

**Tax and Fee Options for
King County Flood Control Zone District:
June 14, 2007**

Introduction

The King County Council recently formed a countywide flood control zone district known as the King County Flood Control Zone District (FCZD). Flood control zone districts have a variety of options for funding flood protection or storm water improvements. RCW 86.15.160 authorizes flood control zone districts to impose (1) voter-approved excess property tax levies; (2) assessments; (3) regular property tax levies; and (4) service charges for storm water control. In addition, RCW 86.15.176 authorizes service charges for flood control improvements.

A uniform ad valorem property tax levy throughout the countywide FCZD would be the most efficient funding structure with the fewest administrative challenges to implement. In addition, the risk of a successful challenge to such a structure is low. It would also provide the FCZD board of supervisors maximum flexibility in programming the available revenues for the highest priority flood control projects and programs over time, notwithstanding the type or geographic location of the projects.

However, a number of cities have pointed out that certain geographic areas appear to receive more benefit than others from flood protection facilities and programs identified in the County's Flood Hazard Management Plan (FHMP) which will be implemented by the FCZD. They have requested that the County explore the development of a "two-tiered" funding structure for the countywide FCZD. Under such a structure, property owners who receive more immediate benefits from flood protection facilities would bear a greater financial burden. This white paper describes the issues surrounding possible "two-tier" revenue structures for the FCZD for consideration by the FCZD Advisory Committee in developing its recommendations to the board of supervisors.

Statutory Funding Options and Certain Constraints

RCW 86.15.160 authorizes:

(1) An annual excess ad valorem tax levy within any zone or participating zones when authorized by the voters of the zone or participating zones under RCW 84.52.052 and 84.52.054;

(2) An assessment upon property, including state property, specially benefited by flood control improvements or storm water control improvements imposed under chapter 86.09 RCW;

(3) Within any zone or participating zones an annual ad valorem property tax levy of not to exceed fifty cents per thousand dollars of assessed value when the levy will not take dollar rates that other taxing districts may lawfully claim and that will not cause the combined levies to exceed the constitutional and/or statutory limitations, and the additional levy, or any portion thereof, may also be made when dollar rates of other taxing units is released therefor by agreement with the other taxing units from their

authorized levies;

(4) 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 permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested;

(5) Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state and state property, shall be liable for the charges to the same extent a private person and privately owned property is liable for the charges, and in setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(6) The creation of local improvement districts and utility local improvement districts, the issuance of improvement district bonds and warrants, and the imposition, collection, and enforcement of special assessments on all property, including any state-owned or other publicly-owned property, specially benefited from improvements in the same manner as provided for counties by chapter 36.94 RCW.

In addition, RCW 86.15.176 authorizes service charges for flood control facilities, as follows:

The supervisors may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits from a flood control improvement including public entities, except as otherwise provided in RCW 90.03.525. The service charge shall be uniform for the same class of benefits or service. In classifying services furnished or benefits received the board may in its discretion consider the character and use of land and its water runoff characteristics and any other matter that present a reasonable difference as a ground for distinction. Service charges shall be applicable to a zone or participating zones. The disposition of all revenue from service charges shall be in accordance with RCW 86.15.130.

It is important to note that the authority under 86.15.160(3) for a regular property tax levy is constrained in two significant ways. First, in the hierarchy of regular local property tax levies that must be kept within the statutory limitation of \$5.90 per \$1,000 assessed valuation (AV), FCZD's are a junior taxing district and among the lowest priority (i.e. first to be scaled back in the event other more senior levy rates use the capacity). There is currently in 2007 sufficient AV capacity throughout almost all of King County for the full statutory limit of \$0.50 per thousand AV for the flood district, with the exception of unincorporated portions of Public Hospital District 1 (due to a large operating levy for the hospital district and the maximum levy for the overlapping fire district).

There are, however, some pending decisions regarding potential "levy lid lifts" that could constrain the available AV capacity in 2008, including a consideration by the County Council to shift the countywide Emergency Medical Services (EMS) levy from a special district outside of the \$5.90 cap to a "lid lift" on the senior countywide levy within the \$5.90 cap.

If the decision is made to shift EMS levy to a “lid lift,” this would reduce the available AV capacity by about 25 cents countywide, still leaving sufficient room for the FCZD levy in most of the county. However, this shift together with some of the special district “lid lifts” on the ballot this August could create problems in specific localized areas of the county. In such a worst-case scenario, as the junior taxing district the FCZD rate would have to be pro-rationed to the lowest available rate in the County – or an agreement with the senior special districts could be negotiated whereby the FCZD reimburses the special districts for lowering their levy pursuant to RCW 39.67.010. These agreements allow the junior taxing district to limit the revenue loss associated with a pro-rationing situation to the AV in the offending levy codes, as opposed to the entire district.

Second, as a regular property tax levy, once the initial FCZD property tax rate is established for 2008, any future growth in the levy revenues will be limited by the 1% growth factor (plus an allowance for new construction AV – currently assumed at about 1.8%) that was established by Initiative 747. Therefore in setting the initial levy rate, it is important to project what revenue is required over a multi-year period to complete the highest priority projects identified in the FHMP and to set the initial rate sufficiently high to generate excess reserves in the early years of whatever period is defined as the term within which the projects are to be completed. In other words, since expenditures will need to ramp up at considerably more than roughly 2.8% annual growth rate in the levy, in order to complete the high priority projects within a reasonable period, the initial levy rate will need to be set high enough to build reserves in the early ramp up years.

“Two-tier” Revenue Structure Options

One potential “two-tiered” option is a two-tier tax using the “subzones” authority in RCW 86.15.025. From an administrative standpoint, this is not a feasible option for 2008 due to the statutory requirement in RCW 84.09.030 that any new taxing district boundaries would need to be formally adopted no later than August 1, 2007 in order to allow the County Assessor to report any new taxing districts to the state by that statutory deadline. This is a State law requirement.

While this is the statutory deadline for the Assessor, it is important to note that unless the boundaries of the subzones coincided with existing “levy code” boundaries used by the Assessor to distinguish between overlapping taxing districts, the Assessor would need to be notified several months in advance of August 1st of the subzones’ boundaries in order to provide sufficient time to amend the levy code system to align with the subzones. Staff in the Assessor’s office advises that at least a couple months, and ideally more, should be allowed for this effort.

In considering this as an option for future years, the Advisory Committee should also consider the fact that it appears that revenues raised within a subzone would have to be spent on projects specifically benefiting that subzone; and (2) notwithstanding the statutory authority for subzones, the differential taxation approach using subzones has not been legally tested in the courts. Therefore, there is some risk from a legal challenge

based on the state constitution's tax uniformity clause (Article 7, Section 1 of the constitution requires taxes on real estate to be uniform throughout a taxing district).

Another factor that should be considered with respect to this option (as well as the other two-tier options) is the relative burden on property owners within the subzones paying higher rates versus the "baseline" rate through most of the county; and how little this might affect the "baseline" countywide rate as compared to a simple uniform countywide ad valorem. In order to illustrate this point, DNRP has modeled a scenario of a two-tiered tax based on subzones defined as the 100-year floodplains of the main stem rivers. This scenario is modeled and compared to a simple uniform countywide tax – with both alternatives designed to collect the same amount of revenue (\$30 million in 2008). The two-tier scenario assigns 10% of the revenue requirement to the estimated AV in the floodplain subzones and 90% to the balance of the AV in the county; this results in a levy rate of \$0.36 per thousand AV in the floodplains and \$0.09 per thousand AV in the rest of the county, as compared to the baseline countywide rate of \$0.10 per thousand AV. As shown in the attached table (Attachment A) in order to get even a minor reduction to the countywide tax burden, the tax burden on the property owners within the floodplains would be significant, and may exceed what is available AV capacity in some cases (see discussion above about pro-rationing).

Other options for achieving the "two-tiered" effect would be a combination of a countywide uniform ad valorem property tax and (a) an assessment authorized under RCW 86.15.160(2) or 86.15.160(6), referencing 86.09 RCW and 36.94 RCW, respectively; or (b) a service charge authorized under RCW 86.15.176, which would be an extra charge on properties served by or receiving benefits from flood control improvements to be implemented by the FCZD.

Two methods for imposing special assessments are authorized by chapter 86.15 RCW. The first under chapter 86.09 RCW involves an administratively challenging and complex process, requiring a differing system of assessment for the different classes of facilities and further requiring that the system of assessment include (a) assessment zones, (b) the acreage included in each assessment zone, (c) a dollar value of benefit or use per acre, and (d) various classes or types of improvements together with a dollar value or benefit or use for an improvement included in each of the classes.

A second authorized method for imposing special assessments is the local improvement district process under chapter 36.94 RCW. In addition to the administrative processes associated with the establishment of LIDs and imposing special benefit assessments, including the appraisal process, development of the assessment roll, and the notice, hearing and appeals process, this mechanism requires the written consent of each city or town before the territory of such city or town may be included in the LID.

The special benefit assessment approach requires an extensive administrative process, including analysis of benefits received by each class of property subject to the assessment. Special benefits to property must equal or exceed the amount of the assessment. While feasible for small local improvement districts and geographically

limited flood districts with facilities directly benefiting an identifiable class of properties, it is a much less feasible alternative for a countywide district focusing on regional flood control improvements providing benefits across tens of thousands of parcels. In addition, it is unlikely that special benefit assessments would generate significant revenue in relation to the overall cost of implementing the high priority Flood Plan projects.

The use of special assessments to finance the flood protection facilities and programs identified in the FHMP would require significant amounts of administrative effort and a careful benefit/burden analysis by class of property and facilities.

With respect to a tax/service charge option, there has been significant recent litigation challenging service charges on the existence or extent of benefit received. It appears that at the very least a study would need to be undertaken to develop a consistent and reproducible database that characterizes the condition of each parcel and its contribution to flooding or the benefits received from flood protection facilities, (e.g., a parcel's land use or level of development as it pertains to water runoff characteristics or other attributes that might be a reasonable ground for distinguishing how properties are served by or benefit from the improvements to be implemented by the FCZD.)

One potential basis for defining the service charge component, for example, could be to develop rate classification for all properties that drain to the main-stem rivers based on their properties water runoff characteristics, among other factors. Unfortunately, at the current time, there is no such database available that covers all of King County. While virtually every jurisdiction in King County has a stormwater service charge based on jurisdictional data, each jurisdiction collects its own land cover and parcel-based information using methods and protocols specific to the jurisdiction. While a consistent land cover database developed from remotely sensed data is available for King County from digital and landsat imagery, its resolution is less than parcel size.

It would be possible for an inter-jurisdictional committee of land use planners and engineers, perhaps using a consultant with expertise in the development of surface water kinds of rates, to evaluate the current data used by jurisdictions. Using these data, such a group could develop a protocol for collecting land cover data and to develop a model of charges for a countywide flood control zone district. Nonetheless, such an approach has not been tested in the courts.

In addition, the development of the protocol, the collection of the data, and the development of such a rate model would take substantial time and money. Based on King County surface water management program experience, it is likely that the development of appropriate data and a rate model would take several months to a year or more depending upon the budget and staff or consultant forces available. A conservative estimate of the cost of evaluating what is available and scoping the development of such a data base is about \$100,000. Depending upon the nature of the data inconsistencies and gaps identified, the actual development cost and time could be identified.

Administrative and Billing Issues

Aside from the legal risks described above, each of the two-tier tax/fee options for the FCZD present administrative challenges and incur costs (both one-time and ongoing) that are not an issue with respect to a uniform countywide ad valorem property tax. The countywide property tax calculation and billing systems managed by the County Assessor and the County Treasury Office are in place. While modest adjustments to those systems would be needed to itemize the new FCZD on the property tax bill and to account for the revenues collected, they are easily manageable and would incur only nominal costs. For any two-tier option, there will be significant upfront costs associated with the development of both a rate model and information system adjustments to the billing and collection systems, as well as ongoing rate base and system maintenance costs and billing costs for any non-tax options that would have to be covered out of FCZD revenues.

Two-Tier Tax Model: As noted earlier, a two-tier tax would require formal subzones and potentially amendments to the Assessor's levy code system. As noted earlier, such a subzone-based differential tax could not be implemented by 2008.

Tax/Service Charge Model: Similarly, any tax/service charge option would require the development of a consistent countywide parcel database for the fee portion and a rate model to be applied to that database – the costs of which would be borne by the FCZD; and the work required in developing rate structure to meet applicable legal requirements means that this is also not likely to be a feasible option for 2008.

Billing System: Any form of tax or fee (or combination) for a FCZD would presumably be billed through the annual King County Real Estate Tax statement, which is prepared by the King County Treasury Office. The county tax statement provides a breakout of taxes by jurisdiction (state, county, city, special districts) and fees (e.g. Noxious Weeds, Soil Conservation, Surface Water Utility). The delineation between fees and taxes is important to property owners who itemize on their federal taxes because local taxes are deductible while service fees are not. There is limited space available on the existing property tax billing statement – but it can accommodate a single uniform tax for the FCZD, without incurring any significant additional expenses. If a decision is made to pursue a two-tier option for a future year, the King County Treasury Office will almost certainly need to undertake a significant redesign of the billing statements.

For taxes, the King County Assessor's office maintains up-to-date tax information for each and every property parcel in the county. Assessor files interface with the Treasury's property tax system. There would be no separate charges to the FCZD for maintenance of the tax system.

For fees, separate systems must be developed and maintained. For example, the King County Water and Land Resources Division maintains a separate parcel-based system for billing the King County Surface Water Management (KCSWM) fee. This is an important cost issue to keep in mind when considering fees vs. taxes. The FCZD would bear the

cost of developing and maintaining a fee billing system to interface with the tax billing system. (As a point of reference, to maintain the KCSWM billing system requires 1.5 FTE at a cost of about \$160,000 per year.)

An additional important cost factor to understand is that for *fee* billings, the Treasury Division charges a 1% billing fee on gross receipts.

Summary

A uniform ad valorem property tax levy throughout the countywide FCZD would be the most efficient structure to implement and has low legal risk. It would also provide the FCZD board of supervisors maximum flexibility in programming the available revenues for the highest priority flood control projects and programs over time, notwithstanding the geographic location of the projects.

Although two-tier revenue structures are available, all entail additional legal risk or administrative burdens – or both. In addition, none appear to be definitely feasible for implementation in 2008. This has implications for how the initial countywide ad valorem property tax should be set in 2008, if the Advisory Committee envisions pursuing a “two-tier” structure for possible implementation in 2009 or 2010, in light of the 1% growth factor limit on regular property tax levies.

Attachment A:

Two-Tier Subzone Tax Scenario for a Countywide Flood Control Zone District

The following scenario was modeled to determine the impacts to floodplain property owners assessed differential levy rates based a two-tier subzone for a countywide flood control zone district.

Scenario 1: 10% of revenue requirement assigned to the assessed valuation of properties in floodplain and 90% assigned to balance of assessed valuation countywide

	Assessed Valuation	%	Levy Amount	Levy Rate	Annual Average Household Tax
Estimated AV of Properties in Mapped 100-year Floodplain	\$ 8,228,761,060	10%	\$ 3,000,000	0.36457	\$ 146
Total Estimated AV of All Properties Countywide	\$ 290,526,437,999	90%	\$27,000,000	0.09293	\$ 37
Totals =	\$ 298,755,199,059	100%	\$ 30,000,000		

Recommended Baseline Uniform Countywide Tax: 100% of revenue requirement assigned to the assessed valuation of all properties countywide.

	Assessed Valuation	%	Levy Amount	Levy Rate	Annual Average Household Tax
Total Estimated AV of All Properties Countywide	\$ 298,755,199,059	100%	\$30,000,000	0.10042	\$ 40