

Developers fear new stormwater regulations will undermine Smart Growth

By Julie Turkewitz

New stormwater regulations have widened a rift between Maryland's environmental and development communities, raising questions about whether the new provisions will harm the very Smart Growth they aim to encourage.

Starting this May, developers building on new land or refitting already developed properties must adhere to a new set of stormwater management regulations. The provisions represent "sweeping" changes in Maryland's regulation system, according to Stewart Comstock, a regulatory and compliance engineer for the Maryland Department of the Environment.

But developers – particularly those who concentrate on projects in already developed areas — predict hundreds of thousands of dollars in losses. They argue that the new regulations will raise barriers to redevelopment in urban areas, unintentionally encouraging building in new areas and more of the suburban sprawl that environmentalists charge harms the Chesapeake Bay.

The new provisions illustrate a larger state trend, according to Leslie Knapp, associate director of the Maryland Association of Counties: An increasingly common collision between environmental and smart growth policies as policymakers strive to foster both sustainability and prosperity.

To address this, as well the impacts of the new regulations, the Task Force on the Future for Growth and Development in Maryland – a group of citizens, politicians, business leaders and others responsible for studying development in the state – will sponsor a forum on Friday (Jan. 15).

In the past, stormwater management focused on channeling rainwater away from a property as quickly as possible and then treating that water before it made its way into the Chesapeake Bay or one of its tributaries. Now, to comply with the Maryland Stormwater Management Act of 2007, the state will require developers to implement a new type of water management system.

Deemed Environmental Site Design, the new system mandates that lots maintain pre-development runoff characteristics even after structures are erected. More specifically, the new codes require that builders completing redevelopment projects reduce the amount of impervious land – areas not penetrable by water – by at least 50 percent, or that they replace the current stormwater system so that 50 percent of that area is treated using Environmental Site Design.

Tom Shueler, coordinator at the Chesapeake Stormwater Network, says the new regulations represent a critical – and necessary – departure from past provisions, including ones he helped write in 2000. In the past, environmentalists viewed farming as a major contributor to bay pollution, "but development plays an enormous role," he says.

According to Shueler, who has worked on stormwater issues since 1980, runoff from development causes 25 percent of excess nutrients in the Chesapeake watershed, 35 percent of excess sediment in the watershed and “a great deal of the [excess] toxic chemicals.”

Many, however, including builders’ advocates and members of the Maryland Association of Counties, call the new requirements burdensome for developers and express fear about their long-term effects. Several suggest the requirements will make redevelopment costs so high that constructors will simply avoid redevelopment projects and opt for new construction projects in more economically viable – but less environmentally friendly – far out suburban regions.

Scott Dorsey, president of Merritt Properties, a Maryland-based development company with an office in Virginia, opened his Sterling office 10 years ago because he thought the southern state “encouraged” development, whereas Maryland merely “tolerated” it. Since then, Merritt has developed about one million square feet of property in Virginia.

Once the new regulations take effect and the economy picks up, Dorsey expects to start doing more work where he finds economic opportunity – in Virginia. The impact, warns Dorsey, likely will include reduced job growth in Maryland.

“Our politicians don’t understand,” he says. “You need a healthy development industry to provide for places to grow and to provide people with places to work.”

Baltimore County has spent seven years promoting a redevelopment renaissance by encouraging builders to retrofit pre-1950s housing, as opposed to building on new land. But Jonas Jacobson, Director of Environmental Protection and Resource Management for the county, says the renaissance slated for places like Dundalk, Essex, Towson, Randallstown, Pikesville and Catonsville may become too expensive for developers – and come to a halt once the regulations go into effect.

“They are looking to impose a requirement that is so onerous that nobody is going to come in and do those retrofits,” he says.

The new standards could significantly impact places like inner-city Baltimore, where untouched land is sparse and reducing the amount of impervious surfaces on a specified lot by 50 percent, “will be nearly impossible,” according to Knapp at the Maryland Association of Counties.

In the city, says Jacobson, this could leave lots in disrepair, slow job growth and discourage people from moving in. Builders will head elsewhere. “It’s going to lead to sprawl and additional pollution which is counter to this whole policy – which is to reduce nutrients to the Bay,” Jacobson says.

The Maryland Department of the Environment went through a lengthy process to construct the new requirements, soliciting advice from all interested parties. But developers cite other issues with the requirements. The new provisions go into effect immediately on May 4, 2010; any project that has not had its stormwater management plan and all other required permits approved before this date must adhere to the new regulations.

That will leave hundreds of projects – many of whom formulated stormwater management plans years in advance – in the lurch, says Michael C. Powell, a lawyer who represents the Maryland State Builders Association. Architects and engineers will have to scrap current plans and start over. Projects built in phases – like a Johns Hopkins University facility in Howard County that will take at least 10 years to complete – will have to rip out already built structures.

“We’re talking about hundreds of thousands and maybe millions of dollars [in losses] statewide,” Powell says, suggesting a grandfather clause that would ease the burden for in-process projects. The Department of the Environment considered such a plan, but decided against it.

Powell says that with the economic crisis, the new stormwater regulations hit builders at a particularly inopportune time. When the department formulated them, builders were losing projects, firing workers and “dying” financially. “To have time to figure out what the state was doing on regulations was not forefront in their eyes,” he says.

As a compromise, Knapp suggests the solution is not to scrap the entire concept of the Environmental Site Design – which could be useful in Chesapeake Bay restoration efforts – but rather, to reform some of the provisions that will go into effect in May. In general, he says, the state needs to do a better job of fostering a conversation about the conflict between environmental policies and growth policies.

While Friday’s forum may address some of the specific problems with these regulations, he also sees the need for a more permanent body that addresses increasing conflicts between growth and environmental policy. “You need to have a body or forum where all impacted stakeholders, be they governmental or nongovernmental, can sit down and discuss these issues when there are conflicts.”

**Information on the Stormwater Management Forum
Maryland Department of the Environment
Aqua Conference Room, 1st Floor
1800 Washington Blvd, Baltimore
Friday, January 15, 2010. 1 p.m. to 4 p.m.**

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Watch for continued coverage of the stormwater management issues at Center Maryland.

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