

January 15, 2010

To: Members of the Task Force for the Future of Growth and Development

From: Maryland Municipal League

Re: Newly Adopted Stormwater Management Regulations

Dear Task Force Members:

When the stormwater management legislation was first introduced in 2007, the Maryland Municipal League initially opposed the legislation based on anticipated unfunded mandates and significantly increased project costs. The bill was subsequently amended during the 2007 session to allay, in large part, many of the concerns expressed by the League and MML supported the legislation as passed. However, in comparing the legislation passed by the General Assembly in 2007 with the now-adopted regulations, it is safe to say that our fears relative to unfunded mandates and significantly increased redevelopment costs are, in fact, likely to be realized.

Based on feedback from many municipalities in Maryland, it appears likely that the new stormwater management regulations will pose a number of challenges, particularly with regard to economic development/redevelopment projects, technical requirements, and enforcement and maintenance of the smaller water quality stormwater devices and practices. Some thoughts on specific topics:

#### Redevelopment

The increase in impervious surface reduction requirements makes already "marginal" redevelopment sites in municipal urban areas even less attractive than in competing greenfield sites, which runs counter to Maryland's Smart Growth principles. Why would a developer choose to treat 50% of existing impervious surfaces on their site plus 100% of any new development when they could just move outside a dense downtown area and build all new development on a rural site? In addition, many of the Environmental Site Design (ESD) techniques include infiltration, which could be challenging in dense downtown areas where soils have been severely compacted for many years. It is feared that forced infiltration could cause significant water issues for adjacent building foundations.

It should be noted that urban redevelopment already costs more than greenfield development, even without the added requirements imposed by the new stormwater regulations. Often, there are already added costs of demolition and reconstruction on small properties because such work often takes much longer and requires greater coordination of work activities due to confined spaces and potential for damage to adjoining properties. Also, in cases where adequate public facilities ordinances exist in urban areas, these requirements often force developers to seek outlying greenfield sites, which is a major contributing factor to the growing sprawl development patterns experienced in Maryland over the past 30 years. Additional engineering requirements and associated costs will not reverse this trend, nor will it help revitalize economic development activities in older, downtown urban centers.

It is feared that, due to the likely increased costs of meeting the newly adopted stormwater management regulations, projects in economically challenged urban areas may be abandoned due to an inability to meet the strict 50% mandate. With the State's emphasis on infill development as opposed to new development in more rural areas, it seems counterintuitive to have new stormwater regulations now in place that make it even more expensive and complicated for developers to redevelop an existing site with infrastructure in place as opposed to developing on raw land. We should be providing incentives for developers to build on existing infrastructure in urban areas instead of making it more difficult and more expensive. While offsite stormwater mitigation is the other alternative to meeting the onsite 50% reduction requirement, because of the overall urban, impervious nature of most municipalities, attempting to mitigate on a second site may be equally challenging and costly.

Recommendation:

If MDE insists on a 50% impervious surface reduction (instead of the current 20%), base the reduction on a sliding scale whereas very small redevelopment sites would be able to keep the 20% reduction as their goal, with the impervious reduction increasing up to a maximum of 50% as site acreage increased. This would help give smaller sites a better chance for cost effective redevelopment, while still meeting the 50% goal on larger sites that may be less constrained with regard to usable lot area and more opportunities to utilize less expensive stormwater practices. If this recommendation were pursued, a definition of the size of the various redevelopment projects would need to be established so jurisdictions would have a clear idea of which impervious percentages would apply to different sized redevelopment projects.

Grandfathering

The imposition of the newly adopted stormwater management regulations could potentially mean taking projects that have already received preliminary subdivision approval, master plan approval, site plan approval, etc., back to the drawing board and completely redesigning them to meet ESD and then having to take them all the way back through the planning process – a likely “kiss of death” for many projects in an already shaky economy.

The May 4, 2010 deadline for development plan approval under the "old" stormwater regulations puts developers in a difficult position. According to MDE, the developers would have to substantially complete their projects in the two-year window of their erosion and sediment control permit, or they could be forced to redesign their projects in 2012 (even if work was well underway at that point). Phased residential developments may be caught in the situation where phases completed before 2012 have a completely different layout and "feel" than subsequent phases because of the change in regulations, even though all phases of the project had conceptual and/or preliminary approval prior to the May 4, 2010 deadline. At this point, municipalities and developers are uncertain as to whether or not phased projects will be allowed to continue as originally approved under the 2000 regulations.

Recommendation:

The newly adopted stormwater regulations should be delayed to allow phased projects that have already received local stormwater permits under the 2000 regulations be allowed to be completed

under the 2000 stormwater management regulations. Another option for phased projects might be to allow those projects that have received preliminary planning approval, sediment and erosion preliminary approval, and preliminary stormwater approval by January, 2010 to proceed under the 2000 stormwater regulations with the stipulation that they receive final planning, sediment and erosion, and stormwater approvals by May, 2012.

#### Inspection & Maintenance Issues

Implementation of ESD will result in the creation of many more small-scale stormwater management facilities. Historically most property owners do a poor job maintaining the few stormwater facilities that they are currently responsible for. As stormwater facilities are expanded, municipalities expect that even less maintenance will be performed by homeowners. Municipalities will be required to inspect these facilities periodically, increasing the burden on already overburdened municipal staff members and scarce municipal resources. If the average homeowner does not maintain a water quality device installed on the homeowner's property by a developer, how does the State propose that this be enforced and monitored? Is a violation and subsequent fine levied on the homeowner - which would likely lead to a lawsuit? Most municipalities are challenged enough in allocating staff to inspect and monitor existing stormwater management ponds; trying to keep track of a vast array of much smaller devices on private property will exacerbate this situation.

MDE requires that protective easements be prepared and recorded for all of these new facilities so new lots will now be encumbered with easements for rain gardens, rain barrels, and other small ESD practices, as well as easements that allow municipal inspectors to access these facilities. For existing subdivisions, it is unclear whether ESD/MEP requirements would apply to existing undeveloped lots in communities with existing stormwater management systems approved under the 2000 ordinance. If this is the case, it is likely that new homeowners in existing subdivisions may find themselves responsible for maintaining nonstructural water quality devices such as pervious pavers, rain barrels, cisterns, etc. while their neighbors utilize structural water quality devices installed and paid for when the community was originally approved under the 2000 ordinance.

#### Recommendation:

While it is generally agreed that ESD provides environmental benefit, it also brings a host of issues (and potential headaches) to the municipalities and homeowners that have to enforce the regulations. It is suggested that the new regulations not apply to already established communities with Stormwater Management Plans approved under the 2000 regulations when undergoing new, phased development.