

**MEMORANDUM**

April 29, 2011

TO: County Council

FROM: Amanda Mihill, Legislative Analyst *amihill*

SUBJECT: **Action:** Expedited Bill 7-11, Stormwater Management – Revisions

<p><b>Transportation, Infrastructure, Energy &amp; Environment Committee recommendation</b> (3-0): enact Bill 7-11.</p>
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Expedited Bill 7-11, Stormwater Management – Revisions, sponsored by the Council President at the request of the County Executive, was introduced on March 15, 2011. A public hearing was held on March 29 at which Stan Wong, on behalf of the Executive supported Bill 7-11 (©6). The Transportation, Infrastructure, Energy and Environment Committee held a worksession on Bill 7-11 on April 12.

**Background**

Bill 7-11 would limit the use of certain alternative stormwater management measures to redevelopment projects. Specific alternative stormwater management measures for new development and redevelopment were added to County law by Expedited Bill 40-10, which the Council enacted on July 27, 2010. The Executive's transmittal memorandum indicates that the Maryland Department of the Environment (MDE) considered the language applying alternative stormwater management measures to new development to be less restrictive than State law and therefore not in compliance with State law. MDE did not object to allowing alternative stormwater management measures for redevelopment projects.

**Commission Discussion/Recommendation**

The letter from MDE explaining their rationale is on ©7. The letter states that alternative measures can be used to address stormwater management for redevelopment under certain conditions (see COMAR 26.17.02.05(D)(2) on ©8), but alternatives for new development do not exist in state regulations and therefore this portion of the County's law was less stringent than the state law. The MDE letter identifies 2 options to correct this situation: (1) do not allow alternative stormwater management measures for new development (the approach taken by Bill 7-11); and (2) allow alternative stormwater management measures for new development subject to an MDE-approved watershed management plan. Section 19-22 of the County Code already allows the Department of Environmental Protection to develop stormwater management plans that could include alternative

stormwater management strategies for new development, but these plans are for specific areas of the County. **The Committee recommended (3-0) enacting Bill 7-11.**

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 7-11  
Concerning: Stormwater Management –  
Revisions  
Revised: 3/11/2011 Draft No. 1  
Introduced: March 15, 2011  
Expires: September 15, 2012  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN EXPEDITED ACT to:**

- (1) limit the use of certain alternative stormwater management measures to redevelopment projects; and
- (2) generally amend County law regarding stormwater management.

By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Section 19-26

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

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



# LEGISLATIVE REQUEST REPORT

Expedited Bill 7-11

Stormwater Management - Revisions

- DESCRIPTION:** Amends Chapter 19, Article II of the County Code to comply with the Maryland Stormwater Management Act of 2007
- PROBLEM:** Expedited Bill 40-10 was forwarded by the County Executive to the County Council and passed by the Council on July 27, 2010. As required by State law, the bill which was forwarded by the Executive had received preliminary approval by the Maryland Department of the Environment.
- Amendments to the bill were made during the review of the bill by the Council. MDE has given approval for all of those amendments except for a portion of Section 19-26. MDE considers this change in language to be less restrictive than State law and regulation; and, therefore, not acceptable. This bill addresses and modifies the language that MDE will not approve.
- GOALS AND OBJECTIVES:** The legislation modifies Section 19-26(c) of Chapter 19, Article II of the Code for compliance with State law and regulation by removing language pertaining to new development.
- COORDINATION:** Department of Permitting Services, Department of Environmental Protection
- FISCAL IMPACT:** No additional impact for the Department of Permitting Services
- ECONOMIC IMPACT:** None
- EVALUATION:** For compliance with State law and regulations
- EXPERIENCE ELSEWHERE:** MDE approval of stormwater management legislation is required for all counties and municipalities within the State of Maryland.
- SOURCE OF INFORMATION:** Rick Brush, Manager, Water Recourses, Department of Permitting Services, 240-777-6343
- APPLICATION WITHIN MUNICIPALITIES:** All except Rockville, Gaithersburg, and Takoma Park
- PENALTIES:** Class A




OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

March 8, 2011

TO: Valerie Ervin, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation relating to Proposed Stormwater Management

I am forwarding to the Council for introduction a bill to revise Chapter 19, Article II of the County Code to comply with State Stormwater Management (SWM) requirements. I am also forwarding a Legislative Request Report for this bill.

Council enacted Expedited Bill 40-10, Stormwater Management on July 27, 2010. The bill required stormwater management through the use of Environmental Site Design (ESD), nonstructural best management practices to the Maximum Extent Practicable (MEP) in compliance with the Maryland Stormwater Management Act of 2007.

The Maryland Department of the Environment (MDE) approved all of the provisions of Expedited Bill 40-10 except for the portion of County Code Section 19-26 relating to the use of specified alternative SWM measures for new development. MDE considered this part of Section 19-26 to be less restrictive than State law and, therefore, not acceptable. The attached bill modifies Section 19-26 by repealing the option of using alternative SWM measures for new development; thereby bringing County law into compliance with State requirements.

As required by State law, Expedited Bill 40-10 was forwarded by the County Executive to MDE before its introduction in Council and received preliminary approval. However, the part of the bill to which MDE objects was added by Council amendment. Please note that any further amendments to the County's SWM law will also be subject to review and approval by MDE.

For more information on this bill, please contact Rick Brush, Water Resources Plan Review Manager, Department of Permitting Services, at 240-777-6343.

Attachments

c: Robert Hoyt, Director, Department of Environmental Protection  
Carla Reid, Director, Department of Permitting Services



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

March 25, 2011

TO: Valerie Ervin, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Expedited Council Bill 7-11, Stormwater Management - Revisions

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

Expedited Bill 40-10, enacted by Council on July 27, 2010, included a provision that allows the use of certain alternative stormwater management measures for new development, as well as redevelopment projects. Expedited Bill 7-11 amends the County's stormwater management law to exclude new development from being able to use various alternative stormwater management techniques to satisfy that law. The alternative stormwater management measures allowed under Expedited Bill 40-10 included on-site structural best management practices (BMPs), off-site structural BMPs and environmental site design (ESD), and a mix of impervious area reduction, ESD, and on- or off-site structural BMPs to control and treat stormwater.

After reviewing the provisions of Bill 40-10 as enacted, the Maryland Department of the Environment determined that allowing the use of alternative stormwater management techniques for new development is less restrictive than what is required by the State, and that the County's legislation is therefore not in compliance with State law. Expedited Bill 7-11 amends the County's stormwater management law to bring it into compliance with State law by allowing the use of alternative stormwater management techniques for redevelopment projects, but not for new development.

**FISCAL AND ECONOMIC SUMMARY**

The provision allowing the use of alternative stormwater management measures for new development was added during Council's consideration of Bill 40-10 and was not in the Bill as submitted by the County Executive. Consequently, the fiscal impact statement for Bill 40-10 was prepared under the assumption that alternative stormwater management measures could not be used for new development. Expedited Bill 7-11 will modify the County's current stormwater law to more closely conform to the bill originally submitted by the County Executive and to the provisions that served as the basis for the Office of Management and Budget's (OMB) fiscal impact statement for Bill 40-10. Therefore, Bill 11-7 will not alter the fiscal and economic impacts projected in connection with the July 14, 2010 fiscal impact statement provided for Bill 40-10.

Office of the Director

**Testimony on Behalf of County Executive Isiah Leggett  
Regarding Expedited Bill 7-11, Stormwater Management**

**Stan Wong, Chief  
Division of Land Development  
Department of Permitting Services**

**March 29, 2011**

Good afternoon. My name is Stan Wong, Chief of the Division of Land Development in the Department of Permitting Services (DPS). Thank you for the opportunity of testify on behalf of the County Executive in support of Expedited Bill 7-11, which revises the stormwater management provisions in current law to comply with State stormwater management requirements.

The purpose of this Bill is to amend Section 19-26 of the County Code in order to eliminate the ability for new developments to utilize alternative stormwater management measures.

The Council enacted Expedited Bill 40-10, Stormwater Management on July 27, 2010. The bill required stormwater management through the use of Environmental Site Design (ESD) nonstructural best management practices to the Maximum Extent Practicable (MEP) in compliance with the Maryland Stormwater Management Act of 2007.

The Maryland Department of the Environment (MDE) approved all of the provisions of Expedited Bill 40-10 except for the portion of County Code Section 19-26 relating to the use of specified alternative stormwater management measures for new development. MDE considered this part of Section 19-26 to be less restrictive than State law and, therefore, not acceptable. The attached bill modifies Section 19-26 by repealing the option of using alternative stormwater management measures for new development; thereby bringing County law into compliance with State requirements.

As required by State law, Expedited Bill 40-10 was forwarded by the County Executive to MDE before its introduction in Council and received preliminary approval. However, the part of the bill to which MDE objects was added by Council amendment. Please note that any further amendments to the County's stormwater management law will also be subject to review and approval by MDE.

Representatives of DPS will be available to provide more information on specific requirements of the Bill as it moves forward.





# MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley  
Governor

Shari T. Wilson  
Secretary

Anthony G. Brown  
Lieutenant Governor

Robert M. Summers, Ph.D.  
Deputy Secretary

August 19, 2010

Mr. Rick Brush  
Department of Permitting Services  
250 Hungerford Drive  
Rockville, MD 20850

Dear Mr. Brush;

Thank you for submitting the revised Chapter 19, Article II – Stormwater Management of the Montgomery County Code to the Maryland Department of the Environment (MDE) as adopted by the Montgomery County Council on July 27, 2010. MDE has reviewed the County's adopted ordinance and offers the following comments.

MDE understands that several changes were made to the County's ordinance during the adoption process. Of these changes, two are substantive. The first involves the elimination of qualitative control waivers [see §19-24.(c)]. This is more stringent than the State Regulations [see the Code of Maryland Regulations (COMAR) 26.17.02.05C(4)] and is acceptable.

The second amendment is the addition of provisions for allowing the use of alternative stormwater management measures to address stormwater management requirements for new development (§19-26.C). According to COMAR 26.17.02.05D(2), alternative measures may be used to address stormwater management for redevelopment projects provided that impervious area reduction and environmental site design (ESD) have been implemented to the maximum extent practicable (MEP). However, similar options for new development do not exist in State regulation. MDE cannot approve Montgomery County's stormwater management ordinance because §19-26.C allows alternative measures to be used to address new development requirements. Therefore, Montgomery County must revise §19-26.C.

While not acceptable as currently presented, alternative stormwater management strategies may be used to address new development requirements if those strategies are consistent with an MDE-approved watershed management plan (see COMAR 26.17.05E). MDE strongly encourages the County to revisit §19-26.C with respect to the implementation of watershed management plans. Thank you again for submitting Montgomery County's stormwater management ordinance. If you have questions, please feel free to call me at 410-537-3550 or email me at [scomstock@mde.state.mde.us](mailto:scomstock@mde.state.mde.us).

Sincerely,

Stewart R. Comstock, P.E.  
Water Management Administration

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## **.05 When Stormwater Management is Required.**

A. Unless the particular activity is exempted by this regulation, a person may not develop any land without an approved final stormwater management plan from the approving agency. A grading or building permit may not be issued for a property unless a final stormwater management plan has been approved that is consistent with:

- (1) The Stormwater Management Subtitle;
- (2) This chapter;
- (3) The county or municipal ordinance.
- (4) The Design Manual for new development; and
- (5) Policies established by the local approving agency for redevelopment.

B. The following activities are exempt from the provisions of this chapter:

- (1) Additions or modifications to existing single family detached residential structures if they comply with §B(2) of this regulation;
- (2) Any developments that do not disturb over 5,000 square feet of land area; and
- (3) Land development activities which the Administration determines will be regulated under specific State laws which provide for managing stormwater runoff.

C. Waivers.

(1) County and municipal ordinances may contain waiver policies for individual developments if the ordinances are approved by the Administration. The Administration will approve county and municipal ordinances and waiver policies if:

- (a) They reasonably ensure that a development will not adversely impact stream quality;
- (b) Waiver decisions are made on a case-by-case basis; and
- (c) The cumulative effects of the waiver policy are evaluated.

(2) Except as provided in §C(3) and (5) of this regulation, stormwater management quantitative control waivers shall be granted only to those projects within areas where watershed management plans have been developed consistent with §E of this regulation.

(3) Except as provided in §C(5) of this regulation, if watershed management plans consistent with §E of this regulation have not been developed, stormwater management quantitative control waivers may be granted to projects:

(a) That have direct discharges to tidally influenced receiving waters;

(b) That are in-fill development located in a Priority Funding Area where the economic feasibility of the project is tied to the planned density, and where implementation of the 2009 regulatory requirements would result in a loss of the planned development density provided that:

- (i) Public water and sewer and stormwater conveyance exist;
- (ii) The quantitative waiver is applied to the project for the impervious cover that previously existed on the site only;
- (iii) ESD to the MEP is used to meet the full water quality treatment requirements for the entire development; and 8

(iv) ESD to the MEP is used to provide full quantity control for all new impervious surfaces; or

(c) When the approving agency determines that circumstances exist that prevent the reasonable implementation of quantity control practices.

(4) Except as provided in §C(5) of this regulation, stormwater management qualitative control waivers apply only to:

(a) In-fill development projects where stormwater management implementation is not feasible;

(b) Redevelopment projects if the requirements of §D of this regulation are satisfied; or

(c) Sites where the approving agency determines that circumstances exist that prevent the reasonable implementation of quality control practices.

(5) Stormwater management quantitative and qualitative control waivers may be granted for phased development projects if a system designed to meet the 2000 regulatory requirements and local ordinances for multiple phases has been constructed by May 4, 2010. If the 2009 regulatory requirements cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in future phases must be demonstrated.

#### D. Redevelopment.

(1) An approving agency shall require that stormwater management be addressed for redevelopment. Unless otherwise specified by watershed management plans developed according to §E of this regulation, all redevelopment project designs shall do one of the following:

(a) Reduce existing impervious area within the limit of disturbance by at least 50 percent according to the Design Manual;

(b) Implement ESD to the MEP to provide water quality treatment for at least 50 percent of the existing impervious area within the limit of disturbance; or

(c) Use a combination of both §D(1)(a) and (b) of this regulation for at least 50 percent of the existing site impervious area.

(2) Alternative stormwater management measures may be used to meet the requirements in §D(1) of this regulation if the developer satisfactorily demonstrates to the approving agency that impervious area reduction and ESD have been implemented to the MEP. Alternative stormwater management measures include, but are not limited to:

(a) An on-site structural BMP;

(b) An off-site structural BMP to provide water quality treatment for an area equal to or greater than 50 percent of the existing impervious area; or

(c) A combination of impervious area reduction, ESD implementation, and an on-site or off-site structural BMP for an area equal to or greater than 50 percent of the existing site impervious area within the limit of disturbance.

(3) An approving agency may develop separate policies for providing water quality treatment for redevelopment projects if the requirements of §D(1) and (2) of this regulation cannot be met. Any separate redevelopment policy shall be reviewed and approved by the Administration and may include, but not be limited to:

(a) A combination of ESD and an on-site or off-site structural BMP;

(b) Retrofitting including existing BMP upgrades, filtering practices, and off-site ESD implementation;

(c) Participation in a stream restoration project;

(d) Pollution trading with another entity;

(e) Design criteria based on watershed management plans developed according to §E of this regulation;

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(f) Payment of a fee-in-lieu; or

(g) A partial waiver of the treatment requirements if ESD is not practicable.

(4) The determination of what alternative stormwater management measures will be available may be made by the approving agency at the appropriate point in the development review process. Counties and municipalities shall consider the prioritization of alternative measures in §D(3) of this regulation after it has been determined that it is not practicable to meet the 2009 regulatory requirements using ESD. In deciding what alternative measures may be required, an approving agency may consider factors including, but not limited to:

(a) Whether the project is in an area targeted for development incentives such as a Priority Funding Area, a designated Transit Oriented Development area, or a designated Base Realignment and Closure Revitalization and Incentive Zone;

(b) Whether the project is necessary to accommodate growth consistent with comprehensive plans; or

(c) Whether bonding and financing have already been secured based on an approved development plan.

(5) Stormwater management shall be addressed according to the new development requirements in the Design Manual for any net increase in impervious area.

(6) The recharge, channel protection storage volume, and overbank flood protection volume requirements specified in the Design Manual do not apply to redevelopment projects unless specified by the approving agency.

(7) On-site or off-site channel protection storage volume requirements as specified in the Design Manual may be imposed if watershed management plans developed according to §E of this regulation indicate that downstream flooding or erosion need to be addressed.

(8) Variations of this redevelopment policy shall be approved by the Administration.

E. An approving agency may develop quantitative waiver and redevelopment provisions for stormwater management that differ from the requirements of this chapter. These provisions shall be developed only as part of an overall watershed management plan. Watershed management plans developed for the purposes of implementing different stormwater management policies for waivers and redevelopment shall:

(1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;

(2) Evaluate both quantity and quality management;

(3) Include cumulative impact assessment of watershed development;

(4) Identify existing flooding and receiving stream channel conditions;

(5) Be conducted at a scale determined by the approving agency; and

(6) Specify where on-site or off-site quantitative and qualitative stormwater management practices are to be implemented.