AGENDA ITEM 16
July 13, 2010
Public Hearing

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Analyst

SUBJECT: **Public Hearing:** Expedited Bill 40-10, Stormwater Management - Revisions

Expedited Bill 40-10, Stormwater Management - Revisions, sponsored by the Council President at the request of the County Executive, was introduced on June 29, 2010. A Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for July 15 at 9:30 a.m.

Bill 40-10 would require management of stormwater runoff through the use of nonstructural best management practices to the maximum extent practicable for new development and redevelopment projects approved by the Department of Permitting Services and bring local stormwater management requirements into compliance with the Maryland Stormwater Management Act of 2007 and the State implementing regulations adopted this year.

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Expedited Bill No. 40-10
Concerning: Stormwater Management -- Revisions
Revised: 6/24/2010 Draft No. 1
Introduced: June 29, 2010
Expires: December 29, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) require management of stormwater runoff through the use of nonstructural best management practices to the maximum extent practicable for new development and redevelopment projects approved by the Department of Permitting Services;
(2) bring local stormwater management requirements into compliance with the Maryland Stormwater Management Act of 2007; and
(3) generally amend County law regarding stormwater management.

By amending
Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-20 through 19-35

By adding
Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-21A, 19-23A

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-20 through 19-35 are amended, and Sections 19-21A and 23A are added as follows:

19-20. Purpose of article; scope.

The purpose of this Article is to protect, maintain and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff from developed and developing lands. [The policy of the County is to minimize damage to public and private property, reduce the effects of development on stream water quality, control stream channel erosion, reduce local flooding, and, to the extent reasonable, maintain the pre-development runoff characteristics of land after development through proper management of stormwater runoff.] The primary goal of the County is to maintain after development, as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding by implementing environmental site design to the maximum extent practicable and using appropriate structural best management practices only when necessary. The 2000 Maryland Stormwater Design Manual and any subsequent revisions are incorporated by reference as if fully set forth in this Article.

19-21. Definitions.

* * *

Administrative waiver: A decision by the Department to allow the construction of a development to be governed by the County stormwater management law in effect as of May 4, 2009. An administrative waiver is distinct from a waiver granted under Section 19-25.

Agricultural land management practice: Those methods or procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

* * *

Approval: A documented action by the Department after a review to determine and acknowledge the sufficiency of submitted material to meet the requirements of a specified stage in the County's development review process. Approval does not mean an acknowledgement by the Department that submitted material has been received for review.

* * *

Best management practice: A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff to mitigate flooding, reduce pollution, recharge groundwater, and provide other amenities related to the management of stormwater runoff.

* * *

Channel protection storage volume: The volume used to design structural best management practices to control stream channel erosion.

* * *

Concept plan: The first of 3 required plan approvals that includes the information necessary to allow an initial evaluation of a proposed project.

* * *

Design Manual: The [applicable] 2000 Maryland Stormwater Design Manual, as revised from time to time, which serves as the official guide for stormwater management principles, methods, and practices in Maryland.

* * *

Drainage area: That area[, which is enclosed by a ridge line,] that contributes runoff to a single point, measured in a horizontal plane.

Environmental site design or *ESD*: Using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of development on water resources. Methods for designing ESD practices are specified in the Design Manual

* * *

Final project approval: Approval of the final stormwater management plan and erosion and sediment control plan required to construct a project's stormwater management facilities. Final project approval also includes securing bonding or financing for final development plans if either is required as a prerequisite for approval.

Final stormwater management design plan: The last of 3 required plan approvals that includes the information necessary to allow all approvals and permits to be issued by the appropriate authority.

* * *

Impervious area: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including structures, buildings, patios, decks, sidewalks, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pools, and artificial turf. Impervious surface also includes all areas used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including roads, road shoulders, driveways, and parking areas.

Infiltration: The passage or movement of water into the soil surface.

Maximum extent practicable or *MEP*: Designing stormwater management systems so that all reasonable opportunities for using environmental site design planning techniques and treatment practices are exhausted and, only where absolutely necessary, a structural best management practice is implemented.

Nonstructural maintenance: Grass cutting; removal of litter and debris, tree limbs, algae and aquatic plants; tree and shrub trimming and removal; maintenance of fences; aesthetic improvements such as graffiti removal, and any other enhancements in and around a stormwater management facility that are not necessarily essential for ensuring that the facility continues to function properly.

* * *

On-site stormwater management: The design and construction of [a facility] stormwater practices to control [all] stormwater runoff in a development.

Overbank flood protection volume: The volume controlled by structural practices to prevent an increase in the frequency of out of bank flooding generated by development.

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Planning techniques: A combination of strategies employed early in project design to reduce the impact from development and to incorporate natural features into a stormwater management plan.

* * *

Preliminary project approval: An approval as part of the Department's preliminary development or planning review process that includes, at a minimum:

(a) the number of planned dwelling units or lots;

(b) the proposed project density;

(c) the proposed size and location of all land uses for the project;

(d) a plan that identifies:

(1) the proposed drainage patterns;

(2) the location of all points of discharge from the site; and

(3) the type, location, and size of all stormwater management measures based on site-specific stormwater management requirement computations; and

(e) any other information required by the Department, including:

(1) the proposed alignment, location, and construction type and standard for all roads, access ways, and areas of vehicular traffic;

(2) a demonstration that the methods by which the development will be supplied with water and wastewater service are adequate; and

(3) the size, type, and general location of all proposed wastewater and water system infrastructure.

* * *

Redevelopment: Any construction, alteration, or improvement [which] that:

(a) exceeds or equals 5,000 square feet of land disturbance; and

(b) is performed on a site where the existing land use is commercial, industrial, institutional, or multifamily residential and existing imperviousness is greater than 40 percent.

* * *

Site development stormwater management plan: The second of 3 required plan approvals that include information necessary to allow detailed evaluation of a proposed project.

Stabilization: the prevention of soil movement by any of various vegetative or structural means.

Stormwater: [That precipitation which travels over natural, altered, or impervious surfaces to the nearest stream, channel, conduit, or impoundment and appears in surface waters. Stormwater also includes snow melt] Water that originates from a precipitation event.

Stormwater management: The collection, conveyance, storage, treatment, and control of stormwater [runoff] as needed to reduce accelerated channel erosion, increased flood damages, or water pollution.

Stormwater management facility: An infiltration device, [vegetative filter,] filtering device, stormwater pond, stormwater wetland, hydrodynamic structure, [channel, pipe, weir, orifice, or combination of those measures,] or other best management practice designed and constructed to control stormwater [runoff] to reduce accelerated stream channel erosion and pollution of surface waters. A

stormwater management facility does not include environmental site design practices or any nonstructural stormwater management system.

* * *

Stormwater management system: Natural areas, environmental site design practices, stormwater management measures, and any structure through which stormwater flows, infiltrates, or discharges from a site.

Structural maintenance: The inspection, construction, reconstruction, modification, [or] repair, and cleaning of any part of a stormwater management facility undertaken to assure that the facility remains in the proper working condition to serve its intended purpose and prevent [structural] failure. Structural maintenance does not include landscaping, grass cutting, or trash removal.

* * *

19-21A. Grandfathering.

(a) The Director may, for good cause shown, grant an administrative waiver to a development that received a preliminary project approval before May 4, 2010. Administrative waivers expire as provided under subsection (b) and may be extended as provided under subsection (c).

(b) Expiration of an administrative waiver.

(1) Except as provided in subsection (c), an administrative waiver must expire on:

(A) May 4, 2013, if the development does not receive final project approval before that date; or

(B) May 4, 2017, if the development receives final project approval before May 4, 2013.

(2) All construction authorized under an administrative waiver must be completed by:

(A) May 4, 2017; or

(B) if the waiver is extended under subsection (c), by the expiration date of the waiver extension.

(c) Extension of an administrative waiver.

(1) Except as provided in paragraph (2), an administrative waiver must not be extended.

(2) An administrative waiver may only be extended if, by May 4, 2010 the development:

(A) received a preliminary project approval; and

(B) was subject to a development rights and responsibilities agreement or a tax increment financing approval.

(3) An administrative waiver extended under paragraph (2) expires when the development rights and responsibilities agreement, the tax increment financing approval, or the annexation agreement expires.

19-22. Watershed management plans.

(a) The Department of Environmental Protection, in cooperation with the Department, the Board, and other appropriate agencies, may develop watershed management plans to implement stormwater management policies that apply individually to specific watersheds in the County. Each watershed management plan should:

* * *

(5) specify the types of [quantitative] stormwater management, stream restoration and wetlands protection practices to be implemented;

* * *

(7) specify where the [Department] Director may grant waivers of on-site stormwater management controls;

* * *

19-23. Stormwater management measures.

(a) An applicant must use the ESD planning techniques and practices and structural stormwater management measures established in this Article and the Design Manual, either alone or in combination, in a stormwater management plan. An applicant must demonstrate that environmental site design has been implemented to the maximum extent practicable before the use of a structural best management practice is considered in developing the stormwater management plan.

(b) *ESD planning techniques and practices.*

(1) An applicant must apply the following planning techniques according to the Design Manual to satisfy the on-site stormwater management requirements of Section 19-25:

(A) preserve and protect natural resources;

(B) conserve natural drainage patterns;

(C) minimize impervious area;

(D) reduce runoff volume;

(E) use ESD practices to maintain 100% of the average annual predevelopment groundwater recharge volume for the site;

(F) use green roofs, permeable pavement, reinforced turf, and other alternative surfaces;

(G) limit soil disturbance, mass grading, and compaction;

(H) cluster development; and

(I) any practice approved by the Administration.

(2) An applicant must design the following ESD treatment practices according to the Design Manual to satisfy the on-site stormwater management requirements of Section 19-25:

(A) disconnection of rooftop runoff;

(B) disconnection of nonrooftop runoff;

(C) sheetflow to conservation areas;

(D) rainwater harvesting;

(E) submerged gravel wetlands;

(F) landscape infiltration;

(G) infiltration berms;

(H) dry wells;

(I) micro-bioretention;

(J) rain gardens;

(K) swales;

(L) enhanced filters; and

(M) any practice approved by the Administration.

(3) The use of ESD planning techniques and treatment practices specified in this Section must not conflict with existing State or County laws.

(c) *Structural stormwater management measures.*

(1) An applicant must design the following structural stormwater management practices according to the Design Manual to satisfy the on-site stormwater management requirements of Section 19-25:

(A) stormwater management ponds;

(B) stormwater management wetlands;

(C) stormwater management infiltration;

(D) stormwater management filtering systems; and

(E) stormwater management open channel systems.

(2) An applicant must consider the performance criteria specified in the Design Manual with regard to general feasibility, conveyance, pretreatment, treatment and geometry, environment and landscaping, and maintenance when selecting structural stormwater management practices.

(3) An applicant must select structural stormwater management practices to accommodate the unique hydrologic or geologic regions of the County.

(d) An applicant may use alternative ESD planning techniques and treatment practices and structural stormwater management measures for new development runoff control if they meet the performance criteria established in the Design Manual and are approved by the Administration. Practices used for redevelopment projects must be approved by the Department.

(e) For purposes of modifying the on-site stormwater control requirements or design criteria, the applicant must submit to the Department an analysis of the impacts of stormwater flows downstream in the watershed. The analysis must include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, or natural point of restricted streamflow, established with the Department's concurrence, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the project or stormwater management facility.

19-23A. Specific design criteria.

The basic design criteria, methodologies, and construction specifications, subject to the approval of the Department and the Administration, must be those of the Design Manual.

[19-23]19-24. Review and approval of stormwater management plans.

(a) *Concept plan.* Before the Board may approve a preliminary plan of subdivision, an applicant must submit a stormwater management and sediment control concept plan to the Department for review and approval. [If a preliminary plan of subdivision or site plan is not required, the applicant must submit a stormwater management concept plan to the Department for review and approval before submitting an application for a sediment control permit.] All plans submitted for concept approval must provide sufficient information for the Department to make an initial assessment of the proposed project and determine whether stormwater management can be provided according to this Article and the Design Manual. Each concept plan is subject to the following conditions and requirements:

(1) A natural resources inventory must be reviewed and approved by the Department or the Board before the applicant submits a concept plan as required under this Section.

[(1)](2) The plan must indicate how the stormwater management and sediment control criteria will be applied to each proposed development or redevelopment project. The Department may require a plan to analyze the downstream effects of any proposed development or redevelopment project. [The plan must indicate how the development will minimize any interference with or addition to the current flow of water onto adjacent properties. The applicant may include structural and nonstructural

stormwater management measures in the plan.] The design criteria and methodologies used in developing the plan must be consistent with criteria specified in the Design Manual and any other criteria established by regulation.

(3) The plan must describe how environmental site design practices will be implemented to the maximum extent practicable and provide for use of structural best management practices only where the applicant is able to demonstrate to the Director's satisfaction that environmental site design or other nonstructural best management practices are not a viable option.

(4) The plan must include the following:

(A) a map at a scale specified by the Department showing site location, existing natural features, water and other sensitive resources, topography, and natural drainage patterns;

(B) the anticipated location of all proposed impervious areas, buildings, roadways, parking, sidewalks, utilities, and other site improvements;

(C) the location of the proposed limit of disturbance, erodible soils, steep slopes, and areas to be protected during construction;

(D) preliminary estimates of stormwater management requirements, the selection and location of ESD practices to be used, and the location of all points of discharge from the site; and

(E) any other information the Director requires.

[(2)](5) Any stormwater management plan must be consistent with any watershed management plan that the Department of

Environmental Protection has approved or any flood management plan that the [Maryland Department of the Environment] Administration has approved involving the site of the proposed development or redevelopment project.

[(3)](6) The Department must refer the concept plan [back] to the Department of Environmental Protection, the Department of Transportation, and the Board for comment before approving the plan [if the Board so requests].

[(4) The Department may require incrementally more specific submittals at each stage of the approval process for a project which requires site plan or development plan review.]

(b) *Site development stormwater management plan.* Before the Board may approve a site plan, the applicant must submit a site development stormwater management plan to the Department for review and approval. The applicant may combine the site development stormwater management plans with the concept plans required under subsection (a) if acceptable to the Director. Any site development stormwater management plan submitted for review and approval must include the following:

(1) all information provided during the concept plan review phase;

(2) final site layout, exact impervious area locations and acreages, proposed topography, delineated drainage areas at all points of discharge from the site, and stormwater volume computations for ESD practices and structural measures;

(3) a proposed erosion and sediment control plan that contains the construction sequence, any phasing necessary to limit earth disturbances and impacts to natural resources, and an overlay

plan showing the types and locations of ESD and erosion and sediment control practices to be used;

(4) a narrative that supports the site development design, describes how ESD will be used to meet the minimum control requirements, and justifies any proposed structural stormwater management measure; and

(5) any other information the Director requires.

[(b)](c) *Final stormwater management* [*Design*] *design plan.*

(1) Any person required under this Chapter to obtain a sediment control permit must include a final stormwater management design plan as part of the permit application. The final stormwater management design plan must conform to both the concept plan and site development stormwater management [concept] plan and serve as the basis for all later construction. [All construction specifications must adhere to the requirements in the Design Manual and any applicable regulations.] The applicant must submit a final stormwater management design plan for approval in the form of construction drawings accompanied by a report that includes sufficient information to evaluate the effectiveness of the proposed runoff control design. The applicant must also submit a final erosion and sediment control plan under Section 26.17.01.05 of the Maryland Code of Regulations, as amended. Any plan submitted under this paragraph must meet all of the requirements of the Design Manual.

(2) Any report submitted for final stormwater management design plan approval must include, but is not limited to:

(A) geotechnical investigations including soil maps, borings, site-specific recommendations, and any additional information necessary for the final stormwater management design;

(B) a drainage area map depicting predevelopment and post-development runoff flow path segmentation and land use;

(C) hydrologic computations of the applicable ESD and unified sizing criteria according to the Design Manual for all points of discharge from the site;

(D) hydraulic and structural computations for all ESD practices and structural stormwater management measures to be used; and

(E) a narrative that supports the final stormwater management design.

(3) Construction drawings submitted for final stormwater management design plan approval must include, but are not limited to:

(A) a vicinity map;

(B) existing and proposed topography and any proposed drainage area, including any area necessary to determine downstream analysis for the proposed stormwater management facilities;

(C) any proposed improvement, including the location of any building or other structure, impervious surface, storm drainage facility, and all grading;

(D) the location of any existing and proposed structure;

(E) any easement and right-of-way;

(F) the delineation, if applicable, of the 100-year floodplain and any on-site wetlands;

(G) structural and construction details including representative cross sections for all components of the proposed drainage system or systems and stormwater management facilities;

(H) all necessary construction specifications;

(I) a sequence of construction;

(J) data for total site area, disturbed area, new impervious area, and total impervious area;

(K) a table showing the ESD and unified sizing criteria volumes required in the Design Manual;

(L) a table of materials to be used for stormwater management facility planting;

(M) all soil boring logs and locations;

(N) an inspection and maintenance schedule;

(O) certification by the owner/developer that all stormwater management construction will be done according to this plan; and

(P) an as-built certification signature block to be executed after project completion.

(4) The maintenance schedule required under this Section must cover the life of any structural stormwater management facility or system of ESD practices and must specify the maintenance to be completed, the time period for completion, and the responsible party that will perform the maintenance. The maintenance schedule must be printed on the approved final stormwater management plan.

[(c)](d) *Plan preparation.* The Director may require the stormwater management concept, site development stormwater management and final stormwater management and design plans to be prepared by a professional engineer, professional land surveyor, registered architect or landscape architect licensed in Maryland, or any other individual whose qualifications are acceptable to the Department. If a stormwater best management practice requires either a dam safety permit from the [Maryland Department of the Environment] Administration or a small pond approval from the District, the Director must require the design plan to be prepared by a professional engineer licensed by the State of Maryland.

(e) If a stormwater management plan involves direction of some or all runoff off of the site, it is the developer's responsibility to obtain from any adjacent property owner any easement or other necessary property interest concerning water flow. Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.

[19-24] 19-25. On-site requirements; County participation; waivers.

(a) *On-site stormwater management.*

(1) A person that receives [a building permit or] a sediment control permit must provide on-site stormwater management unless the Director waives this requirement.

(2) The Director may waive the on-site stormwater management requirement if the Director finds that:

(A) environmental site design has been implemented to the maximum extent practicable and stormwater from the site is safely conveyed to a Department approved off-site

facility that has been constructed to provide stormwater management for the site; or

(B) on-site stormwater management is not required under applicable State law.

(3) The use of ESD planning techniques and treatment practices must be exhausted to the maximum extent practicable under the Design Manual before any structural best management practice may be implemented. A stormwater management plan for a development project subject to this Article must be designed using the ESD sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria according to the Design Manual. The MEP standard is met when channel stability is maintained, predevelopment groundwater recharge is replicated, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary.

* * *

(c) *Waiver.*

(1) An applicant seeking a waiver of any on-site stormwater management requirement must submit a request to the Department in writing in a form acceptable to the Director. [The applicant must submit a separate written request for each later addition, extension, or modification to a development that has received a waiver.]

(2) A request for quantitative stormwater control waivers must contain sufficient descriptions, drawings, and any other information that is necessary to demonstrate that environmental

site design has been implemented to the maximum extent practicable. The applicant must submit a separate written request for each later addition, extension, or modification to a development that has received a waiver.

(3) Except as provided in paragraph (4), stormwater management qualitative control waivers apply only to:

(A) an infill development project where environmental site design is not feasible;

(B) a redevelopment project if the applicable requirements of this Article are satisfied; or

(C) a site where the Director determines that circumstances exist that prevent the reasonable implementation of environmental site design.

(4) The Director may grant a stormwater management quantitative and qualitative control waiver for a phased development project if a system designed to meet the 2000 regulatory requirements under State and County law for multiple phases was constructed by May 4, 2010. If the 2009 regulatory requirements cannot be met for future phases constructed after May 4, 2010, the applicant must demonstrate all reasonable efforts to incorporate environmental site design in future phases.

[(2)](5) The Director may grant a waiver if the applicant shows that existing physical conditions prevent full compliance with any on-site stormwater management requirement. However, the applicant must still demonstrate that environmental site design has been implemented to the maximum extent practicable.

[(3)](6) If a site is an infill development or redevelopment site, the Director may waive channel protection requirements[,] if all reasonable options for implementing environmental site design to the maximum extent practicable have been exhausted, and:

(A) the planned development or redevelopment project will not increase the impervious surface area on the site; or

(B) runoff from the site will drain through an adequately-sized existing improved storm drain system before discharging into a natural stream channel, without adversely affecting the receiving channel, and the discharge to the storm drain system will not increase erosion in the receiving waters.

[(4) The Director may also waive channel protection requirements if:

(A) an off-site facility was designed and constructed to provide the necessary runoff controls for the site; and

(B) the facility's design assures non-erosive conveyance of runoff from the site to the facility.]

[(5)](7) The Director [may] must not grant a waiver [only if] unless:

(A) the applicant satisfies criteria established by regulation; and

(B) the waiver is consistent with an applicable watershed management plan, if any, prepared by the applicant and approved by the Department of Environmental Protection.

[(6)](8) The Director may grant each waiver only on a case-by-case basis. The Director must consider the cumulative effects of all waivers granted in a drainage area or watershed. The waiver must reasonably ensure that the proposed development will not adversely impact stream quality.

[(7)](9) When a waiver is granted, the Director must require the applicant to:

(A) provide a monetary contribution;

(B) grant an easement or dedicate land for the County to construct a stormwater management facility; or

(C) take specific stream or wetland restoration measures.

[19-25] 19-26. Contributions, dedications, and stream restoration.

* * *

(c) *Stream and wetlands restoration measures.* [The] For redevelopment only, the Department may allow an applicant to construct stream or wetland restoration measures instead of [on-site stormwater management controls] monetary contributions or dedications if:

(1) the Director of Permitting Services and the Director of Environmental Protection both find that it is in the County's best interest for the applicant to provide stream or wetland restoration measures; and

(2) the estimated cost of the stream or wetland restoration measures do not exceed the estimated cost of on-site stormwater management controls that the applicant would otherwise be required to [construct] provide for new development.

[19-26]19-27. Stormwater management design criteria.

(a) [Each applicant must use recharge volume, water quality volume, and channel protection storage volume sizing criteria to design a stormwater management facility for new development as required by the Design Manual and any applicable regulation. Each applicant must also use water quality volume and channel protection storage criteria for any redevelopment project.] Unless otherwise indicated, redevelopment is

subject to the same requirements that are applicable to new development under this Article. Each applicant must use planning techniques, nonstructural practices, and design methods to implement environmental site design to the MEP standard. The use of environmental site design must be exhausted before structural best management practices are used. Stormwater management plans must be designed using ESD sizing criteria, recharge volume, water quality volume, and channel protection storage volume sizing criteria according to the Design Manual and any applicable regulation. If the Department finds that historical flooding problems exist at the site of a new development or redevelopment project, the Director may require the use of overbank flood protection volume [and], extreme flood volume criteria, or both.

(b) [The Director may reduce the minimum control requirements if the applicant incorporates nonstructural stormwater management measures into the site design plans in accordance with the Design Manual and any applicable regulations.] For redevelopment, the applicant may use alternative stormwater management measures to satisfy the requirements in subsection (a) if the applicant satisfactorily demonstrates to the Director that impervious area reduction and environmental site design have been implemented to the maximum extent practicable. The use of environmental site design for redevelopment projects must not reduce the density established under the County Zoning Code, master plans, and sector plans. Alternative stormwater management measures include, but are not limited to:

(1) an on-site structural best management practice;

(2) an off-site structural best management practice to provide water quality treatment; or

(3) a combination of impervious area reduction, environmental site design implementation, and an on-site or off-site structural best management practice within the limit of disturbance.

[(c) The applicant may use alternative structural and nonstructural practices to satisfy water quality volume requirements if the Director finds that those practices satisfy the criteria in the Design Manual and any additional criteria established by regulation. The Department must approve any alternative practice used for either a new development or redevelopment project. The Administration must also approve any alternative practice used for a new development project.]

[19-27] 19-28. Financial security.

(a) *Required.*

(1) Before issuing a [building] sediment control permit for a development which requires a stormwater management [facility] system, the Director must require the applicant or owner to furnish a performance or cash bond, irrevocable letter of credit, certificate of guarantee, or other instrument from a financial institution or issuing person satisfactory to the Director and the County Attorney, for construction of the on-site stormwater management [facility] system in an amount equal to the estimated cost of the construction.

* * *

(3) The bond, letter of credit, certificate of guarantee, or other instrument must be conditioned on the faithful performance of the terms and conditions of an approved stormwater management

plan and construction of the [facility] system as provided in that plan and under this Article. The bond, letter of credit, certificate of guarantee, or other instrument must inure to the benefit of the County if the applicant or owner does not comply with the conditions of the bond, letter of credit, certificate of guarantee, or other instrument.

(b) *Release.*

(1) The Director must not release a bond, letter of credit, certificate of guarantee, or other instrument until the [Department, after a final inspection,] applicant has [found] submitted "as-built" plans and the Department has issued a certification of completion based on the Director's finding, after having performed a final inspection, that the stormwater management [facility] system complies with the approved plan and this Article.

(2) The Department may agree with an applicant regarding the stages of the work to be done on the [facility] system. After completing each stage, the applicant must notify the Department that the applicant is ready for an inspection and, after the Director certifies that the applicant has completed that stage of work under the approved plan and this Article, the Director may reduce the bond, letter of credit, certificate of guarantee, or other instrument pro rata, or may direct the Director of Finance to refund to the applicant a prorated share of the amount that the applicant deposited with the County.

* * *

[19-28] 19-29. Inspection and maintenance of stormwater management [facilities] systems.

(a) *Installation inspections.*

(1) The [Department] Director, or [an individual] a person designated by the applicant that is also qualified and approved by the Department to supervise construction, must inspect each [stormwater] best management [facility] practice under construction as needed to certify the [facility's] system's compliance with approved plans. The inspector must conduct each inspection as provided in a checklist or in any other manner that the Department has approved for each type of stormwater management [facility] system. The inspector must prepare a written inspection report that includes the following information:

(A) the date and location of the inspection;

(B) whether construction [complied] complies with the approved stormwater management plan;

(C) any variation from approved construction specifications; and

(D) any violations of law or regulations that the inspector observes.

(2) The Department must notify the applicant in writing if the inspector observes any violations of this Article during the inspection. The written notice must describe the nature of the violation and prescribe any corrective action needed.

(3) Construction work on a stormwater management [facility] system must not proceed until the Department:

(A) inspects and approves the work previously completed or the plans and certifications previously submitted; and

(B) furnishes the inspection reports to the applicant after each inspection.

(4) Once construction is complete, the applicant must submit as-built plan certification to the Department to ensure that ESD planning techniques, treatment practices, and structural stormwater management measures and conveyance systems comply with the specifications contained in approved plans. At a minimum, as-built certification must include a set of drawings comparing the approved stormwater management plan with what was constructed. The Director may require additional information if needed.

(5) All as-built plans submitted to the Department under this subsection must be prepared by a design professional or other person qualified and approved by the Department.

[(b) *Inspection and maintenance of off-site facilities.* The Department of Environmental Protection must inspect and approve each off-site stormwater management facility for acceptance for County maintenance. After a facility is accepted, the Department of Environmental Protection must inspect each underground facility at least once each year and each above-ground facility at least once every 3 years, and must maintain each accepted facility in good working condition.]

[(c)](b) [*Inspection and maintenance*] *Maintenance of new* [*on-site facilities*] *stormwater management systems.*

(1) Before issuing a [building] sediment control permit to develop any property that requires [an on-site stormwater management facility] implementation of best management practices, the Department must require the property owner to execute an

easement and an inspection and maintenance agreement that is binding on all [later] subsequent owners of the land to be served by any private stormwater management system.

(2) The easement [and agreement] must give the County a perpetual right of access to the [facility] stormwater management system at all reasonable times, to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, clean, or repair any part of the stormwater management [facility] system within the area covered by the easement as needed to assure that the [facility] system remains in proper working condition under approved design and environmental standards. The inspection and maintenance agreement must require the owner to be responsible for all maintenance of any completed ESD treatment system and nonstructural maintenance of [the] any on-site stormwater management facility if the development consists of residential property or associated nonresidential property. Otherwise, the inspection and maintenance agreement must require the owner to be responsible for all maintenance of the [facility] entire on-site stormwater management system, including [structural maintenance] maintaining in good condition, and promptly repairing and restoring, all ESD practices, grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices in perpetuity.

* * *

(5) [The Department of Environmental Protection must inspect each County- maintained underground facility at least once every year and each County-maintained above-ground facility at least once

every 3 years.] Any repair or restoration and maintenance performed under this Section must be in accordance with previously approved or newly submitted plans and any reasonable corrective measure specified by the Director of Environmental Protection.

[(d)] (c) [*Inspection and maintenance*] *Maintenance of existing* [*on-site*] *stormwater management facilities.*

(1) The owner of [an on-site] a stormwater management facility that is not subject to subsection [(c)] (b) must perform all structural maintenance needed to keep the facility in [property] proper working condition. The owner of a residential property or associated nonresidential property, or a homeowners' association [which] that includes the residential property, may execute a stormwater management easement granting the County a perpetual right of access to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, clean, or repair any part of the stormwater management facility within the easement as needed to assure that the facility remains in proper working condition under approved design standards.

(2) If the owner of a stormwater management facility grants a stormwater management easement to the County, the owner must make any structural repairs needed to place the facility in proper working condition, as determined by the Department of Environmental Protection, before the County enters into an inspection and maintenance agreement with the owner that obligates the County to assume responsibility for structural maintenance of the facility. After the owner and the County have

agreed that the County will assume responsibility for structural maintenance of the facility, the owner must record in the County land records the easement and any other agreements executed in conjunction with the easement that are binding on later owners of the land. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.

(3) After the Department of Environmental Protection receives a certified copy of the easement and agreements, the County must structurally maintain and inspect the facility as provided in subsection [c] (b).

[(e) Abandonment instead of repair.] (d) *Maintenance inspections*.

(1) The Department of Environmental Protection must [inspect each] ensure preventive maintenance through inspection of all stormwater management [facility to see what repairs, if any, are needed to restore the facility to proper working condition. If the Director of Environmental Protection finds that the stormwater management facility is no longer needed to control stormwater runoff or that the benefits of a repaired stormwater management facility are not justified by the cost of repair, the owner of the stormwater management facility must abandon the use of the facility for stormwater functions as the Director of Environmental Protection orders. Any order issued under this subsection must not restrict the facility from being used for recreational or other purposes not related to stormwater control.] systems. The inspection must occur during the first year of operation and then at least once every 3 years.

(2) Inspection reports must be maintained by the Department of Environmental Protection for all stormwater management systems and must include the following:

(A) the date of inspection;

(B) name of inspector;

(C) the condition of:

(i) vegetation or filter media;

(ii) fences or other safety devices;

(iii) spillways, valves, or other control structures;

(iv) embankments, slopes, and safety benches;

(v) reservoir or treatment areas;

(vi) inlet and outlet channels or structures;

(vii) underground drainage;

(viii) sediment and debris accumulation in storage and forebay areas;

(ix) any nonstructural practices to the extent practicable; and

(x) any other item that could affect the proper function of the stormwater management system; and

(D) description of needed maintenance.

(3) The owner of any privately maintained stormwater management system must correct the deficiencies discovered during the inspection within the time period specified in any written notice issued by the Director of Environmental Protection.

(e) *Abandonment instead of repair.* If the Director of Environmental Protection finds that the stormwater management facility is no longer needed to control stormwater runoff or that the benefits of a repaired

stormwater management facility are not justified by the cost of repair, the owner of the stormwater management facility must abandon the use of the facility for stormwater functions as the Director of Environmental Protection orders. Any order issued under this subsection must not restrict the facility from being used for recreational or other purposes not related to stormwater control.

(f) *Nonstructural maintenance of* [*on-site*] *stormwater management facilities*. The owner of [an on-site] a stormwater management facility must [provide landscaping and] perform [any other] routine inspection and nonstructural maintenance that impacts the effectiveness of routine structural maintenance, performed either privately or publicly. Among other actions, the owner must:

(1) prevent the accumulation of solid waste on the property and the generalized growth of weeds or plants in violation of Section 58-3;

(2) clear any woody vegetation, including trees and brush along with their root systems, within 25 feet of the facility's control structure and within 15 feet of an upstream or downstream dam embankment; and

(3) abate any other condition on the property that the Department of Environmental Protection reasonably finds may adversely affect the facility's proper functioning.

* * *

(h) *Stop work orders.*

(1) If a maintenance inspection reveals that the maintenance, repair, or restoration of a stormwater management facility is being performed in a manner that is hazardous, creates a nuisance, or

endangers human life or the property of others, or is otherwise being preformed in an unauthorized manner, the Director of Environmental Protection may, without advance warning, post the site with a stop work order directing that all maintenance, repair, or restoration activity cease immediately.

(2) The Director of Environmental Protection must provide written notice to the property owner, any designated representative of the property owner, or any on-site person in charge of the work when a stop work order is issued. That notice must specify the extent to which work is stopped and the conditions under which work may resume.

(3) A person must not continue, or allow the continuance of, work on a stormwater management facility covered by a stop work order, except for work necessary to abate the nuisance, or hazardous conditions as identified by the Director.

(i) *Emergency authority.* If, after inspection, the Director of Environmental Protection finds that the condition of a privately maintained stormwater management facility presents an immediate danger to the public health or safety because of an unsafe condition, [or] improper construction, or poor maintenance, the Director of Environmental Protection may take needed actions to protect the public and make the facility safe, including entering the property to make needed repairs. The County must assess any costs incurred as a result of the Director of Environmental Protection's actions against each owner of the facility. The County may collect the costs in the same manner as real property taxes are collected against the property where the facility

is located. In addition, the County may seek reimbursement under any other method legally available to collect debts owned to the County.

[19-29.] 19-30. Stormwater management loan program.

* * *

[19-30.] 19-31. Regulations.

* * *

[19-31.] 19-32. Exemptions.

The following development activities are exempt from the stormwater management requirements under this Article:

(a) agricultural land management [activities] practices;

* * *

[19-32] 19-33. Transition for approved plans.

Each new development or redevelopment project must comply with this Article, except [that:

(a) A previously approved] when the Department issues final sediment control and stormwater management [concept] design plan [remains valid if the Department issues a sediment control permit] approval for the property covered by the plan before [July 1, 2003. The applicant must construct the stormwater management system within 2 years after the Department issues the sediment control permit.

(b) A residential lot containing 2 or more acres is exempt from any on-site stormwater management requirement if the preliminary plan creating the lot was approved before July 1, 2002 and the Department issues the sediment control permit before July 1, 2003.] May 4, 2010.

[19-33] 19-34. Agreements between the County and municipalities.

* * *

(c) If a municipality operates a stormwater management program that serves substantially the entire municipality and meets all applicable federal and [state] State standards, the County must reimburse the municipality, subject to appropriation, for the cost of operating the program, limited to the amount the Director of Environmental Protection estimates the County would spend for that municipality if it were operating the program, by means of a cooperative agreement under subsection (b).

[19-34. Reserved.]

19-35. Water Quality Protection Charge.

(a) As authorized by [state] State law (Maryland Code, Environment Art., § 4-204), the Director of Finance must annually impose and collect a Water Quality Protection Charge, as provided in this Section. The Director must collect the Charge in the same manner as County real property taxes, apply the same interest, penalties, and other remedies (including tax sale) if the Charge is not paid, and generally treat the Charge for collection and administration purposes as if it were a County real property tax. The Director may treat any unpaid Charge as a lien on the property to which the charge applies.

(b) The Charge must be imposed on each residential property and associated nonresidential property, as specified in regulations adopted by the Executive under Method (1) to administer this Section. The regulations may define different classes of real property, depending on the amount of impervious surface on the property, stormwater runoff from the property, and other relevant characteristics, for purposes of applying the [charge] Charge.

* * *

(e) The regulations may allow credits against and exemptions from the Charge:

(1) to the extent that credits and exemptions are not prohibited by [state] State law; and

(2) if each credit or exemption will enhance water quality or otherwise promote the purposes of this Article.

* * *

(g) This Charge does not apply to any property located in a municipality in the County which:

(1) operates a stormwater management program that meets all applicable federal, [state] State, and County requirements and has received any necessary federal or [state] State permit; and

(2) imposes a similar charge or other means of funding its stormwater management program in that municipality.

(h) A person that believes that the Director of Environmental Protection has mistakenly assigned a Charge to the person's property or computed the Charge incorrectly may apply to the Director of Environmental Protection in writing for a review of the Charge, and request an adjustment to correct any error, [within 21 days after receiving a bill for] not later than September 30 of the year that payment of the Charge is due. [If] An aggrieved property owner may appeal the Director's decision to the County Board of Appeals within 10 days after the Director issues the decision.

(i) A person that believes that the Director of Environmental Protection [denies any requested adjustment, the applicant may] has incorrectly denied the person's request [reconsideration of the Director's denial in writing within 10 days after the date of the denial. An aggrieved

property owner] for a credit under subsection (b) may appeal the Director's [final] decision to the County Board of Appeals within 10 days after the Director issues the decision.

(j) The Board of Appeals may hear and decide all appeals taken from a [final] decision of the Director of Environmental Protection under this [subsection] Section as provided in Article I of Chapter 2A.

Sec. 2. Expedited Effective Date. The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Nancy M. Floreen, President, County Council — Date

Approved:

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 40-10
Stormwater Management

DESCRIPTION:	Amends Chapter 19, Article II of the County Code to comply with the Maryland Stormwater Management Act of 2007
PROBLEM:	The Stormwater Management Act of 2007 requires the use of environmentally sensitive site design (ESD) to the maximum extent practicable on development and redevelopment sites and went into effect on May 4, 2010. ESD encourages more stormwater to be infiltrated into the ground rather than stored and released slowly. ESD requires more surface areas to treat stormwater.
GOALS AND OBJECTIVES:	The County legislation mirrors the requirements in State law and regulations for new development. Current County requirements are more stringent than state requirements. This legislation maintains those more stringent standards. This legislation also includes provisions for grandfathering which were recently adopted by the State in emergency regulations.
COORDINATION:	Department of Permitting Services, Department of Environmental Protection
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be determined.
SOURCE OF INFORMATION:	Rick Brush, Manager, Water Resources Plan Review, Department of Permitting Services, 240-777-6343; Steve Shofar, Chief, Division of Watershed Management, 240-777-7736
APPLICATION WITHIN MUNICIPALITIES:	To be determined.
PENALTIES:	Class A

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 17, 2010

TO: Nancy Floreen, Council President

FROM: Isiah Leggett, County Executive

SUBJECT: Proposed Legislation to Comply with the Stormwater Management Act of 2007

I am forwarding to the Council for introduction an Expedited Bill to revise Chapter 19, Article II of the County Code to comply with State stormwater management requirements. I am also forwarding a Legislative Request Report for this bill.

The Stormwater Management Act of 2007 (2007 Act), which sets the minimum standards that the County law must meet, requires the use of Environmentally Sensitive Site Design (ESD) to the maximum extent practicable (MEP) on new development and redevelopment sites. The 2007 Act took effect on May 4, 2010. ESD encourages stormwater to be infiltrated into the ground rather than stored in structural facilities such as stormwater ponds and released slowly into the environment.

Prior to enactment of the 2007 Act, the County's stormwater requirements for new development sites were the same as the State law requirements for new development sites. This bill maintains that symmetry and adopts the same requirements for new development that are included in the 2007 Act.

Prior to enactment of the 2007 Act, the County's stormwater management requirements for redevelopment sites were more stringent than the State law requirements for redevelopment sites. This bill maintains more stringent requirements for redevelopment sites than those that are included in the 2007 Act. In essence, the bill applies the same stormwater management requirements to new development and redevelopment except that it provides more flexibility regarding the use of alternative stormwater management measures for redevelopment sites.

Before enactment of the 2007 Act, the State required stormwater management for redevelopment sites to protect Water Quality. Specifically, the State required management of the first inch of runoff from 20% of a redevelopment site. To

protect Water Quality, the 2007 Act requires management of the first inch of runoff from 50% of redevelopment site using ESD to the maximum extent practicable. County law currently requires stormwater management to protect Water Quality (the first inch of run-off from 100% of the redevelopment site) *and* Channel Protection (the expected runoff from a 1-year 24-hour duration rainfall event from 100% of a redevelopment site). This bill maintains the same standards for redevelopment sites and requires the use of ESD to the maximum extent practicable to meet these standards. The attached chart provides a comparison of former and new State and County law requirements for both new development and redevelopment.

This bill includes provisions recently adopted by the Maryland Department of the Environment (MDE) in emergency regulations to implement the 2007 Act, which allow the County to grant administrative waivers from the new standards for projects that have prior preliminary approvals.

For more information on this bill, please contact Rick Brush, DPS Water Resources Plan Review Manager, at 240-777-6343 or Steve Shofar, DEP Watershed Management Division Chief, at 240-777-7736.

Attachments

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Carla Reid, Director, Department of Permitting Services
Robert Hoyt, Director, Department of Environmental Protection

State and County Stormwater Requirements - Former and New[1]

New Development

	Definition	MDE Former	Mo. Co. Former	MDE New	Mo. Co. New
Water Quality	-First flush -First 1" of rainfall	-ESD or structural	-ESD or structural	-ESD	-ESD
Channel Protection	-Volume stored and slowly released to minimize erosion to stream banks from high velocities. -2.6" of rainfall	-Structural (unless flows are less that 2 cubic ft/second)	-Structural (unless flows are less that 2 cubic ft/second)	-ESD to MEP -Structural where ESD not possible	-ESD to MEP -Structural where ESD not possible
Recharge	-Volume needed to maintain groundwater	Required	Required	Required	Required

Redevelopment

	Definition	MDE Former	Mo. Co. Former	MDE New	Mo. Co. New
Water Quality	-First flush -First 1" of rainfall	-20% of WQv	-100% of WQv	-50% WQv -ESD to MEP	-100% of WQv -ESD to MEP
Channel Protection	-Volume stored and slowly released to minimize erosion to stream banks from high velocities. -2.6" of rainfall	-Not required	-100% of CPv (unless flows are less that 2 cubic ft/second)	-Not required	-100% -ESD to MEP -Structural where ESD not possible
Recharge	-Volume needed to maintain groundwater	Not Required	Not Required	Required	Required

[1] "WQv" means Water Quality volume (first inch of runoff)
"CPv" means Channel Protection Volume (1-year 24-hour duration rainfall event). This is 2.6 inches in Montgomery County.
"ESD" means Environmentally Sensitive Site Design.
"MEP" means Maximum Extent Practicable