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Maryland Department of the Environment Proposes Long Awaited Environmental Site Design Requirements

The Maryland Department of the Environment (“MDE”) has proposed long anticipated regulations that implement key provisions of Maryland’s Stormwater Management Act of 2007. The regulations represent the most significant change to the State’s Stormwater Management program since 2000. The proposed regulations advance the concept of “Environmental Site Design” (ESD) by promoting its use “to the maximum extent practicable” in place of traditional structural best management practices.

ESD is defined under the proposed regulations as “using small scale stormwater management practices, nonstructural techniques and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.” Methods for designing and implementing ESD are specified in the newly revised Chapter 5 of the Maryland Stormwater Design Manual (the “Design Manual”) which is likewise being amended and released for comment in conjunction with the proposed regulations.

The proposed regulations require that ESD be incorporated into stormwater management plans to the “maximum extent practicable”, which is defined under the regulations as “designing stormwater management systems so that all opportunities for using ESD planning techniques and treatment practices are exhausted”. More traditional structural stormwater management practices are allowed only after all potential ESD has been considered. The proposed regulations provide that the “maximum extent practicable” standard is met when channel stability is maintained, predevelopment groundwater recharges replicated, non-point source pollution is minimized and structural stormwater management practices are used only if determined to be absolutely necessary. According to the proposed Design Manual, ESD practices are to be sized so that the runoff leaving a site is reduced to a level equivalent to a wooded site in good condition.

ESD techniques and practices include, among other things:

- Conserving natural drainage patterns
- Minimizing impervious areas
- Using green roofs, permeable pavements, reinforced turf and other alternative surfaces
- Clustering development

In addition to encouraging the use of ESD practices, the proposed regulations make other significant changes to the State’s stormwater management practices. The critical features of the new regulations include:

- Requiring local jurisdictions to submit amended stormwater management ordinances and programs incorporating the new ESD criteria to MDE by July 1, 2009 and ensuring that the new practices are implemented by December 31, 2009;
- Providing that redevelopment projects with existing site impervious area of greater than 40% reduce existing impervious area by at least 50%, implement ESD to provide

water quality treatment for at least 50% of the existing impervious area, use a combination of these two practices for at least 50% of the existing site and impervious area, or employ alternative measures on- or off-site to provide water quality treatment for an area equal to 50% of the existing impervious area;

- Providing that, for redevelopment projects with less than or equal to 40% impervious area, the stormwater requirements for new development will apply;
- Mandating that counties and municipalities modify planning and zoning ordinances to eliminate any impediments to implementing ESD to the maximum extent practicable;
- Establishing a three-part stormwater management plan development process requiring preparation of a concept plan, development plan and final stormwater management plan;
- Establishing an ESD inspection and maintenance process to ensure that owners properly install and maintain both structural and ESD stormwater features.

MDE published the proposed final regulations on the agency's website on October 17. Notice of a public hearing to be held the week of December 8 at MDE headquarters will be published in the Maryland Register on November 7. The proposed regulations will be published in the Maryland Register on November 21. MDE hopes to issue the final regulations in the first week of January, 2009.

A copy of the proposed regulation and revised Design Mutual are available at the following link

<http://www.mde.state.md.us/Programs/WaterPrograms/SedimentandStormwater/swm2007.asp>

If you have any questions about the proposed regulations, the schedule for adoption, or otherwise would like to submit comments on the proposed regulations, please contact Tom Ligan (410-244-7820) or Rosewin Sweeney (410-244-7587) at Venable's Environmental Group.

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Maryland's Stormwater Management Act of 2007

On April 24, 2007, Governor Martin O'Malley signed the "Stormwater Management Act of 2007" (Act), which became effective on October 1, 2007. Prior to this Act, environmental site design (ESD), was encouraged through a series of credits found in Maryland's Stormwater Design Manual. The Act requires that ESD, through the use of nonstructural best management practices and other better site design techniques, be implemented to the maximum extent practicable. Charged with implementation, the Maryland Department of the Environment (MDE) is in the process of addressing the requirements of the Act including changes to regulations, the **2000 Maryland Stormwater Design Manual**, and other guidance materials. Provisions of the Stormwater Management Act (Environment Article 4 §201.1 and §203) are available on the web [here](#).

Creating regulations and gathering supporting documentation will be a challenging task. Continuing the exchange of ideas is an important part of this process. This website will be used to distribute information related to implementing the Stormwater Management Act of 2007. Like many construction sites, this is a work in progress. Updates will be posted as information becomes available.

New! Updates:

October 17, 2008 Update:

MDE has begun the formal process for adopting new stormwater management regulations in Maryland. The new regulations and revisions to the 2000 Maryland Stormwater Design Manual may be found here:

- [SWM Regulations \(COMAR 26.17.02\)](#)
- [Design Manual Table of Contents](#)
- [Design Manual List of Tables and Figures](#)
- [Design Manual Chapter 1](#)
- [Design Manual Chapter 5](#)
- [Design Manual Appendix B.4](#)
- [Design Manual Appendix E.1](#)
- [All Design Manual Revisions \(Large File\)](#)

A Public Hearing has been scheduled for December 8, 2008 at MDE. Details concerning this hearing will be posted here as they are available.

Publication of the stormwater regulations and Design Manual revisions in the Maryland Register is anticipated to follow the schedule listed below.

October 1, 2008 Update:

MDE has revised the regulatory adoption schedule for the Code of Maryland Regulations (COMAR) 26.17.02 Stormwater as a result of receiving significant comments regarding the draft policies that include the Chapter 5 rewrite, comprehensive plan review,

redevelopment, and ESD sizing. The following is the projected schedule for the formal adoption of these new regulations. The regulatory review process will include a 30 day formal comment period after the publication of the proposed regulations in the Maryland Register as well as an opportunity to comment in person at the December public hearing.

- Publication of proposed final regulations on MDE's Website Oct. 17th
- Notice of Public Hearing in Maryland Register Nov 7th
- Publication of proposed regulations in Maryland Register Nov 21st
- Public Hearing at MDE the week of Dec 8th (Location and time TBD)
- Final Regulations adopted first week of January.

July 31 Presentations:

- [ESD Comprehensive Plan](#)
- [ESD Sizing Criteria](#)
- [ESD Modeling Results \(KCI\)](#)
- [ESD Redevelopment Policy](#)

July 25 Updates:

- [Response to Core Principles](#)
- [Redevelopment Policy](#)
- [ESD Sizing Criteria](#)

Report on Fee Systems for Stormwater Management (SWM Act 2007)

- [SWM Fee Report \(PDF\)](#)
- [SWM Fee Report w/References \(PDF\)](#)

[May 2008 Update](#)

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[Baltimore \(1/20/2008\)](#)
[Bel Air \(1/28/2008\)](#)
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[Chapter 5 First Draft](#)

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