinance No. 86-28, as amended); and the Land Development Code, including Section 6.050.00 therein, "Water Management Systems and Drainage Improvements Standards."

9. Collier County does not fund the Primary System ("primary watercourses") because the Primary System is the responsibility of the Big Cypress Basin of the South Florida Management District ("District") pursuant to an Agreement, dated October 30, 2000, between the County and that District, which also provides that the County shall be

responsible for planning, operation, maintenance and capital improvements of all secondary watercourses. County staff will continue to pursue partial funding from the Big Cypress Basin for maintenance of the Secondary System as has been provided by the Basin in the past.

10. When a tertiary stormwater system issue warrants an improvement, a determination will be made by stormwater staff as to the issue's cause and responsibility. Funding of such improvements will be based on the Board of County Commissioners approval of a proportionate share contribution from parties deemed responsible, including and not limited to a community, individuals, developers, property owners association, etc.

11. Money received from grants, developer agreements, Municipal Service Taxing Units/Benefit Units (MSTU/BU), donations, and other funding sources can be expended for all purposes regarding the County's stormwater systems as authorized by the respective budget approved by the Board of County Commissioners and as otherwise permitted by law.

12. If any Fund(s) referenced in this Resolution is/are hereafter renumbered, the renumbered successor in function Fund shall continue to be subject to this Resolution (as if not renumbered).

Capital and Operating Budget.

13. The Board shall adopt a Capital and Operating Budget not later than the first day of each Fiscal Year. Each Budget shall specify the estimated revenues and estimated costs for the above-referenced stormwater Funds. The Capital Budget may include funding for general maintenance, specific maintenance projects, and specific stormwater projects including specific major repairs, specific major replacements, and/or specific System extensions.

THIS RESOLUTION is hereby adopted after motion, second, and majority vote by the Board of Collier County Commissioners on this 25th day of March, 2008.

ATTEST:  DWIGHT E. BROCK, Clerk

By: Alan Acivelle, Jr.
Deputy Clerk
Signature only

BOARD OF COUNTY COMMISSIONERS,
COLLIER COUNTY, FLORIDA.

By: Tom Henning
Tom Henning, Chairman

Approved as to form and legal sufficiency

By: Scott R. Teach
Scott R. Teach,
Managing Assistant County Attorney

ATTACHMENT "A"

Definitions

"Capital Improvement" means a stormwater project designed and constructed to improve the stormwater Level of Service through the construction of stormwater facilities including providing drainage and/or flood protection for existing and/or future development, to minimize degradation of water quality of receiving waters and/or surrounding natural areas, and/or promote natural groundwater aquifer recharge areas.

"Maintenance" means ordinary maintenance, including minor repairs and/or minor replacements required to keep the respective Stormwater System or part(s) thereof in a condition to function properly, or to prevent decline of pipes, culverts, canals, swales, ditches, control structures, and other stormwater facilities. The primary purpose of maintenance is to keep the Stormwater Facility functioning in the manner as designed. Improvements that increase the conveyance capacity or retention/detention capacity of the Facility are capital Improvements.

"NPDES" - As used in this Resolution, NPDES is limited to the County's obligations under its "National Pollutant Discharge Elimination System (NPDES) Phase II MS4 General Permit," which regulates discharges of stormwater into surface waters of the State of Florida from the County's Municipal Separate Storm Sewer System ("MS4"). In Collier County the MS4 includes the Secondary System, and Tertiary Systems including County and State road drainage systems.

"Primary System" means the Stormwater System that is neither the Secondary System nor any Tertiary System. The Primary System in unincorporated Collier County is administered, managed and controlled under the jurisdiction of the Big Cypress Basin of the South Florida Water Management District.

"Secondary System" means the system of canals, ditches, swales, outfalls and other structures that are neither part of the Tertiary System nor part of the Primary System. The Secondary System typically receives stormwater from a Tertiary System or directly from a neighborhood's drainage system, and conveys such water directly into the Primary System watercourses or directly into a receiving water. The County's Secondary System is identified in a document created and up-dated from time to time by the staff of the County's Stormwater Department.

"Stormwater Facilities" means tangible assets, including, but not limited to, ponds, pumps, pipes, culverts (including driveway culverts), inlets, weir control structures, canals, ditches, swales, and other appurtenant structures.

"Tertiary System" means, and is limited to, small systems that have relatively limited conveying/holding capacity, as follows: (a) Neighborhood drainage system that collects stormwater from the respective neighborhood and conveys that stormwater away from

that neighborhood into either the Secondary System, directly into the Primary System, or directly into a receiving water; or (b) Public maintained roadside stormwater system, including small roadside swales and retention/detention ponds, that provide stormwater connectivity from public roadway surfaces into either the Secondary System, directly into the Primary System, or directly into a receiving water.

EXECUTIVE SUMMARY

Recommendation to adopt a Resolution of the Board of County Commissioners of Collier County, Florida, amending and clarifying the County's Stormwater Funding, Operation and Management Policy

OBJECTIVE: To obtain approval from the Board of County Commissioners (Board) to adopt a Resolution to clarify the funding, operation and management of the County's stormwater systems.

CONSIDERATIONS: In 1991, the Board of County Commissioners approved Ordinance No. 91-27, establishing a Stormwater Utility for Collier County. Ordinance No. 91-27 established the "Stormwater Utility enterprise fund" to account for all revenues, expenditures, assets, earnings of the utility, in which all revenues from the stormwater utility shall be deposited, and that such monies shall, in order of priority, (i) pay the costs of operations and maintenance, (ii) debt service, and (iii) extension and replacement of the system.

On June 22, 2004, the Board of County Commissioners approved item 10G of the County Manager's Report entitled "Recommendation to adopt a Stormwater Funding Policy for the Capital Improvement Program to ensure adequate flood protection and water quality, estimated fiscal impact of \$140 million from Collier County with a total of \$346 million over the next 20 years." The Board concurred with an overall funding program that included proportionate cost share for stormwater improvements from Collier County, Big Cypress Basin of the South Florida Water Management District, Municipal Services Taxing Units (MSTUs) and other grants.

On March 5, 2005, the Board of County Commissioners adopted Resolution No. 2005-115 entitled "Resolution of the Board of County Commissioners of Collier County, Florida, directing that ad valorem revenues (generated from 0.15 mills) shall be dedicated to Collier County's Stormwater Utility for fiscal year 2006 and for the next nineteen fiscal years." The Board directed that these revenues be deposited into "Fund 325 -- the Stormwater Capital Improvement Fund."

On January 25, 2007, the Board of County Commissioners approved Ordinance No. 2007-11 amending the Collier County Growth Management Plan (GMP) that includes the Drainage Sub-Element of the Public Facilities Element. This portion of the GMP inventories the stormwater management activities within unincorporated Collier County and establishes the goal of providing drainage and flood protection for existing and future development, minimize degradation of quality of receiving waters and surrounding natural areas and protect the functions of natural groundwater aquifer recharge areas. The County's Transportation Services Division is responsible for the management of the stormwater drainage systems associated with County roadways as well as the Secondary Drainage system, and is responsible to assure compliance with the County's National Pollutant Discharge Elimination System (NPDES) Phases II MS4 General Permit.

On June 12, 2007, the Board of County Commissioners directed staff to prepare and bring back to the Board for consideration a consolidated Stormwater Ordinance/Resolution that clearly defines responsibility for constructing, operating and maintaining stormwater facilities.

On January 29, 2008, staff presented two alternative approaches for County Stormwater responsibilities and priorities (Item 10D). The Board continued the item and directed staff to further clarify the Stormwater Policy.

Collier County has more than 130 lineal miles of canals, 41 water level control structures, and 3 pump stations that are operated and maintained by the County. This system of stormwater drainage facilities is referred to as the Secondary Drainage System. The network of roadside drainage facilities within County and State Transportation easements are operated and maintained by the County as part of the roadside Tertiary System. In addition, there are many neighborhood drainage systems that are privately owned and not maintained by the County.

The Board of County Commissioners recognizes that to meet the needs of the community, it is important that the Secondary Drainage System be preserved and improved in order to provide adequate facility capacity to receive the discharge from neighborhoods and roadside tertiary drainage systems in order to protect the health, safety and welfare of the citizens of the County. Improvement of the secondary system will facilitate off-site flows from neighborhoods and in many instances, help resolve existing tertiary system deficiencies in the most cost-effective manner.

Unfortunately, funding from MSTUs as identified in the 2004 Stormwater Funding Policy has not materialized and the Florida State Legislature has restricted the County's ability to generate future revenue from MSTUs by requiring an adjustment to the County-wide ad valorem tax to offset revenues received from any new MSTU, unless action is taken by the Board by supermajority vote to exceed the prior millage rate for ad valorem taxes.

The attached resolution seeks to clarify that tax revenues generated by 0.15 mills or the Board approved funding from the County's ad valorem taxes are to be deposited into Fund 324 and Fund 325 to be expended for administration of the NPDES Phase II MS4 General Permit and for planning and design of stormwater projects for improvements and maintenance of the Secondary System. The Resolution focuses current funding towards improvement of the Secondary System with funding for improvements, and for maintenance of the Tertiary System only if such maintenance is the most effective and efficient means to resolve a Secondary System deficiency; or when there is a specific health, safety and welfare concern regarding the Secondary System or any Tertiary System.

The Resolution also recognizes that the public funding in the County Stormwater Utility should not be used to fund problems with the tertiary system where such drainage problems are the direct result of action of the developer, the Homeowner Association or the individual property owner to alter their stormwater facilities approval when the property was developed. However, the County or Water Management District might have the need to fund or provide the proportional support for tertiary system improvements where action of the governmental entity created or contributed to the deficiency. Rather than setting a preset proportionate funding for

tertiary improvements, each separate issue will be addressed by the Board, upon analysis by staff and input by the affected property owners on the funding split, if any, based on contribution to the deficiency.

FISCAL IMPACT: The Stormwater Utility funds will be used to improve and preserve the Secondary Drainage System through maintenance and capital improvement projects receiving the discharge from neighborhoods and roadside tertiary drainage systems. Funds will also be used for administration of the NPDES Program. Funding for tertiary system improvements will be determined by the Board only after a determination by staff of a public health, safety and welfare concern and an analysis of the predevelopment responsibility for such deficiencies between governmental entities and the developer, associations or private property owners.

GROWTH MANAGEMENT IMPACT: This resolution is consistent with the County's Growth Management Plan.

RECOMMENDATION: That the Board of County Commissioners of Collier County, Florida:

1. Adopt the attached Resolution amending and clarifying the County's Stormwater Funding, Operation and Management Policy.
2. Authorize the Chairman to execute same on behalf of the Board.

Prepared By: Margaret Bishop, P.E., Senior Project Manager, Stormwater Section,
Transportation Services Division

Attachments: (1) Resolution; (2) 2007 AUIR Facility Summary Form; (3) Current Funding Policy Proportionate Fund Split