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Real Estate & Land Use

Virginia Alert

Stormwater Focus Moves from State to Federal Regulations

Under two identical bills that have almost completed their trek through the General Assembly (HB 1220 and SB 395), the proposed state stormwater regulations that caused so much concern to the development community and local governments in late 2009 will not go into effect until 2011, and they may be modified before that time. However, the EPA plans to issue by December 2010 new regulations that will significantly impact the treatment of stormwater and other sources of nutrients in the Chesapeake Bay.

The EPA's new Chesapeake Bay Total Maximum Daily Load ("TMDL") is expected to limit phosphorus, nitrogen, and sediment levels, not only in the Bay itself, but also in all the tributaries that lead to the Bay — essentially the entire northern half of Virginia. Although the preliminary load limit for phosphorus, which was released last October, was more favorable than Virginia's Department of Conservation & Recreation had been using as it developed its proposed state stormwater regulations, the development community should be very cautious in taking too much comfort. First of all, the TMDL will be regulating nitrogen and sediment in addition to phosphorus. Moreover, the various models on which the preliminary limits were based are currently being updated, and revised target loads will be issued by EPA on April 30. Virginia and the other Bay states will then have until June 1 to develop Watershed Implementation Plans that will allocate each state's maximum permitted load among various point and non-point sources and among various smaller areas with-

in each of their major watersheds. Eventually, those allocations will be further subdivided down to individual localities. Once the states have submitted their preliminary Watershed Implementation Plans, the EPA will issue a draft TMDL on Aug. 15. The development community should be sure to review this draft and utilize the public comment period between Aug. 15 and Oct. 15. EPA will then issue the final Chesapeake Bay TMDL in December 2010.

The goal of the TMDL is to reach by 2025 the target loads that will eventually bring the Chesapeake Bay back to full health. States will have two-year milestones that must be reached on the way to that goal. Failure to reach a milestone will subject a state to substantial enforcement consequences from the EPA that would impact developers and others.

The impact of the TMDL on the development community is still largely unknown. The answer will lie in the revised load limits and in the application of those limits at the subwatershed and local levels. We should all keep a very close eye on this process throughout 2010.

Key Dates

April 30: Revised nutrient target loads

June 1: Virginia's preliminary Watershed Implementation Plan to EPA

Aug. 15 - Oct. 15: Public comment on draft TMDL

December 2010: Final TMDL adopted



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