

Alert

GOOD NEWS! AELR Passes the Emergency Stormwater Management Regulations

Attorneys

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On April 6, 2010, the Maryland Joint Committee on Administrative, Executive, and Legislative Review ("AELR") approved Emergency Stormwater Management Regulations (the "Emergency Regulations") allowing jurisdictions greater flexibility in implementing new State Stormwater Management ("SWM") regulations. The new State SWM regulations require the use of Environmental Site Design (ESD) to the Maximum Extent Practicable (MEP) for SWM facilities that would impose significant costs to redesign SWM facilities and could result in reduced density for many projects.

The Emergency Regulations allow local jurisdictions to grant waivers from the new SWM regulations in certain circumstances and address how redevelopment projects and new developments can comply with the new SWM regulations, as follows:

- **Waivers:** Local governments may grant waivers to allow projects to be governed by the current 2000 SWM regulations (i.e., grandfathered from the application of the new, more stringent SWM regulations) if they receive "preliminary project approval" by May 4, 2010. "Preliminary project approval" is defined as an approval that includes, at a minimum:
 - the number of planned dwelling units or lots and proposed project density;
 - the proposed size and location of all land uses;
 - a plan that identifies the proposed drainage patterns, location of all discharge points, and the type, location and size of all stormwater management measures;
 - and any other information required by the approving agency at that phase of the review process.
- If granted, the waiver expires on May 4, 2013 if the development has not received final project approval by then, and on May 4, 2017 if construction is not complete. Waivers may only be extended beyond May 4, 2017 if the project is subject to a Development Rights and Responsibilities Agreement, a Tax Increment Financing approval, or an Annexation Agreement. Projects that have received final approval of their stormwater

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management plans by May 4, 2010 do not need to apply for the waiver.

- **Redevelopment:** Local governments may allow redevelopment projects to use alternative SWM measures including: participation in a stream restoration project, pollution trading, payment of a fee-in-lieu, or a partial waiver of the requirements to the extent that ESD is not practicable.
- **New Development:** For sites with less than 40% existing imperviousness that would be considered "new development" under the new SWM regulations, local governments can grant a waiver for phased projects with SWM facilities already constructed under prior SWM regulations and for certain infill projects.

The next step in the process will be for local jurisdictions to include these provisions in their SWM laws and regulations. Therefore, it is important that the development community participate at the local level to ensure counties and municipalities incorporate this flexibility into their SWM laws and regulations.

The Emergency Regulations are effective immediately and will remain in effect for a maximum period of 6 months, during which time the Maryland Department of the Environment (MDE) must finalize permanent regulations. Notice of the permanent regulations is expected to be published in the Maryland Register within the next few weeks and will be open for public comment and possibly a hearing.

We will continue to provide updates on this important issue as new information becomes available.

Please contact us if you want to know how these Emergency Regulations may impact your project.