



Storm(y) Waters on the Horizon: Changes Coming to Regulation of Stormwater in New Jersey

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Regulation of stormwater in New Jersey is undergoing a shakeup that may have significant consequences for redevelopers and property owners. In fact, New Jersey recently enacted legislation that allows municipalities to create stormwater utilities. This legislation, which has been called a “rain tax,” authorizes these utilities to impose fees and take other actions to control stormwater. The NJDEP also recently proposed changes to the regulations governing stormwater management in connection with certain construction projects. The newly proposed requirements include minimizing the use of impervious materials and promoting green stormwater infrastructure. While conservationists argue that these proposed rules do not go far enough to address environmental issues relating to stormwater, if adopted the proposed changes would impose more burdensome requirements on construction projects. In any event, redevelopers and property owners should carefully consider these new developments, as they will have an impact on existing and planned projects.

As noted, a major change in the regulation of stormwater in New Jersey results from the passage of legislation that allows municipalities to create stormwater utilities. A key component in the legislation is the ability for these utilities to impose fees on a property owner based on “a fair and equitable approximation” of how much runoff is generated from its property, but property owners can obtain fee reductions through certain stormwater management activities. The “fair and equitable” standard is vague and may be subject to challenge, if and when local governments begin to form stormwater utilities. The new legislation is permissive, not mandatory, and it is not yet clear how many local governments will decide to set up stormwater utilities. The new legislation also contains other provisions relating to stormwater management, including procedures and standards for the dedication of a stormwater management system to a municipality. Redevelopers and property owners should monitor the creation

of stormwater utilities within their municipalities.

The proposed changes to the stormwater regulations are more technical in nature and include:

- Replacing the current requirement that major developments incorporate nonstructural stormwater management strategies to the “maximum extent practicable” with the more onerous requirement that such developments meet groundwater recharge standards, and stormwater runoff quantity and quality standards. (Nonstructural stormwater management activities include practices such as reducing and disconnecting impervious cover, flattening slopes, utilizing native vegetation, and maintaining natural drainage features and characteristics.) The proposed amendments also would require green infrastructure to be used to satisfy these same standards.
- Expanding the projects subject to the stormwater rules by changing the definition of major development, which triggers the applicability of the rules. Under the current rules, “major development” is defined as development ultimately disturbing one or more acres of land, or increasing impervious surface by one-quarter acre or more. One proposed change to the definition of major developments is to include within the definition, the creation of one-quarter acre or more of “regulated motor vehicle surface.” Another proposed change clarifies that “major development” includes any project that is part of a larger common plan of development or sale that cumulatively disturbs one or more acres or creates one-quarter acre or more of impervious surface. These changes will significantly expand the reach of the stormwater rules.

While there has been some praise for certain of these proposed changes from environmentalists—such as the focus on requiring green infrastructure to better manage stormwater— if these additional changes are adopted, which seems likely, they could raise costs for new developments and construction projects.

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