


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR <i>File for T.J.S.</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 E. FAYETTE STREET, 8 th FLOOR		
	SUBJECT	CITY COUNCIL BILL #09-0411/ STORMWATER MANAGEMENT		

TO

DATE:
April 16, 2010

The Honorable President and
 Members of the City Council
 City Hall, Room 400
 100 N. Holliday Street
 Baltimore, MD 21202

At its regular meeting of April 15, 2010 the Planning Commission considered City Council Bill #10-0434, which is for the purpose of modifying the provisions governing Stormwater management to comply with new requirements of State law: requiring the development, review, and approval of phased plans for Stormwater management; establishing certain control requirements to manage Stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of Stormwater.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #10-0434 and adopted the following resolution, nine members being present (seven in favor and two opposed).

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #10-0434 be passed by the City Council.

If you have questions, please contact Mr. Wolde Ararsa, Division Chief of the Land Use and Urban Design Division, at 410-396-4488.

TJS/WA/ttl

Attachments

cc:

- Mr. Andy Frank, Deputy Mayor
- Ms. Sophie Dagenais, Chief of Staff
- Ms. Kaliopé Parthemos, Asst. Deputy Mayor
- Ms. Angela Gibson, Mayor's Office
- The Honorable Bill Henry, City Council Commission Representative
- Ms. Nikol Nabors-Jackson, DHCD
- Mr. Larry Greene, Council Services
- Ms. Marcia Collins, DPW



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

April 15, 2010

REQUEST: City Council Bill #10-0434/Stormwater Management

For the purpose of modifying the provisions governing stormwater management to comply with new requirements of State law; requiring the development, review, and approval of phased plans for stormwater management; establishing certain minimum control requirements to manage stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of stormwater.

RECOMMENDATION: Amend and Approve: The amendments will reflect the changes from the Maryland Department of the Environment "Emergency Regulations" dated March, 2010. This recommendation is being made with the understanding that the Department of Public Works and the Planning Department will continue to review and evaluate the City's approved PUD projects to ascertain if they are found to be eligible under CCB #10-0434. In the event PUDs are not found to be eligible under the "grandfathering" provisions or other waiver provisions, the Planning Commission recommends that the City provide amendments to the State regulations to address Baltimore's unique PUD situation.

STAFF: Kenneth Hranicky

PETITIONER: Administration (Department of Public Works)

SITE/GENERAL AREA: Citywide

HISTORY

- Ordinance 78-869 - Establishing a mechanism to enforce provisions of a Baltimore City Erosion and Sediment Control Manual, and to impose fines for violations of requirements of the Manual, under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 84-84 - Establishing a Baltimore City Stormwater Management Program under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.

- Ordinance 87-1130 – Amendment to the Stormwater Management Program to incorporate the Chesapeake Bay Critical Area regulations; placed Stormwater Management under the jurisdiction of the Department of Transportation.
- 2000 Code Revision - Placed the Stormwater Management Program in a new Article 7 – Natural Resources (Subtitles 21 through 26), under the jurisdiction of the Department of Public Works.
- Ordinance 02-367 – A major overhaul of Stormwater Management for the purpose of revising the laws governing stormwater management; requiring the development, review, and approval of stormwater management plans; establishing certain minimum control requirements; requiring certain structural and nonstructural practices; requiring certain reports and inspections; requiring easements for certain purposes; providing for certain exemptions, waivers, and variances; requiring certain permits; imposing certain fees; establishing certain maintenance requirements; defining certain terms; establishing certain penalties; and generally relating to the protection, maintenance, and enhancement of the management of stormwater.

CONFORMITY TO PLANS

The proposed legislation is found to be consistent with the following element of the Baltimore City Comprehensive Master Plan: LIVE Goal 2: Elevate the Design and Quality of the City's Built Environment. PLAY Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality. Furthermore, this legislation is consistent with the adopted City Sustainability Plan: Pollution Prevention Goal #3: Ensure that Baltimore water bodies are fishable and swimmable.

ANALYSIS

This report is an addendum to the February 18th, March 18, and April 1, 2010, staff reports. This item was continued at the Planning Commission February 18th, March 18, and April 1, 2010, hearing. This report summarizes the outcomes in Annapolis and explains staff's recommendations.

The updating of Baltimore's stormwater management regulations, required State Stormwater Management Act of 2007, is necessary for Baltimore to retain its authority over managing stormwater runoff. In recent weeks there has been a flurry of debate surrounding the impacts of the State's new stormwater legislation, set to take effect May 4, 2010. Participants have included the State legislature, Maryland Department of the Environment (MDE), local jurisdictions, the Maryland Association of Counties and the Maryland Municipal League, and stakeholders in the development and environmental advocacy communities. The State legislation requires that MDE approve City's stormwater management code. There has been an ongoing of dialogue between the City's Department of Public Works (DPW) and MDE that is still currently underway.

On April 6th, the House-Senate Committee on Administrative, Executive and Legislative Review (AELR) approved MDE's Emergency Stormwater Regulations. The Emergency Regulations are materially similar to the consensus agreement that had become HB 1125. After discussions with DPW and the Mayor's Office; it is the Planning Department's understanding

that the City's interests were represented during discussions on HB 1125 and the 'emergency regulations'. The 'emergency regulations' were adopted by Administrative, Executive and Legislative Review Committee and HB 1125 was withdrawn. The 'emergency regulations' became effective on April 7, 2010, and will last for six months, during which time MDE must propose final regulation changes and provide for public input.

DPW is pursuing amendments included in the 'emergency regulations'. Those amendments include *Administrative Quantitative* and *Qualitative* Waivers. The Administrative Waivers allow for the 'grandfathering' of projects that meet certain criteria. A quantitative and qualitative waiver may be granted for phased projects with already constructed stormwater management facilities that were designed to meet the 2000 standards. If the 2009 regulatory requirements (2007 SWM Act requires changes to the stormwater management regulations go into effect, requiring local jurisdictions to make changes to local laws by May 2010) cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in future phases must be demonstrated. In addition, quantitative and qualitative waivers may be granted to infill developments that are located in priority funding areas that meet certain minimum criteria. These waivers must be reviewed by MDE 30 days after issuance.

Many Planned Unit Developments (PUDs) are phased developments. PUDs go through an extensive and comprehensive review process in the City that requires a considerable investment of time and resources by the development community. This issue is address in §23-5 Phased Development Projects. DPW may grant a quantitative and qualitative control waiver for phased development projects if the stormwater system has been constructed and the development has demonstrated that the regulatory requirements for stormwater adopted by MDE in 2009 cannot be met for:

1. Future phases of a phased development project that are constructed after May 4, 2010; and
2. The applicant demonstrates that all reasonable efforts were made to incorporate environmental site design into these phases of the development.

After discussions with the Mayor's Office, it is staff's understanding that with the inclusion of the 'emergency regulation', waiver flexibility for PUDs are reasonably provided for in CCB #10-0434. However, to ensure that there are no unintended consequences regarding PUDs, Planning will continue to work with DPW to evaluate and assess the impacts to the City's approved PUDs over the coming weeks. This analysis will answer the question regarding the impact the new regulations will have on existing PUDs. If negative impacts are discovered, Staff will work with DPW and the Administration to proposed appropriate changes to City and State legislation.

In addition to CCB #10-0434, DPW will still have to follow up on the follow two additional matters:

1. The writing of the 2010 Baltimore City Stormwater Design Guidelines. Planning will work with DPW on these guidelines. Staff will also work with DPW to appropriately incorporate PUDs into the Baltimore City Stormwater Design Guidelines and waiver provisions.

2. Coordinating DPW's involvement on the Site Plan Review Committee.

CCB #10-0434 has been written to meet the requirements of the Stormwater Management Act of 2007 while addressing Baltimore's urban environment challenges. This effort is also in line with the City Master Plan and Sustainability Plan along with other initiatives that are cleaning our waters. The details are an ongoing effort but CCB #10-0434 does provide the legal framework for the City to move forward while meeting the requirements of the SWM 2007 Act. Planning staff supports DPW's proposed amendments incorporating the grandfathering and waiver provisions, so the City may maintain a competitive position with other jurisdictions in encouraging redevelopment and development and increasing the City tax base.

Staff recommends approval of the bill, with the recommended amendments for grandfathering and redevelopment discussed above.

In advance of today's hearing on this matter, staff mailed 90 letters to a diverse set of stakeholders, including community associations, environmental organizations and members of the development community.



Thomas J. Stosur
Director



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

April 1, 2010

This report is an addendum to the February 18, and March 18, 2010, Staff Reports

REQUEST: City Council Bill #10-0434/Stormwater Management

For the purpose of modifying the provisions governing stormwater management to comply with new requirements of State law; requiring the development, review, and approval of phased plans for stormwater management; establishing certain minimum control requirements to manage stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of stormwater.

RECOMMENDATION: Amend and Approve:

§21-1(cc) APPROVAL.

- (1) MEANS A DOCUMENTED ACTION BY AN APPROVING BODY THAT FOLLOWS A REVIEW AND DETERMINATION BY AN APPROVING BODY THAT THE MATERIAL SUBMITTED BY A DEVELOPER IS SUFFICIENT TO MEET THE REQUIREMENTS OF A SPECIFIED STAGE IN A LOCAL DEVELOPMENT REVIEW PROCESS.
- (2) DOES NOT INCLUDE AN ACKNOWLEDGEMENT BY AN APPROVING BODY THAT MATERIAL SUBMITTED BY A DEVELOPER HAS BEEN RECEIVED FOR REVIEW.

§21-1(dd) APPROVING BODY.

MEANS A COUNTY, MUNICIPALITY, OR OTHER UNIT OF GOVERNMENT THAT EXERCISES FINAL PROJECT APPROVAL OR PRELIMINARY PROJECT APPROVAL AUTHORITY.

§21-1(ee) FINAL PROJECT APPROVAL.

- (1) FINAL APPROVAL BY AN APPROVING BODY OF A STORMWATER MANAGEMENT PLAN AND EROSION AND SEDIMENT CONTROL PLAN REQUIRED TO CONSTRUCT A DEVELOPMENT PROJECT'S STORMWATER MANAGEMENT FACILITIES; AND
- (2) BONDING OR OTHER FINANCING HAS BEEN SECURED BASED ON FINAL PLAN FOR THE DEVELOPMENT PROJECT IF REQUIRED AS A CONDITION OF APPROVAL.

§21-1(ff) PRELIMINARY PROJECT APPROVAL.

- (1) MEANS APPROVAL AS PART OF THE DEPARTMENT'S LOCAL PRELIMINARY DEVELOPMENT OR PLANNING REVIEW PROCESS THAT INCLUDES, AT A MINIMUM:
 - a. THE PROPOSED:
 - i. NUMBER OF DWELLING UNITS OR LOTS;
 - ii. PROJECT DENSITY; AND
 - iii. SIZE AND LOCATION OF ALL PLANNED USES OF THE DEVELOPMENT PROJECT;
 - b. PLANS THAT IDENTIFY:
 - i. PROPOSED SITE DRAINAGE PATTERNS;
 - ii. THE LOCATION OF ALL POINTS OF DISCHARGE FROM THE SITE
 - iii. THE TYPE LOCATION AND SIZE OF ALL STORMWATER MANAGEMENT MEASURES BASED ON SITE-SPECIFIC STORMWATER MANAGEMENT REQUIREMENT COMPUTATIONS; AND
 - c. ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO:
 - i. THE PROPOSED ALIGNMENT, LOCATION, AND CONSTRUCTION TYPE AND STANDARD FOR ALL ROADS, ACCESS WAYS, AND AREAS OF VEHICULAR TRAFFIC;
 - ii. A DEMONSTRATION THAT THE METHODS FOR DELIVERING WATER AND WASTEWATER SERVICE TO THE DEVELOPMENT PROJECT ARE ADEQUATE; OR
 - iii. THE SIZE, TYPE AND GENERAL LOCATION OF ALL PROPOSED WASTEWATER AND WATER SYSTEM INFRASTRUCTURE.
- (2) CITY PLANNED UNIT DEVELOPMENTS (PUD'S) TYPICALLY DO NOT CONTAIN THE REQUIREMENT 4.III. ABOVE, BUT HAVE UNDERGONE AN EXTENSIVE PUBLIC REVIEW AND APPROVAL PROCESS, INCLUDING MULTIPLE PUBLIC HEARINGS AND CITY COUNCIL APPROVAL. FOR ALL PUDS THAT HAVE RECEIVED APPROVAL BY CITY COUNCIL, ON OR AFTER MAY 4, 2000 AND UP TO MAY 4, 2010, CAN BE CONSIDERED UNDER THE 2000 REGULATORY REQUIREMENTS. FOR PROJECTS TO BE CONSIDERED UNDER THIS PROVISION THEY ARE REQUIRED TO BE ACTIVE BASED ON:
 - a. FUNDING PRIOR TO MAY 4, 2010,
 - b. BUILDING PERMITS AND PRIOR DEVELOPMENT ACTIVITY.
 - c. CHANGES IN THE PUD THAT INCREASES IMPERVIOUSNESS WILL REQUIRE THAT INCREASED IMPERVIOUS SURFACE MEET THE CURRENT REGULATIONS.
- (3) FINAL APPROVAL BY AN APPROVING BODY OF A STORMWATER MANAGEMENT PLAN AND EROSION AND SEDIMENT CONTROL PLAN REQUIRED TO CONSTRUCT A DEVELOPMENT PROJECT'S STORMWATER MANAGEMENT FACILITIES; AND
- (4) BONDING OR OTHER FINANCING HAS BEEN SECURED BASED ON FINAL PLAN FOR THE DEVELOPMENT PROJECT IF REQUIRED AS A CONDITION OF APPROVAL.

Subtitle 23. Waivers
§23-7 Redevelopment.

(D) Applicable requirements – Alternatives

(2) WHEN DETERMINING WHICH ALTERNATIVE MEASURES TO AUTHORIZE UNDER THIS SUBSECTION, THE DEPARTMENT:

(I) SHALL, AFTER IT HAS BEEN DETERMINED THAT ENVIRONMENTAL SITE DESIGN HAS BEEN IMPLEMENTED TO THE MAXIMUM EXTENT PRACTICABLE, CONSIDER THE ORDER OF PRIORITY OF THE ALTERNATIVE MEASURES IN PARAGRAPH (3) OF THIS SUBSECTION; AND

(II) MAY CONSIDER WHETHER:

1. THE REDEVELOPMENT PROJECT IS LOCATED IN AN AREA DESIGNATED AS:
 - A. A PRIORITY FUNDING AREA UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE;
 - B. A TRANSIT ORIENTED DEVELOPMENT AREA UNDER TITLE 7, SUBTITLE 1 OF THE TRANSPORTATION ARTICLE; OR
 - C. A BASE REALIGNMENT AND CLOSURE REVITALIZATION AND INCENTIVE ZONE UNDER TITLE 5, SUBTITLE 13 OF THE ECONOMIC DEVELOPMENT ARTICLE;
2. THE REDEVELOPMENT PROJECT IS NECESSARY TO ACCOMMODATE GROWTH CONSISTENT WITH THE COMPREHENSIVE PLAN FOR THE AREA WHERE THE DEVELOPMENT PROJECT WILL BE LOCATED; OR
3. BONDING AND FINANCING HAVE BEEN SECURED BASED ON AN APPROVAL OF A REDEVELOPMENT PLAN BY THE DEPARTMENT.

~~(2)(3)~~(X) A PARTIAL WAIVER OF THE TREATMENT REQUIREMENTS IF ENVIRONMENTAL SITE DESIGN IS NOT PRACTICABLE.

(E) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, A QUANTITATIVE CONTROL WAIVER MAY BE GRANTED TO A DEVELOPMENT PROJECT THAT IS LOCATED IN AN AREA WHERE A WATERSHED MANAGEMENT PLAN HAS NOT BEEN DEVELOPED IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT IF:

- (1) THE DEVELOPMENT PROJECT DISCHARGES DIRECTLY INTO TIDALLY INFLUENCED RECEIVING WATERS; OR
- (2) THE DEVELOPMENT PROJECT IS AN INFILL DEVELOPMENT LOCATED IN AN AREA DESIGNATED AS A PRIORITY FUNDING AREA UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE WHERE:
 - (I) THE ECONOMIC FEASIBILITY OF THE PROJECT IS TIED TO THE PLANNED DENSITY OF THE DEVELOPMENT PROJECT;
 - (II) IMPLEMENTATION OF THE STORMWATER MANAGEMENT REGULATORY REQUIREMENTS ADOPTED BY THE DEPARTMENT IN

2009 WOULD RESULT IN A LOSS OF PLANNED DEVELOPMENT DENSITY; AND

(III) THE FOLLOWING CONDITIONS ARE MET:

1. PUBLIC WATER, SEWER, AND STORMWATER CONVEYANCE EXISTS;
2. THE QUANTITATIVE WAIVER IS APPLIED ONLY TO THE EXISTING IMPERVIOUS COVER ON THE SITE OF THE DEVELOPMENT PROJECT;
3. ENVIRONMENTAL SITE DESIGN IS USED TO THE MAXIMUM EXTENT PRACTICABLE TO MEET THE FULL WATER QUALITY TREATMENT REQUIREMENTS OF THE ENTIRE DEVELOPMENT PROJECT; AND
4. ENVIRONMENTAL SITE DESIGN IS USED TO THE MAXIMUM EXTENT PRACTICABLE TO PROVIDE FOR FULL QUANTITY CONTROL FOR ALL NEW IMPERVIOUS SURFACES.

(F) (1) A QUANTITATIVE AND QUALITATIVE CONTROL WAIVER MAY BE GRANTED FOR PHASED DEVELOPMENT PROJECTS IF, BY MAY 4, 2010, A STORMWATER SYSTEM HAS BEEN CONSTRUCTED THAT IS DESIGNED TO MEET:

- (I) THE REGULATORY REQUIREMENTS FOR STORMWATER ADOPTED BY THE DEPARTMENT IN 2000; AND
 - (II) THE LOCAL ORDINANCE REQUIREMENTS IN EFFECT FOR PHASED DEVELOPMENT AT THE TIME THE STORMWATER SYSTEM WAS CONSTRUCTED.
- (2) (I) THIS PARAGRAPH APPLIES TO A PHASED DEVELOPMENT PROJECT THAT HAS RECEIVED A WAIVER UNDER PARAGRAPH (1) OF THIS SUBSECTION.
- (II) IF THE REGULATORY REQUIREMENTS FOR STORMWATER ADOPTED BY THE DEPARTMENT IN 2009 CANNOT BE MET FOR FUTURE PHASES OF A PHASED DEVELOPMENT PROJECT THAT ARE CONSTRUCTED AFTER MAY 4, 2010, THE DEVELOPER SHALL DEMONSTRATE TO AN APPROVING BODY THAT ALL REASONABLE EFFORTS WERE MADE TO INCORPORATE ENVIRONMENTAL SITE DESIGN INTO THESE PHASES OF DEVELOPMENT.

(G) AN APPROVING BODY MAY GRANT AN ADMINISTRATIVE WAIVER TO A DEVELOPMENT PROJECT THAT RECEIVED PRELIMINARY PROJECT APPROVAL FROM THE APPROVING BODY ON OR BEFORE MAY 4, 2010.

- (1) EXCEPT AS PROVIDED BY SUBSECTION (C) OF THIS SECTION, AN ADMINISTRATIVE WAIVER GRANTED UNDER SUBSECTION (A) OF THIS SECTION SHALL EXPIRE ON:
- (I) MAY 4, 2013, IF THE DEVELOPMENT PROJECT DOES NOT RECEIVE FINAL PROJECT APPROVAL ON OR BEFORE THAT DATE; OR
 - (II) MAY 4, 2017, IF THE DEVELOPMENT PROJECT RECEIVES FINAL PROJECT APPROVAL ON OR BEFORE MAY 4, 2013.

- (H) (1) AN APPROVING BODY MAY GRANT AN EXTENSION TO AN ADMINISTRATIVE WAIVER IF, BY MAY 4, 2010, A DEVELOPMENT PROJECT:
- (I) HAS RECEIVED PRELIMINARY PROJECT APPROVAL; AND
 - (II) WAS SUBJECT TO:
 - 1. A DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT;
 - 2. A TAX INCREMENT FINANCING APPROVAL; OR
 - 3. AN ANNEXATION AGREEMENT.
 - (2) AN ADMINISTRATIVE WAIVER THAT IS EXTENDED UNDER THIS SUBSECTION EXPIRES WHEN AN AGREEMENT OR APPROVAL UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION TERMINATES.
- (I) CONSTRUCTION AUTHORIZED BY AN ADMINISTRATIVE WAIVER GRANTED UNDER THIS SECTION SHALL BE COMPLETED:
- (1) ON OR BEFORE MAY 4, 2017; OR
 - (2) BY THE EXPIRATION DATE OF THE EXTENSION TO AN ADMINISTRATIVE WAIVER GRANTED UNDER SUBSECTION (C) OF THIS SECTION.

STAFF: Kenneth Hranicky

PETITIONER: Administration (Department of Public Works)

SITE/GENERAL AREA: Citywide

HISTORY

- Ordinance 78-869 - Establishing a mechanism to enforce provisions of a Baltimore City Erosion and Sediment Control Manual, and to impose fines for violations of requirements of the Manual, under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 84-84 - Establishing a Baltimore City Stormwater Management Program under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 87-1130 – Amendment to the Stormwater Management Program to incorporate the Chesapeake Bay Critical Area regulations; placed Stormwater Management under the jurisdiction of the Department of Transportation.
- 2000 Code Revision - Placed the Stormwater Management Program in a new Article 7 – Natural Resources (Subtitles 21 through 26), under the jurisdiction of the Department of Public Works.
- Ordinance 02-367 – A major overhaul of Stormwater Management for the purpose of revising the laws governing stormwater management; requiring the development, review, and approval of stormwater management plans; establishing certain minimum control requirements; requiring certain structural and nonstructural practices; requiring certain reports and inspections; requiring easements for certain purposes; providing for certain exemptions, waivers, and variances; requiring certain permits; imposing certain fees; establishing certain maintenance requirements; defining certain terms;

establishing certain penalties; and generally relating to the protection, maintenance, and enhancement of the management of stormwater.

CONFORMITY TO PLANS

The proposed legislation is found to be consistent with the following element of the Baltimore City Comprehensive Master Plan: LIVE Goal 2: Elevate the Design and Quality of the City's Built Environment. PLAY Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality. Furthermore, this legislation is consistent with the adopted City Sustainability Plan: Pollution Prevention Goal #3: Ensure that Baltimore water bodies are fishable and swimmable.

ANALYSIS

This report is an addendum to the February 18th, and March 18, 2010, staff reports. This item was continued at the Planning Commission February 18th, and March 18, 2010, hearing. This report gives further background behind CCB #10-0434, and explains staff's recommendations. Understanding that background behind this legislation will give the reader an appreciation of the depth of the effort behind cleaning the waters of the Bay and how this CCB and other efforts are playing a role in the Bay cleanup.

The March 18th staff report covered a timeline of State and local activity since the passing of the Stormwater Management Act of 2007. That Act owes its heritage to the Clean Water Act (CWA). CWA accounted for point-source pollution (e.g. industrial plant effluent, wastewater treatment plants...) but did not address non-point sources. The Water Quality Act of 1987 (1987 WQA) responded to the stormwater problem by requiring that industrial stormwater dischargers and municipal separate storm sewer systems (often called "MS4") obtain National Pollutant Discharge Elimination System (NPDES) permits, by specific deadlines. The MS4 permit is the regulatory means of setting local goals/targets of meeting the requirements of the Total Maximum Daily Load (TMDL). More specifically, MS4 has specific targets for a range of issues. Attached you will find a copy of the Montgomery County MS4 permit. On February 16, 2010, MDE issued the third round of the Montgomery County's Municipal Separate Storm Sewer System (MS4) permit. This 5-year permit complies with the Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) regulations that require large urban jurisdictions to control pollution from stormwater runoff to the maximum extent practicable. The Montgomery County MS4 permit shows the regulatory trail that extends from the MS4 permit to the Clean Water Act. Along that regulatory path is the TMDL. Though the final TMDL for the Chesapeake Bay is due in December of this year, it has been tentatively agreed that the Bay is going to have a TMDL that is 200 million pounds of nitrogen and 15 million pounds of phosphorous. A copy of this letter from the EPA is included in your materials.

Essentially Baltimore City is a partner in doing it's very best to clean up the Bay – meet the TMDL – meet the targets of the MS4 permit. In essence, meeting the targets of the MS4 permit will impact how we develop the landscape, in terms of control – local control. In other words, we are working cooperatively with our neighboring jurisdictions to reach the Bay TMDL. The more control we maintain over our waterways, the more favorable we can make the

development environment. Meeting the targets of the MS4 permit is something we need to maintain that local control. Current MS4 permit was issued January 2005; requires 20% impervious area treatment; treatment of impervious area due mostly to large stormwater BMPs and stream restoration projects; nutrient removal estimated as of 2009 is 3% by BMPs and 4% by street sweeping

Anticipating issuance of new draft MS4 permit (current one is expired); an additional 20% of impervious area to be treated or reduced, for a total of 40%; stormwater discharge to be treated as point source pollution similar to a treatment plant discharge; TMDL anticipated for 35% nutrient removal, trash and floatable debris TMDL for 100% reduction (allocation shared with Baltimore County). What follows is some of the previous and ongoing efforts by the City to meet the goals of the MS4 permit

City restored:

- City restored 3,453 acres of impervious area at a cost of \$30 million; 5,895 acres of restoration for 2010 required
- City restored 2 miles of stream restoration; approximately 28 miles in need of additional restoration
- 2,422 acres of trash removed; 58,831 acres required for removal – reduce trash by 100%
- targeted pollutant reductions were 3% by BMPs, 4% by street sweeping; will need to reduce nutrients by 35%, bacteria by 98%, sediment by 25-35%
- 7,437 inlets repaired since 2001; have 33,000 inlets and 1,500 miles of storm drains

Another example of the financial impact of meeting the Bay TMDL is the City meeting the requirement of the 2002 Consent Decree. On April 24, 2002 the City of Baltimore entered into a Consent Decree with the Maryland Department of the Environment (MDE), the US Environmental Protection Agency (USEPA) and the US Justice Department for the expressed purpose of enabling the City of Baltimore to comply with the Clean Water Act and the Environmental Article of the Annotated Code of Maryland. The Consent Decree provides a specific time table for inspection and repair of every sanitary (sewage) line 8” and larger within Baltimore City. The timetable lays out a 14 year schedule with individual project deadlines that equate to an estimated \$900 million-\$1.4 billion dollar cost. The City of Baltimore, through the Department of Public Works, Bureau of Water and Wastewater, provides drinking water to over 1.8 million people and provides the majority of sewerage treatment for these same customers. Most of the design and construction costs are being covered by the sale of Municipal bonds and increases in water and the newest water/sewer rates for both residential customers and businesses.

As stated before, the whole effort behind this SWM Act 2007 is one task that will help to meet the Bay TMDL (Point source and non-point source make up the TMDL). The City has a tremendous amount invested in this effort and a continuing liability that it is only fair that development is built in a way that does not add to the financial burden of the City. To ensure that this does not happen means having development account for its pollutant impact.

Beyond the obvious environmental benefit of cleaner waters, we have the sword of Damocles above us in the form of Federal involvement in our local development permit process. It is fair to say that we have knowledgeable people at a local and state level that know better what needs to be done. Maintaining and monitoring our collective systems to better understand what methods are most effective and what gives us more return for the dollar. That is one of the reasons DPW pursued the alternatives in this bill. These alternatives are our way of saying that these are very efficient to controlling our pollutant runoff. We want to work with developers to implement these ways and those of ESD and MEP to reduce nutrients and sediments.

The updating of Baltimore's stormwater management regulations, required State Stormwater Management Act of 2007, is necessary for Baltimore to retain its authority over managing stormwater runoff. In recent weeks there has been a flurry of debate surrounding the impacts of the State's new stormwater legislation, set to take effect May 4, 2010. Participants have included the State legislature, Maryland Department of the Environment (MDE), local jurisdictions, the Maryland Association of Counties and the Maryland Municipal League, and stakeholders in the development and environmental advocacy communities. The State legislation requires that MDE approve City's stormwater management code. There has been an ongoing of dialogue between the City's Department of Public Works (DPW) and MDE that is still currently underway.

In March, in an effort to modify regulations that addressed grandfathering and waivers, MDE produced 'emergency regulations' that were eventually captured in HB 1125 as amended and approved by the house and is now in the Senate. It is anticipated that the Senate will concur with the House Bill as it is reflective of agreements of various stakeholders reached during hearings on the House Bill. That should occur by April 12th - Sine Die (i.e. end of legislative session).

Staff amendments will capture the 'emergency regulations' allowances while also expressing a desire that DPW argue for a unique condition of Baltimore City while in negotiations with MDE. The amendment will allow the City to issue a waiver of the new, more stringent stormwater regulations for projects that had completed part of the development review process but had not received 'Final Approval' by May 4, 2010. Those projects must have received "Preliminary Project Approval". HB 1125 defines "Preliminary Project Approval" as a plan approval or completed review by a local jurisdiction that includes:

- 1) the number of planned dwelling units or lots and proposed density;
- 2) the proposed size and location of all land uses in the project; and
- 3) a plan that identifies the proposed drainage patterns, locations of all points of discharge from the site, and the type, location and size of all stormwater management controls based upon site-specific computations of stormwater management requirements.

Per the proposed MDE Emergency Regulations, these projects could qualify as "grandfathered" under the existing stormwater management regulations with an Administrative Waiver, and could be allowed to be built out utilizing today's less stringent stormwater

standards. Regulations will also require that Administrative Waivers expire if the project does not obtain Final Approval by May 4, 2013 or begin construction before May 4, 2017. Final Project Approval means that the developer has an approved final erosion and sediment control plan, and an approved final stormwater management plan, and, if applicable, bonding and/or financing has been secured based on the final plans for the development. To allow this “grandfathering” to occur, Baltimore’s stormwater management code must include provisions outlined in the ‘emergency regulations’. Staff’s recommended amendments incorporate terminology that is consistent with the ‘emergency regulations’ as outlined in MDE’s March 2010, “Guidance for Implementation of Local Stormwater Management Programs”. Planning staff strongly believe that the City’s ordinance should incorporate the grandfathering provision, so the City may maintain a competitive position with other jurisdictions in encouraging redevelopment and development and increasing the City tax base.

To maintain maximum flexibility to encourage development, staff’s amendments embrace the grandfathering provisions outline by the MDE guidance document and add one twist. The difference between Baltimore’s PUD requirements and SWM Act 2007 “Preliminary Project Approval” is that the City does not require as part of its PUD requirements “a plan that identifies the proposed drainage patterns, locations of all points of discharge from the site, and the type, location and size of all stormwater management controls based upon site-specific computations of stormwater management requirements”. Significant time, expense, and effort went into the creation of these PUDs. Financial considerations and planning were for these development projects to be built out over time. It is inconsistent with the spirit of the SWM Act 2007 to exclude the City’s PUDs in terms of ‘grandfathering’. To account for this shortcoming Staff recommends:

- (2) CITY PLANNED UNIT DEVELOPMENTS (PUD’S) TYPICALLY DO NOT CONTAIN THE REQUIREMENT 4.III. ABOVE, BUT HAVE UNDERGONE AN EXTENSIVE PUBLIC REVIEW AND APPROVAL PROCESS, INCLUDING MULTIPLE PUBLIC HEARINGS AND CITY COUNCIL APPROVAL. FOR ALL PUDS THAT HAVE RECEIVED APPROVAL BY CITY COUNCIL, ON OR AFTER MAY 4, 2000 AND UP TO MAY 4, 2010, CAN BE CONSIDERED UNDER THE 2000 REGULATORY REQUIREMENTS. FOR PROJECTS TO BE CONSIDERED UNDER THIS PROVISION THEY ARE REQUIRED TO BE ACTIVE BASED ON:
- a. FUNDING PRIOR TO MAY 4, 2010,
 - b. BUILDING PERMITS AND PRIOR DEVELOPMENT ACTIVITY.
 - c. CHANGES IN THE PUD THAT INCREASES IMPERVIOUSNESS WILL REQUIRE THAT INCREASED IMPERVIOUS SURFACE MEET THE CURRENT REGULATIONS.

Staff realizes that economics change the mix and use but should not come at the sacrifice our efforts.

Staff amendments also include other waiver provisions (quantitative) found in the ‘emergency regulations’ to cover phased projects that have already constructed stormwater management

facilities and infill development projects that are located in the Priority Funding Areas (in which all of Baltimore is located) with existing stormwater conveyance and public water and sewer, and where the economic feasibility of the project is tied to the planned density.

On the issue of Redevelopment, also addressed in the MDE guidance, the City ordinance again needs to incorporate the maximum flexibility allowed by the State. The focus here is quality treatment for one-inch rainfall for at least 50% of the existing impervious area. This standard is significantly less stringent than the requirements for new development, which require the use of *environmental site design to the maximum extent practicable*. Regarding redevelopment, the regulations list alternative stormwater management measures that may be considered if addressing 50% of the redevelopment site's impervious area cannot be readily accomplished. These measures include a combination of environmental site design and on-site or off-site structural Best Management Practices, participation in a stream restoration project, pollution trading with another entity, Watershed Management Plans, and Payment of a fee-in-lieu. Because of Baltimore's highly urbanized built environment, providing City redevelopment projects these alternative stormwater management approaches are critical, since in many instances on-site treatment options may be impractical as well as cost prohibitive.

The MDE guidance that would need to be incorporated in our code to enable Baltimore to decide what alternatives may be approved for a redevelopment project includes the following 3 considerations:

1. whether the project is in an area targeted for development incentives, such as a PFA, a designated Transit Oriented Development area, or a designated BRAC Revitalization and Incentive Zone;
2. whether the project is necessary to accommodate growth consistent with comprehensive plans; and
3. whether bonding and/or financing has already been secured based on an approved development plan.

Even though Annapolis has not signed into law the 'emergency regulations', Planning staff believes it is critical to include language in the City ordinance now to provide for grandfathering and redevelopment provisions to allow the City to maintain maximum flexibility to allow development to access the full range of stormwater approaches and tools that could be allowed by State law. Although there may not be 'consequences' if the City were not to adopt this ordinance by May 4th, it is Planning's understanding that DPW believes that it is in the City's interest to treat that deadline as a requirement.

Beyond CCB #10-0434, there are still other outstanding SWM issues that will need to be addressed. The 2010 Baltimore City Stormwater Design Guidelines still need to be written. Also, due to the necessity for coordinated site planning it is imperative that the DPW's review process of SWM include participation in the Site Plan Review Committee's meetings. Environmental site design measures also need to be reviewed for 'green building' credits.

CCB #10-0434 has been written to meet the requirements of the Stormwater Management Act of 2007 while addressing Baltimore's urban environment challenges. This effort is also in line

with the City Master Plan and Sustainability Plan along with other initiatives that are cleaning our waters. The details are an ongoing effort but CCB #10-0434 does provide the legal framework for the City to move forward while meeting the requirements of the SWM 2007 Act. Staff recommends approval of the bill, with the recommended amendments for grandfathering and redevelopment discussed above.

In advance of today's hearing on this matter, staff mailed 90 letters to a diverse set of stakeholders, including community associations, environmental organizations and members of the development community.

A handwritten signature in blue ink that reads "Gary W. Loh/for T. Stosur". The signature is written in a cursive, flowing style.

Thomas J. Stosur
Director



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

March 18, 2010

This report is an addendum to the February 18, 2010, Staff Report

REQUEST: City Council Bill #10-0434/Stormwater Management

For the purpose of modifying the provisions governing stormwater management to comply with new requirements of State law; requiring the development, review, and approval of phased plans for stormwater management; establishing certain minimum control requirements to manage stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of stormwater.

RECOMMENDATION: Amend and Approve: That CCB #10-0434 incorporate the grandfathering and redevelopment principles found in the MDE Stormwater Management Regulations "Guidance for Implementation of Local Stormwater Management Programs" dated March 2010. These amendments should be provided by DPW and Planning as part of the City Council review and approval process of this legislation.

STAFF: Kenneth Hranicky

PETITIONER: Administration (Department of Public Works)

SITE/GENERAL AREA: Citywide

HISTORY

- Ordinance 78-869 - Establishing a mechanism to enforce provisions of a Baltimore City Erosion and Sediment Control Manual, and to impose fines for violations of requirements of the Manual, under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 84-84 - Establishing a Baltimore City Stormwater Management Program under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 87-1130 – Amendment to the Stormwater Management Program to incorporate the Chesapeake Bay Critical Area regulations; placed Stormwater Management under the jurisdiction of the Department of Transportation.

- 2000 Code Revision - Placed the Stormwater Management Program in a new Article 7 – Natural Resources (Subtitles 21 through 26), under the jurisdiction of the Department of Public Works.
- Ordinance 02-367 – A major overhaul of Stormwater Management for the purpose of revising the laws governing stormwater management; requiring the development, review, and approval of stormwater management plans; establishing certain minimum control requirements; requiring certain structural and nonstructural practices; requiring certain reports and inspections; requiring easements for certain purposes; providing for certain exemptions, waivers, and variances; requiring certain permits; imposing certain fees; establishing certain maintenance requirements; defining certain terms; establishing certain penalties; and generally relating to the protection, maintenance, and enhancement of the management of stormwater.

CONFORMITY TO PLANS

The proposed legislation is found to be consistent with the following element of the Baltimore City Comprehensive Master Plan: LIVE Goal 2: Elevate the Design and Quality of the City's Built Environment. PLAY Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality. Furthermore, this legislation is consistent with the adopted City Sustainability Plan: Pollution Prevention Goal #3: Ensure that Baltimore water bodies are fishable and swimmable.

ANALYSIS

This report is an addendum to the February 18th, 2010, staff report. This item was continued at the Planning Commission February 18th, 2010, hearing. This report identifies actions that have transpired since then and amends staff's recommendations.

The updating of Baltimore's stormwater management regulations, required State Stormwater Management Act of 2007, is necessary for Baltimore to retain its authority over managing stormwater runoff. In recent weeks there has been a flurry of debate surrounding the impacts of the State's new stormwater legislation, set to take effect May 4, 2010. Participants have included the State legislature, Maryland Department of the Environment (MDE), local jurisdictions, the Maryland Association of Counties and the Maryland Municipal League, and stakeholders in the development and environmental advocacy communities. The State legislation requires that MDE approve City's stormwater management code. There has been an ongoing dialogue between the City's Department of Public Works (DPW) and MDE that is still currently underway. A brief timeline for what has occurred, starting with passage of the State legislation in 2007.

- April, 2007
 - Stormwater Management Act of 2007 signed into law
- July, 2007
 - MDE holds public outreach meeting considering implementation strategies and stakeholder input

- December 2007
 - MDE distributes, for public comment, revised Chapter 5 of the “2000 Maryland Stormwater Design Manual”
- January and May 2008
 - MDE holds focus group meetings and conducts further research.
- July 2008
 - MDE releases proposed modifications to COMAR and publishes timeline for moving forward
- April, 2009
 - MDE releases “Response to Comments on Proposed Regulations and Supplement 1, 2000 Maryland Stormwater Design Manual”
- May, 2009
 - New State Regulations implementing the Stormwater Management Act of 2007 become effective
- November, 2009
 - DPW sends a draft of the proposed City ordinance to MDE for review
- January, 2010
 - MDE responds to City’s DRAFT
 - CCB 10-0434 / Stormwater Management legislation is introduced at City Council
- February, 2010
 - City resubmits draft ordinance to MDE for comments
 - MDE releases DRAFT comments for “Guidance for Implementation of Local Stormwater Management Programs” for stakeholder input
- March, 2010
 - MDE releases “Guidance for Implementation of Local Stormwater Management Programs” (i.e. Emergency Regulations) that are currently under review for approval by Administrative, Executive, and Legislative Review Committee (AELR). Emergency regulations become effective upon approval by AELR.

As of March 15th, the City had not yet received MDE comments on our last version of the draft Ordinance submitted.

The ‘emergency regulations’ will allow the City to issue a waiver of the new, more stringent stormwater regulations for projects that had completed part of the development review process but had not received ‘Final Approval’ by May 4, 2010. Those projects must have received “Preliminary Project Approval”. Preliminary Project Approval means a plan approval or completed review by a local jurisdiction that includes:

- 1) the number of planned dwelling units or lots and proposed density;
- 2) the proposed size and location of all land uses in the project; and
- 3) a plan that identifies the proposed drainage patterns, locations of all points of discharge from the site, and the type, location and size of all stormwater management controls based upon site-specific computations of stormwater management requirements.

Per the proposed MDE Emergency Regulations, these projects could qualify as “grandfathered” under the existing stormwater management regulations with an Administrative Waiver, and could be allowed to build out utilizing today’s less stringent stormwater standards. Regulations will also require that Administrative Waivers expire if the project does not obtain Final Approval by May 4, 2013 or begin construction before May 4, 2017. Final Project Approval means that the developer has an approved final erosion and sediment control plan, and an approved final stormwater management plan, and, if applicable, bonding and/or financing has been secured based on the final plans for the development. To allow this “grandfathering” to occur, Baltimore’s code must include provisions outlined in the ‘emergency regulations’ be incorporated into our ordinance. To do so means incorporating terminology that is consistent with the ‘emergency regulations’ as outlined in MDE’s March 2010, “Guidance for Implementation of Local Stormwater Management Programs”. Planning staff strongly believe that the City’s ordinance should incorporate the grandfathering provision, so the City may maintain a competitive position with other jurisdictions in encouraging redevelopment and development and increasing the City tax base.

The Emergency Regulations also lists other waiver provisions (quantitative) to cover phased projects that have already constructed stormwater management facilities and infill development projects that are located in the Priority Funding Areas (in which all of Baltimore is located) with existing stormwater conveyance and public water and sewer, and where the economic feasibility of the project is tied to the planned density. To maintain maximum flexibility to encourage development, Baltimore City’s ordinance should fully embrace the waiver provisions outline by the MDE guidance document dated March, 2010.

On the issue of Redevelopment, also addressed in the MDE guidance, the City ordinance again needs to incorporate the maximum flexibility allowed by the State. The focus here is quality treatment for one-inch rainfall for at least 50% of the existing impervious area. This standard is significantly less stringent than the requirements for new development, which require the use of *environmental site design to the maximum extent practicable*. Regarding redevelopment, the regulations list alternative stormwater management measures that may be considered if addressing 50% of the redevelopment site’s impervious area cannot be readily accomplished. These measures include a combination of environmental site design and on-site or off-site structural Best Management Practices, participation in a stream restoration project, pollution trading with another entity, Watershed Management Plans, and Payment of a fee-in-lieu. Because of Baltimore’s highly urbanized built environment, providing City redevelopment projects these alternative stormwater management approaches are critical, since in many instances on-site treatment options may be impractical as well as cost prohibitive.

The MDE guidance that would need to be incorporated in our code to enable Baltimore to decide what alternatives may be approved for a redevelopment project includes the following 3 considerations:

1. whether the project is in an area targeted for development incentives, such as a PFA, a designated Transit Oriented Development area, or a designated BRAC Revitalization and Incentive Zone;

2. whether the project is necessary to accommodate growth consistent with comprehensive plans; and
3. whether bonding and/or financing has already been secured based on an approved development plan.

Even though final feedback from MDE on the existing City draft ordinance has not been received and the MDE Emergency Regulations have not been finalized officially at the State level, Planning staff believes it is critical to include language in the City ordinance now to provide for grandfathering and redevelopment provisions to allow the City to maintain maximum flexibility to allow development to access the full range of stormwater approaches and tools allowed by State law.

Beyond CCB #10-0434, there are still other outstanding SWM issues that will need to be addressed. The 2010 Baltimore City Stormwater Design Guidelines still need to be written. Also, due to the necessity for coordinated site planning it is imperative that the DPW's review process of SWM include participation in the Site Plan Review Committee's meetings. Environmental site design measures also need to be reviewed for 'green building' credits.

CCB #10-0434 has been written to meet the requirements of the Stormwater Management Act of 2007 while addressing Baltimore's urban environment challenges. This effort is also in line with the City Master Plan and Sustainability Plan. The details are an ongoing effort but CCB #10-0434 does provide the legal framework for the City to move forward while meeting the requirements of the Act. Staff urges the Planning Commission to recommend approval of the bill, with the proposed amendments for grandfathering and redevelopment discussed above. These amendments should be provided by DPW and Planning as part of the City Council review and approval process of this legislation.

In advance of today's hearing on this matter, staff mailed 353 letters to a diverse set of stakeholders, including community associations, environmental organizations and members of the development community.



Thomas J. Stosur
Director



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

February 18, 2010

REQUEST: City Council Bill #10-0434/Stormwater Management

For the purpose of modifying the provisions governing stormwater management to comply with new requirements of State law; requiring the development, review, and approval of phased plans for stormwater management; establishing certain minimum control requirements to manage stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of stormwater.

RECOMMENDATION: Approval, with the understanding that DPW is currently working to formulate technical amendments that will be presented to the City Council. These amendments will not change or alter the intent of CCB #10-0434, which the Department of Planning fully supports. Rather, the amendments will put in place a two-tier approach to stormwater management that both DPW and Planning believe to be the best fit for Baltimore City.

STAFF: Kenneth Hranicky

PETITIONER: Administration (Department of Public Works)

SITE/GENERAL AREA: Citywide

HISTORY

- Ordinance 78-869 - Establishing a mechanism to enforce provisions of a Baltimore City Erosion and Sediment Control Manual, and to impose fines for violations of requirements of the Manual, under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
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CONFORMITY TO PLANS

The proposed designation is found to be consistent with the following element of the Baltimore City Comprehensive Master Plan: LIVE Goal 2: Elevate the Design and Quality of the City's Built Environment. PLAY Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality.

ANALYSIS

The State of Maryland requires jurisdictions responsible for administering stormwater programs to update their laws from time to time to reflect the changes made in State law. Baltimore City has had this delegated responsibility since July 1, 1984 when the City's Stormwater Management Ordinance was first established. The program was last amended in 2001. City Council Bill #10-0434 would overhaul the City's requirements for stormwater management (SWM). In 2007, the state legislature passed the Stormwater Management Act. This Act charged Maryland Department of the Environment (MDE) to adopt new regulations and update Maryland's Stormwater Design Manual to implement environmental site design (ESD) to the maximum extent practicable. Prior to the Act, environmental site design was *encouraged* through a series of credits found in the State's Design Manual. The Act now *requires* environmental site design to be implemented to the maximum extent practicable through the use of better site design techniques, alternative surfaces, non structural techniques, and micro-scale practices. The new regulations will be sweeping. The old way of handling stormwater involved collecting it in one spot and piping it away. The new rules will (wherever practical) require natural buffers--earth and plants--that mimic nature and allow rain to percolate slowly into the ground and back into the Bay. The Act, through environmental site design, addresses three issues relating to SWM: groundwater recharge, water quality, and channel protection volumes. These new regulations, as required by the Act, need to be adopted by local jurisdictions by May 4, 2010. Baltimore City Department of Public Works has made a concerted effort in working with MDE and stakeholders to meet the requirements of the Act while addressing the unique challenges of Baltimore's urban landscape.

Department of Public Works, Bureau of Water and Waste Water manages Baltimore's stormwater system and reviews SWM of development proposals. The City of Baltimore's SWM ordinance can be found in Article 7, Sections 21 through 28 of the City of Baltimore

Code. CCB #10-0434 is modifying that Code, in accordance with State requirements. The major bill provisions are as follows:

- Environmental Site Design is defined in the bill and it means using small-scale SWM practices, nonstructural techniques, and better site planning that, in accordance with methods specified in the State's Design Manual, are used to mimic natural Hydrologic Runoff Characteristics and minimize the impact of land development on water resources.
- Maximum Extent Practicable is defined in the bill and it means that SWM systems are designed so that all reasonable opportunities for using environmental site design planning techniques and treatment practices are exhausted and structural best management practice (BMP) is implemented only where absolutely necessary.
- CCB #10-0434 also includes the 2010 Baltimore City Stormwater Design Guidelines that will supplement the State's Design Manual as it relates to SWM principles, methods, and practices in the City. These stormwater design guidelines will need to be reviewed and approved by MDE.
- Redevelopment is defined in the bill as any construction, alteration, or improvement performed on sites where the existing land use is commercial, industrial, institutional, or multifamily residential and existing site impervious area exceeds 40%. When the total site impervious area under existing conditions exceeds the 40% threshold, redevelopment requirements will apply. Otherwise the project will be regulated as new development. The difference between 'new' and 'redevelopment' is the allowed use of 'other' approved water quality treatment measures.
- This bill will impact new development and redevelopment. The exemptions are: 1) If the development is a single-family dwelling that does not disturb more than 2,500 square feet and the parcel has not previously been the subject of an exemption; 2) Other than for single-family dwellings, the activity does not disturb more than 5,000 square feet of land; 3) agricultural lands; and other lands regulated under specific state laws that provide for SWM.
- Environmental site design techniques and practices and structural SWM measures used to satisfy the minimum control requirements must be recorded in the land records of Baltimore; must be binding on subsequent property owners; and may not be altered without the City's prior approval.
- For Redevelopment - After environmental site design to the maximum extent practicable is pursued without success, alternatives include Watershed or stream restoration; pollution trading; design criteria based on watershed management plans; off-set fees dedicated exclusively for SWM or other practices approved by the DPW. NOTE: For any net increase in impervious area resulting from the project, SWM must be addressed according to the new development requirements of the State's Design Manual. The aforementioned alternatives are not applicable to "new" developments.

Found in CCB #10-0434 §22-3(b) (1) & (2) are the sub-sections establishing a two-tier approach to SWM for the City. It is stated that "The criteria in the State's Design Manual for environmental site design to the maximum extent practicable and the use of environmental site design planning techniques and treatment practices must be exhausted before any structural best management practice or alternative practice is implemented." §22-3(b)(2) states that "Stormwater management plans for development projects subject to this Division II must be

designed using environmental site design sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria according to the State's Design Manual. The maximum-extent-practicable standard is met when channel stability is maintained, predevelopment groundwater recharge is replicated, nonpoint source pollution is minimized, and structural stormwater management practices or alternative practices are used only if determined to be absolutely necessary."

Environmental site design to the maximum extent practicable is acknowledged in the City's legislation as the priority. The State already acknowledges that sometimes environmental site design will not attain the goals of the Act due to site limitations. A major part of the issue for determining appropriate SWM is knowing the geology of the site along with other underground infrastructure. The application of environmental site design to the maximum extent practicable for SWM measures, their selection, basic design criteria, methodologies, and construction specifications will comply with the State's Design Manual and the City's Design Guidelines. After all reasonable environmental site design options have been exhausted and the targets of groundwater recharge, water quality, and channel protection volumes have not been met then 'alternatives' can be considered. Alternatives include on-site and off-site structural best management practices (BMPs). They can also include retrofit projects, stream restoration, pollution trading, watershed management plans, or other approved practices.

Baltimore City is the most highly urbanized area affected by the State legislation and its impacts will be significant. Planning, design, and review workloads resulting from these new regulations will increase. In addition to the increased workload, the transition will require a paradigm shift in thinking. There will be a challenge of defining maximum extent practicable and achieving practical compliance coherence between newly required environmental site design and competing City land use and building codes and ordinances. In conflict with environmental site design, which would reduce impervious surface in an attempt to maximize infiltration and reduce stormwater runoff, such ordinances often require increased impervious surface area to accommodate citizens with disabilities, emergency response vehicles, and the like. Also, more stringent requirements might encourage developers to develop greenfield sites rather than redevelop in highly urbanized areas where construction activities are more complex and stormwater control may be difficult to achieve. To overcome these obstacles Baltimore's DPW has worked with MDE to create opportunities that will provide citizens with a greener, safer and more livable environment while meeting the goals of the 2007 SWM Act for a cleaner Bay. What is unique about the City's ordinance can be found in the second tier approach (i.e. after exhausting environmental site design to the maximum extent practicable). The key elements of this "second tier" approach include:

- Establishing a watershed approach to target restoration practices using offset fees when on-site stormwater controls are not feasible or sufficient. A decision matrix will followed to determine if development cannot support effective controls on site.
- Establishing a "small project" fee for developments disturbing between 2,500 and 5,000 sq. ft., to offset the cumulative effects of smaller projects that add to the impervious areas of the City.
- Developing a more progressive offset fee structure to be based on an average cost for stormwater management practices.

- Conducting a hydrology study to identify areas where stormwater management is needed or can be waived for flood control purposes.

There are still outstanding SWM issues that will need to be addressed. The 2010 Baltimore City Stormwater Design Guidelines still need to be written. Also, due to the necessity for coordinated site planning it is imperative that the DPW's review process of SWM include participation in the Site Plan Review Committee's meetings. Environmental site design measures also need to be reviewed for 'green building' credits.

CCB #10-0434 has been written to meet the requirements of the Stormwater Management Act of 2007 while addressing Baltimore's urban environment challenges. This effort is also in line with the City Master Plan and Sustainability Plan. The details are an ongoing effort but CCB #10-0434 does provide the legal framework for the City to move forward while meeting the requirements of the Act.

In advance of a hearing on this matter, staff mailed 269 letters to a diverse set of stakeholders, including community associations, environmental organizations and members of the development community.

A handwritten signature in black ink that reads "Thomas J. Stosur". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas J. Stosur
Director