



Real Estate & Land Use

Virginia Alert



Virginia Stormwater Regulations Update

New Stormwater Regulations

This morning, Dec. 9, the State Water Control Board (“Board”) finally passed the stormwater regulations that have caused so much concern in the development community. In a late-breaking development that occurred over the last few days of a multi-year process, the Board did relax the key proposed phosphorus standard from a very strict 0.28 pounds per acre per year to 0.45. This certainly is a significant improvement for the development community, although it may well only be temporary. Over the next year, the EPA will be issuing new nutrient limits for the northern half of Virginia that drains to the Chesapeake Bay. The Board will be reconsidering its brand new phosphorus limit in conjunction with development of the EPA limits. So stay tuned!



John R. Easter

The New .45 Is Not the Same as the Old .45

A word of caution about the new .45 standard. Even though the .45 limit is what is currently in place in many jurisdictions, the new standard is considerably more restrictive than the current standard. That’s because some of the other changes in the regulations change the

way the .45 number is calculated. For example, open vegetated areas called “managed turf”, which include areas such as lawns and playing fields, will now be deemed to produce phosphorus-bearing runoff, whereas that has not previously been the case. In addition, the new regulations have much stricter standards for retaining a higher volume of water on site. Therefore, even though the temporary, new phosphorus standard may not have changed much, development can be expected to incur significantly higher costs.

Protect Yourself Through Grandfathering

The new regulations will take effect in about six months, on July 1, 2010. One key provision allows many projects that have received temporary or site plan approval or subdivision approval and have obtained a stormwater permit before July 1, 2010, to be grandfathered from the new regulations until 2014 and potentially until 2019. The key requirements are that you have received both your development plan approval and your stormwater permit by the end of June 2010. If you have any projects that are close to that stage, you should be sure to move them along so that you can avoid the regulations.

For more information about this topic or about land use in general please contact John Easter at 804.783.6475 or jeaster@williamsmullen.com or any other member of the Land Use team.

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