

Major Changes to District of Columbia Stormwater Management Regulations

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Effective January 15, 2014, the District of Columbia Department of the Environment (“DDOE”) implemented a major overhaul of its stormwater management regulations. The overhaul is intended to achieve the Mayor’s sustainability goals of (i) making 100% of the District’s waterways fishable and swimmable, and (ii) using 75% of District’s land to filter or capture rainwater by 2032.

The new regulations impact two types of activities:

- (i) new construction and development that results in at least 5,000 square feet of land disturbance (a “Major Land Disturbance Activity”), and
- (ii) substantial improvement of a property, the footprint of which (plus any additional land disturbance) is at least 5,000 square feet and whose redevelopment costs are at least 50% of the property’s pre-development value (a “Major Substantial Improvement Activity”).

Under the new rules, a Major Land Disturbance Activity must be able to retain the first 1.2 in. of a rainfall either on-site or through a combination of both on-site and off-site retention. A Major Substantial Improvement Activity will be required to retain the first 0.8 in. of rainfall either on-site or through a combination of both on-site and off-site retention. Under both activities, 50% of the required retention must be achieved on-site.

On-site Best Management Practices:

Developers will be able to satisfy the on-site requirements through Best Management Practices (“BMPs”) that retain water through infiltration, evaporation and/or harvesting for non-potable use. The rules set forth thirteen specific examples of BMPs. These include green roofs, tree planting and preservation, permeable pavement systems, bioretention, open channel systems, filtering systems, ponds and wetlands.

Off-site Options:

The new regulations provide two off-site retention options (which may be combined): (i) an in-lieu fee (“ILF”), and (ii) the use of privately tradable Stormwater Retention Credits (“SRCs”). The ILF is payable annually to DDOE and is equal to \$3.50 (indexed to inflation) per gallon of required retention volume. SRCs are generated by owners who have implemented BMPs with retention capabilities above the required threshold (which BMP retention capability may not exceed 1.7 in.). Building owners who implemented BMPs that resulted in greater than required levels of retention capability after May 1, 2009 may be eligible to apply for and receive SRCs which they could then retain, use, transfer, or sell.

Effective Date:

The new regulations went into effect on January 15, 2014 and apply to projects whose first stormwater management plan is submitted as part of the building permit application process after that date. However, for storm water management plans submitted between January 1, 2014 and January 15, 2015, Major Land Disturbance Activities will be allowed to satisfy the regulations entirely through off-site retention options. Major Substantial Improvement Activities may satisfy the regulations entirely through off-site retention options for storm water management plans submitted between January 1, 2014 and July 14, 2015. For storm water management plans submitted after January 15, 2015, Major Land Disturbance Activities must satisfy 50% the requirements on-site and for storm water management plans submitted after July 14, 2015, Major Substantial Improvement Activities must satisfy 50% of the requirements on-site.

Exemptions:

Several types of projects are exempt from the new regulations. These include (i) areas of projects for which an Advanced Design ("AD") has been submitted and approved (which approval has not expired) and comply with the stormwater management requirements in place at the time of submission; (ii) areas of multi-phased projects for which all stormwater infrastructure and BMPs have been installed in compliance with a DDOE-approved stormwater management plan during an earlier phase of construction; (iii) projects with an unexpired Historic Preservation Review Board or Commission on Fine Arts concept review approval, an unexpired National Capital Planning Commission preliminary or final design submission approval, an unexpired Board of Zoning Adjustment variance or special exemption, or an unexpired Office of Planning Large Tract Review approval that conflicts with the installation of BMPs.

Planning Ahead:

Developers should begin thinking about how these new regulations will impact development and construction costs for projects in the pipeline. Inevitably, these new regulations will increase such costs due to the inclusion or addition of BMPs, the payment of an ILF, or the purchase of SRCs. For some owners, however, the new regulations could present an opportunity for a new source of revenue. Owners should begin exploring whether their properties may have surplus SRCs which could become a tradable commodity, much like Transferable Development Rights. Additionally, office and retail landlords should review their form leases to determine whether ILFs, which will change yearly, and the landlord's cost of purchasing of SRCs can be passed on to tenants under leases structured to pass on operating costs.

For questions about the District's new stormwater management regulations, please contact your usual Goulston & Storrs attorney or the attorneys listed below.

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