

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2010 Legislative Session

Bill No. CB-80-2010

Chapter No. _____

Proposed and Presented by Council Member Dernoga

Introduced by Council Members Dernoga and Olson

Co-Sponsors _____

Date of Introduction September 28, 2010

BILL

1 AN ACT concerning

2 Water Quality Resources and Grading Code

3 For the purpose of enacting Subtitle 32, the Water Quality Resources and Grading Code,
4 concerning grading, drainage and pollution control; erosion and sediment control; stormwater
5 management; and accessibility for the disabled; and for the purpose of repealing certain
6 provisions of Subtitle 4, the Building Code, and codifying them within Subtitle 32.

7 BY repealing and reenacting with amendments:

8 SUBTITLE 4. BUILDING.

9 Sections 4-111 and 4-352,

10 The Prince George's County Code

11 (2007 Edition, 2009 Supplement, as amended).

12 BY repealing:

13 SUBTITLE 4. BUILDING.

14 DIVISION 2. FLOODPLAIN ORDINANCE.

15 Sections 4-256 through 4-266,

16 DIVISION 3. GRADING, DRAINAGE, AND
17 POLLUTION CONTROL.

18 Sections 4-270 through 4-312,

19 DIVISION 4. STORMWATER MANAGEMENT.

20 SUBDIVISION 1. GENERAL PROVISIONS.

21 Sections 4-316 through 4-321.01,

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SUBDIVISION 2. STORMWATER CONCEPT
AND DESIGN PLANS.
Sections 4-322 through 4-329.02,
SUBDIVISION 3. INSPECTION, MAINTENANCE,
AND ENFORCEMENT.
Sections 4-330 through 4-341, and
DIVISION 6. NONTIDAL WETLAND
PROTECTION ORDINANCE.
Sections 4-356 through 4-379,
The Prince George's County Code
(2007 Edition, 2009 Supplement, as amended).

BY adding:

SUBTITLE 32. WATER RESOURCES
PROTECTION AND GRADING CODE.
DIVISION 1. ADMINISTRATIVE PROVISIONS.
SUBDIVISION 1. ADOPTION BY REFERENCE.
Sections 32-101 and 32-102,
SUBDIVISION 2. GENERAL PROVISIONS.
Sections 32-103 through 32-120,
DIVISION 2. GRADING, DRAINAGE AND
POLLUTION.
Sections 32-124 through 32-166,
DIVISION 3. STORMWATER MANAGEMENT.
SUBDIVISION 1. GENERAL PROVISIONS.
Sections 32-170 through 32-199,
DIVISION 4. FLOODPLAIN ORDINANCE.
Sections 32-202 through 32-212, and
DIVISION 5. NONTIDAL WETLAND
PROTECTION ORDINANCE.
Sections 32-216 through 32-241,
The Prince George's County Code

(2007 Edition, 2009 Supplement, as amended).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 4-111 and 4-352 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 4. BUILDING.

DIVISION 1. BUILDING CODE.

Subdivision 2. Amendments to the International Building Code.

Sec. 4-111. Administration; Section 105, Permits.

(a) Section 105.2 is amended to read as follows: "Work Exempt from Permit." Notwithstanding the foregoing, except for classified historic sites and property located within Chesapeake Bay Critical Area Overlay Zones, permits shall not be required for the following, provided that the construction does not result in any violation of this Subtitle: a one- story detached accessory structure on one- and two-family dwelling properties with less than one hundred fifty (150) square feet of floor space not designed or intended for occupation or habitation and limited to one (1) accessory structure only per property; all forms of paving less than five hundred (500) square feet except for parking surfaces; a retaining wall not greater than two (2) feet in height unless supporting a structure; fence not greater than four (4) feet in height; and satellite dishes not greater than two (2) feet in diameter in height; and satellite dishes not greater than two (2) feet in diameter. Except for classified Historic Sites, permits shall not be required for installation of siding, roofing, storm doors or windows, or retrofit insulations, provided that no construction is involved.

* * * * *

[(g) Section 105.4.1 is added to read as follows: "Chesapeake Bay Critical Area." Where the property is located within a Chesapeake Bay Critical Area Overlay Zone, a Conservation Plan and a Conservation Agreement prepared in accordance with the Conservation Manual shall be submitted for approval and, wherever grading or construction are proposed, shall include an approved technical erosion and sediment control plan and an approved stormwater design plan. Where the Subdivision Review Committee has not reviewed and the Planning Board has not approved the Conservation Plan and Conservation Agreement, these shall be transmitted in accordance with the Conservation Manual to the Subdivision Review Committee for its review

1 and to the Planning Board for approval. The Planning Board shall approve the Conservation
2 Plan and Conservation Agreement prior to the issuance of a building and/or grading permit,
3 unless waived in accordance with the Conservation Manual. Where an approved Conservation
4 Plan and Conservation Agreement includes an approved technical erosion and sediment control
5 plan and stormwater design plan, the Building Official shall ensure that permits issued are
6 consistent with the approved Conservation Plan and Conservation Agreement. If an approved
7 Conservation Plan and Conservation Agreement do not include a technical erosion and sediment
8 control plan and a stormwater design plan, the Conservation Plan and Conservation Agreement
9 shall be revised to include these approved plans prior to the issuance of a building or grading
10 permit.]

11 [(1) Development of land which is the subject of a Detailed Site Plan approved by the
12 Planning Board between June 1, 1984, and January 15, 1988, does not require a Conservation
13 Plan prior to the issuance of grading and building permits. In these instances, the Building
14 Official shall only approve technical sediment and erosion control plans and stormwater design
15 plans which are consistent with the approved Detailed Site Plan. Other than minor revisions, as
16 defined in the Conservation Manual, deviations from the approved Detailed Site Plan necessitate
17 the approval of a Conservation Plan and Conservation Agreement.]

18 [(2) If an approved Conservation Plan and Conservation Agreement are required prior
19 to the issuance of a building or grading permit, then a copy of the fully executed Conservation
20 Agreement shall be recorded among the land records of Prince George's County prior to the
21 issuance of the applicable permit.]

22 [(3) No permit for building within a Chesapeake Bay Critical Area Overlay Zone shall
23 be issued until the applicant has posted a cash deposit or bond in the amount of Two Hundred
24 Dollars (\$200.00) plus forty cents (\$0.40) per square foot of the total area to be disturbed, to
25 guarantee and assure the implementation of the Conservation Plan and Conservation Agreement.
26 This cash deposit or bond shall be required for work performed in any such Overlay Zone,
27 regardless of the area of disturbance.]

28 [(4) In the event that the entire amount of the cash deposit or bond is expended prior to
29 the implementation of the Conservation Plan and Conservation Agreement, the applicant is
30 responsible for all additional monies required to fully implement the Conservation Plan and
31 Conservation Agreement. There is created a tax lien on the real property for monies expended

1 by the County for the implementation of the Conservation Plan and the Conservation Agreement.
2 Upon certification from the County Attorney that a tax lien has been created, the amount of such
3 lien shall be collected by the Director of Finance in the same manner as other County real estate
4 taxes.]

5 [(5) Where building occurs within a Chesapeake Bay Critical Area Overlay Zone
6 without, or in violation of, an approved permit, Conservation Agreement, or Conservation Plan,
7 the owner of the real property and/or the contractor shall be liable for a penalty of up to One
8 Dollar and twenty cents (\$1.20) per square foot for the area cleared, graded, and/or constructed,
9 and shall be subject to the mitigation requirements contained in the Conservation Manual.]

10 [(6) Minor revisions of an approved Conservation Plan are defined in the
11 Conservation Manual and may be made in accordance with the procedures set forth therein.]

12 [(h)] (g) Section 105.5 is amended to read as follows: "Expiration." Every permit issued
13 shall become invalid unless the work on the site authorized by such permit is commenced within
14 one hundred eighty (180) days after the issuance, or if the work authorized on the site by such
15 permit is suspended or abandoned for a period of one hundred eighty (180) days after the time
16 the work is commenced. The Code Official is authorized to grant, in writing, one or more
17 extensions of time, for periods not more than one hundred eighty (180) days each. The extension
18 shall be requested in writing and justifiable cause shall be demonstrated. Any permit issued for
19 property within the area of a pending Sectional Map Amendment (as provided for in the County
20 Zoning Ordinance) that is rezoned to a less intense zone, shall expire on its own terms upon
21 approval of the Sectional Map Amendment by the District Council if a completed building
22 foundation for a use not permitted in the less intense zone has not been completed. The Building
23 Official shall notify the permit holder of the expiration of the permit.

24 [(i)] (h) Section 105.5.1 is added to read as follows: "Expiration of Permit and Correction
25 of Code Violations." Any permit issued for residential property to correct a building code or
26 housing code violation issued pursuant to Subtitle 4 or Subtitle 13 of the County Code shall be
27 issued only for a period of time reasonably necessary to correct the violation, not to exceed
28 ninety (90) days. The initial period of the permit shall be established by the Building Official
29 based upon the extent of the work required to correct the violation. The permit may be extended
30 or renewed for an additional period of one hundred eighty (180) days if, in the opinion of the
31 Building Official, the applicant has demonstrated substantial progress to complete the work in

1 accordance with the permit and has demonstrated substantial justification for failure to complete
2 the work within the period of the permit. The Board of Administrative Appeals shall have no
3 authority to grant an extension to the period of the permit.

4 [(j)] (i) Section 105.8 is added to read as follows: "Rural Tier." Where the property is
5 located in the Rural Tier, as delineated in the Approved General Plan, the validity period of
6 building permits and the requirements for granting extensions to the validity periods of expired
7 building permits shall conform to Subtitle 27, Part 18 of the County Code (Interim Development
8 Ordinance).

9 [(k)] (j) Section 105.9 is added to read as follows: "Building Location." No permit for
10 building shall be issued for a structure that overlaps the County line. Location of the County line
11 on the site plan shall be certified by a Professional Land Surveyor.

12 [(l)] (k) Section 105.10 is added to read as follows: "Date and Hours of Operation
13 Limits." All permits shall be issued with date and hours of operation limits listed as determined
14 by the Building Official. All permits shall be issued indicating that no work shall be performed
15 during the hours of 9:00 p.m. to 7:00 a.m., unless work is performed pursuant to Section 4-120 of
16 this Subtitle.

17 * * * * *

18 **DIVISION 5. ADMINISTRATIVE PROVISIONS.**

19 **Sec. 4-352. Fee Schedule.**

20 (a) General: No permit to begin work for new construction, alteration, removal,
21 demolition, or other building operation shall be issued until the fees prescribed by this Section
22 have been paid to Prince George's County, nor shall an amendment or revision to a permit
23 necessitating an additional fee be approved until the additional fee has been paid. The fee for
24 each building permit shall be based on the total construction cost of the building, structure,
25 and/or any other improvement of the property for which such building permit is obtained.

26 * * * * *

27 [(j) Grading, drainage, erosion control: Fees for permits for grading, drainage, erosion
28 control, and other site work controlled by Division 3 of this Subtitle shall be based upon that area
29 (A), in square feet, remaining from the area of the entire site, (A1), after deducting the resistant
30 ground cover or surface, and in an amount as determined by the following table:]

31

[From	But Less Than	Fee Rate
0 Acres	1 Acre	\$.006 per Square Foot or fraction thereof
1 Acre	2 Acres	Additional \$230.00 per Acre or fraction thereof
2 Acres	10 Acres	Additional \$160.00 per Acre or fraction thereof
10 Acres	50 Acres	Additional \$90.00 per Acre or fraction thereof
50 Acres	200 Acres	Additional \$50.00 per Acre or fraction thereof
200 Acres	600 Acres	Additional \$30.00 per Acre or fraction thereof
600 Acres or Greater		Additional \$24.00 per Acre or fraction thereof]

1 [(k) Fee for Sediment Control Site Plan Review by Soil Conservation District for Area to
 2 be Disturbed in Excess of 15,000 Square Feet -- Initial application fee shall be Fifteen Dollars
 3 (\$15.00). There is no fee required for plan review if the land shown in the submitted site plan to
 4 be disturbed is 15,000 square feet or less.

5 (1) Certification by Soil Conservation District (SCD) of field review in conjunction
 6 with SCD plan review: There is no certification fee required if the land to be disturbed is 15,000
 7 square feet or less. Certification fee shall be Seventy-five Dollars (\$75.00) for the first acre or
 8 portion thereof of land, in excess of 15,000 square feet, proposed to be disturbed in the submitted
 9 plan.

10 (2) Certification by SCD of field review in conjunction with SCD plan review:
 11 Certification fee shall be Fifty Dollars (\$50.00) for each additional acre not to exceed five (5)
 12 acres proposed to be disturbed in the submitted plan.

13 (3) Certification by SCD of field review in conjunction with SCD plan review:
 14 Certification fee for acreage in excess of five (5) acres shall be Fifteen Dollars (\$15.00) for each
 15 additional acre.

16 (4) Certification by SCD of field review in conjunction with SCD plan review:
 17 Certification fee for acreage in excess of 200 acres shall be prorated based on actual costs of

1 review by SCD in excess of the revenue received from the sediment control fees imposed for the
2 first 200 acres of the subject site.

3 (5) The fee system imposed in this Subsection shall conform to the provisions of
4 Section 8-1103(c) of the Natural Resources Article, Annotated Code of Maryland.]

5 [(l) Bond Reduction Fee: A Two Hundred Fifty Dollar (\$250.00) nonrefundable fee for
6 administrative expenses shall be paid for each request for a partial release of the monies posted
7 as a guarantee pursuant to Section 4-281 of this Code.]

8 [(m)Bond Recall Fee: Whenever the Building Official requests payment of monies posted
9 as guarantee pursuant to Section 4-281 of this Code, a Two Hundred Fifty Dollar (\$250.00)
10 nonrefundable fee for administrative expenses shall be paid.]

11 [(n)] (j) Boilers and vessels. The fee for inspection of boilers and vessels shall be as
12 follows:

Heating Boilers	FEES
Water	
0-1000 MBH	\$20.00
1000-2000 MBH	\$30.00
over 2000 MBH	\$40.00
Steam	
0-1000 P/H	\$30.00
1000-2000 P/H	\$40.00
2000-4000 P/H	\$50.00
over 4000 P/H	\$60.00
Power Boilers	
0-100 HP	\$40.00
100-500 HP	\$50.00
500-1000 HP	\$60.00
Domestic Hot-Water Supply Boilers	\$20.00
Miniature Boilers	\$20.00
Unfired pressure vessels without manhole	\$20.00
Unfired pressure vessels with manhole	\$40.00

1 The fee for the inspection certificate for boilers and pressure vessels shall be Twenty Dollars
2 (\$20.00).

3 [(o)] (k) Certificates. For a certificate of compliance, the fee payable by the owner on or
4 before the expiration of the certificate shall be as follows:
5

Passenger elevator -- power driven	\$30.00
Passenger elevator -- hand driven	\$10.00
Freight elevator -- power driven	\$30.00
Sidewalk elevator -- power driven	\$12.00
Sidewalk elevator -- hand driven	\$ 7.00
Dumbwaiter -- power driven	\$15.00
Dumbwaiter -- hand driven	\$ 7.00
Escalator -- per floor	\$12.00
Man lift -- power driven	\$12.00
Material hoists	\$20.00

6 [(p) Stormwater Management Facility Plan Review Fees: The fee for review of stormwater
7 management concept plans shall be One Hundred Dollars (\$100.00) for a single residential lot
8 and Two Hundred Fifty Dollars (\$250.00) for all other plans. The fee for review of a public
9 storm drain system shall be Three Dollars (\$3.00) per linear foot of public storm drain pipe or
10 Two Hundred Fifty Dollars (\$250.00), whichever is greater. The fee for review of a private
11 storm drain system shall be One Dollar fifty cents (\$1.50) per linear foot of private storm drain
12 pipe or One Hundred Twenty-Five Dollars (\$125.00), whichever is greater. The fee for special
13 drain permits shall be One Hundred Dollars (\$100.00) per connection. The fee for major
14 revisions shall be One Hundred Dollars (\$100.00) or 25% of the original review fees, whichever
15 is greater. If a storm drain permit is not obtained within a twenty-four (24) month period after
16 technical approval of the plans, a fee of One Hundred Dollars (\$100.00) shall be charged for
17 updating the plans. The fee for as-built plan submittals shall be Two Hundred Fifty Dollars
18 (\$250.00). The review charge for tax-exempt properties, including non-profit organizations,
19 churches, chartered cities and municipalities, shall be one half of the fees recited in this
20 subsection. In addition, all Prince George's County affiliated public services will be charged.]

1 [(q)] (l) Stormwater Management Fee-In-Lieu: The fees-in-lieu authorized in Section
 2 4-324 (b) of this Code shall be as follows:

3 (1) The standard fee shall be as set forth in the table below, which is based upon the
 4 percentage of area which typically becomes impervious to infiltration when the property is
 5 developed as zoned, multiplied by \$8,000.

Zone	Percentage of Impervious	Fee/Dwelling Unit	Fee/Acre (Special Exceptions)
O-S	1.0	--	\$ 160
R-A	1.5	--	240
R-E	12.0	\$ 750	1920
R-R	18.0	750	2880
R-80	22.0	750	3520
R-55	26.0	750	4160
R-35	40.0	750	6400
R-T	50.0	750	8000
R-20	50.0	750	8000
R-30	50.0	750	8000
R-18	55.0	750	8800
R-H	75.0	250	12,000
R-10	75.0	250	12,000
I-1	80.0	--	12,800
I-2	80.0	--	12,800
I-3	75.0	--	12,000
I-4	70.0	--	11,200
C (All)	90.0	--	14,400

6 (2) Fees for Comprehensive Design Zones or any other zones not included in this
 7 schedule will be the fees for the zone(s) that most closely approximates the proposed land use.

8 (3) Fee Reductions and Credits

9 (A) A one-third reduction in the assessed fee will be made for each of the
 10 following on-site stormwater measures that the applicant is required to provide:

11 (i) Water quality management or LID;

- (ii) One year extended detention or LID; or
- (iii) Flood control facilities (10-year or 100-year stormwater management).

(B) The Director may reduce the fee:

(i) To an amount based on the actual impervious area if the site plan approved by the Planning Board provides that the impervious area of the development will be less than the maximum allowed under the County's zoning regulation, and the applicant demonstrates that future increases in the impervious area are unlikely. For residential zones, the fee reduction will be proportioned on a dwelling unit basis at a maximum of Seven Hundred Fifty Dollars (\$750.00) per dwelling unit. The fee reduction will be calculated using a formula of Actual Impervious Acreage x \$16, 0000.00;

(ii) To reflect the cost of land which the applicant agrees to provide for a regional stormwater facility;

(iii) To exclude undevelopable area (i.e., floodplains) or areas requiring a subsequent stormwater management concept plan from the fee computation for industrial and commercial developments; or

(iv) To the actual cost of providing on-site controls to the extent that the applicant can demonstrate such actual costs to the satisfaction of the Director.

[(r)] (m) Woodland Conservation Threshold:

(1) Woodland replacement amount for forest cover removed during development is based on the net tract area of the site and the Conservation Threshold value found in Table 1. In addition, forest cover saved above the Conservation Threshold value is credited toward the replacement amount.

Table 1: Woodland Conservation requirements by zone for all zones

Zone2	Conservation Threshold	Zone2	Conservation Threshold
O-S	50%	C-A	15%
R-A	50%	C-O	15%
R-E	25%	C-S-C	15%
R-R	20%	C-1	15%
R-80	20%	C-C	15%
R-55	20%	C-G	15%
R-35	20%	C-2	15%
R-20	20%	C-W	15%

R-T	20%	C-M	15%
R-30	20%	C-H	15%
R-30C	20%	C-R-C	15%
R-18	20%	I-1	15%
R-18C	20%	I-2	15%
R-10	20%	I-3	15%
R-10A	20%	I-4	15%
R-H	20%	M-X-T	15%
R-M-H	20%	E-I-A	15%
R-U	20%	V-M	20%
R-M	20%	V-L	25%
R-L	25%	R-S	20%
M-A-C	15%	T-D-O1	
L-A-C	15%	L-A-C1	

- 1 In the T-D-O and the R-P-C Zones, the Conservation Threshold is determined by the underlying zone.
- 2 The Conservation Threshold for any zone included in Subtitle 27 of the Prince George's County Code which is not specifically listed herein shall be established based upon the criteria contained in Natural Resources Article, Sec. 5-1601 through 5-1613 Forest Conservation Act.

1 (2) In the O-S and R-A Zones, the District Council may reduce the Conservation
2 Threshold to a minimum of 25% for the following active recreation uses: ball fields, golf
3 courses, community recreation centers, playgrounds, tennis courts, and basketball courts; or, if a
4 reduction is necessary to protect or enhance a specific ecological system or to prevent or
5 eliminate a public health hazard, on a lot or parcel on which activity occurred prior to November
6 21, 1989, and continues to occur, that materially affected the condition and use of the land, based
7 on a recommendation from the Director of the Department of Environmental Resources.

8 [(s)] (n) Reforestation Fee-in-Lieu:

9 (1) In cases where on-site or off-site reforestation for forest cover removed from a
10 site above the Conservation Threshold is not feasible, a fee-in-lieu of woodland replacement may
11 be assessed. This fee shall be assessed at a rate of thirty cents (\$0.30) per square foot multiplied
12 by the area in square feet of forest removal, down to the Conservation Threshold, and that
13 product multiplied by one-quarter (0.25). The fee system, instead of on-site or off-site
14 reforestation, will be at the discretion of the approving authority. These funds shall be used only

1 for the costs associated with afforestation/reforestation, woodland site acquisition, and site
 2 preparation on public or private lands for establishing woodlands. Fees will be collected by the
 3 Department of Environmental Resources prior to the issuance of a permit.

4 [(t)] (o) School Facilities Surcharges:

5 (1) Upon the issuance of a building permit for new residential construction for which
 6 a building permit application has been made on or after July 1, 1996, the applicant shall pay a
 7 school facilities surcharge, with the exception of a permit for the construction of:

8 (A) Dwellings for the elderly which are operated in accordance with State and
 9 Federal fair housing laws within an apartment house for the elderly, an assisted living facility, a
 10 congregate living facility, a mixed residential development, or planned retirement community;

11 (B) A single-family detached dwelling to be built or subcontracted by an
 12 individual owner in a minor subdivision and intended as the owner's personal residence;

13 (C) Improvements on property in an infrastructure finance district approved
 14 before January 1, 2000; or

15 (D) Multifamily housing designated as student housing within one and one half
 16 (11/2) miles of the University of Maryland, College Park Campus, under the following
 17 conditions:

18 (i) A multifamily project that includes the following features:

19 (aa) A minimum of one (1) bathroom per two (2) beds;

20 (bb) Appropriate locks will be provided on every bedroom door as
 21 permitted by the Life Safety Code;

22 (cc) At least seventy percent (70%) of bedrooms shall not exceed one
 23 hundred and forty-five (145) square feet or be smaller than standard market units (exclusive of
 24 the closet and bathroom);

25 (dd) Balconies shall not be permitted, but enclosed decks and patios
 26 shall be permitted on the ground floor;

27 (ee) At least ninety percent (90%) of dwelling units shall be furnished
 28 with a single or full bed and desk in each bedroom and appropriate seating for each resident in
 29 the living and dining areas;

30 (ff) Design of amenities shall be geared toward college students such
 31 as study rooms, computer rooms, club rooms and game rooms; and

1 (gg) Written evidence of a relationship with an institution of higher
 2 education in terms of one or more of the following: resident life services, shuttle bus services,
 3 coordinated permit parking policies and telecommunications wiring.

4 (ii) A multifamily project that is exempt pursuant to subsection (D)(1) shall
 5 be assessed a school facilities surcharge at the time a building permit is issued for the conversion
 6 of a multifamily dwelling to standard market units.

7 (2) The amount of the school facilities surcharge for a building permit issued on or
 8 after July 1, 2003 shall be:

9 (A) Seven Thousand Dollars (\$7,000) if the building is located between
 10 Interstate Highway 495 and the District of Columbia;

11 (B) Seven Thousand Dollars (\$7,000) if the building is included within a basic
 12 plan or conceptual site plan that abuts an existing or planned mass transit rail station site
 13 operated by the Washington Metropolitan Area Transit Authority; or

14 (C) Twelve Thousand Dollars (\$12,000) for all other buildings.

15 (3) School Facility Surcharge in Municipal Corporations: Prior to the issuance of a
 16 building permit for new residential construction in a municipality with zoning authority and the
 17 authority to issue building permits, the applicant shall pay to the County a school facilities
 18 surcharge in the amount of:

19 (A) Seven Thousand Dollars (\$7,000) if the building is located between
 20 Interstate Highway 495 and the District of Columbia;

21 (B) Seven Thousand Dollars (\$7,000) if the building is included within a basic
 22 plan or conceptual site plan that abuts an existing or planned mass transit rail station site
 23 operated by the Washington Metropolitan Area Transit Authority; or

24 (C) Twelve Thousand Dollars (\$12,000) for all other buildings.

25 [(u)] (p) Public Safety Surcharge:

26 (1) Upon the issuance of a building permit for new residential construction for which
 27 a building permit application has been made on or after July 1, 2005, the applicant shall pay a
 28 public safety surcharge, with the exception of a permit for the construction of:

29 (A) New residential construction for which a preliminary plan has been approved
 30 prior to July 1, 2005; or

1 (B) A single-family detached dwelling to be built or subcontracted by an
2 individual owner in a minor subdivision and that is intended to be used as the owner's personal
3 residence.

4 (2) The amount of the public safety surcharge for a building permit issued on or after
5 July 1, 2005 shall be:

6 (A) Two thousand dollars (\$2,000) if the building is located in the developed
7 tier, as defined by the Maryland-National Capital Park and Planning Commission in the 2002
8 Prince George's County approved General Plan;

9 (B) Six thousand dollars (\$6,000) for all other buildings.

10 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
11 Maryland, that Division 2. FloodPlain Ordinance, Sections 4-256 through 4-266; Division 3.
12 Grading, Drainage, And Pollution, Sections 4-270 through 4-312; Division 4. Stormwater
13 Management, Subdivision 1. General Provisions, Sections 4-316 through 4-321.01, Subdivision
14 2. Stormwater Concept And Design Plans, Sections 4-322 through 4-329.02, Subdivision 3.
15 Inspection, Maintenance, And Enforcement, Sections 4-330 through 4-342; and Division 6.
16 Nontidal Wetland Protection Ordinance, Sections 4-356 through 4-379 of Subtitle 4 of the Prince
17 George's County Code be and the same are hereby repealed:

18 [Sec. 4-267. through Sec. 4-269. Reserved.]

19 [Sec. 4-313. through Sec. 4-315. Reserved.]

20 Sec. [4-342]4-256. through Sec. 4-344. Reserved.

21 * * * * *

22 Sec. 4-353. through Sec. [4-355]4-379. Reserved.

23 SECTION 3. BE IT ENACTED by the County Council of Prince George's County,
24 Maryland, that Subtitle 32, Division 1. Administrative Provisions, Subdivision 1. Adoption by
25 Reference, Sections 32-101 and 32-102; Subdivision 2. General Provisions, Sections 32-103
26 through 32-120; Division 2. Grading, Drainage and Pollution; Sections 32-124 through 32-166;
27 Division 3. Stormwater Management; Subdivision 1. General Provisions, Sections 32-170
28 through 32-200; Division 4. Floodplain Ordinance, Sections 32-202 through 32-212; and
29 Division 5. Nontidal Wetland Protection Ordinance, Sections 32-216 through 32-241 of the
30 Prince George's County Code be and the same is hereby added:

31 **SUBTITLE 32. WATER RESOURCES PROTECTION AND GRADING CODE.**

1 **DIVISION 1. ADMINISTRATIVE PROVISIONS.**

2 **Subdivision 1. Adoption by Reference.**

3 **Sec. 32-101. Code – Adopted by Reference.**

4 The following codes and standards are hereby adopted by reference and made part of this
 5 Subtitle with the same force and effect as those set out in full herein as the official Water
 6 Resources Protection and Grading Code of Prince George’s County, together with the changes,
 7 deletions or modifications prescribed in this Subtitle:

8 COMAR 26.17.01 – Erosion and Sediment Control

9 COMAR 26.17.02 – Stormwater Management

10 COMAR 05.02.02 – Maryland Accessibility Code

11 **Sec. 32-102. Public Inspection.**

12 A copy of the COMAR Regulations adopted by this Subtitle shall be marked as a master
 13 copy and maintained by the Clerk of the Council.

14 **SUBDIVISION 2. GENERAL PROVISIONS.**

15 **Sec. 32-103. Administration; Applicability.**

16 (a) The regulations as embodied in Divisions 2 of this Subtitle shall control and establish
 17 minimum requirements for grading, drainage, surface structures, erosion control of land and
 18 stormwater management within Prince George’s County, Maryland and shall establish
 19 procedures by which such requirements are to be administered and enforced.

20 (b) Where existing standards or requirements adopted herein have been updated or
 21 superseded by the promulgating authority, such revised standard or requirement shall be deemed
 22 as prima facie evidence of compliance with the intent of this Subtitle.

23 **Sec. 32-104. Administration; Duties and Powers of the Director.**

24 (a) The Director of the Department of Public Works and Transportation hereinafter
 25 referred to as “the Director, or the Director’s authorized representative(s) shall enforce all
 26 provisions of this Code.

27 (b) The Director shall keep official records of applications received, permits and
 28 certificates issued, fees collected and reports of inspection hours. Construction Documents shall
 29 be retained in accordance with the Department’s retention policy procedures.

30 (c) The Director shall have the authority as necessary in the interest of public health, safety
 31 and general welfare, to adopt and promulgate rules and regulations, to interpret and implement

1 the provisions of this Code to secure the intent thereof, and to designate requirements applicable
2 because of local climate or other conditions. Such rules shall not have the effect of waiving the
3 COMAR Regulations specifically provided for in this Code, nor shall such rules violate
4 engineering practice involving public safety.

5 **Sec. 32-105. Administration; Permits; Expiration of Permits; Correction of Code Violations**
6 **and Suspension or Revocation and Reissuance of Permits.**

7 (a) Any permit issued for grading pursuant to Subtitle 32 of this Code shall be issued only
8 for a period of time reasonably necessary to perform the work, a period not to exceed 5 years.
9 Where a permit is issued to correct a violation, the permit shall not exceed ninety (90) days. The
10 initial period of the permit shall be established by the Director based upon the extent of the work
11 required to correct the violation. The permit may be extended or renewed for an additional
12 period of one hundred eighty (180) days if, in the opinion of the Director, the applicant has
13 demonstrated substantial progress to complete the work in accordance with the permit and has
14 demonstrated substantial justification for failure to complete the work within the period of the
15 permit. The Board of Appeals shall have no authority to grant an extension to the period of the
16 permit.

17 (b) The Director may refuse to accept an application for a permit from any applicant, as
18 principal, who is or was in default on a previously issued permit or who is the permittee listed on
19 an expired permit which is not currently in the process of being extended by the County
20 administrative action.

21 (c) A permit under which no work is commenced within one hundred eighty (180) days
22 after issuance shall expire and become null and void; provided, however, that the Director may
23 extend the time herein not to exceed an additional one hundred eighty (180) days upon sufficient
24 justification shown.

25 (d) A permit under which work has been started and later suspended or discontinued shall
26 expire and become null and void six (6) months after the work has stopped. Work will be
27 considered suspended or discontinued when the permittee fails to prosecute the work so as to
28 ensure completion within a reasonable period of time.

29 (e) A permit issued in error or not in compliance with the County Code at the time of
30 issuance may be suspended by the Director.

31 (f) When a permit has expired for failure to commence work, it may be renewed with-in a

1 period of thirty (30) days from the date of expiration, if the conditions under which the permit
 2 was originally issued have remained unchanged and there has been no change in law or
 3 ordinance that would adversely affect the permit. A fee shall be collected for each renewal;
 4 provided, however, that no permit may be renewed more than two (2) times.

5 (g) The Director may reissue a permit subject to all applicable laws and regulations in
 6 effect at the time the permit was originally issued, for a period not to exceed one (1) year after
 7 expiration provided that:

8 (1) The County Executive by Executive Order, has made a finding of severe
 9 economic factors adversely affecting real estate development and construction in the County
 10 during a specified period and the County Council has been notified by the County Executive of
 11 such finding at least seven (7) days prior to issuance of the Executive Order;

12 (2) There is a reasonable showing that these economic factors contributed to the
 13 expiration of the permit;

14 (3) There has been no change in the zoning of the property which would affect the
 15 issuance of the permit; and

16 (4) A processing fee has been paid in an amount equal to the amount that would be
 17 required if the permit was renewed.

18 (h) Permits suspended for failure to comply with the County Code or ordinances may be
 19 reinstated by the Director upon compliance or approved validation.

20 **Sec. 32-106. Administration; Construction Documents.**

21 (a) "Location of Underground Utility Lines prior to Commencement of Work". For all
 22 work that requires excavation deeper than twelve (12) inches, the permittee accepting the permit
 23 agrees to contact the Utility Service Protection Center, "Miss Utility", and non-member utility
 24 companies, as known, in due time prior to beginning any excavation work for the purpose of
 25 having each utility company locate its lines on site. In the event that the permittee fails to obtain
 26 the services of the utilities, then in such event, and irrespective of whether or not a utility line is
 27 ruptured, the Director may revoke the grading permit. In such event, all fees paid to the County
 28 shall be forfeited and, in order to continue work, a new application with requisite fee for a permit
 29 shall be filed. Drawings shall be reexamined to determine that all utilities have been located and
 30 verified by the utility companies having knowledge of the location of such underground utilities.
 31 However, in the event any or all of the respective utility companies fail to furnish the requisite

1 information to the permittee within a reasonable period of time as determined by the Director
2 under all circumstances, then, in such event, the foregoing revocation provisions shall not apply.

3 (b) Builders and permittee shall place on record with each utility company a written
4 acknowledgment that final grade has been achieved to within six (6) inches. Utility lines shall
5 not be installed until such acknowledgement has been received by the utilities.

6 **Sec. 32-107. Administration; Violations.**

7 Any person, firm, association, partnership corporation, or combination thereof, who shall
8 violate a provision of the COMAR Regulations or of this Subtitle, or fail to comply with any of
9 the requirements thereof, violates a lawful order issued hereunder, shall be guilty of a
10 misdemeanor punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by
11 imprisonment for six (6) months, or both. Each day that a violation continues shall be deemed a
12 separate offense.

13 **Sec. 32-108. Administration; Emergency Measures; Abatement of Unsafe Conditions; Tax**
14 **Lien.**

15 (a) When, in the opinion of the Director, there is an imminent danger to human life or the
16 public welfare due to an unsafe condition, the Director shall cause the necessary work to be done
17 to render the unsafe condition temporarily safe, whether or not the legal procedure herein
18 described has been instituted. At the time the unsafe condition has been rendered temporarily
19 safe, the Director shall notify the owner/permittee that the temporary measures have been taken
20 and the owner/permittee is required to restore the area within thirty (30) days and that the
21 owner/permittee is subject to a violation being issued directing that the work be completed by
22 that time. If the area is not restored within thirty (30) days, the owner/permittee shall be fined up
23 to One Thousand Dollars (\$1,000.00) each day the violation exists.

24 (b) When necessary for public safety, the Director shall temporarily close sidewalks,
25 streets, public ways or other public access means adjacent to the unsafe condition and prohibit
26 the same from being used.

27 (c) For the purpose of this Section, the Director shall employ the necessary labor and
28 materials to perform the required work as expeditiously as possible.

29 (d) Costs incurred in the performance of emergency work shall be paid from the treasury
30 of the local upon issuance of a jurisdiction by certificate of the Director. The legal counsel of the
31 jurisdiction shall institute appropriate action against the owner/permittee of the property where

1 the unsafe condition was located from recovery of such costs, including, but not limited to,
 2 certification for a tax lien.

3 (e) A tax lien shall be created on real property for monies expended by the County to make
 4 safe a property and/or abatement of other nuisances or conditions that constitute a danger to
 5 public health and safety. Upon certification by the County Attorney that a tax lien has been
 6 created, the amount of such lien shall be collected by the Director of Finance in the same manner
 7 as other County real estate taxes.

8 **Sec. 32-109. Accessibility.**

9 (a) The Department of Public Works and Transportation hereby adopts the Maryland
 10 Accessibility Code as set forth in the Code of Regulations (COMAR) Section .05.02.02. Exit-
 11 way ramps shall have a width of not less than five (5) feet.

12 (b) The Department of Public Works and Transportation shall be responsible for enforcing
 13 the Maryland Accessibility Code requirements pertaining only to exterior issues outside of any
 14 building or structure, except for any project that has one (1) building on (1) parcel, which shall
 15 be the responsibility of the Department of Environmental Resources, who shall also be
 16 responsible for the enforcement of the handicap code requirements pertaining to the interior of
 17 all buildings and structures, including exterior stairways, balconies, etc.

18 **Sec. 32-110. Soils and Foundations.**

19 Except when erected upon solid rock or otherwise protected from frost, foundations, walls,
 20 piers and other permanent supports of structures shall extend thirty (30) inches below finished
 21 grade, and spread footings of adequate size shall be provided when necessary to properly
 22 distribute the load within the allowable bearing value of the soil, or such structures shall be
 23 supported on piles when solid earth to rock is not available. Footings shall not be founded on
 24 frozen soils unless such frozen condition is of a permanent character.

25 **Sec. 32-111. Structural Tests and Special Inspections.**

26 The special inspections for existing soil conditions, fill placement and load bearing
 27 requirements shall follow Division 2 of this Subtitle.

28 **Sec. 32-112. Requirements for Grading, Removal, etc., Generally**

29 (a) The regulations contained in this Subtitle and the provisions of its Divisions jointly
 30 construed shall control all matters concerning grading, drainage and erosion control, except such
 31 matters as are otherwise provided for in the Prince George's County Code, in the rules and

1 regulations pertaining to the Washington Suburban Sanitary District as lawfully adopted by the
 2 Washington Suburban Sanitary Commission pursuant to the authorities contained in its organic
 3 statute, as the same may from time to time be amended and all laws having general application in
 4 the County under the public general and public laws of the State, as well as rules and regulations
 5 of Maryland State Departments or agencies.

6 (b) All work done under any grading permit issued under this Subtitle shall be in full
 7 compliance with this Code; the regulations of Subtitle 23 and Subtitle 25 and any other
 8 applicable provisions of the Prince George's County Code; or any other statute, ordinance or
 9 regulation officially and lawfully adopted by State, Bi-County or County agencies that are
 10 applicable in the County.

11 (c) The Director is hereby authorized and directed to assist in the enforcement of such
 12 statutes, ordinances and regulations to the full extent of the powers delegated to him in this
 13 Subtitle.

14 (d) In the Chesapeake Bay Critical Area Overlay Zones, trees removed pursuant to an
 15 approved Conservation Plan and Conservation Agreement shall be replaced in accordance with
 16 Subtitle 5B by reforestation or afforestation, or a fee in lieu of reforestation or afforestation may
 17 be paid prior to the issuance of any permits pursuant to this Subtitle. All fees in lieu shall be
 18 maintained in a specially created fund under the administration of the Director and shall be used
 19 solely for reforestation or afforestation of land located in the Chesapeake Bay Critical Area
 20 Overlay Zones.

21 **Sec. 32-113. Issuance of Certificates of Occupancy.**

22 (a) No certificates of occupancy or temporary occupancy for any building or structure shall
 23 be issued until the grading permit, if required, is in substantial compliance with the provisions of
 24 this Code and other provisions of State and local laws, ordinances and regulations.

25 (b) An adequate ground stabilization shall be established and all of the requirements of the
 26 approved Tree Conservation Plan, including plantings shall be completed prior to the issuance of
 27 the certificates of occupancy.

28 **Sec. 32-114. Exemptions to Subtitle.**

29 (a) Procedure. The County Council may exempt, upon specific request, from the
 30 requirements of this Subtitle, all grading within the corporate limits of a Prince George's County
 31 municipality, with planning and zoning authority, when ever the County Council determines, by

1 resolution, that the grading regulations and administrative procedures of said municipality and
 2 the enforcement thereof are as adequate and equally effective as the County's grading
 3 regulations, any other applicable regulations and administrative procedures presently or hereafter
 4 enacted. Said exempting resolution may include any conditions, restrictions or requirements
 5 deemed necessary by the County Council.

6 (b) Referral. Whenever any municipality, delegated authority under the provisions of this
 7 exemption, determines that it lacks the necessary expertise to review an application and issue a
 8 permit subsequent thereto, said application shall be referred to the Director for appropriate
 9 action. If so referred, compliance shall be had with all applicable provisions of this Subtitle
 10 including fee requirements. Administration and enforcement shall be pursuant to this Subtitle.

11 **Sec. 32-115. Exemption from Review Fees.**

12 (a) Upon certification by the Superintendent of Schools that a construction project is a part
 13 of an educational program of the Prince George's County Public Schools, the Director shall
 14 waive any fees that would be otherwise required by this Subtitle.

15 (b) The Director shall waive any review fees that would be otherwise required by this
 16 Subtitle for any construction project that is undertaken by the Prince George's County Public
 17 Schools and any public affiliated agencies.

18 **Sec. 32-116. Administration and Enforcement of Subtitle – Generally.**

19 (a) Administration and enforcement of this Subtitle shall be by the Director of the
 20 Department of Public Works and Transportation.

21 (b) The Director shall be a classified employee under Subtitle 16, Personnel, of this Code.
 22 The Director shall designate such number of officers, technical assistants, inspectors and other
 23 employees as shall be necessary for the administration of this Subtitle. The Director may
 24 designate an employee as his Deputy who shall exercise all the powers of the Director during the
 25 temporary absence or disability of the Director.

26 (c) The Director shall have the power and the duty to enforce the provisions of this
 27 Subtitle and all fees provided in this Subtitle shall be paid to the order of Prince George's
 28 County. All permits shall be issued by the Director in the name of Prince George's County.

29 **Sec. 32-117. Interpretations, etc., by Director.**

30 Whenever in the regulations provided for in this Subtitle it is provided that anything shall
 31 be done to the approval of or subject to the direction of the Director, this shall be construed to

1 give the Director only the discretion of determining whether the rules and standards established
 2 by this Subtitle have been complied with, and no such provision shall be construed as giving any
 3 officer discretionary powers to establish such regulations or standards or power to require
 4 conditions nor prescribed by this Subtitle or any other ordinance of the County or to enforce any
 5 provisions of this Subtitle in an arbitrary or discriminatory manner.

6 **Sec. 32-118. Stop Work Orders.**

7 (a) Whenever any work is being done in violation of the provisions of this Subtitle or is
 8 not in conformance with the term of any permit issued for such work, the Director or his duly
 9 authorized representative may order all or part of the work on the job stopped until such violation
 10 or nonconformance is eliminated and any work or installation made in violation of this Subtitle is
 11 corrected. Such "Stop Work Order;" if oral, shall be followed by a written "stop order" within
 12 twenty-four (24) hours (excluding Saturday, Sunday or holidays).

13 (b) It shall be unlawful to do or perform any work on a permit following the issuance of a
 14 "Stop Work Order," except as may be necessary to comply with the corrective action ordered by
 15 the "Stop Work Order" or otherwise prevent injury or damage to persons or property.

16 (c) The "Stop Work Order" shall contain, or be accompanied by; a written notice
 17 indicating that there is a right to a hearing before the Director or his designee. Such request for a
 18 hearing may be filed in writing or in person at the Office of the Director. The owner/permittee
 19 affected by a "Stop Work Order" shall be entitled to such hearing as quickly as feasible, within
 20 twenty-four (24) hours of receipt of a request for a hearing by the Director. The Director, or a
 21 designated impartial member of his staff who has or is delegated authority to act, shall afford the
 22 owner/permittee a fair hearing with an opportunity to present evidence or testimony that is
 23 relevant to the "Stop Work Order." The owner/permittee shall be afforded reasonable notice of
 24 the time and place of the hearing at the time of the request in person, or by telephone or other
 25 appropriate means if the request is forwarded in writing.

26 **Sec. 32-119. Unlawful Continuance.**

27 Any person, firm, association, partnership, corporation or combination thereof,
 28 who shall continue work in violation of the provisions of a "Stop Work Order", or shall remove
 29 or cause to be removed a "Stop Work Order" sign still in effect and operation, shall be guilty of a
 30 misdemeanor, punishable by a fine of not more than One Thousand Dollars (\$1,000.00), or
 31 imprisonment for six (6) months.

Sec. 32-120. Fee Schedule.

(a) The fee schedule for work performed in connection with the Grading, Drainage and Erosion Control Code shall be as follows:

(1) General. No permit to begin work for new grading shall be issued until the fees prescribed by this Section have been paid to Prince George’s County, nor shall an amendment or revision to a permit necessitating an additional fee be approved until the additional fee has been paid. The minimum fee for a grading permit shall not be less than \$20.00. A nonrefundable filing fee for grading shall be a minimum of fifty percent (50%) of the estimated cost of the permit, and shall be applied to the permit fee if the permit is actually issued within six (6) months of the date of the application; otherwise, the permit application shall expire and the filing fee shall be forfeited.

(2) Grading, Drainage, Erosion Control: Fees for permits for grading, drainage, erosion control and other site work shall be based upon that area (A), in square feet, remaining from the area of the entire site, (A1), after deducting the remaining ground cover or surface, and in an amount as determined by the following table:

TABLE 1

From	But Less Than	Fee Rate
0 Acres	1 Acre	\$.006 per Square Foot or fraction thereof
1 Acre	2 Acres	Additional \$230.00 per Acre or fraction thereof
2 Acres	10 Acres	Additional \$160.00 per Acre or fraction thereof
10 Acres	50 Acres	Additional \$90.00 per Acre or fraction thereof
50 Acres	200 Acres	Additional \$50.00 per Acre or fraction thereof
200 Acres	600 Acres	Additional \$30.00 per Acre or fraction thereof
600 Acres or Greater		Additional \$24.00 per Acre or fraction thereof

(3) Fee for Sediment Control Site Plan Review by Soil Conservation District for Area to be Disturbed in Excess of 5,000 Square Feet – Initial application fee shall be One Hundred Dollars (\$100.00). There is no fee required for plan review if the land shown in the submitted site plan to be disturbed is 5,000 square feet or less.

(A) Certification by Soil Conservation District (SCD) of field review in

1 conjunction with SCD plan review: There is no certification fee required if the land to be
2 disturbed is 5,000 square feet or less. Certification fee shall be Two Hundred Dollars (\$200.00)
3 for the first acre or portion thereof of land, in excess of 5,000 square feet, pro-posed to be
4 disturbed in the submitted plan.

5 (B) Certification by SCD of field review in conjunction with SCD plan review:
6 Certification fee shall be one Hundred Dollars (\$100.00) for each additional acre not to exceed
7 five (5) acres proposed to be disturbed in the submitted plan.

8 (C) Certification by SCD of field review in conjunction with SCD plan review:
9 Certification fee for acreage in excess of five (5) acres shall be Fifty Dollars (\$50.00) for each
10 additional acre.

11 (D) Concept Sediment Control Site Plan will pay a flat fee of Three Hundred
12 Dollars (\$300.00). All subsequent site development plan shall pay one-half of fees required in
13 Section (3)(A), (B) and (C) above.

14 (E) Certification by SCD of field review in conjunction with SCD plan review:
15 Certification fee for acreage in excess of 300 acres shall be prorated based on actual costs of
16 review by SCD in excess of the revenue received from the sediment control fees imposed for the
17 first 300 acres of the subject site. Mining and landfill areas in excess of 500 acres shall be
18 prorated.

19 (F) The fee system imposed in this Subsection shall conform to the provisions of
20 Section 4-103(c) of the Environmental Article, Annotated Code of Maryland.

21 (4) Bond Reduction Fee. A Two Hundred Fifty Dollar (\$250.00) nonrefundable fee
22 for administrative expenses shall be paid for each request for a partial release of the monies
23 posted as guarantee pursuant to Section 32-135 of this Code.

24 (5) Bond Recall Fee. Whenever the Director requests payment of monies posted as
25 guarantee pursuant to Section 32-135 of this Code, a Two Hundred Fifty Dollar (\$250.00)
26 nonrefundable fee for administrative expenses shall be paid.

27 (6) Fee for Modification of Permit. Except for stormwater management facilities, the
28 fee for modifying a permit or application shall be a minimum of Ten Dollars (\$10.00). If an
29 extensive plan review is required, the fee shall be sufficient to offset the cost of plan review and
30 services as determined by the Director.

31 (7) Refunds. Except for stormwater management facilities, in any case where permits

1 have been issued and no work has begun hereunder, the person who has paid the fee for said
 2 permit may return said permit for cancellation, and, upon the cancellation thereof, there will be
 3 refunded to him/her the amount of said fees less the actual expenses (not to exceed fifty percent
 4 (50%) of the fee paid, but not less than the filing fee) incident to the issuance of said permit as
 5 determined by the Director; provided the application for such refund shall be made within six (6)
 6 months after the issuance of said permit, after which time no refund may be made. No filing fee
 7 of any kind shall be refunded.

8 (8) Stormwater Management Facility Plan Review Fees. The fee for review of
 9 stormwater management concept plans shall be One Hundred Dollars (\$100.00) for a single
 10 residential lot and Two Hundred Fifty Dollars (\$250.00) for all other plans. The fee for review
 11 of public storm drain system shall be Three Dollars (\$3.00) per linear foot of public storm drain
 12 pipe or Two Hundred Fifty Dollars (\$250.00), whichever is greater. The fee for review of a
 13 private storm drain system shall be One Dollar fifty cents (\$1.50) per linear foot of private storm
 14 drain pipe or One Hundred Twenty-Five Dollars (\$125.00), whichever is greater. The fee for
 15 special drain permits shall be One Hundred Dollars (\$100.00) per connection. The fee for major
 16 revisions shall be One Hundred Dollars (\$100.00) or 25% of the original review fees, whichever
 17 is greater. If a storm drain permit is not obtained within a twenty-four (24) month period after
 18 technical approval of the plans, a fee of One Hundred Dollars (\$100.00) shall be charged for
 19 updating the plans. The fee for as-built submittals shall be Two Hundred Fifty Dollars
 20 (\$250.00). The review fee charge for tax-exempt properties, including non-profit organizations,
 21 and churches shall be one half of the fees recited in this subsection. All Prince George's County
 22 affiliated public services, chartered cities and municipalities will not be charged.

23 (9) Stormwater Management Fee-In-Lieu. The fees-in-lieu authorized in Section 32-
 24 179(b) of this Code shall be as follows:

25 (A) The standard fee shall be as set forth in the table below, which is based upon
 26 the percentage area which typically becomes impervious to infiltration when the property is
 27 developed as zoned, multiplied by \$16,000.

1

TABLE 2

Zone	Percentage of Impervious	Fee/Dwelling Unit	Fee/Acre (Special Exceptions)
O-S	1.0	----	\$160
R-A	1.5	----	240
R-E	12.0	\$750	1920
R-R	18.0	750	2880
R-80	22.0	750	3520
R-55	26.0	750	4160
R-35	40.0	750	6400
R-T	50.0	750	8000
R-20	50.0	750	8000
R-30	50.0	750	8000
R-18	55.0	750	8800
R-H	75.0	250	12,000
R-10	75.0	250	12,000
I-1	80.0	----	12,800
I-2	80.0	----	12,800
I-3	75.0	----	12,000
I-4	70.0	----	11,200
C (All)	90.0	----	14,400

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(B) Fees for Comprehensive Design Zones or any other zones not included in this schedule will be the fees for the zone(s) that most closely approximates the proposed land use.

(C) Fee Reduction and Credits.

(i) A one-third reduction in the assessed fee will be made for each of the following on-site stormwater measures that the applicant is required to provide:

(aa) Water quality management; or

(bb) One year extended detention; or

(cc) Flood control facilities (10-year or 100-year stormwater

1 management).

2 (ii) The Director may adjust the fee:

3 (aa) To an amount based on the actual impervious area if the site plan
 4 approved by the Planning Board and/or District Council provides that the impervious area of the
 5 development will be less than the maximum allowed under the County’s zoning regulation and
 6 the applicant demonstrates that future increases in the impervious area are unlikely. For
 7 residential zones, the fee reduction will be proportioned on a dwelling unit basis at a maximum
 8 of Seven Hundred Fifty Dollars (\$750.00) per dwelling unit. The fee reduction will be
 9 calculated using the formula of Actual Impervious Acreage x \$16,000.00;

10 (bb) To reflect the cost of land which the applicant agrees to provide
 11 for a regional stormwater facility;

12 (cc) To exclude undeveloped area (i.e., floodplains) or areas requiring
 13 a subsequent stormwater management concept plan from the fee computation for industrial and
 14 commercial developments; or

15 (dd) To the actual cost of providing on-site controls to the extent that
 16 the applicant can demonstrate such actual costs to the satisfaction of the Director.

17 (10) Woodland Conservation Fee-in- Lieu: If required by an approved Type 2 Tree
 18 Conservation Plan, the woodland conservation fee-in-lieu as provided for in Subtitle 25 shall be
 19 collected by the County prior to the issuance of the first permit. Fees will be collected by the
 20 Department of Public Works and Transportation prior to the issuance of a permit.

21 (11) Floodplain Review and Service Fee: Review of floodplain study performed by
 22 Engineer / Consultant shall be \$0.50 per linear foot of stream within the property plus \$200.00
 23 per structure and \$50 for setting floodplain elevation with no study. For conducting the
 24 floodplain study using the County’s GIS based floodplain models and providing floodplain
 25 information to the public shall be \$2,500.00 for existing channel condition only, \$3,500.00 for
 26 both existing and proposed channel conditions, \$250.00 for a single lot and \$50.00 for any
 27 floodplain inquiry.

28 **Sec. 32-121. through Sec. 32-123. Reserved.**

29 **DIVISION 2. GRADING, DRAINAGE AND POLLUTION CONTROL.**

30 **Sec. 32-124. Purpose.**

31 The purpose of this Division is to prevent property damage, protect living resources and

1 prevent environmental degradation to safeguard the public's health, safety, welfare and
 2 economic well-being by establishing minimum requirements for grading, reforestation,
 3 woodland conservation, drainage, erosion control and pollution discharge and control on land
 4 and to watercourses within Prince George's County, Maryland, and to establish procedures by
 5 which these requirements are to be administered and enforced. It is the further purpose of this
 6 Division to implement the provisions of the Environment Article-Title 4, Subtitle 1 of the
 7 Annotated Code of Maryland, so as to safeguard the natural resources of the County and of the
 8 State of Maryland by controlling erosion and sediment deposition on lands and in waters within
 9 the watersheds of the State and to prevent their pollution.

10 **Sec. 32-125. Definitions.**

11 (a) Wherever the following words are used in, or in conjunction with, the administration of
 12 this Division, they shall have the meaning ascribed to them in this Section.

13 (1) **Afforestation.** The establishment of a biological community of perpetual
 14 woodlands either through the planting of trees an area from which trees have always or very long
 15 been absent, or planting of open areas which are not presently in forest cover.

16 (1.1) **Agricultural land Management Practices.** Those methods and procedures used
 17 in the cultivation of land in order to further crop livestock production and conservation of related
 18 soil and water resources. Logging and/or timber harvesting operations shall not be considered a
 19 part of this definition.

20 (2) **Architect.** A person duly registered or authorized to practice landscape
 21 architecture in the State of Maryland and qualified to prepare grading plans and specifications.

22 (3) **ASTM.** The American Society for Testing Materials.

23 (4) **Bedrock.** The solid undisturbed rock in place either at the ground surface or
 24 beneath surficial soil deposits.

25 (5) **Borrow Pit.** The source of earth or bank-run sand and gravel from below the
 26 ground surface by open pit excavation as a single incident on a site for use at a single
 27 construction site elsewhere, otherwise, the excavation will be classed as open-pit mining.

28 (6) **Building Pad.** The immediate site for a building including the area actually
 29 covered, plus the adjacent peripheral fringe area having a reasonable slope away from the
 30 building.

31 (7) **Certification or to Certify.** A signed written statement that specific plans and

1 specifications, construction, inspections, or tests have been prepared and performed, and that
2 such comply with the requirements of this Division.

3 (8) **Chesapeake Bay Critical Area.** All lands and waters defined in §8-1807 of the
4 Natural Resources Article, Annotated Code of Maryland. This includes (a) all waters of and
5 lands under the Chesapeake Bay and its tributaries to the head of tide, and as indicated on the
6 State wetlands maps; and all State and private wetlands designated under the Title 16 of the
7 Environment Article; (b) all land and water areas within one thousand (1,000) feet beyond the
8 resources identified in (a); and (c) Modification to these areas through inclusions or exclusions
9 proposed by local jurisdictions and approved by the Critical Area Commission as specified in §8-
10 1807 of the Natural Resources Article, Annotated Code of Maryland.

11 (9) **Class I Fill.** Load-bearing fills proposed for support of buildings, walls and other
12 structures, the function thereof which would be especially impaired by settlement.

13 (10) **Class 2 Fill.** Load-bearing fills proposed for support of roadways, pavements,
14 rigid utilities lines, house connections, and structures which would not be especially impaired by
15 moderate settlement.

16 (11) **Class 3 Fill.** Common fills proposed for landscaping or for other non-load-
17 bearing usage.

18 (12) **Compaction.** Densification of a soil or rock fills by mechanical or other
19 acceptable procedures.

20 (13) **Conservation Agreement.** A formal agreement which commits a grading or
21 building permit applicant to the execution of various approved elements of a Conservation Plan,
22 including a stormwater management concept plan, an erosion and sedimentation concept plan, a
23 vegetation management plan, and other plans which may be required by the Department of
24 Public Works and Transportation or the Prince George's County Planning Board.

25 (14) **Conservation Plan.** A plan developed in accordance with Subtitle 5B, which
26 demonstrates how a project has been designed to meet the specific Chesapeake Bay Critical Area
27 criteria. The Conservation Plan consists of a stormwater management concept plan, an
28 erosion/sedimentation concept plan, a vegetation management plan, and such other plans relating
29 to environmental systems as may be required by the Washington Suburban Sanitary
30 Commission, the Maryland-National Capital Park and Planning Commission, the Prince
31 George's County Health Department, the Prince George's County Department of Public Works

1 and Transportation or the Prince George's Soil Conservation District.

2 (15) **Control Measures.** Structural or nonstructural devices or practices, or a
 3 combination thereof, which reduce pollutant discharges through control, treatment, prevention,
 4 management or monitoring measures and processes.

5 (16) **Cultivation.** Plowing, dicing, harrowing and tilling of existing farm fields for the
 6 production of crops and livestock.

7 (17) **Director.** The Director of Public Works and Transportation or the Director's
 8 designee.

9 (18) **Discharge.** Any dumping, pumping, placement, storage, use, draining, handling,
 10 washing, tracking, spilling, leaking, transportation, conveyance or disposal practice or any other
 11 mechanism which may result in or may allow pollutants to enter onto land or within the
 12 watercourses of the County.

13 (19) **Drainage.** Stormwater runoff, snow melt runoff, surface runoff or ground water
 14 flows.

15 (20) **Drainage System.** Any natural system or man-made device, mechanism or
 16 measure used in any manner for the collection, conveyance, management, treatment, disposition
 17 or disposal of drainage.

18 (21) **Dust Free Surface.** A ground composed of rolled and compacted cinders,
 19 gravels or other approved nonabsorbent materials to prevent rising of dust on road, access ways,
 20 driveways and parking lots.

21 (22) **Embankment of Fill.** A deposit of soil, rock or other materials placed by man.

22 (23) **Engineering Geology.** The application of geological data and principles to
 23 engineering problems dealing with naturally occurring rock and soil, for the purpose of assuring
 24 that geological factors are recognized and adequately interpreted in engineering practice.

25 (24) **Erosion.** The process by which the ground surface is worn away by the action of
 26 wind and/or water.

27 (25) **Erosion and Sediment Control Plan.** An erosion and sediment control strategy
 28 or plan, to minimize erosion and prevent off-site sedimentation by containing sediment on site or
 29 by passing sediment laden runoff through a sediment control measure, prepared and approved in
 30 accordance with the specific requirements of the Prince George's Soil Conservation District and
 31 this Subtitle, and designed in accordance with the Standards and Specifications.

1 (26) **Excavation or Cut.** An act, by which soil or rock is cut into, dug, quarried,
2 uncovered, removed, displaced or relocated and shall include the conditions resulting there from.

3 (27) **Existing grade.** The vertical location of the existing ground surface prior to
4 excavating or filling.

5 (28) **Finished or Proposed Grade.** The final grade or elevation of the ground,
6 drainage or other structures conforming to the proposed design.

7 (29) **Forest Stand Delineation (FSD).** A detailed accounting of woody vegetation
8 prepared in plan and document form, as required by Subtitle 25.

9 (30) **Grading.** Any stripping, removal of topsoil, excavating, filling, stockpiling or
10 any combination thereof, including the condition resulting there from.

11 (31) **Grading Permit.** A permit issued to authorize work to be performed under this
12 Division. The permit for grading and/or site development intended as an incident to building
13 construction may be included as part of the building permit.

14 (32) **Landscape Architect.** A person duly registered or authorized to practice
15 landscape architecture in the State of Maryland and qualified to prepare grading plans and
16 specifications.

17 (33) **Load-Bearing Fill.** Fill placed in a controlled manner to support structure
18 foundations, vehicular traffic, or any earthwork which the instability thereof would constitute a
19 public hazard or nuisance.

20 (34) **Mitigation.** The offsetting of forest values lost due to the destruction of
21 woodlands without a permit or contrary to an approved Tree Conservation Plan by replanting
22 woodlands or agrees upon means.

23 (35) **Natural Ground Surface.** The ground surface in its original state before any
24 grading, excavation or filling.

25 (36) **Net Tract Area.** For the purposes of woodland conservation, the gross tract area
26 minus the approved one hundred (100) year floodplain and areas previously dedicated for public
27 use.

28 (37) **One Hundred (100) Year Floodplain.** That area which would be inundated by a
29 flood that has a one percent (1%) chance of being equaled or exceeded in any given year.

30 (38) **Open-Pit Mining.** The continuing or reoccurring removal of material from below
31 the ground surface by open excavation on a site for immediate or ultimate use at the same or

1 other site in processing and manufacture of building and construction materials or any other
 2 products, or at various locations elsewhere in its natural state.

3 (39) **Permittee.** Any person to whom a permit is issued pursuant to this Division.

4 (40) **Pollutant.** Sediment runoff due to erosion.

5 (41) **Ponding.** Water that remains on the ground surface in a single area larger than
 6 sixteen (16) square feet for more than forty-eight (48) hours after a rain event where cold
 7 weather conditions (such as, but not limited to, frozen ground or combined ice, snow or rain
 8 event) are not a contributing factor in water remaining on the ground surface.

9 (42) **Prince George's Soil Conservation District.** One (1) of twenty four (24) soil
 10 conservation districts created pursuant to Subtitle 3 of the Agricultural Article of the Annotated
 11 Code of Maryland.

12 (43) **Professional Engineer.** A person duly registered or otherwise authorized by the
 13 State of Maryland to practice in the field of engineering.

14 (44) **Reforestation.** The re-establishment of a biological community of perpetual
 15 woodlands through the planting of trees on area from which trees were recently removed.

16 (45) **Refuse.** See "solid wastes (refuse)."

17 (46) **Sediment.** Soils or other surficial materials transported by surface water as a
 18 product of erosion.

19 (47) **Significant Drainage.** Surface drainage rates that exceed three (3) cubic feet per
 20 second based on the ten (10) year storm event as calculated by the Rational Method.

21 (48) **Site.** Any lot or parcel of land combination of contiguous lots or parcels of land.

22 (49) **Site Development.** The resulting condition of land improvements through the
 23 constructing, installing, placing or planting of: open and closed storm drainage facilities,
 24 stormwater management facilities, supporting foundations for utility lines and service (house)
 25 connections, parking lots, driveways, curbs, pavements, steps, sidewalks, bike paths, recreational
 26 facilities, patios, ground planters, ground covers, plantings, landscaping and logging and timber
 27 harvesting operations.

28 (50) **Slope.** The inclined exposed surface of a fill, excavation or natural terrain.

29 (51) **Soil.** All earth material of whatever origin that overlies bedrock and may include
 30 the decomposed zone of bedrock which can be readily excavated by mechanical equipment.

31 (52) **Soil engineer.** A professional engineer who is qualified by education and

1 experience to practice applied soil mechanics and foundation engineering.

2 (53) **Solid wastes (refuse).** The same as defined in Section 21-101 of this Code.

3 (54) **Standards and Specifications.** The current version of the “Maryland Standards
4 and Specifications for Soil Erosion and Sediment Control” as adopted by the Prince George’s
5 Soil Conservation District.

6 (55) **Stripping.** Any activity which removes or significantly disturbs the vegetation
7 surface cover including clearing, grubbing of stumps and root mat and top soil removal.

8 (56) **Structural Rock Fills.** Fills including limited amounts of rubble, broken asphalt,
9 brick or concrete.

10 (57) **Surveyor.** A registered land surveyor licensed to practice land surveying in the
11 State of Maryland and qualified to prepare grading plans and specifications.

12 (58) **Timber Harvesting (logging).** The severing of any size tree above ground level
13 leaving the root system and all stumps intact, except for the purpose of providing a temporary
14 access for some other use, or for the removal of a dead, dying or hazardous tree. A Tree
15 Conservation Plan may be required for the timber harvesting activities to be conducted in
16 conformance with Subtitle 25.

17 (59) **Topsoil.** Soil to be used as topsoil, and the placement of topsoil over a prepared
18 subsoil prior to the establishment of permanent vegetation, shall meet the specifications of, and
19 be in accordance with, Maryland Department of the Environment, Standards and Specifications
20 for Soil Erosion and Sediment Control, 21.0 Standards and Specifications for Topsoil or
21 approved subsequent revisions thereof.

22 (60) **Tree Conservation Plan (TCP).** A site map that delineates woodland
23 conservation areas and the associated text that details requirements, penalties, and mitigation as
24 described in Subtitle 25.

25 (61) **Watercourse.** Any natural or improved stream, river, creek, ditch, channel,
26 canal, conduit, culvert, drain, gully, swale or wash in which waters flow either continuously or
27 intermittently.

28 **Sec. 32-126. Permits Required.**

29 (a) **Grading Permit.** Except as exempted in Section 32-127, no person shall do, nor shall
30 the property owner permit any site development or grading of land for any purpose without the
31 owner/permittee of the said land first having obtained a grading permit from the Director.

1 **(b) Drainage System Connection Permit.** A permit is required to connect or discharge to
2 any drainage system or watercourse within the County. This permit is to ensure that all drainage
3 systems are to be used primarily for the control, disposition and management of drainage,
4 prohibit illegal discharge of pollutants and to safeguard water quality, living resources, public
5 health and prevent damage to the drainage system.

6 **(c) At the option of the applicant, a permit may cover the grading and other site**
7 development on a single lot, or on a combination of contiguous lots in a single block, or in
8 contiguous blocks.

9 **(d) The grading and other site development required on a single lot or parcel where one**
10 building permit is being issued shall conform to the provisions of this Division and may be
11 included as part of the building permit, in which case no separate grading permit is required.

12 **(e) With the exception of single family detached dwellings, a single grading permit is**
13 required for grading and other site development work on a single lot or parcel where two or more
14 building permits are issued.

15 **(f) The information reflected in the permit shall be maintained factual and current by the**
16 permittee.

17 **(g) When the scope of work to be performed is solely for the purpose of commercial**
18 timber harvesting, the erosion and sediment control plan approved by the Prince George's Soil
19 Conservation District shall be the sole technical basis for issuance of the grading permit. The fee
20 for the timber harvesting permit shall be \$100.

21 **Sec. 32-127. Exceptions to Grading Permit.**

22 **(a) Provided all other provisions of this Division are met and excluding the property**
23 located within the Chesapeake Bay Critical Area Overlay Zone, no grading or storm drain
24 connection permit will be required under the following conditions:

25 **(1) Agricultural land management practices and construction of agricultural**
26 structures; and removal of cultivated sod, shrubs and trees for transplant as part of a regular
27 commercial activity.

28 **(2) The stockpiling, with slopes at a natural angle of repose, of raw or processed**
29 sand, stone and gravel at concrete, asphalt and material processing plants and storage yards not
30 associated with a development application.

31 **(3) Refuse disposal areas or sanitary landfills operated and conducted in accordance**

1 with the requirements, rules and ordinances adopted by Prince George's County.

2 (4) Grading for or by, and on land owned by, the United States of America or the
 3 State of Maryland when used exclusively for purposes originally acquired or consistent with
 4 constitutional and statutory authorizations and limitations; or for , by or under permit from a
 5 municipality authority, State Highway Administration or the County Department of Public
 6 Works and Transportation to the extent such grading is within public right-of-way and adjacent
 7 slope easements or minimum slope areas only, and specifically exclusive of the remainder of the
 8 lot.

9 (5) Grading and trenching by privately or publicly-owned and operated public utility
 10 companies or commissions for open channel improvements and underground utility installations
 11 and maintenance in:

12 (A) Public right-of-ways and Washington Suburban Sanitary Commission
 13 easements; and

14 (B) Utility easements immediately adjacent to public right-of-ways or in the
 15 space on abutting lot(s) needed to accommodate the respective house connections; provided,
 16 however, that all grading and trenching involved is included in a current site grading permit or as
 17 part of a current building permit.

18 (6) Grading, as a maintenance measure, or for landscaping purposes on existing
 19 developed lots or parcels, provided:

20 (A) The aggregate of area(s) affected or bare-earthed at any one (1) time does
 21 not exceed five thousand (5,000) square feet;

22 (B) The grade change does not exceed twelve (12) inches at any point and does
 23 not alter the drainage pattern;

24 (C) All bare earth is promptly seeded, sodded or otherwise effectively protected
 25 from erosive actions.

26 (D) Does not require a Tree Conservation Plan per Subtitle 25.

27 (7) Grading and related earthwork, incidental to individual water wells and sewage
 28 disposal (septic) systems installed pursuant to a valid permit from the appropriate authority.

29 **Sec. 32-128. Same; Other Permits Required.**

30 Permits issued pursuant to this Division do not relieve the owner/permittee of responsibility
 31 for securing required permits for work to be done which is regulated by any other applicable

1 code, act or ordinance. The provisions of this Division shall not preclude the inclusion in such
 2 other permit of more stringent regulation or requirements concerning the grading of land.

3 **Sec. 32-129. Application.**

4 A written application from the owner of the site or the owner's authorized representative, in
 5 the form prescribed by the Director, shall be required for each permit. Grading and site
 6 development plans and specifications shall be submitted with each application for a grading
 7 permit, unless because of remoteness from adjacent properties and/or self-evidence of the ease of
 8 compliance with this and other requirements of this Subtitle, the Director specifically determines
 9 that none are required. These plans shall be prepared or approved and signed and sealed by a
 10 professional engineer, surveyor, architect or landscape architect. The Director may waive the
 11 preparation or approval and signature by the professional engineer, surveyor, architect or
 12 landscape architect only when it is self-evident that the work is simple, clearly shown, and
 13 entails no hazard or nuisance potential to adjacent property and does not include the construction
 14 of a fill upon which a structure may be erected.

15 Application for a drainage connection permit shall be filed in conjunction with, and
 16 pursuant to, the Concept plan application as in Section 32-177 of this Division or as directed by
 17 the Director as part of an enforcement action under Section 32-116 of this Subtitle.

18 **Sec. 32-130. Contents of Grading/Site Development Plan.**

19 (a) In addition to the requirements in Section 32-129, plans and specifications
 20 accompanying the grading permit application shall meet the requirements and show data as
 21 follows:

22 (1) Additional sets of prints shall be submitted in quantity as determined by the
 23 Director to coordinate the applied for permit issuance with collateral activities of all other
 24 County agencies. The paper size for plans shall not exceed 30"x 42".

25 (2) Date, name, address and telephone number of preparer of plans, or each discipline
 26 and owner of site.

27 (3) Certification from preparer of the plan, or each discipline (surveying existing
 28 conditions, proposed surface grade establishments, load-bearing fills and slope stabilities, storm
 29 drainage, retaining walls, etc.), as might have participated in the finished form, attesting to the
 30 completeness and correctness of existing conditions as shown and to the compliance of all
 31 proposed grading and other work with all of the requirements of this Subtitle, except for specific

1 waivers or modifications as listed.

2 (4) A clear and definite delineation of limits of disturbance and areas where
3 vegetation is to remain, in conformance with the approved tree conservation plan if one is
4 required, along with a calculation of the disturbed area in square feet of the total site minus that
5 area to remain undisturbed and currently having an effective erosion resistant ground cover or
6 surface.

7 (5) For all applications, other than those for surplus earth disposed on sites ten (10)
8 acres or larger existing-topography, proposed grading and site development with contours at one
9 (1) or two (2) foot intervals, and drawn at a scale no smaller than one (1) inch equals fifty (50)
10 feet of the entire site, plus a minimum twenty (20) foot adjacent peripheral strip; or as might
11 otherwise clearly reflect existing conditions and proposed grading and other work, provided that
12 such other interval and scale has the Director's approval in advance of plan preparation.

13 (6) For surplus earth disposal on sites ten (10) acres or larger existing topography and
14 proposed grading and site development for restoration to a condition meeting the minimum
15 design and construction standards provided for elsewhere herein, with contours at no greater than
16 five (5) foot interval and drawn at a scale no smaller than one (1) inch equals two hundred (200)
17 feet; provided, however, that for work to be performed within fifty (50) feet of any property line
18 plans shall conform to the requirements of Paragraph (5) of this Subsection.

19 (7) A clear and definite delineation with dimensions for sizing and locating areas for
20 each class of fill proposed.

21 (8) Established, or in the case of new subdivisions being processed, approved
22 tentative street grades (elevations), including Maryland-National Capital Park and Planning
23 Commission and/or Department of Public Works and Transportation file number(s).

24 (9) Basement, first floor and ground elevations at corners of all buildings, spot
25 elevations at critical points on the proposed grading plan, and on all other structures; and profiles
26 and/or cross sections showing the proposed and finished grade or driveways, access lanes, walks,
27 watercourses, as needed to demonstrate compliance with this Subtitle.

28 (10) Size, location and construction details of all proposed site development.

29 (11) Drainage area map and study including computations covering the entire area
30 tributary to the site, and showing calculated runoff to all structures, lines and open channel
31 facilities.

1 (12) A clear and definite delineation of the proposed subdivision of the site for the
2 purpose of staging, to minimize time of exposure to erosive actions, along with the construction
3 of the sequential order for the working of each, and a statement of their respective areas, minus
4 the area therein to remain undisturbed, in square feet.

5 (13) Soil type as shown on the USDA Soil Survey of Prince George's County or soil
6 type as determined by a professional engineer at the location of each proposed residential
7 building. For each proposed residential building lot on which a basement is proposed to be
8 constructed, the hydrological characteristics of the lot to a depth of six (6) feet below the finished
9 floor level of the basement and the depth of the closest aquifer to the proposed final grade of the
10 basement.

11 (14) Time required performing and completing all work on the site, with anticipated
12 starting and completion dates for each subdivision thereof, as staged to minimize exposure to
13 erosive actions.

14 (15) An approved Type 2 Tree Conservation Plan or valid letter of exemption from the
15 Woodland Conservation Ordinance in conformance with the provisions of Subtitle 25.

16 **Sec. 32-131. Soils Investigation Report.**

17 The Director shall require a soils investigation report prepared and certified by a
18 professional engineer duly registered in the State of Maryland to correlate surface and subsurface
19 conditions with the proposed grading, site and building plans. The Director may require a soils
20 investigation report depending upon slopes, anticipated characteristics of soil, drainage
21 characteristics and the like. The results of the investigation shall be presented in a report by a
22 professional engineer which shall include, but need not be limited to, data regarding the nature,
23 distribution and supporting ability of existing soils and rock on the site and include conclusions
24 and recommendations for grading requirements and erosion control including recommendations
25 to insure stable soil conditions and groundwater control applicable. The Director may require
26 supplemental reports and data by an engineering geologist as might be deemed necessary.
27 Recommendations included in such reports and approved by the Director shall be incorporated in
28 the grading plan or specifications.

29 **Sec. 32-132. Waiver.**

30 (a) The Director may waive or modify requirements of this Division on such conditions
31 and subject to submission of such reports deemed necessary to insure compliance with the intent

1 of this Subtitle. No waiver or modification will be considered, granted or approved unless;

2 (1) Specifically requested in writing; and

3 (2) Each such waiver or modification is specifically and separately approved in
 4 writing by the Director. Approval of the plans, per se, will not constitute approval of any waiver
 5 or modification of any requirement of this Subtitle that might otherwise be shown on the plans.

6 (b) The Prince George's Soil Conservation District may grant a written waiver from the
 7 requirements of the Standards and Specifications if strict adherence to the specifications will
 8 result in unnecessary hardship and not fulfill the intent of the Subtitle. The applicant shall
 9 submit a written request for a waiver to the Prince George's Soil Conservation District. The
 10 request shall state the specific waiver sought and reasons for requesting the variance. The Prince
 11 George's Soil Conservation District shall not grant a waiver unless and until sufficient specific
 12 reasons justifying the waiver are provided by the applicant.

13 **Sec. 32-133. Denial of Permit.**

14 (a) General. Grading permits shall not be issued where the proposed grading would cause
 15 hazards adverse to public safety and welfare or violate the Code. If it can be
 16 shown to the satisfaction of the Director that any hazards caused can be essentially eliminated by
 17 the construction of retaining structures, buttress fills, drainage facilities, including furnishing of
 18 the necessary easements, the Director may issue the grading permit on the requirement that such
 19 construction work is performed and after secured easements are granted and recorded.

20 (b) Hazardous grading. The Director shall not issue a grading permit where he finds that
 21 the work as proposed by the applicant will damage any private or public property, or interfere
 22 with any existing drainage course in such manner as to cause damage to any adjacent property or
 23 result in the deposition of debris or sediment on any public way or into any waterway, or create
 24 an unreasonable hazard to persons or property.

25 (c) Geological hazard. If, in the opinion of the Director, the land area for which grading is
 26 proposed is subject to geological hazard to the extent that no reasonable amount of corrective
 27 work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to
 28 persons or property, the grading permit shall be denied.

29 (d) Floodplain Hazard. Grading within the one hundred year floodplain is subject to the
 30 controls and requirements of this Code and, if permitted pursuant thereto, must also comply with
 31 this and other Sections of this Code.

1 (e) Woodland Conservation. The Director shall not issue a grading permit:

2 (1) Where the work proposed would violate an approved Tree Conservation Plan; or
3 if a valid Letter of Exemption has not been obtained; or

4 (2) Within five (5) years of timber harvest unless mitigation is provided that is
5 consistent with the woodland conservation requirements of the underlying zone.

6 (f) The denial of a grading permit application for the reasons stated in Subsection (e),
7 above, may only be appealed to the Prince George's County Board of Administrative Appeals, in
8 accordance with its established Rules and Procedures.

9 (g) No drainage system connection permit for a connection to any watercourse or public
10 drainage system shall be issued to discharge pollutants without applicable Federal, State or local
11 pollution discharge permits, or other applicable permits such as a wetland permit.

12 (h) Any permittee or property owner shall notify the Director of any Federal or State
13 pollution discharge permit or conditions thereof to any drainage system or watercourse issued
14 within the County. Failure to obtain a pollution discharge permit from the Director of a state or
15 federal agency shall result in the denial or revocation of any permit issued by the Department of
16 Public Works and Transportation and shall subject the permittee, operator or property owner to
17 the provisions of Section 32-150(a), 32-196, 32-197 of this Code and 28-261 of the County Code.

18 **Sec. 32-134. Permit Fees.**

19 No permit shall be issued for grading and other work covered within this Division until the
20 fee established in Section 32-120 has been paid.

21 **Sec. 32-135. Development Bonds.**

22 (a) In the evaluation of development sites, no permit for grading and/or site development
23 disturbing more than one acre of the site shall be issued until the applicant (excepting County
24 Governmental Departments and agencies, municipalities and/or municipal corporations for
25 municipal-owned property), as principle, has posted a cash deposit or bond from an approved
26 corporate surety or other collateral, including a certificate of guarantee pursuant to Section 2-
27 463, if determined acceptable by the Director and by the County Attorney, to guarantee and
28 assure that all work will be completed in accordance with the approved plans and the provisions
29 of this Division.

30 (b) Except as otherwise provided, the amount of any bond required to be posted under this
31 section shall be equal to or greater than the total cost of the project, as estimated by the

1 Department, including an additional twenty-five percent (25%) of the estimated cost for
2 contingencies, plus the current unit price per square foot of the area to be afforested or
3 reforested.

4 (c) No deposit or bond is required for a single permit for grading and other work
5 disturbing less than one acre. However, a cash deposit or bond is required for simultaneously
6 applied for, or sequentially numbered permits for, work on contiguous lots or parcels with an
7 aggregate disturbed area of more than one acre, or in those instances, in the determination of the
8 Director, where individual permit applications necessitate the need for the posting of a bond.
9 This exception to the bond requirement shall not be construed as an exception to the
10 requirements for a permit.

11 (d) If all work authorized by the permit is not completed within the time specified therein
12 or as otherwise provided for in Section 32-143 or violates any other term or condition of the
13 permit it shall be defaulted. A cash deposit shall be forfeited or, if a bond has been posted,
14 action will be taken as follows:

15 (1) Where the Director determines that a permit is in default and the work is guar-
16 anteed by a surety bond, the Department shall immediately notify the bonding institution or
17 agent to undertake and complete the work in accordance with the permit.

18 (2) Where the Director has determined that a permit is in default and the work is
19 guaranteed by a form of bond other than a surety bond, and the bonding institution or agent fails
20 to commit to undertake completion of the work within thirty (30) days of having been given
21 notice by the Department, the Director shall immediately move to collect all bonds which have
22 been posted.

23 (3) Upon a decision to collect the bonds, the Director shall evaluate the work
24 remaining to be performed and determine whether,

25 (A) the work covered by the permit should be completed;

26 (B) the work site should be restored to its original condition; or

27 (C) other modifications to the permitted work site should be made. The Director
28 shall then determine whether the bonds posted are sufficient to carry out the required completion,
29 restoration or modified work.

30 (4) After evaluating the work performed as specified above, the Director shall
31 develop an estimate of the costs for said work, to include an amount equal to twenty-five percent

1 (25%) of the anticipated construction cost as contingency, and compare the estimated amount to
2 the amount of the bond posted by the permittee,

3 (A) if the amount of the bond posted is in excess of the estimate, the Department
4 shall immediately move to collect the bonds and carry out the necessary work. The entire
5 amount of the bonds posted may be used either in or near the permit site as may be determined
6 by the Director to be necessary.

7 (B) If the bonds posted are not sufficient, the Department shall develop and
8 implement a course of action as determined by the Director. The Department shall immediately
9 move to collect all of the bonds which have been posted.

10 (5) If the bonds which have been posted are in excess of the amount required to
11 complete the permitted work, any necessary restoration work or modified work as determined
12 necessary by the Director to be necessary, the excess amount shall be released to the payer after
13 all work has been finished by the Department and all costs of same have been accounted for.

14 (6) Upon notification that a bond has been forfeited in accordance with this Subtitle,
15 the bonding institution or agent providing the bond shall have thirty (30) days to issue payment
16 to the County. If the bonding institution or agent fails to render payment within thirty (30) days
17 of the notice from the Director to make payment, the bonding institution or agent may be barred
18 from issuing any subsequent bonds for any other work within the County for a period of five (5)
19 years. The right to reissue bonds after having been previously barred shall be allowed only after
20 all outstanding amounts have been paid, plus an amount equal to ten (10%) a year, compounded
21 annually.

22 (e) All funds received from defaulted permits will be used by the County to defray the cost
23 of contracting, including engineering and administration and for the completion of all work
24 authorized by the permit per the approved plans, but no less than restoring the site to meet the
25 minimum requirements of this Division with particular emphasis on stability, safety, drainage,
26 vegetative cover and erosion control. Any unused portion of monies forfeited will be returned.
27 In the event that the entire amount of cash deposit or bond is expended, the permittee has a
28 continuing obligation for payment of all additional monies expended by the County for the
29 implementation of the plan. Upon certification from the County Attorney that a tax lien has been
30 created, the amount of such lien shall be collected by the Director of Finance in the same manner
31 as other County real estate taxes.

1 (f) Before acceptance, all bonds shall be approved by the Director and the County
 2 Attorney. If a corporate bond is offered, it shall be executed by a surety or guaranty company
 3 qualified to transact business in the State of Maryland. If a cash bond is offered, it shall be
 4 deposited with the Office of Finance, Treasury Division, which shall give an official receipt
 5 therefore, stipulating that said cash has been deposited in compliance with, and subject to the
 6 provisions of, this Section.

7 (g) Cash deposits shall be returned and surety bonds cancelled upon compliance of all
 8 work authorized by the permit and the issuance of a certificate of completion by the Director.

9 (h) Upon completion and acceptance of the various stages of grading and/or site
 10 development, the permittee may request, in writing to the Director, partial release of the monies
 11 posted as a guarantee pursuant to Section 32-135 of this Code. A Two Hundred Fifty Dollar
 12 (\$250.00) nonrefundable fee (Section 32-120) for administrative expenses shall be paid for each
 13 request.

14 (i) Whenever the Director requests payment of the monies posted as a guarantee pursuant
 15 to Section 32-135 of this Code, the permittee shall pay a Two Hundred Fifty Dollar (\$250.00)
 16 nonrefundable fee (Section 32-120) for administrative expenses.

17 (j) Where a site requires afforestation or reforestation, no grading permit, building permit,
 18 or combination thereof, shall be issued until the applicant has posted a cash deposit or bond from
 19 an approved corporate surety or other collateral, including a certificate of guarantee pursuant to
 20 Section 2-463, if determined acceptable by the Director and by the County attorney, to guarantee
 21 and assure that all work will be completed in accordance with the approved plans and the
 22 provisions of this Division and Subtitle 25.

23 **Sec. 32-136. Conditions of Approval.**

24 (a) In granting a permit pursuant to this Division, the Director may impose such conditions
 25 as may be reasonably necessary to prevent water quality degradation by the discharge of
 26 pollutants, or creation of a nuisance or unreasonable hazard to persons, or unnecessary
 27 destruction of living resources or damage to property. Such conditions shall include (even if not
 28 specifically written in the permit), but need not be limited to:

29 (1) The granting (or securing from others) and recordation in County land records of
 30 easements for drainage facilities, including the acceptance of their discharge on the property of
 31 others, and for the maintenance of slopes or erosion control facilities.

1 (2) Adequate control of dust by watering, or other control methods that is in
2 conformance with applicable air pollution ordinances.

3 (3) Improvements of any existing grading, ground surface, or drainage condition on
4 the site (not to exceed the area as proposed for work or development in the application) to meet
5 the standards required under this Division for new grading, drainage and erosion control.

6 (4) Sediment traps and basins located within a densely populated area or in the
7 proximity of an elementary school, playground or other area where small children may
8 congregate without adult supervision shall be enclosed with a minimum forty-two (42) inch high
9 safety fence.

10 (5) Protection of water quality through the implementation and maintenance of
11 drainage treatment devices or the use of control measures.

12 **Sec. 32-137. Liability.**

13 Neither the issuance of a permit under the provisions of this Division nor compliance with
14 the provisions hereto or with any condition imposed by the Director hereunder shall relieve any
15 person from responsibility for damage to persons, property, drainage systems, living resources,
16 or the general environment nor impose any liability upon the County for damages to persons and
17 property.

18 **Sec. 32-138. Responsibility of Permittee.**

19 (a) Notwithstanding other conditions or provisions of a permit or the minimum standards
20 set forth in this Division, the permittee is responsible for the abatement of pollutant discharges,
21 damage to adjacent property, and the maintenance of water quality. No person shall perform
22 grading on land in any manner or so close to the property line as to endanger or damage any
23 adjoining public street, sidewalk, alley or any other public or private property without supporting
24 and protecting such property from settling, cracking, erosion, sedimentation, or other damage or
25 personal injury which might result.

26 (b) The permittee shall be responsible for the prompt removal of, and damages resulting
27 from, any soil, miscellaneous debris, any pollutant discharge, or other materials washed, spilled,
28 tracked, dumped, or otherwise deposited on public or private streets, highways, sidewalks,
29 watercourses or other public thoroughfares as an incident to the construction activity, or during
30 transit to and from the construction site where, in the opinion of the Director, such deposition
31 constitutes a public nuisance or hazard.

1 (c) During grading operations, the permittee shall be responsible for the prevention of
 2 damage to any public utilities or services. This responsibility applies within the limits of grading
 3 and along any routes of travel of equipment.

4 **Sec. 32-139. Permit Authorization.**

5 (a) The issuance of a grading permit shall constitute an authorization to do only that work
 6 described in the permit and shown on the approved site plans and specifications, in strict
 7 compliance with the requirements of this Division, unless each and every modification or waiver
 8 is specifically listed and given specific approval by the Director pursuant to Section 32-132.

9 (b) The issuance of any drainage connection permit shall constitute an authorization to
 10 discharge subject to continued compliance with of any covenants, stipulations, and agreements
 11 and the provisions of the connection permit and any maintenance agreement, in full compliance
 12 with any other Federal, State or local water quality protection laws.

13 **Sec. 32-140. Compliance.**

14 The permittee, his agent, contractors and employees shall carry out the proposed work in
 15 accordance with the approved plans and specifications, and in compliance with all the
 16 requirements of the permit and this Subtitle.

17 **Sec. 32-141. Action Upon Noncompliance.**

18 (a) In the event work does not conform to the permit or to the plans and specifications or
 19 to any instructions of the Director, notice to comply shall be given to the permittee in writing.
 20 After notice to comply is given, a maximum period of up to ten (10) days, in the determination of
 21 the Director, shall be allowed for the permittee or his contractor to begin to make the corrections.
 22 If an imminent hazard exists, the Director may require that the corrective work begin
 23 immediately. In the event of a failure to comply as directed or to satisfactorily complete all work
 24 required, the Director is hereby authorized to use the monies posted as guarantee pursuant to
 25 Section 32-135 of this Code to complete the work by contract or to order its completion by
 26 County personnel.

27 (b) If the Director finds any existing conditions to be other than as stated in the application
 28 or approved plans, he may stop the work until a revised plan is submitted conforming to the
 29 existing conditions.

30 (c) Failure of the permittee to comply with the directives of this Section will constitute a
 31 violation to Section 32-141, and the Director may cancel the permit and proceed with the

1 necessary restoration of the site using the Development Bond funds provided under Section 32-
 2 135.

3 (d) Any discharge or connection to a drainage system or watercourse which is not
 4 permitted subject to the provisions of this Division or not permitted under other Division of this
 5 Code which is found to contain pollutants shall be considered illegal and in noncompliance, and
 6 subject to enforcement and permitting actions set forth in this Code.

7 **Sec. 32-142. Changes to Plans.**

8 (a) All changes or modifications to the approved grading plans must be submitted to and
 9 approved by the Director. All necessary substantiating reports shall be submitted with any
 10 proposal to modify the approved grading plans. No grading or other work in connection with
 11 any proposed modification shall be permitted without the prior written approval of the Director.

12 (b) When inspection of a site indicates that the approved erosion and sediment control plan
 13 needs change, the change shall be in compliance with the erosion and sediment control criteria
 14 contained in the Standards and Specifications as follows:

15 (1) The permittee shall submit requests for major revisions to approved erosion and
 16 sediment control plans, such as the addition or deletion of a sediment basin, to the Prince
 17 George's Soil Conservation District to be processed appropriately. This processing includes
 18 revisions due to plan and site discrepancies and inadequacies controlling erosion and sediment as
 19 revealed through inspection; major revisions affecting the limits of disturbance shall require a
 20 revised tree conservation plan and

21 (2) The Director may approve minor modifications to approved erosion and sediment
 22 control plans in the field if documented on a field inspection report. The modification shall be
 23 noted on the approved plans, signed by an inspector and dated. The Prince George's Soil
 24 Conservation District, shall in conjunction with the Department of Public Works and
 25 Transportation, develop a list of allowable field modifications for use by field inspection
 26 personnel; minor revisions resulting in less than 5,000 square feet of vegetation removal per site
 27 may be verified.

28 **Sec. 32-143. Time Limits.**

29 (a) Generally. No grading or drainage system connection permits shall be issued for a
 30 period to exceed 5 years. The permittee shall fully perform and complete all of the work shown
 31 on the plans within the time limit specified in the permit.

1 (b) Extension. Prior to the expiration of a grading permit, the permittee may present a
2 written request for an extension to the Director. If, in the opinion of the Director, an extension is
3 warranted, a one-time extension, not to exceed one (1) year may be granted. Extension fees shall
4 be calculated at the same rate as permit fees, and based on the amount of site area that has not
5 received final inspection approval. The applicability of bonding requirements shall be adjusted
6 accordingly.

7 **Sec. 32-144. Inspection and Supervision.**

8 (a) The Director shall inspect all work and shall require that the permittee furnish adequate
9 supervision, documentation of satisfactory testing and compaction prepared and certified by a
10 professional engineer duly registered in the State of Maryland for all class 1 and class 2 fills and
11 class 3 fills as deemed necessary.

12 (b) Prior to the issuance of a grading permit, the permittee, the contractor and/or their
13 agents shall attend a preconstruction meeting on-site with the Director on each site requiring an
14 approved sediment and erosion control plan.

15 (c) After obtaining the initial site grading permit(s), the permittee shall obtain written
16 inspection approvals by the Director at the following stages in the development of the site or of
17 each phase of development thereof:

18 (1) Upon completion of installation of tree protection devices, followed by the
19 installation of perimeter erosion and sediment controls, prior to proceeding with any
20 other earth disturbance or grading. Other building or grading inspection approvals may not be
21 authorized until initial approval of the tree protection devices and perimeter erosion and
22 sediment controls has been obtained.

23 (2) Upon completion of stripping, the stockpiling of top soil, the construction of
24 temporary sediment and erosion control facilities, disposal of all waste material and preparation
25 of the ground;

26 (3) Upon completion of rough grading, but prior to placing top soil, permanent
27 drainage, or other site development improvements and ground covers;

28 (4) Upon completion of final grading, permanent drainage and erosion control
29 facilities including established ground covers and planting, and all other work required by the
30 permit. The Director may make additional inspections as might be deemed appropriate.

31 (d) Work shall not proceed beyond the stages outlined above until the Director inspects the

1 site and approves the work previously completed. Requests for inspections shall be made at least
 2 twenty-four (24) hours in advance (exclusive of Saturdays, Sundays and holidays) of the time the
 3 inspection is desired.

4 (e) For inspection and enforcement of the woodland conservation program and the erosion
 5 and sediment control program, the following shall be required:

6 (1) Ensure that approved tree conservation plans and approved Erosion and Sediment
 7 Control plans and permits are on the site and are complied with;

8 (2) Ensure that every active site having an erosion and sediment control plan is
 9 inspected for compliance with the approved plan on the average of once every two weeks; and

10 (3) Prepare written reports after every inspection that describe:

11 (A) The date and location of this site inspection;

12 (B) Whether the approved plan has been properly implemented and maintained;

13 (C) Practical deficiencies or erosion and sediment control plan deficiencies; and

14 (D) If a violation exists, the type enforcement action that is taken.

15 **Sec. 32-145. Reports.**

16 (a) Periodic reports of land grading activities and the supervision, testing and compaction
 17 control documenting the compaction of fill and certifying the acceptability and location of all
 18 fills shall be submitted to the Director. Where so directed, an as-built plan and the reports shall
 19 include certification of the adequacy of:

20 (1) Stripped areas and benched or keyed surfaces prepared to receive fills;

21 (2) Removal of unsuitable materials;

22 (3) Fill placement locations and depths;

23 (4) Construction of erosion control facilities, drainage devices, buttress fills,
 24 subdrains, retaining walls and other grading appurtenances; and

25 (5) Elevations of all rough grading completed.

26 **Sec. 32-146. Change of Ownership.**

27 The transfer of ownership of a site or any portion thereof by a permittee shall not relieve
 28 such permittee from any obligations under this Division.

29 **Sec. 32-147. Final Reports.**

30 Upon completion of the work, the Director shall require a report from a registered
 31 professional engineer, surveyor or architect certifying that all site work and facilities have been

1 completed in accordance with the conditions of the permit, the approved plans and
2 specifications, with the minimum standards of this Division, with a specific listing of all waivers
3 as might have been approved.

4 **Sec. 32-148. Certification of Completion.**

5 Upon receipt and approval of the final reports, if required by Section 32-147 and/or upon
6 otherwise determining that all permitted work has been satisfactorily completed in conformance
7 with this Subtitle, the Director will issue a certification of completion, the same being
8 prerequisite to the return of the cash deposit or release of bond in whole or part pursuant to
9 Section 32-135.

10 **Sec. 32-149. Maintenance.**

11 On any property on which grading or other work has been performed pursuant to a permit
12 granted under the provisions of this Division, the permittee or owner, or the agent, contractor and
13 employees of the permittee or owner shall continuously maintain and repair all graded surfaces
14 and erosion control facilities, drainage structures or means and other protective devices,
15 plantings and ground cover installed and completed.

16 **Sec. 32-150. Existing Conditions.**

17 (a) Remedy of Defects. Deficiencies, Discharges, Connections and Maintenance.
18 Whenever and wherever the Director finds that any existing grading, drainage, ground condition,
19 discharge or drainage connection is defective, deficient or illegal under the requirements of this
20 Division and constitutes or creates a public nuisance or hazard, or will result in adverse impacts
21 to water quality or may cause damage to property, drainage system, or a watercourse, then and in
22 such event the owner/permittee of the property upon which condition is located, or the person
23 responsible for the condition, upon receipt of notice in writing from the Director, shall within the
24 period specified therein, secure the required permit, perform or cause to be performed the
25 required remedial work, repairs or maintenance so as to correct and remedy the defect or
26 condition, and to be in conformance with the requirements of this Division and other
27 requirements of this Subtitle.

28 (b) Disregard of Notice to Remedy Condition; Penalty or Enforcement. Failure to
29 complete or undertake the required remedial work within the period specified shall constitute a
30 violation(s) pursuant to Sections 32-107 and 32-118 of this Code. If an act, omission or
31 condition constituting a violation is of a continuing nature, each day that a violation continues

1 shall be deemed a separate offense. The actual application of the penalty provisions of these
 2 Sections, or the possible prospective application thereof shall not preclude the enforced removal,
 3 correction or abatement of prohibited conditions or use through appropriate proceedings in a
 4 court of law. The notice provisions of Sections 32-107 and 32-118 and as amended herein shall
 5 not be applicable when, in the determination of the Director, there is an unsafe condition of soil
 6 or premises, or both, which constitutes a violation of one or more of the provisions of this
 7 Division and is a serious, immediate threat to the health or safety of the general public or
 8 adjacent property.

9 (c) Emergency Measures. The application of such penalty shall not preclude the enforced
 10 removal, abatement or correction of the conditions which were found to be in noncompliance,
 11 through appropriate proceedings in a court of law. In addition, the County may take those
 12 actions necessary to correct the situation, and all cost incurred therefore shall be billed to the
 13 responsible person in accordance with the provisions of Section 32-108(e), or be recovered
 14 through legal recourse.

15 **Sec. 32-151. Site Grades.**

16 (a) Site grades shall be adapted to establish street grades and topography, preserving to the
 17 extent feasible the natural contours, existing woodlands, specimen trees and terrain features.

18 (b) Concentrated surface drainage from each lot or parcel shall discharge directly, or
 19 through no more than one (1) adjacent lot unless suitable easements are granted, to accommodate
 20 its flow into a publicly maintained drainage system, street or continuously flowing natural
 21 watercourse. Easements may not be required if, in the opinion of the Director, it can be
 22 demonstrated by a Maryland registered professional engineer that the concentrated surface
 23 drainage is insignificant and/or will not adversely affect adjacent properties.

24 (1) Slope Limitations. In effecting the foregoing objectives, the slope limitations
 25 specified in Table 4 herein and elsewhere in this Division shall be followed. The exact value
 26 shall be as determined by the preparer of the plan to suit each specified site.

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TABLE 4 – SITE SLOPE LIMITATIONS

FEATURE	MAXIMUM	MINIMUM
Setback of Building from edge Building Pad or Shelf	-----	10 ft. *
Slope of Pad or Shelf Away from Building, Residential	30" in 10'	10" in 10'
Slope of Pad or Shelf Away from Building, All Others	-----	10" in 10'
Yards or Lawns	3:1	2 ½%
Slope of Terraces, Slopes or Banks, Residential	3:1	-----
Slope of Terraces, Slopes or Banks, all others	2:1	-----
Side Slope of Swale or Ditch	3:1	10:1
Longitudinal Gradient of Sodded Swale or Ditch	4% or **	2%
Slope patios-longitudinal pitch (end to end) and Lateral pitch (side to side) away from the Building	¼" in 12"	1/8" in 12"
Driveways – lateral pitch (side to side) away from Building	½" in 12"	1/8" in 12"
Sidewalks and leadwalks – lateral pitch	48:1	-----
Driveways – longitudinal pitch (end to end) away from the Building	12.5%	1%
Sidewalks and leadwalks - longitudinal	12:1	-----
Parking Lots and Areas	7%	1%
<p>* Minimum from sides of single-family residences and from ends of a townhouse complex is four (4) feet.</p> <p>** The slope that will yield a velocity no greater than four (4) feet per second.</p>		

(2) Exception. Slopes steeper than 3:1 may remain undisturbed and undeveloped when preserving a forested area; however, a soils analysis may be required by the Director if the long term stability of the slope is in question.

(3) Building Types and Designs. Selection of building types and designs shall be coordinated with, and shall be considered secondary to, conformance of the site grading to the foregoing objectives, the preferred slope limitations, and other requirements of this Division.

(4) Factor of Safety. All slopes shall have a factor of safety of 1.5

Sec. 32-152. Ground Stabilization.

(a) All graded surfaces shall have suitable soil for permanent vegetative growth; free of any rocks, stones or other nonirreducible/nonorganic matter larger than one and one-half (1 ½)

1 inches in diameter; diced and raked; and shall be limed, fertilized, seeded, mulched with tack or
2 sodded, planted or otherwise protected from erosion; and shall be watered, tended and
3 maintained until growth is well established.

4 (1) Topsoil shall be in accordance with the Maryland Department of the
5 Environment, Standards and Specifications for Soil Erosion and Sediment Control, 21.0 Standard
6 and Specifications for Topsoil, or approved subsequent revisions thereof.

7 (2) Stabilization methods and materials shall be in accordance with the Maryland
8 Department of the Environment, Standards and Specifications for Erosion and Sediment Control,
9 20.0, Standards and Specifications for Vegetative Stabilization, or approved subsequent revisions
10 thereof.

11 (3) Upon completion of the work, a vegetative ground cover certification from a
12 registered professional engineer, surveyor, or landscape architect shall be provided certifying
13 that all disturbed or graded surfaces on the project site, with exception of areas shown on the
14 plan that do not apply, have permanent vegetative growth and that the vegetative materials were
15 placed in accordance with Section 32-152 and have been completed in accordance with the
16 conditions of the permit, the approved plans and specifications, and with the minimum standards
17 of this Division, with specific listing of all waivers as might have been approved.

18 **Sec. 32-153. Contents of the Erosion and Sediment Control Plan.**

19 (a) No grading permit shall be issued for areas to be disturbed in excess of five thousand
20 (5,000) square feet or one hundred (100) cubic yards of earth moved without an approved
21 erosion and sediment control plan which meets the requirements of the Prince
22 George's Soil Conservation District, this Division, the State Sediment Control Regulations,
23 COMAR 26.17.01, and the Standards and Specifications. The plan shall include sufficient
24 information to evaluate the environmental characteristics of the affected areas, the potential
25 impacts of the proposed grading on water resources, and the effectiveness and acceptability of
26 measures proposed to minimize soil erosion and off-site sedimentation. This plan shall serve as
27 a basis for all subsequent grading and stabilization. The applicant shall certify on the plan that
28 all clearing, grading, drainage, construction and development shall be conducted in strict
29 accordance with the plan.

30 (b) Applicants shall submit the following information to the Prince George's Soil
31 Conservation District:

- 1 (1) A letter of transmittal;
- 2 (2) A vicinity sketch indicating north arrow, scale and other information necessary to
- 3 easily locate the property;
- 4 (3) A plan at an appropriate scale indicating at least:
 - 5 (A) Name, address and telephone number of:
 - 6 (i) The owner of the property where the grading is proposed;
 - 7 (aa) The applicant;
 - 8 (B) The existing and proposed topography;
 - 9 (C) The proposed grading and earth disturbance including:
 - 10 (i) Surface area involved;
 - 11 (ii) Excess spoil material;
 - 12 (iii) Use of borrow material;
 - 13 (iv) Specific limits of disturbance consistent to that shown on an approved
 - 14 Type 2 Tree Conservation Plan; and
 - 15 (v) A clear and definite delineation of all woodland conservation areas and
 - 16 areas to remain undisturbed consistent with the approved Type 2 Tree Conservation Plan;
 - 17 (D) Storm drainage provisions, including:
 - 18 (i) Velocities and quantities of flow at outfalls; and
 - 19 (ii) Site conditions around points of all surface water discharge from the
 - 20 site;
 - 21 (E) Erosion and sediment control provisions to minimize on-site erosion and
 - 22 prevent off-site sedimentation including:
 - 23 (i) Provisions to preserve top soil and limit disturbance;
 - 24 (ii) Details of grading practices;
 - 25 (4) Design details for structural controls;
 - 26 (5) Details of temporary and permanent stabilization measures including placement
 - 27 of the statement on the plan that following initial soil disturbance or redisturbance, permanent or
 - 28 temporary stabilization shall be completed within seven (7) calendar days for the surface of all
 - 29 perimeter dikes, swales, ditches, perimeter slopes and all slope greater than 3 horizontal to 1
 - 30 vertical (3:1), and for all embankments of ponds, basins and traps; and fourteen (14) days for all
 - 31 other disturbed or graded areas on the project site provided that the requirements of this Section

1 do not apply to those areas which are shown on the plan and are currently being used for material
 2 storage or for those areas on which actual construction activities are currently being performed or
 3 to interior areas of a surface mine site where the stabilization material would contaminate the
 4 recoverable resource;

5 (6) Sequence of construction describing the relationship between the implementation
 6 and maintenance of controls, including permanent and temporary stabilization and the various
 7 stages or phases of earth disturbance and construction. The sequence of construction shall, as a
 8 minimum, include a schedule and time frame for the following activities:

9 (A) Clearing and grubbing for those areas necessary for installation of perimeter
 10 controls;

11 (B) Construction of perimeter controls;

12 (C) Remaining clearing and grubbing;

13 (D) Road grading;

14 (E) Grading for the remainder of the site;

15 (F) Utility installation and whether storm drains will be used or blocked after
 16 construction;

17 (G) Final grading, landscaping or stabilization; and

18 (H) Removal of controls;

19 (7) A statement placed on the plan indicating that the permittee shall request that the
 20 Department of Public Works and Transportation approve work completed in accordance with the
 21 approved erosion and sediment control plan, the grading or building permit, and this Division,
 22 and that the permittee shall obtain written inspection approvals by the Director at the following
 23 stages in the development of the site, or of each subdivision thereof:

24 (A) Upon completion of installation of tree protection devices, followed by the
 25 installation of perimeter erosion and sediment controls, prior to proceeding with any other earth
 26 disturbance or grading. Other building or grading inspection approvals may not be authorized
 27 until initial approval by the inspection agency is made;

28 (B) Upon completion of stripping, the stockpiling of top soil, the construction of
 29 temporary sediment and erosion control facilities, disposal of all waste material and preparation
 30 of the ground;

31 (C) Upon completion of rough grading, but prior to placing top soil, permanent

1 drainage or other site development improvements and ground covers;

2 (D) Upon completion of final grading, reforestation, permanent drainage, and
 3 erosion control facilities including established ground covers and planting, and all other work of
 4 the building permit;

5 (8) Certification by the owner or permittee that any clearing, grading, construction or
 6 development, or all of these, will be done pursuant to this plan and that responsible personnel
 7 involved in the construction project will have a Certification of Training at a State of Maryland
 8 Department of the Environment approved training program (i.e. Green Card Certification) for the
 9 control of sediment and erosion before beginning the project. The Certification of Training for
 10 Responsible Personnel requirement may be waived by the Prince George's Soil Conservation
 11 District on any project involving four (4) or fewer residential units; and

12 (9) In approving the plan, the Prince George's Soil Conservation District may require
 13 any additional information or data deemed appropriate and/or may impose such conditions
 14 thereto as may be deemed necessary to ensure compliance with the provisions of this Division,
 15 the State Sediment Control Regulations, COMAR 26.17.01, the Standards and Specifications, or
 16 the preservation of public health and safety.

17 **Sec. 32-154. Preparation of Ground.**

18 (a) The entire area, or each subdivision thereof, included within the limits of proposed cut
 19 and fill shall be stripped with particular emphasis on the removal of all root mat, trash, organic
 20 matter, and otherwise objectionable, noncomplying and unsuitable materials and soils. All
 21 previously placed uncontrolled fill shall be removed from areas to receive class I fill for a
 22 building or structure that is to be erected. No building or structure shall be erected on class III
 23 fill material.

24 (1) Prior to placing class 1 fill, the ground surface, if within five (5) feet of finished
 25 grade, or foundation base elevation, shall be compacted so that the top six (6) inches achieves a
 26 density of not less than ninety (90%) of maximum density as defined in Section 32-158.

27 (2) No class 1 or 2 load-bearing fill shall be placed on frozen ground. Class 3 may be
 28 placed on frozen ground.

29 (3) Natural and/or existing slopes steeper than five (5) horizontal to one (1) vertical
 30 shall be benched or continuously stepped into competent materials prior to placing fill of any
 31 class. Fills toeing out on natural slopes steeper than four (4) horizontal to one (1) vertical shall

1 not be made unless approved by the Director after receipt of a report by a soil engineer certifying
 2 that he has investigated the property, made soil tests, and that, in his opinion, such steeper slopes
 3 will safely support the proposed fill.

4 (4) All specimen trees within or adjacent to areas of proposed disturbance shall be
 5 protected in accordance with the approved Type 2 Tree Conservation Plan. Where Type 2 Tree
 6 Conservation Plan is not required, all specimen trees within or adjacent to areas of disturbance
 7 shall be protected by appropriate tree protection devices placed outside the drip line of the tree.

8 **Sec. 32-155. Waste Materials.**

9 (a) All objectionable, noncomplying and unsuitable materials and soils, and surplus
 10 complying earth encountered on the site or as developed during the construction operation, shall
 11 be classed as waste, and shall be immediately removed and disposed of by hauling to a County
 12 authorized refuse disposal area or sanitary landfill, or as follows:

13 (1) Combustibles, such as litter, trash, root mat, brush, trees, stumps by stockpiling,
 14 and subsequent burning on site, as regulated by other codes, or if considered salvageable as
 15 lumber, firewood, etc., by removal and hauling away. These materials shall not be dumped,
 16 piled or buried on the site or at any location other than a County authorized refuse disposal area
 17 and/or landfills.

18 (2) Brick, broken concrete and asphalt, by inclusion as part of fill material pursuant to
 19 Section 32-157.

20 (3) Top soil – by direct placement or interim stockpiling and subsequent placement in
 21 the uppermost layer immediately below finished grade in areas proposed for landscaping on the
 22 site or by placement in intermittent layers in class 3 fills on the site.

23 (4) Surplus complying earth and topsoil, by hauling away, or placement at only those
 24 sites elsewhere for which a permit has been issued. Dumping on other sites, not under permit is
 25 not permitted.

26 (5) The general contractor or party responsible for construction shall provide a
 27 sufficient number of covered containers at the construction site to contain litter and trash for
 28 timely disposal at a County authorized refuse disposal facility. For the purpose of this Section,
 29 litter and trash shall mean litter as defined by Section 13-261 of this Code, but shall not include
 30 any building or construction wastes.

1 **Sec. 32-156. Fill -- Classes.**

2 (a) The grading plans and specifications shall specify and delineate the use and extent of
3 fills in accordance with the following classifications:

4 (1) Class 1 fill -- Load-bearing fills proposed for support of buildings, walls, and
5 other structures, the function thereof which would be especially impaired by settlement.

6 (2) Class 2 fill -- Load-bearing fills proposed for support of roadways, pavements,
7 rigid utility lines, house connections, and structures which would not be especially impaired by
8 moderate settlement.

9 (3) Class 3 fill -- Common fills proposed for lawns, landscape plantings, or for other
10 nonload-bearing usage.

11 **Sec. 32-157. Fill -- Materials.**

12 (a) All class 1 and 2 fills shall consist of readily compactable soils meeting the following
13 minimum requirements:

14 (1) No inclusions of ice or snow, organic or other deleterious materials subject to
15 decay and high shrink-swell soils shall be permitted.

16 (2) No rock or similar irreducible material with a maximum dimension greater than
17 eighteen (18) inches shall be buried or placed in any portion of the fill, with the top two and one-
18 half (2 ½) feet below finished grade, foundations and utility service connections having nothing
19 larger than eight (8) inches in any dimension, unless permitted by the Director after receipt of a
20 report by a soil engineer certifying that he has investigated the property and the fill materials,
21 and that a fill including oversized materials may be constructed to meet the intent of this
22 Division.

23 (b) Class 3 fills may include the more difficult to compact soils, at other than optimum
24 moisture content; rock and similar irreducible materials without limit as to size provided no
25 detectable voids are formed, into which overlying soils may later be displaced; and top soil,
26 intermittently layered with nonorganic soil. In other than rock gardens, at least twelve (12)
27 inches of top soil must cover all rock or irreducible materials with a maxi-mum dimension
28 greater than eight (8) inches.

29 (c) The material must be free of contamination levels of any pollutant which is, or may be
30 considered to represent, a possible health hazard to the public or may be detrimental to surface or
31 ground water quality, or may cause damage to property or the drainage system.

Sec. 32-158. Fill - Compaction.

(a) Each layer of Class 1 and Class 2 fills shall be compacted at optimum moisture content (plus or minus two (2) percentage points), and to a minimum of ninety-five (95%) and ninety (90%) percent, respectively, of maximum density as determined in the laboratory by the Standard proctor Test (AASHTO T-99, ASTM D-698). Each layer of class 3 fills shall be compacted sufficiently to support customarily used tracked spreading equipment and upon completion to be stable and after planting to prevent erosion. Other methods of compaction that the Director deems appropriate and result in an equal or better quality of compaction for Class 1 and 2 fills may be accepted.

(1) Lower degrees of compaction may be permitted by the Director after receipt of a report by a soil engineer certifying that the soil engineer has investigated the subsoils of the site, has tested representative fill materials and that, in the opinion of the soil engineer, such lower degree of compaction will be adequate for the intended use of the fill.

(2) In-place (field) density shall be determined in accordance with the ASTM test method D-1556-82E, D-2922-91 or AASHTO T-191-86, T-238-86.

(3) All fills shall be placed in approximately horizontal layers, each layer having a loose thickness of not more than eight (8) inches for Class 1, twelve (12) inches for Class 2 and two (2) feet for Class 3 fills. If approved by the Director, thicker lifts may be per-mitted only upon submittal of adequate density test documentation of limited test fills.

Sec. 32-159. Subgrade – Compaction.

The top eight (8) inches of soil in cut, or the required Class 2 fill sections to be used as subgrade for support of patios, building floor slabs, driveways, parking pads and lots, sidewalks and other structures which would not be especially impaired by moderate settlement shall be compacted, or recompacted, to at least ninety (90%) percent of maximum density as determined by the Standard Proctor test.

Sec. 32-160. Slopes.

(a) Within the limitations specified in Section 32-151 and elsewhere, slopes of site grading, drainage and other improvements and facilities shall be determined by the preparer of the plan to suit the specific site and in accordance with accepted engineering practice.

(1) No fill or cut shall be made which creates an exposed surface steeper in slope than two (2) horizontal to one (1) vertical unless specifically waived by the Director after receipt of a

1 report by a soil engineer certifying that the engineer has investigated the property, and that, in the
2 engineer's opinion, such steeper slope will be structurally stable and that the ground cover to be
3 used is of a low maintenance type and will effectively control erosion.

4 (2) The Director may require that slopes be constructed with exposed surface flatter
5 than those shown in Section 32-151, or may require such other measures as the Director deems
6 necessary for stability and safety.

7 (3) Sides of temporary excavations made for foundations, buildings, and utility
8 installations shall be protected, shored, or sloped as required by regulations of the Maryland
9 State Department of Labor and Industry.

10 **Sec. 32-161. Slope – Setbacks.**

11 (a) Cut and fill slopes steeper than four (4) horizontal and one (1) vertical shall be set back
12 from property lines and buildings shall be set back from cut or fill slopes in accordance with
13 Figures 1 and 2 herein.

14 (1) Fill placed above the top of an existing or proposed surface with a slope steeper
15 than three (3) horizontal to one (1) vertical shall be set back from the top of the slope a minimum
16 distance of six (6) feet.

17 (2) The setbacks established by this Section are minimum and may be increased by
18 the Director, if the Director deems it necessary for safety or stability, or to prevent possible
19 damage from water, soil or debris.

20 (3) The Director may reduce the required setback from property lines where:

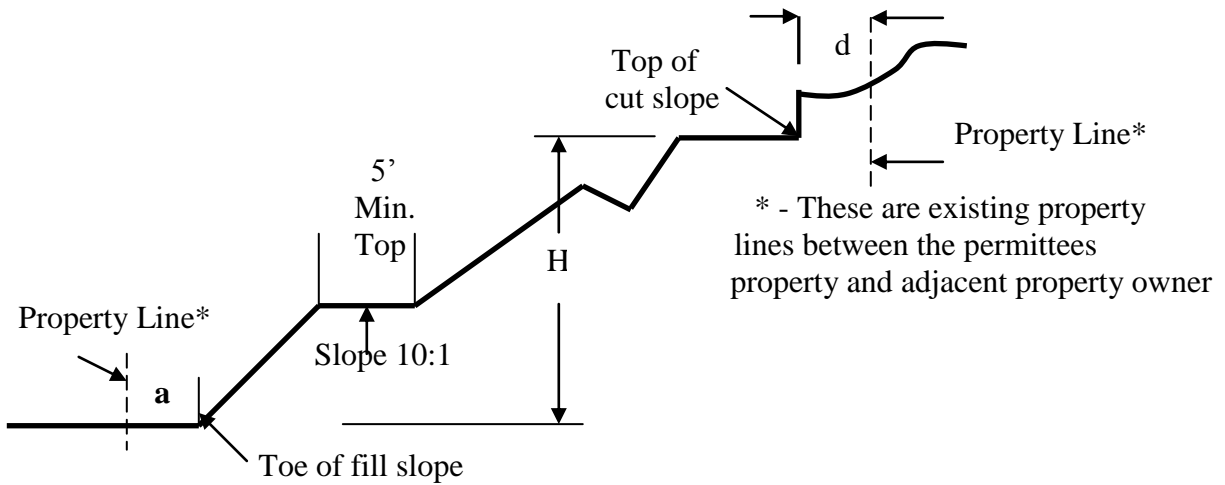
21 (A) The Director determines the necessity for the setback to be eliminated or
22 reduced by the construction of retaining walls or because the owner/permittee has the right to
23 extend slopes onto the adjacent property; or

24 (B) After receipt of a report by a soil engineer certifying that the soil engineer
25 has investigated the property and that in the engineer's opinion the reduction in the set-back will
26 not endanger any public or private property or result in the deposition of sediment or debris on
27 any public way.

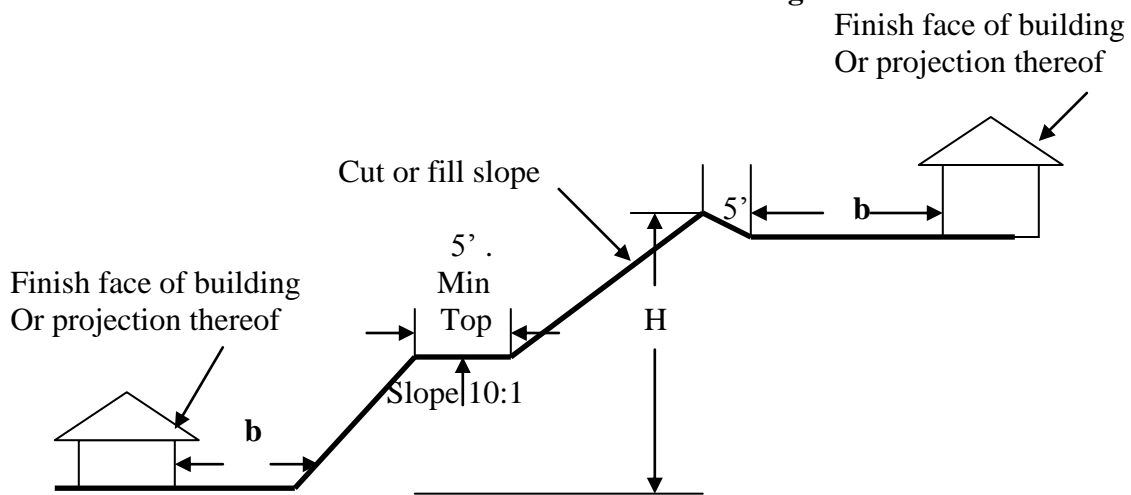
**MINIMUM SETBACK REQUIREMENTS
for Slopes Steeper than 4:1**

H in Feet	Toe if Fill from property line a	Top of cut from property line d	Building from toe or top of slope b
0 – 10	4'	2'	10'
10 – 30	8'	4'	15'
over 30	12'	6'	20'

SLOPE SETBACK FROM PROPERTY LINE – Figure 1



BUILDING SETBACK - Figure 2



1 **Sec. 32-162. On-Site Drainage.**

2 (a) The following provisions apply to the safe conveyance and disposal of drainage to
3 prevent erosion and property damage.

4 (1) Drainage facilities, including but not limited to sump pumps, foundation drains,
5 trench drains and under drains, shall be provided and shall be discharged into a publicly
6 maintained drainage system or continuously flowing natural water course to safely convey
7 surface and ground water in such a manner to prevent detrimental erosion, overflow, ponding or
8 nuisance of any kind in accordance with applicable design criteria, standards and procedures as
9 contained herein and as required by approved standards and regulations of the Prince George's
10 County Department of Public Works and Transportation.

11 (2) Unless intended by design for water quality and quantity purposes, the ponding of
12 water shall not be permitted particularly above cut or fill slopes or on drain-age terraces, nor
13 shall new development cause water to be impounded on adjacent property. Adequate drainage
14 facilities shall be provided to prevent such ponding. Existing ponding (ponding not created by
15 development) may remain in undisturbed, undeveloped, forested areas, unless it has
16 objectionable effects.

17 (3) Cut and fill slopes shall be terraced wherever the vertical interval (height) of any
18 2:1 slope exceeds twenty (20) feet; for 3:1 slope it shall be increased to thirty (30) feet; and for
19 4:1 to forty (40) feet. Benches shall be located to divide the slope face as equally as possible and
20 shall convey the water to a stable outlet. Drainage terraces shall be a minimum of six (6) feet
21 wide with an absolute minimum invert gradient of between two percent (2%) and a maximum
22 invert gradient of three percent (3%), unless accompanied by appropriate design and
23 calculations, and with a ten to one (10:1) lateral slope toward the toe of the upper bank, and must
24 convey water with minimum six (6) inch freeboard to a safe disposal area.

25 (4) The permittee and the owner shall make adequate provisions to prevent any
26 surface waters from materially damaging the face of any and all earth surfaces, excavation or fill.
27 All such earth surfaces shall be temporarily and/or permanently protected from surface water
28 runoff from above by interceptor and diversion berms, swales brow or berm ditches, and shall be
29 sodded, seeded and/or planted unless, upon the recommendation of the Prince George's Soil
30 Conservation District, the Director determines such treatment is unnecessary and specifically
31 waives this requirement pursuant to Section 32-132.

1 (5) All areas designed for buildings pads shall be graded to slope away from the
2 building in conformance with the limitations in Section 32-151.

3 (6) All drainage terraces, interceptor and diversion berms, swales and ditches shall be
4 designed and constructed in accordance with standards contained elsewhere herein and when
5 required, shall be piped or paved or otherwise improved. In order for drainage to discharge into
6 natural watercourses such natural ground shall be protected from erosion by an adequate amount
7 of riprap or by other measures. Flows exceeding three (3) cubic feet per second will not be
8 permitted in open facilities such as swales and ditches, but shall be conveyed in enclosed storm
9 drain systems. Concentrated flow in driveways, parking lots and access lanes shall not exceed
10 one-half (1/2) the width of paving, or ten (10) feet, whichever is less.

11 (7) Overflows from one hundred (100) year storm shall be traced through the site and
12 intervening area to their locations of discharge into a natural stream and, at critical locations,
13 their hydraulic gradient determined to ascertain that the pro-posed construction does not flood or
14 damage existing and proposed buildings or structures along the trace, as required by Division 4
15 of this Subtitle.

16 (8) Springs and surface seeps and other ground waters having objectionable effects
17 shall be capped with stone and/or sand with interlaced tile drains or perforated pipes connecting
18 into a piped outfall to a public storm drainage system or continuously flowing natural
19 watercourse.

20 (9) Unless otherwise permitted by Federal, State or local regulations, or the
21 provisions of this Division, the discharge of pollutants onto land, to a drainage system, or to a
22 watercourse within the County is prohibited.

23 (10) All drainage system rights-of-way and easements shall be used by the County for
24 the purposes of the administration of this Division to conduct activities related to enforcement,
25 compliance, investigation and surveillance.

26 (11) Downspout discharge may discharge to a properly graded area provided the point
27 of discharge at the Building Restriction Line (BRL) or ten (10) feet from any property line and
28 conveyed by splash block oriented parallel to said line. If the downspouts are connected into an
29 underground drainage system, a cleanout valve and air gap for blockage overflow is required.

30 **Sec. 32-163. Completion of Site Development.**

31 Site development shall be completed in accordance with the approved plans prior to the

1 Director of the Department of Environmental Resources granting occupancy of any building or
 2 structure on the site. The site work shall be completed prior to, or at the same time as, the
 3 completion of the buildings or structures. Adequate and acceptable completion of recreational
 4 facilities, landscaping, parking, parking lighting, retaining walls, and other site work shall be in
 5 compliance with the approved site plans and other conditions. The requirements of the approved
 6 Type 2 Tree Conservation Plan shall be completed prior to the issuance of the use and occupancy
 7 permit.

8 **Sec. 32-164. Grading, Drainage and Erosion Control Standards.**

9 (a) The design, testing, installation and maintenance of grading, drainage and erosion
 10 control operations and facilities shall meet the minimum requirements set forth in the Standards
 11 listed herein.

12 (1) Soils.

13 (A) ASTM Standards, Volume 0408 Titled Natural Building Stones, Soil and
 14 Rock, by the American Society for Testing and Materials, Philadelphia.

15 (B) ASTM Designation D-1556-82E, Density of Soil in Place by the Sand-Cone
 16 Method.

17 (C) ASTM Designation D-698-82E, Moisture-Density relations of Soils and Soil
 18 Aggregate Mixtures Using 5.5 –lb. (2.50 kg) Rammer and 12 in. (457 MM) Drop.

19 (D) Maryland Department of the Environment, 1994 Maryland Standards and
 20 Specifications for Soil Erosion and Sediment Control.

21 (2) Drainage. Subtitle 23 titled “Roads and Sidewalks,” the Prince George’s County
 22 Code; Prince George’s County, Maryland, Stormwater Management Design Manual, 1984.

23 (3) Erosion Control. Soil Survey of Prince George’s County, Maryland issued
 24 December 2009 Maryland Standard and Specifications for Soil Erosion and Sediment Control.
 25 Maryland Department of the Environment, Current Maryland Standards and Specifications for
 26 Soil and Erosion Control.

27 (4) Subtitle 25 titled “Trees and Vegetation,” the Prince George’s County Code,
 28 adopting by reference the “Prince George’s County Woodland Conservation and Tree
 29 Preservation Policy Document.”

30 **Sec. 32-165. Other Plans.**

31 The application for a permit shall be accompanied by other plans required as determined by

1 the nature and type of work proposed. These plans shall reflect the various types of work or
 2 conditions on the site which may include, but are not limited to, the following types:
 3 landscaping, storm drain, stormwater management, tree preservation, conservation, mitigation
 4 and sediment and erosion control. These plans shall be subject to applicable review and approval
 5 criteria.

6 **Sec. 32-166. Building Restrictions in Drinking Water Reservoir Watersheds.**

7 (a) No grading permit may be issued for the construction of any structure within two
 8 thousand five hundred (2,500) feet of a drinking water reservoir except as provided by this
 9 Section.

10 (b) A grading permit for the construction of a one or two-family dwelling and associated
 11 structures may be issued in accordance with this Division.

12 (c) A grading permit for any other structure may be issued in accordance with this
 13 Division provided that all structures are served by public water and sewage systems.

14 **Sec. 32-167. through Sec. 32-169. Reserved.**

15 **DIVISION 3. STORMWATER MANAGEMENT.**

16 **Subdivision 1. General Provisions.**

17 **Sec. 32-170. Short Title; Purpose.**

18 (a) The provisions of this Division shall constitute and be known as the “Stormwater
 19 Management Ordinance of Prince George’s County, Maryland.”

20 (b) The purpose of this Division is to protect, maintain and enhance the public health,
 21 safety and general welfare by establishing minimum requirements and procedures that control
 22 the adverse impacts from existing or increased stormwater runoff. The goal is to manage
 23 stormwater by using environmental site design (ESD) to the maximum extent practicable (MEP);
 24 to maintain after development, as nearly as possible, the predevelopment runoff characteristics;
 25 and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding;
 26 and to use appropriate structural best management practices (BMPs) only when absolutely
 27 necessary. This will help to restore, as close as possible to predevelopment conditions, enhance,
 28 and maintain the chemical, physical, and biological integrity of streams; minimize damage to
 29 public and private property; and reduce the impacts of land development. This Division also
 30 ensures compliance with various provisions of the Federal Clean Water Act related to the
 31 National Pollutant Discharge Elimination System (NPDES) Permit for municipal stormwater

1 programs and with the County's current NPDES Municipal Stormwater System Permit. This
 2 Division also is consistent with the County's various obligations and commitments to the
 3 protection and restoration of the Chesapeake Bay, Potomac River, Anacostia River and Patuxent
 4 River. Proper management of stormwater runoff will minimize damage to public and private
 5 property; reduce the effects of development on land and stream channel erosion; assist in the
 6 attainment and maintenance of water quality standards; reduce local flooding; and maintain, as
 7 nearly as possible, the predevelopment runoff characteristics of the area.

8 (c) The provisions of this Division are adopted pursuant to Environmental Article, Title 4,
 9 Subtitle 2 of the of the Maryland Annotated Code 2009 replacement volume, and are adopted
 10 under the authority of Prince George's County Code and shall apply to all development
 11 occurring within Prince George's County including within municipalities, except for those
 12 exemptions listed under this Division. The exceptions shall be land owned by the Federal or
 13 State governments, the City of Bowie or agricultural land management practices. The
 14 application of this Division and the provisions expressed herein shall be the minimum
 15 stormwater management requirements and shall not be deemed a limitation or repeal of any other
 16 powers granted by State statute. The County Executive shall be responsible for the coordination
 17 and enforcement of the provisions of this Division. This Ordinance applies to all new and
 18 redevelopment projects that have not received final approval for erosion and sediment control
 19 and stormwater management plans by May 4, 2010, except as provided by (d).

20 (d) Administrative Waivers.

21 (1) The Department may, for good cause shown, grant an Administrative Waiver to a
 22 development that received a Preliminary Project Approval prior to May 4, 2010. The waiver
 23 granted shall expire according to (2), (3) and (4) of this subsection;

24 (2) An Administrative Waiver shall expire on May 4, 2013 if the proposed
 25 development does not receive Final Stormwater Project Approval prior to that date.

26 (3) All construction of approved stormwater management facilities authorized pursuant
 27 to an administrative waiver must be completed by May 4, 2017, or by May 4, 2015 if the
 28 proposed development is a redevelopment project, or the relevant waiver shall expire.

29 (4) An Administrative Waiver shall expire if there is a substantial change to the
 30 proposed development after the Preliminary Project Approval, as determined by the Approving
 31 Agency. Substantial change means:

- 1 (A) An increase in impervious surface by greater than 10%;
 2 (B) A substantial change in proposed drainage patterns; or
 3 (C) A substantial change in the location of the point(s) of discharge from the
 4 site.

5 (e) The provisions of this Division relating to the development of land within the
 6 Chesapeake Bay Critical Area are adopted pursuant to the Annotated Code of Maryland, Natural
 7 Resources Article, and Section 8-1801. et seq., and shall apply to all development within the
 8 Chesapeake Bay Critical Area Overlay Zone. The provisions of this Division may not be
 9 construed to affect the requirements for a project located in an Intense Developed Area of the
 10 Chesapeake and Atlantic Coastal Bays Critical Area to comply with the 10 percent Pollution
 11 Reduction Requirement under COMAR 27.01.02.03 D (3).

12 (f) The following referenced documents are necessary to provide appropriate technical
 13 guidance for the planning, design, construction, inspection and enforcement of the provisions of
 14 this Division. These documents are revised periodically and it is incumbent upon property
 15 owners, planners, designers and applicants to use the most current approved versions available.
 16 For purposes of this Division, the following documents are hereby adopted and incorporated by
 17 reference:

18 (1) The 2000 Maryland Stormwater Management Design Manual, Volumes I and II
 19 Maryland Department of the Environment (April 2000), as revised in April 2009; and

20 (2) The USDA Natural Resources Conservation Service Maryland Conservation
 21 Practice Standard Pond Code 378 (January 2000).

22 (3) Adopted Comprehensive Watershed Management Plans:

23 (A) CR-61-1986 – Piscataway Creek

24 (B) CR-62-1986 – Henson Creek

25 **Sec. 32-171. Definitions.**

26 (a) For purposes of this Division, the following terms, phrases, and words, and their
 27 derivations, shall have the meaning given herein:

28 (1) **Administration** shall mean the Maryland Department of the Environment (MDE)
 29 Water Management Administration (WMA).

30 (2) **Administrative waiver** - a decision by the approving agency pursuant to this
 31 regulation to allow the construction of a development to be governed by the stormwater

1 management ordinance in effect as of May 4, 2009. "Administrative waiver" is distinct from a
 2 variance granted pursuant to Section 32-176 of this Division.

3 (3) **Adverse Impact** - any deleterious effect on waters or wetlands, including their
 4 quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural
 5 uses which are or may potentially be harmful or injurious to human health, welfare, safety or
 6 property, to biological productivity, diversity, or stability or which unreasonably interfere with
 7 the enjoyment of life, property, and including outdoor recreation.

8 (4) **Agricultural Land Management Practices** shall mean those methods and
 9 procedures used in the active cultivation of land in order to further crop and livestock production
 10 and conservation of related soil and water resources.

11 (5) **Alternative Practice** - an environmental site design practice or technique or
 12 structural stormwater management measure that is not found in the Design Manual and is
 13 proposed during concept plan approval. Alternative practices shall be designed to meet the
 14 criteria in the Design Manual, meet the minimum requirements specified in section 32-178 of
 15 this Division and be approved by the Administration.

16 (6) **Applicant** shall mean any person, agent, firm, or governmental agency that
 17 executes the necessary forms to procure official approval of a project, or a permit to carry out the
 18 construction of a project.

19 (7) **Approval** - a documented action following a review to determine and
 20 acknowledge the proposed project meets the requirements of a specified stage in the local
 21 development review process based on a review of submitted material. "Approval" does not mean
 22 an acknowledgement by the approving agency that submitted material has been received for
 23 review or that the material was sufficient for review.

24 (8) **Approving Agency**- shall mean the Department of Public Works and
 25 Transportation which shall be the entity responsible for the review and approval of stormwater
 26 management plans.

27 (9) **Aquifer** shall mean porous water bearing geologic formation generally restricted
 28 to materials capable of yielding an appreciable supply of water.

29 (10) **Bioretention** shall mean a soil/plant source control, terrestrial based,
 30 filter/infiltrating device for managing stormwater runoff.

31 (11) **BMP (Best Management Practice)** a structural device or nonstructural practice

1 designed to temporarily store, retain, or treat stormwater runoff in order to mitigate flooding,
2 reduce pollution, and provide other amenities.

3 (12) **Channel protection storage volume (Cpv)** shall mean the volume used to design
4 management practices to control stream channel erosion specified in the 2000 Maryland
5 Stormwater Management Design Manual (as revised in April 2009). Methods for calculating the
6 channel protection storage volume are specified in the Manual.

7 (13) **Chesapeake Bay Critical Area** shall mean all waters of and lands under the
8 Chesapeake Bay and its tributaries to the [head] heads of tide as indicated on the State wetlands
9 maps; and all State and private wetlands designated under the Annotated Code of Maryland,
10 Natural Resources Article, Title 9; and all land and water areas within one thousand (1,000) feet
11 beyond the landward boundaries of State or private wetlands and heads of tides designated under
12 the Annotated Code of Maryland, Natural Resources Article, Title 9, as indicated on approved
13 Chesapeake Bay Critical Area Overlay Zoning Map Amendments.

14 (14) **Clearing** shall mean the removal of trees and brush from land but shall not
15 include the ordinary mowing of grass or timber harvesting.

16 (15) **Stormwater Concept Plan** the first of three required plan approvals that includes
17 the information necessary to allow an initial evaluation of a proposed project.

18 (16) **Conservation Agreement** shall mean a formal agreement which commits a
19 grading or building permit applicant to the execution of various approved elements of a
20 Conservation Plan, including a Stormwater Management Plan, an approved sediment and erosion
21 control plan, a vegetation management plan, and other plans which may be required by the
22 Department or the Prince George's County Planning Board.

23 (17) **Conservation Plan** shall mean a plan developed in accordance with the Subtitle
24 5B, which demonstrates how a project has been designed to meet the specific Chesapeake Bay
25 Critical Area criteria. The Conservation Plan consists of an approved Stormwater Management
26 Plan, an approved and sediment and erosion control plan, a vegetation management plan, and
27 such other plans relating to environmental systems as may be required by the Washington
28 Suburban Sanitary Commission, the Maryland-National Capital Park and Planning Commission,
29 the Prince George's County Health Department, the Prince George's County Department of
30 Public Works and Transportation, or the Prince George's Soil Conservation District.

31 (18) **County** shall mean Prince George's County, Maryland.

1 (19) **County engineer** shall mean Department engineering staff.

2 (20) **Department** shall mean the Department of Public Works and Transportation.

3 (21) **Detention structure** shall mean a permanent structure for the temporary storage
4 of runoff which is designed so as not to create a permanent pool of water.

5 (22) **Develop Land** to change the runoff characteristics of a parcel of land in
6 conjunction with residential, commercial, industrial, or institutional construction or alteration.

7 (23) **Development** means any man-made change to improved or unimproved real
8 estate including, but not limited to, any construction, reconstruction, modification, extension or
9 expansion of buildings or other structures, placement of fill or concrete, construction of new or
10 replacement infrastructure, dumping, mining, dredging, grading, paving, drilling operations
11 storage of materials, land excavation, land clearing, land improvement, landfill operation, or any
12 combination thereof.

13 (24) **Direct discharge** shall mean the concentrated release of stormwater to tidal waters
14 or vegetated tidal wetlands from new development or redevelopment projects in the Chesapeake
15 Bay Critical Area.

16 (25) **Director** shall mean the Director of the Department.

17 (26) **Drainage area** shall mean the area contributing runoff to a study point measured
18 in a horizontal plane, which is enclosed by a ridgeline.

19 (27) **Easement** shall mean a grant or reservation by the owner of land for the use of
20 such land by others for a specific purpose or purposes, the use of which must be included in the
21 conveyance of land affected by such easement.

22 (28) **Environmental Site Design (ESD)** using small scale stormwater management
23 practices and nonstructural techniques, and better site planning to mimic natural hydrologic
24 runoff characteristics and to minimize the impact of land development on water resources.
25 (Methods for designing ESD practices are specified in the Maryland Design Manual.)

26 (29) **Exemption** shall mean those land development activities that are not subject to
27 the stormwater management requirements contained in this Division.

28 (30) **Extended detention** shall mean a stormwater design feature that provides gradual
29 release of a volume of water in order to increase settling of pollutants and protect downstream
30 channels from frequent storm events.

1 (31) **Extreme flood volume (Qf)** shall mean the storage volume required to control
2 those infrequent but large storm events in which overbank flow reaches or exceeds the
3 boundaries of the 100-year floodplain.

4 (32) **Filtration** shall mean the attenuation of stormwater runoff pollutants by plant
5 and/or soil/sand complexes.

6 (33) **Final Stormwater Project Approval** shall mean approval of the final stormwater
7 management plan and erosion and sediment control plan required to construct a project's
8 stormwater management facilities. Final Stormwater Project Approval includes securing bonding
9 or financing for final development plans if either is required as a condition for approval.

10 (34) **Final Stormwater Management Plan** shall mean the last of the three required
11 plan approvals that includes the information necessary to allow all approvals and permits to be
12 issued by the approving agency.

13 (35) **Flow attenuation** shall mean prolonging the flow time of runoff to reduce the
14 peak discharge.

15 (36) **Grading** shall mean any act by which soil is disturbed, cleared, stripped, grubbed,
16 excavated, scarified, filled or any combination thereof.

17 (37) **Impervious Area** – shall mean an area or surface that is covered with solid
18 material or is compacted to the point where water cannot infiltrate underlying soils (e.g., parking
19 lots, roads, houses, patios, swimming pools, compacted gravel areas, and so forth) and where
20 natural hydrologic patterns are altered.

21 (38) **Infiltration** shall mean the passage or movement of water into the soil
22 subsurface.

23 (39) **Maryland Design Manual** shall mean the latest edition of the 2000 Maryland
24 Stormwater Design Manual, Volumes I & II that serve as the State of Maryland's official guide
25 for stormwater management principals, methods, and practices.

26 (40) **Major Watersheds** shall mean the forty-two (42) watersheds identified in the
27 watershed management plan for the purposes of identifying the preferred stormwater
28 management approach within that major watershed.

29 (42) **Maximum Extent Practicable (MEP)** – designing stormwater management
30 systems so that all reasonable opportunities for using ESD planning techniques and treatment
31 practices are exhausted and only where absolutely necessary, a standard BMP is implemented.

1 (43) **Natural Resource Inventory (NRI):** a plan map and supporting documentation
2 that provides all required information regarding the existing physical and environmental
3 conditions on site and is approved by the Planning Director or designee.

4 (44) **Off-site Stormwater Management** shall mean the design and construction of
5 [systems] a regional facility necessary to control stormwater from more than one development,
6 which is to be located outside the proposed area of development.

7 (45) **On-site Stormwater Management** shall mean the design and construction of
8 systems necessary to control stormwater within the proposed area of development.

9 (46) **Overbank flood protection volume** shall mean volume controlled by structural
10 practices to prevent an increase in the frequency of out-of-bank flooding generated by
11 development. Methods for calculating the overbank flood protection volume are specified in the
12 Maryland Stormwater Design Manual).

13 (47) **Permittee** shall mean the individual or corporate officer that signs the stormwater
14 management permit and is legally responsible for all activities pertaining to the permit.

15 (48) **Person** – the federal government, the State, any county, municipal corporation, or
16 other political subdivision of the State, or any of their units, or an individual receiver, trustee,
17 guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership,
18 firm, association, public or private corporation, or any other entity.

19 (49) **Planning Techniques** – a combination of strategies employed early in project
20 design to reduce the impact from development and to incorporate natural features into a
21 stormwater management plan.

22 (50) **Pollution Trading** - program, process, policy to be implemented to reduce
23 pollutants and to improve water quality and clean up the water body by addressing nutrients,
24 sediments and other pollutants from a known source. This is intended to establish incentives for
25 voluntary reductions of pollutants on an existing development with no known stormwater
26 management in place. These pollution control devices are to be recorded through GIS
27 watershed-data base to be used for SWM banking.

28 (51) **Pond** shall mean any stormwater management device that meets the category
29 definition of MD378- USDA Natural Resources Conservation Service: Conservation Standard
30 POND.

1 (52) **Preliminary Plan** shall mean the preliminary plan of subdivision submitted
 2 pursuant to the County's Subdivision regulations.

3 (53) **Preliminary Project Approval** – shall mean approval of a preliminary plan of
 4 subdivision, detailed site plan or specific design plan that includes, at a minimum:

5 (a) The number of planned dwelling units or lots;

6 (b) The proposed project density;

7 (c) The proposed size and location of all land uses for the project including the
 8 amount of impervious surface;

9 (d) A plan that identifies:

10 (i) The proposed drainage patterns;

11 (ii) The location of all points of discharge from the site; and

12 (iii) The type, location, and size of all stormwater management measures
 13 based on site-specific stormwater management requirement computations; and

14 (e) Any other information required by the Department including, but not limited
 15 to:

16 (i) The proposed alignment, location, and construction type and standard for
 17 all roads, access ways, and areas of vehicular traffic;

18 (ii) A demonstration that the methods by which the development will be
 19 supplied with water and wastewater service are adequate; and

20 (iii) The size, type, and general location of all proposed wastewater and
 21 water system infrastructure.

22 (54) **Recharge volume (Rev)** shall mean that portion of the water quality volume used
 23 to maintain groundwater recharge rates at development sites. (Methods for calculating the
 24 recharge volume are specified in the Maryland Stormwater Design Manual.)

25 (54) **Redevelopment** shall mean any construction, alteration, or improvement,
 26 exceeding five thousand (5,000) s.f. of land disturbance, performed on sites where existing site
 27 impervious area within the limit of disturbance exceeds 40 percent.

28 (55) **Retention structure** shall mean a permanent structure that provides for the
 29 storage of runoff and is designed to maintain a permanent pool of water.

1 (56) **Retrofitting** shall mean the implementation of ESD practices, the construction of
2 a structural BMP, or the modification of an existing standard BMP in a previously developed
3 area to improve water quantity problems and water quality.

4 (57) **Sediment** shall mean soils or other surficial materials transported or deposited by
5 the action of wind, water, ice or gravity as a product of erosion.

6 (58) **Site** shall mean any tract, lot or parcel of land or combination of tracts, lots or
7 parcels of land, which are in one ownership, or are contiguous and in diverse ownership where
8 development or redevelopment is to be performed as a part of a unit, subdivision or product.

9 (59) **Site Development Plan** – the second of three required plan approvals that
10 includes the information necessary to allow a detailed evaluation of a proposed project.

11 (60) **Stabilization** shall mean the prevention of soil movement by any of various
12 vegetative and/or structural means.

13 (61) **Stormwater** means water that originates from a precipitation event.

14 (62) **Stormwater Management (SWM)** shall mean using ESD for the collection,
15 conveyance, storage, treatment, and disposal of stormwater runoff in a manner to prevent
16 accelerated channel erosion, increased flood damage, and/or degradation of water quality.

17 (63) **Stormwater Management Design Plan** shall mean the set of drawings and other
18 documents that comprise all of the information and specifications for the systems, structures,
19 concepts, and techniques that will be used to control stormwater as required by the approved
20 concept plan and the Maryland Design Manual.

21 (64) **Stormwater Management System** – natural areas, ESD practices, stormwater
22 management measures, and any other structure through which stormwater flows, infiltrates or
23 discharges from a site.

24 (65) **Stormwater Variance** – the modification of the minimum stormwater
25 management requirements for specific circumstances such that strict adherence to the
26 requirements would result in unnecessary hardship and not fulfill the intent of this Ordinance.

27 (66) **Stream Restoration** - Restoration and reconstruction of existing waterways to
28 maintain the ecological features of the stream, to mitigate stream bed incision and stream wall
29 erosion, to preserve the capacity and to enhance the water quality of the stream. Stream
30 restoration shall address the following including but not limited to intervention and installation
31 of measures to repair damages to the stream corridors, hydrology, hydraulics, sediment transport,

1 geomorphology, aquatic ecology, fisheries and riparian ecology.

2 (67) **Stripping** – any activity that removes the vegetation surface cover including tree
 3 removal, clearing, grubbing and storage or removal of topsoil.

4 (68) **Subdivision** shall mean the division of a lot, tract, or parcel of land into two or
 5 more lots, plots, sites, tracts, parcels, or other divisions by plat or deed.

6 (69) **Watercourse** – any natural or artificial stream, river, creek, ditch, channel, canal,
 7 conduit, culvert, drain, waterway, gully, ravine or wash, in and including any adjacent area that
 8 is subject to inundation from overflow or flood water.

9 (70) **Water Quality Volume (WQv)** - the volume needed to capture and treat 90
 10 percent of the average annual rainfall at a development site. (Methods for calculating the water
 11 quality volume are specified in the Maryland Stormwater Design Manual.)

12 (71) **Watershed** – the total drainage area contributing runoff to a single point.

13 **Sec. 32-172. Watershed Management Planning.**

14 (a) The County Executive shall submit for approval by resolution of the County
 15 Council, a plan for the control of water quantity, the restoration and maintenance of water
 16 quality, and protection of aquatic living resources of each major watershed in the County. The
 17 County Executive also shall provide for the periodic updating of the plans, projects or studies.
 18 Such plans, projects and studies shall be known as the major watershed management plans.

19 (b) If a major watershed management plan is amended by the County Council, the County
 20 Executive shall be given an opportunity to provide comments on such amendments for the
 21 County Council's consideration before the major watershed management plan becomes final.

22 (c) Each watershed plan shall contain stormwater management policies and
 23 recommendations for the implementation of these policies and shall be approved by the
 24 Administration.

25 (d) Where the watershed is located within the Chesapeake Bay Critical Area Overlay
 26 Zone, the watershed plan shall comply with the requirements of Subtitle 5B.

27 (e) A watershed management plan developed for the purpose of implementing different
 28 stormwater management policies for waivers and redevelopment shall:

29 (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph
 30 timing;

31 (2) Evaluate both quantity and quality management and opportunities for ESD

1 implementation;

2 (3) Include a cumulative impact assessment of current and proposed watershed
3 development;

4 (4) Identify existing flooding and receiving stream channel conditions;

5 (5) Be conducted at a reasonable scale;

6 (6) Specify where on-site or off-site quantitative and qualitative stormwater
7 management practices are to be implemented;

8 (7) Be consistent with the General Performance Standards for Stormwater
9 Management in Maryland as found in the Maryland Design Manual; and

10 (8) Be approved by the Administration.

11 **Sec. 32-173. Scope of Ordinance.**

12 No person shall develop or redevelop any land without having met the provisions of this
13 Division by providing appropriate stormwater management measures that control or manage
14 runoff, except as provided within Section 32-174 of this Division.

15 **Sec. 32-174. Exemptions from Requirements.**

16 (a) Except as provided in Subsection (b), the following development activities are exempt
17 from the provisions of this Division and the requirements of providing stormwater management:

18 (1) Agricultural land management practices;

19 (2) Additions or modifications to existing detached one-family dwellings provided
20 that they comply with item (3) of this Subsection; and the subject site does not exceed the
21 maximum allowable lot coverage allowed in Section 27-442 (a) (1) (c) Table II – Lot coverage
22 or Section 27-445.12 (a) (3) Table 2A Maximum net lot coverage, which ever applies.

23 (3) Any developments that do not disturb more than five thousand (5,000) square feet
24 of land area;

25 (4) Developments within the City of Bowie where the city has approved stormwater
26 management design plans for a development either on or off the development site, which
27 otherwise meet or exceed the provisions of this Division;

28 (5) Land development activities which the Administration determines will be
29 regulated under specific state laws that provide for managing stormwater runoff; and

30 (b) Where the property is located within a Chesapeake Bay Critical Area Overlay Zone,
31 the development activities in Subsection (a), above, except for agricultural land management

1 activities, shall comply with the stormwater management requirements of this Division and
 2 conform with the requirements of Subtitle 5B, and a Conservation Plan shall be required relating
 3 to the stormwater management activities. In all cases, the development activities located within
 4 the Chesapeake Bay Critical Area Overlay Zone, and are required to comply with stormwater
 5 management requirements, shall meet the requirements of this division and conform to the
 6 requirements of Subtitle 5B.

7 **Sec. 32-175. Redevelopment.**

8 (a) Stormwater Management Plans are required by the Department for all redevelopment,
 9 unless otherwise specified by watershed management plans developed according to this Division.
 10 Stormwater management measures must be consistent with the Maryland Design Manual.

11 (b) All redevelopment designs shall meet the same water quality treatment and quantity
 12 standards as new development is required to do under Section 32-178 and shall infiltrate into the
 13 ground a 100 percent of the annual average predevelopment groundwater recharge volume.

14 (c) All redevelopment projects shall reduce existing site stormwater runoff volume by
 15 implementing distributed ESD to the MEP.

16 (d) Alternative stormwater management measures may be used to meet the requirements in
 17 32-175(b) of this Division if the owner/applicant satisfactorily demonstrates to the Department
 18 that impervious area reduction has been maximized and ESD has been implemented to the MEP.
 19 Alternative stormwater management measures include, and shall be applied in the following
 20 order of priority:

21 (1) Onsite ESD

22 (2) Offsite ESD;

23 (3) An on-site structural BMP;

24 (4) A combination of onsite or offsite ESD implementation, and onsite or offsite
 25 standard BMP. Standard BMP's shall meet Maryland Design Manual criteria.

26 (e) The Department may permit alternative practice for providing water quality-treatment
 27 for a redevelopment project if the requirements of Section 32-175 (a) and (b) and (c) of this Code
 28 cannot be met, or the alternate stormwater management measures provided by (d) cannot be
 29 utilized to meet the requirements of Section 32-175 (b) and (c). Any such alternate practice
 30 approach for a particular redevelopment shall be reviewed and approved by the Administration
 31 and may include, but not limited to:

1 (1) Retrofitting;

2 (2) Stream restoration;

3 (3) Pollution trading;

4 (4) Design criteria based on watershed management plans developed according to
5 this Division;

6 (5) Fees paid that are dedicated exclusively to provide stormwater management;

7 and

8 (6) Other appropriate practices approved by the Director.

9 The Department shall maintain a list of applications for alternative practices under this
10 subsection and shall promptly post such applications on its web page. At least twenty-one (21)
11 days before the Department may permit alternative practices under this subsection, the
12 Department shall send written notice to the County Council of the proposed alternative practices
13 and shall post the proposed alternative practices on its web page. Any policy statement adopted
14 by the County to guide the implementation of this subsection shall be approved by the County
15 Council and the Administration.

16 (f) Stormwater management shall be addressed for the portion of the site within the limit
17 of disturbance according to the new development requirements in the Maryland Design Manual
18 for any net increase in impervious area.

19 (g) If the Department determines that existing flooding and/or erosion exist downstream
20 of the proposed development, the Department has the authority to require the applicant to
21 attenuate the 2-year and 10-year storm runoff for downstream erosion and/or attenuate the 100-
22 year frequency storm event for downstream flooding in accordance with the Maryland Design
23 Manual.

24 **Sec. 32-176. Stormwater Management Variance.**

25 (a) The Department may grant a written variance from any requirement of this Division
26 if there are exceptional circumstances applicable to the site such that strict adherence will result
27 in unnecessary hardship and not fulfill the intent of the Division. A written request for a
28 variance shall be provided to the Director stating the specific variance sought and appropriate
29 justification.

30 (b) The Department shall not grant a variance unless and until sufficient justification is
31 provided by the permittee developing land that the implementation of ESD to MEP has been

1 investigated thoroughly and notice is provided to the Council. The justification shall include an
 2 explanation of why the requirement of the Division cannot be met and the reasons why the
 3 alternative practices cannot be provided. The Department shall maintain a list of requests for
 4 variances under this subsection and shall promptly post such requests on its web page. At least
 5 twenty-one (21) days before the Department may permit a variance under this subsection, the
 6 Department shall send written notice to the County Council of the proposed variance and shall
 7 post the proposed variance on its web page.

8 (c) The Department may grant a stormwater management quantitative and qualitative
 9 control variance for a phased development project if a system designed to meet the 2000 State
 10 and County regulatory requirements for multiple phases was constructed by May 4, 2010. If the
 11 2009 regulatory requirements cannot be met for any future phase constructed after May 4, 2010,
 12 the applicant must make all reasonable efforts to incorporate environmental site design in each
 13 future phase.

14 (d) The Department shall grant a waiver to any redevelopment project that received
 15 stormwater concept plan approval prior to May 4, 2010, detailed site plan approval prior to
 16 August 31, 2010, and which achieves a minimum of 50 percent of the water quality treated of the
 17 impacted impervious area as provided in the 2009 update to Environmental Article, Title 4,
 18 Subtitle 2 of the Maryland Annotated Code.

19 **Subdivision 2. Stormwater Management Design Plans.**

20 **Sec. 32-177. Stormwater Management Design Plans; required.**

21 (a) A stormwater concept plan shall be submitted for approval to the Department.

22 (b) All preliminary plans of subdivisions shall be consistent with any County approved
 23 concept plan.

24 (c) The applicant shall submit a stormwater management design plans to the Department.

25 (d) If any plan involves any stormwater management facilities or land to be dedicated to
 26 public use, the same information also shall be submitted for review and approval to the agency
 27 having jurisdiction over the facilities, land or other appropriate agencies identified by the
 28 Director for review and approval. This plan shall serve as the basis for all subsequent
 29 construction.

30 **Sec. 32-178. Minimum Stormwater Control Requirements.**

31 (a) The minimum control requirements established in this Section and the Maryland

1 Design Manual are as follows:

2 (1) Planning techniques, nonstructural practices, and design methods specified in the
3 Maryland Design Manual shall be used to implement ESD for the water quality volume and ESD
4 to the MEP for channel protection volume. The use of ESD planning techniques and treatment
5 practices must be exhausted before any structural BMP is implemented. Stormwater management
6 design plans for development projects subject to this Division shall be designed using ESD
7 sizing criteria, recharge volume, water quality volume, and channel protection storage volume
8 criteria according to the Maryland Design Manual. The MEP standard is met when channel
9 stability is maintained, 100% predevelopment groundwater recharge is replicated, non-point
10 source pollution is minimized, and structural stormwater management practices are used only if
11 determined to be absolutely necessary.

12 (2) Attenuation of the 2-year, 10-year frequency storm event for downstream erosion
13 exist and/or attenuation of the 100-year frequency storm event for downstream flooding exist are
14 required according to the Maryland Design Manual and all subsequent revisions when the
15 Department determines that additional stormwater management is necessary because the
16 receiving channel and/or conveyance system are determined inadequate.

17 (3) The Department has the authority to require more than the minimum control
18 requirements specified in this Division if hydrologic or topographic conditions warrant or if
19 flooding, stream channel erosion, or water quality problems exist downstream from a proposed
20 project.

21 (b) Alternative minimum control requirements may be submitted for approval to the
22 Administration. A demonstration that alternative requirements will implement ESD to the MEP
23 and control flood damages, accelerated stream erosion, water quality, and sedimentation will be
24 required by the Department. Comprehensive watershed studies also may be required.

25 (c) In addition, where the development activity is located within a Chesapeake Bay
26 Critical Area Overlay Zone, the minimum stormwater control requirements shall include all the
27 requirements of Subtitle 5B.

28 (d) Concept and design plans, shall be consistent with adopted and approved watershed
29 management plans and flood management plans as approved by the State Water Resources
30 Administration in accordance with the Flood Hazard Management Act of 1976 (Title 8, Subtitle
31 9A of the Natural Resources Article), where applicable.

1 (e) Final Stormwater Management Plan's stormwater systems information for new
 2 developments and redevelopments shall be submitted by the Department to the Department of
 3 Environmental Resources for submission to the Administration under the requirements of the
 4 NPDES program. The owner and/or applicant shall provide this information to the Department.

5 **Sec. 32-179. Stormwater Management Measures.**

6 The ESD planning techniques, practices and structural stormwater management measures in
 7 the Division and the Maryland Design Manual shall be used either alone or in combination in a
 8 stormwater management design plan. An applicant shall demonstrate that ESD has been
 9 implemented to the MEP before the use of a structural BMP is considered in developing the
 10 stormwater management design plan.

11 (a) ESD Planning Techniques and Practices.

12 (1) The following planning techniques shall be applied to MEP according to the
 13 Maryland Design Manual to satisfy the applicable minimum control requirements established in
 14 32-178 of this Division.

15 (A) Preserving and protecting natural resources;

16 (B) Conserving natural drainage patterns;

17 (C) Minimizing impervious area;

18 (D) Reducing runoff volume;

19 (E) Using ESD practices to maintain 100 percent of the annual average
 20 predevelopment groundwater recharge volume;

21 (F) Using green roofs, permeable pavement, reinforced turf, and other
 22 alternative surfaces;

23 (G) Limiting soil disturbance, mass grading, and compaction;

24 (H) Clustering development; and

25 (I) Any practices approved by the Administration.

26 (2) The following ESD treatment practices shall be designed to MEP according to the
 27 Maryland Design Manual to satisfy the applicable minimum control requirements established in
 28 32-178 of this Division.

29 (A) Disconnection of rooftop runoff;

30 (B) Disconnect of non-rooftop runoff;

31 (C) Sheet flow to conservation areas;

- 1 (D) Rainwater harvesting;
- 2 (E) Submerged gravel wetlands;
- 3 (F) Landscape infiltration;
- 4 (G) Infiltration berms;
- 5 (H) Dry wells;
- 6 (I) Micro-bioretenion;
- 7 (J) Rain gardens;
- 8 (K) Swales;
- 9 (L) Enhanced filters; and
- 10 (M) Any practice approved by the Administration.

11 (3) The use of ESD planning techniques and treatment practices specified in this
 12 section shall not conflict with existing state law or local ordinances, regulations, or policies. The
 13 County shall modify planning and zoning ordinances and public works codes to eliminate any
 14 impediments to implementing ESD to the MEP according to the Maryland Design Manual.

15 (b) Structural Stormwater Management Measures.

16 (1) The following structural stormwater management practices shall be designed
 17 according to the Maryland Design Manual to satisfy the applicable minimum control
 18 requirements established in 32-178 of this Division:

- 19 (A) Stormwater management ponds;
- 20 (B) Stormwater management wetlands;
- 21 (C) Stormwater management infiltration;
- 22 (D) Stormwater management filtering systems; and
- 23 (E) Stormwater management open channel systems.

24 (2) The performance criteria specified in the Maryland Design Manual with regard to
 25 general feasibility, conveyance, pretreatment, treatment and geometry, environment and
 26 landscaping, and maintenance shall be considered when selecting structural stormwater
 27 management practices.

28 (3) Structural stormwater management practices shall be selected to accommodate the
 29 unique hydrologic or geologic of the site.

30 (c) ESD planning techniques, treatment practices and structural stormwater management
 31 measures used to satisfy the minimum requirements in 32-178 of this Division must be recorded

1 in the land records of the County through the execution of a maintenance agreement by the
 2 permittee and remain unaltered by subsequent property owners. Prior approval from the
 3 Department shall be obtained before any stormwater management practice is altered.

4 (d) Alternative ESD planning techniques, treatment practices and structural stormwater
 5 measures may be used for new development runoff control if they meet the performance criteria
 6 established in the Maryland Design Manual and all subsequent revisions and are approved by the
 7 Administration. Practices used for redevelopment projects shall be approved by the Department.

8 (e) For the purposes of modifying the minimum control requirements or design criteria, the
 9 owner/applicant shall submit to the Department an analysis of the impacts of stormwater flows
 10 downstream in the watershed. The analysis shall include hydrologic and hydraulic calculations
 11 necessary to determine the impact of hydrograph timing modifications of the proposed
 12 development upon a dam, highway, structure, or natural point of restricted stream flow.

13 **Sec. 32-180. Specific Design Criteria.**

14 The basic design criteria, methodologies, and construction specifications, subject to the
 15 approval of the Department and the Administration, shall be in accordance with the Maryland
 16 Design Manual.

17 **Sec. 32-181. Stormwater Management Design Plan Preparation.**

18 (a) The design of stormwater management design plan shall be prepared by any individual
 19 whose qualifications are acceptable to the Department. The Department may require that the
 20 design be prepared by either a professional engineer, professional land surveyor, or landscape
 21 architect licensed in the State of Maryland, as necessary to protect the public or the environment.

22 (b) If a stormwater BMP requires either a dam safety permit from the Administration or a
 23 small pond approval from the Prince George's Soil Conservation District, the Department shall
 24 require that the design be prepared by a professional engineer licensed in the State.

25 **Sec. 32-182. Stormwater Management Design Plans. Submission Requirements.**

26 (a) Stormwater Concept Plan.

27 The owner/applicant shall submit a Stormwater Concept Plan that provides sufficient
 28 information for an initial assessment of the proposed project and whether stormwater
 29 management can be provided according to 32-179 of this Division and the Maryland Design
 30 Manual. Plans submitted for concept approval shall include, but are not limited to:

31 (1) A vicinity map;

1 (2) An approved Natural Resources Inventory plan;

2 (3) A brief narrative description of the project;

3 (4) Geotechnical investigations including soil maps, borings, site-specific
 4 recommendations and any additional information necessary for the proposed stormwater
 5 management design;

6 (5) Existing and proposed topography and proposed drainage areas, including
 7 areas necessary to determine downstream analysis for proposed stormwater management
 8 facilities;

9 (6) Descriptions of all watercourses, impoundments and wetlands on or adjacent
 10 to the site or into which stormwater directly flows;

11 (7) The location of existing and proposed structures and utilities;

12 (8) Any easements and rights-of-way;

13 (9) The delineation, if applicable, of the 100-year floodplain and all regulated
 14 environmental features as shown on the approved NRI;

15 (10) Any proposed improvements including location of buildings or other
 16 structures, impervious surfaces, storm drainage facilities, all grading, and other site
 17 improvements;

18 (11) Hydrologic computations, including drainage area maps depicting
 19 predevelopment and post-development runoff flow path segmentation and land use;

20 (12) Hydraulic computations;

21 (13) The location of the proposed limit of disturbance, erodible soils, steep slopes,
 22 and areas to be protected during construction;

23 (14) Preliminary estimates of stormwater management requirements, the selection
 24 and location of ESD practices to be used, and the location of all points of discharge from the site;

25 (15) A narrative that supports the Stormwater Concept Plan and describes how
 26 ESD will be implemented to the MEP; and

27 (16) Any other information required by the Department.

28 (b) Site Development Plan.

29 Following Stormwater Concept Plan approval by the Department, the
 30 owner/applicant shall submit technical plans that reflects the comments received from the
 31 previous Stormwater Concept Plan review phase. Plans submitted shall be of sufficient detail to

1 allow site development to be reviewed and include but not limited to:

2 (1) All information provided during the Stormwater Concept Plan review phase;

3 (2) Final site layout, exact impervious area locations and acreages, proposed
 4 grading, delineated drainage areas at all points of discharge from the site, and stormwater volume
 5 computations for ESD practices and quantity control structures;

6 (3) A proposed erosion and sediment control plan that contains the construction
 7 sequence, any phasing necessary to limit earth disturbances and impacts to natural resources, and
 8 an overlay plan showing the types and locations of ESD and erosion and sediment control
 9 practices to be used .

10 (4) A narrative that supports the Site Development Plan design, describes how
 11 ESD will be used to meet the minimum control requirements, and justifies any proposed standard
 12 stormwater management measure; and

13 (5) Any other information required by the Department.

14 (c) Final Stormwater Management Plan.

15 Following Site Development Plan review by the Department, the owner/applicant
 16 shall submit a proposed Final Stormwater Management Plan for permit issuance. Plans submitted
 17 for permit issuance shall be of sufficient detail to allow all approvals and permits to be issued
 18 according to the following:

19 (1) Final erosion and sediment control plans shall be submitted according to COMAR
 20 26.17.01.05; and

21 (2) Final Stormwater Management Plans shall be submitted for approval in the form of
 22 construction drawings and be accompanied by a report that includes sufficient information to
 23 evaluate the effectiveness of the proposed runoff control design.

24 (A) Reports submitted for approval in conjunction with proposed Final
 25 Stormwater Management Plans shall include, but are not limited to:

26 (i) Geotechnical investigations including soil maps, borings, site specific
 27 recommendations, and any additional information necessary for the final stormwater
 28 management design;

29 (ii) Drainage area maps depicting predevelopment as applicable and post
 30 development runoff flow path segmentation and land use;

31 (iii) Hydrologic computations of the applicable ESD and unified sizing

1 criteria according to the Design Manual for all points of discharge from the site;

2 (iv) Hydraulic and structural computations for all ESD practices and
 3 standard stormwater management measures to be used;

4 (v) A narrative that supports the final stormwater management design; and

5 (vi) Any other information required by the Department.

6 (B) Construction drawings submitted for Final Stormwater Management Plan
 7 approval shall include, but are not limited to:

8 (i) A vicinity map;

9 (ii) Existing and proposed topography and proposed drainage areas,
 10 including areas necessary to determine downstream analysis for proposed stormwater
 11 management facilities;

12 (iii) Any proposed improvements including location of buildings or other
 13 structures, impervious surfaces, storm drainage facilities, and all grading;

14 (iv) The location of existing and proposed structures and utilities;

15 (v) Any easements and rights-of-way;

16 (vi) The delineation, if applicable, of the 100-year floodplain and all
 17 regulated environmental features as shown on the approved NRI;

18 (vii) Structural and construction details including representative cross
 19 sections for all components of the proposed drainage system or systems, and stormwater
 20 management facilities;

21 (viii) All necessary construction specifications;

22 (ix) Sequence of construction;

23 (x) Data for total site area, disturbed area, new impervious area, and total
 24 impervious area;

25 (xi) A table showing the ESD and unified sizing criteria volumes required in
 26 the Maryland Design Manual;

27 (xii) A table of materials to be used for stormwater management facility
 28 planting;

29 (xiii) All soil boring logs and locations;

30 (xiv) An inspection and maintenance schedule;

31 (xv) Certification by the owner/applicant that all stormwater management

1 construction will be done according to this plan;

2 (xvi) An as-built certification signature block to be executed after project
3 completion; and

4 (xvii) Any other information required by the Department.

5 (C) If a stormwater management plan involves direction of some or all runoff from the
6 site, it is the responsibility of the applicant to obtain from adjacent property owners any
7 easements or other necessary property interests concerning flow of water. Approval of a
8 stormwater management plan does not create or affect any right to direct runoff onto adjacent
9 property without that property owner's permission.

10 **Sec. 32-183. Changes to Plans.**

11 (a) All changes or modifications to the approved Final Stormwater Management Plans
12 must be submitted to and approved by the Department. All necessary substantiating reports shall
13 be submitted with any proposal to modify the approved plan. No grading or other work in
14 connection with any proposed modification shall be permitted without proper written approval of
15 the Department. If the revision where the limits of disturbance affects the tree conservation area
16 then a revised tree conservation plan shall also be required

17 (b) When inspection of a site indicates that the approved Final Stormwater Management
18 Plan requires a revision or change, the revision shall be in compliance with this Division. To
19 obtain an approved revision, the permittee shall;

20 (1) Submit a request for a revision to the approved Final Stormwater Management
21 Plan to the Department to be processed appropriately. This includes revisions due to plan and
22 site discrepancies and inadequacies at controlling stormwater as revealed through inspection; or

23 (2) Request a field change approval for modifications to the approved Final
24 Stormwater Management Plan and obtain County Engineer's approval. The modification shall
25 be noted on a signed copy of the approved plan, signed and dated by a Department's inspector
26 and documented on a field inspection report. These field modifications may include change of
27 material type, adjustments to avoid field conflicts and other concerns that do not require
28 recalculations and will not affect stormwater performance of management controls.

29 **Sec. 32- 184. Permit Requirements.**

30 (a) A grading or building permit shall not be issued for any parcel or lot unless a final
31 erosion and sediment control plan has been approved by the Prince George's County Soil

1 Conservation District, and Final Stormwater Management Plan has been approved by the
2 Department as meeting all of the requirements of this Division. Where appropriate, building,
3 stormwater management or grading permits shall not be issued or modified without the
4 following:

5 (1) A performance bond acceptable to the County Attorney as required by this
6 Division.

7 (2) Recorded easements for the stormwater management facilities that provide
8 adequate access for inspection and maintenance from a public right-of-way.

9 (3) Approved Final Stormwater Management Plan, provided that the Director may
10 accept a site grading plan that identifies the location and type of facilities to be constructed in
11 sufficient detail to accurately estimate construction costs.

12 (b) Notwithstanding any of the provisions herein, the Director may require an approved
13 Final Stormwater Management Plan and the recordation of all necessary easements prior to
14 issuance of a building permit or grading permit.

15 (c) In no event shall a use and occupancy permit be granted prior to the implementation of
16 the approved final stormwater management plan and an executed and recorded maintenance
17 agreement, if such agreement is required by the Director.

18 (d) Approved final stormwater management plan shall contain certification by the
19 applicant that all land clearing, construction, development and drainage shall be undertaken in
20 accordance with the approved final stormwater management plan.

21 **Sec. 32-185. Permit Fees.**

22 (a) A nonrefundable fee shall be paid at the time of the Final Stormwater Management
23 Plan or application for modification is submitted. The fee may provide for the cost of plan
24 review, administration of the permitting process, inspection and enforcement of all projects
25 subject to this Division. The fee shall be in the amount specified in Section 32-120 of this Code.

26 (b) If a stormwater management facility is to be constructed to serve more than one
27 development, a fee in lieu of construction of an on-site stormwater management ESD to MEP
28 facility may be assessed by the Department, as specified in Section 32-120 of this Code.

29 (c) Special maintenance fees are required for all publicly maintained stormwater
30 management ponds. Special maintenance fees may be required for publicly maintained ESD
31 features. The maintenance fee will be ten (10) percent of the total estimated construction cost for

1 all of the site's ponds, or \$10,000.00, whichever is greater. The fee will be payable by the
 2 applicant with all other fees prior to issuance of storm drain and stormwater management
 3 construction permits.

4 **Sec. 32-186. Permit Suspension and Revocation.**

5 Any grading, stormwater or building permit issued by the County may be suspended or
 6 revoked by the Director after written notice to the permittee for any of the following reasons:

7 (a) Any violation(s) of the conditions of the approved Final Stormwater Management Plan,
 8 including the provisions of the Conservation Plan and Conservation Agreement, where
 9 applicable;

10 (b) Construction not in accordance with the approved Final Stormwater Management Plans
 11 or specifications;

12 (c) Noncompliance with correction notice(s) or stop work order(s) issued for the
 13 construction of any stormwater management practice; or

14 (d) An immediate danger exists in a downstream area as determined by the Department.

15 (e) Permits found to be issued in error when the original approval did not conform to the
 16 provision of this Division or the approval was based on inaccurate information provided by the
 17 permittee.

18 **Sec. 32-187 Permit Conditions.**

19 In granting an approval for any phase of site development, the Department may impose
 20 such conditions that may be deemed necessary to ensure compliance with the provisions of this
 21 Division and the preservation of public health and safety.

22 **Sec. 32-188. Responsibility of Permittee.**

23 (a) Generally, notwithstanding other conditions of a permit on the minimum standards set
 24 forth in this Division, the permittee is responsible for the abatement of pollutant discharges,
 25 damage to adjacent property, and the maintenance of water quality. No person shall grade land
 26 in any manner as to endanger or damage any adjoining public street, sidewalk, alley, or any other
 27 public or private property without adequate protection of the property from settling, cracking,
 28 erosion, sedimentation, or other damage or personal injury which might result.

29 (b) Public-ways. The permittee shall be responsible for the prompt removal of, and
 30 damages resulting from, any soil, miscellaneous debris, and/or pollutant discharge, or other
 31 materials washed, spilled, tracked, dumped, or otherwise deposited on public streets, highways,

1 sidewalks, watercourses, or other public thoroughfares as an incident to the construction activity,
 2 or during transit to and from the construction site where, in the opinion of the Director, such
 3 deposition constitutes a public nuisance or hazard. The permittee shall be responsible for the
 4 prevention of damage to any public utilities or services.

5 (c) In granting an approval for any phase of site development, the Department may
 6 impose such conditions that may be deemed necessary to ensure compliance with the provisions
 7 of this Division and the preservation of public health and safety.

8 **Subdivision 3. Inspection, Maintenance and Enforcement.**

9 **Sec. 32-189. Performance Bond.**

10 (a) The applicant shall provide a cash bond, irrevocable letter of credit, certificate of
 11 guarantee or other means of security acceptable to the County Attorney prior to the issuance of
 12 any building and/or grading permit for construction of a development requiring a stormwater
 13 management facility.

14 (b) The amount of the security shall not be less than the total construction cost of the
 15 publicly maintained stormwater management facility as estimated by the Department.

16 (c) The security required in this Section shall include provisions relative to forfeiture for
 17 failure to complete work specified in the approved Final Stormwater Management Plan, in
 18 compliance with all the provisions of this Division and other applicable laws and regulations,
 19 and any time limitations. Action on a defaulted permit shall be taken in accordance with the
 20 provisions set forth in Section 32-135 of this Code.

21 (d) The security shall not be fully released without final inspection of completed work and
 22 the acceptance of “as-built” plans.

23 (e) A provision may be made for the partial release of up to 75 percent of the amount of
 24 the security.

25 **Sec. 32-190. Inspection Schedule and Reports.**

26 (a) The permittee shall notify the County at least 48 hours before commencing any work in
 27 conjunction with the site development, the stormwater management plan, and upon completion
 28 of the project.

29 (b) Regular inspections shall be made and documented for each ESD planning technique
 30 and practice at the stages of construction specified in the Maryland Design Manual by the
 31 County, its authorized representatives, or certified by a professional engineer licensed in the

1 State of Maryland. At a minimum, all ESD and other practices shall be inspected upon
 2 completion of final grading, the establishment of stabilization, and before issuance of a use and
 3 occupancy approval.

4 (c) Written reports shall include:

5 (1) The date and location of the inspection;

6 (2) Whether construction was in compliance with the approved Final Stormwater
 7 Management Plan;

8 (3) Any variations from the approved construction specifications; and

9 (4) Any violations that exist.

10 (d) The owner/permittee and on-site personnel shall be notified in writing when violations
 11 are observed. Written notification shall describe the nature of the violation and the required
 12 corrective action.

13 (e) No work shall proceed on the next phase of development until the County inspects and
 14 approves the work previously completed and furnishes the permittee with the results of the
 15 inspection reports as soon as possible after completion of each required inspection.

16 **Sec. 32-191. Inspection Requirements During Construction.**

17 (a) At a minimum, regular inspections shall be made and documented at the following
 18 specified stages of construction:

19 (1) For ponds:

20 (A) Upon completion of excavation to sub-foundation and when required,
 21 installation of structural supports or reinforcement for structures, including but not limited to:

22 (i) Core trenches for structural embankments;

23 (ii) Inlet and outlet structures, anti-seep collars or diaphragms, and
 24 watertight connectors on pipes; and

25 (iii) Trenches for enclosed storm drainage facilities;

26 (b) During placement of structural fill, concrete, and installation of piping and catch
 27 basins;

28 (c) During backfill of foundations and trenches;

29 (d) During embankment construction; and

30 (e) Upon completion of final grading and establishment of permanent stabilization.

31 (2) Wetlands – at stages specified for pond construction in 32-191(A) (1) of this

1 Division, during and after wetland reservoir area planting, and during the second growing season
 2 to verify a vegetation survival rate of at least 50 percent.

3 (3) For infiltration trenches:

4 (A) During excavation to subgrade;

5 (B) During placement and backfill of under drain systems and observation wells;

6 (C) During placement of geotextiles and all filter media;

7 (D) During construction of appurtenant conveyance systems such as diversion
 8 structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and

9 (E) Upon completion of final grading and establishment of permanent
 10 stabilization.

11 (4) For infiltration basins – at the stages specified for pond construction in 32-191(A)
 12 (1) of this Division and during placement and backfill of underdrain systems.

13 (5) For filtering systems:

14 (A) During excavation to subgrade;

15 (B) During placement and backfill of underdrain systems;

16 (C) During placement of geotextiles and all filter media;

17 (C) During construction of appurtenant conveyance systems such as flow
 18 diversion structures, pre-filters and filters, inlets, outlets, orifice, and flow distribution structures;
 19 and

20 (E) Upon completion of final grading and establishment of permanent
 21 stabilization.

22 (6) For open channel systems:

23 (A) During excavation to subgrade;

24 (B) During placement and backfill of under drain system for dry swales;

25 (C) During installation of diaphragms, check dams, or weirs; and

26 (D) Upon completion of final grading and establishment of permanent
 27 stabilization.

28 (b) The Department may, for enforcement purposes, use any one or a combination of the
 29 following actions:

30 (1) A notice of violation shall be issued specifying the need for corrective action if
 31 the Final Stormwater Management Plan noncompliance is identified;

1 (2) A stop work order shall be issued for the site by the Department if a violation
2 persists;

3 (3) Bonds or securities shall be withheld or the case may be referred for legal action
4 if reasonable efforts to correct the violation have not been undertaken; or

5 (4) In addition to any other sanctions, a civil action or criminal prosecution may be
6 brought against any person in violation of this Code, the Maryland Design Manual, or this
7 Division.

8 (c) Any step in the enforcement process may be taken at any time, depending on the
9 severity of the violation.

10 (d) Once construction is complete, "as-built" plan certification shall be submitted by either
11 a professional engineer or professional land surveyor licensed in the State of Maryland to ensure
12 that ESD planning techniques, treatment practices, and structural stormwater management
13 measures and conveyance systems comply with the specifications contained in the approved
14 plans. At a minimum, "as-built" certification shall include a set of drawings comparing the
15 approved Final Stormwater Management Plan with what was constructed. The Department may
16 require additional information.

17 (e) The Department shall submit notice of construction completion to the Administration
18 on a form supplied by the Administration for each structural stormwater management practice
19 within 45 days of construction completion. The type, number, total drainage area, and total
20 impervious area treated by all ESD techniques and practices shall be reported to the
21 Administration on a site by site basis. If BMPs requiring Prince George's Soil Conservation
22 District approval are constructed, notice of construction completion shall also be submitted to the
23 Soil Conservation District.

24 **Sec. 32-192. Final Inspection Reports.**

25 (a) The permittee shall provide "as-built" plans certified by a registered professional
26 engineer to be submitted upon completion of a stormwater management facility.

27 (b) The registered professional engineer shall certify that the facility has been constructed
28 as shown on the "as-built" plan and meets the approved Final Stormwater Management Plan and
29 specifications.

30 (c) A final inspection shall be conducted upon completion of the stormwater management
31 facility to determine if the completed work is constructed in accordance with the approved Final

1 Stormwater Management Plan.

2 (d) The Department shall maintain a permanent file of inspection reports.

3 **Sec. 32-193. Acceptance of Certification in Lieu of Inspections.**

4 At the discretion of the Department, the certification of a professional engineer registered in
5 the State of Maryland may be accepted in lieu of any inspection required by this Division.

6 **Sec. 32-194. Ownership and Maintenance of Stormwater Management Facilities.**

7 (a) Any stormwater management measure which serves a single lot or facility shall be
8 privately owned and maintained.

9 (b) All stormwater management measures relying on vegetated areas or site features shall
10 be privately owned and maintained unless located on public property.

11 (c) All other stormwater management facilities shall be publicly owned and operated.

12 **Sec. 32-195. Maintenance Agreement.**

13 (a) Prior to the issuance of any building permit for which stormwater management is
14 required, the County shall require the applicant or owner to execute an inspection and
15 maintenance agreement to include an operation and maintenance plan binding on all subsequent
16 owners of land served by a private stormwater management facility. Such agreement shall
17 provide for access to the facility at reasonable times for regular inspections by the County or its
18 authorized representative to ensure that the facility is maintained in proper working condition to
19 meet design standards.

20 (b) The agreement shall be recorded by the owner in the land records of the County prior
21 to the issuance of any Use and Occupancy permits for the project.

22 (c) The agreement shall also provide that if after notice by the Department to correct a
23 violation requiring maintenance work, satisfactory corrections are not made by the owner(s)
24 within a reasonable period of time (30 days maximum), the County may perform all necessary
25 work to place the facility in proper working condition. The owner(s) of the facility shall be
26 assessed the costs of the work and there shall be a lien on the property, which may be placed on
27 the tax bill and collected as ordinary taxes by the County.

28 (d) The agreement shall also provide that, if after notice by the Department to correct a
29 violation requiring maintenance work, satisfactory corrections are not made by the owner(s)
30 within a reasonable period of time (30 days maximum), the County may perform all necessary
31 work to place the facility in proper working condition. The owner(s) of the facility shall be

1 assessed the cost of the work and any penalties. This may be accomplished by placing a lien on
 2 the property, which may be placed on the tax bill and collected as ordinary taxes by the County.

3 **Sec. 32-196. Inspection for Preventive Maintenance.**

4 (a) Preventive maintenance inspections of public infiltration systems, bioretention,
 5 retention or detention structures shall be made by the Department. The property owner of record
 6 shall be responsible for the preventive maintenance inspection of privately maintained facilities.
 7 The preventive maintenance inspections of privately maintained facilities shall be performed by
 8 a third party such as licensed professional engineer, professional land surveyor, or landscape
 9 architect licensed in the State of Maryland. This preventive maintenance inspections by a third-
 10 party shall be evaluated by the Department of Environmental Resources to ensure compliance
 11 with the approved plan and maintenance agreement. The inspection schedule shall include an
 12 inspection during the first year of operation and at least once every three (3) years thereafter.

13 (b) Inspection reports for public facilities shall be maintained by the Department. Reports
 14 for private facilities shall be maintained by the Department of Environmental Resources.

15 (c) If, after an inspection, the condition of a facility presents an immediate danger to the
 16 public health or safety because of an unsafe condition or improper maintenance, for publicly
 17 maintained facility, the Department or for privately maintained facility, the Department of
 18 Environmental resources as appropriate, shall take such action as may be necessary to protect the
 19 public and make the facility safe. Any cost incurred by the County shall be paid by the owner.

20 (d) Inspection reports for ESD treatment systems and structural stormwater management
 21 measures shall include the following:

22 (1) The date of inspection;

23 (2) Name of inspector;

24 (3) An assessment of the quality of the stormwater management system related to
 25 ESD treatment practice efficiency and the control of runoff to the MEP;

26 (4) The condition of:

27 (a) Vegetation or filter media;

28 (b) Fences or other safety devices;

29 (c) Spillways, valves, or other control structures;

30 (d) Embankments, slopes, and safety benches;

31 (e) Reservoir or treatment areas;

1 (f) Inlet and outlet channels or structures;

2 (g) Underground drainage;

3 (h) Sediment and debris accumulation in storage and forebay areas;

4 (i) Any nonstructural practices to the extent practicable; and

5 (j) Any other item that could affect the proper function of the stormwater
 6 management system.

7 (5) Description of needed maintenance.

8 (e) Upon notifying an owner of the inspection results, the owner shall have 30 days, or
 9 other time frame mutually agreed to between the Department of Enviromental Resources and the
 10 owner, to correct the deficiencies discovered. The Department of Environmental Resources shall
 11 conduct a subsequent inspection to ensure completion of the repairs.

12 (f) If repairs are not properly undertaken and completed, enforcement procedures
 13 following 32-195(c) of this Division shall be followed by the Department of Environmental
 14 Resources.

15 (g) If, after an inspection by the Department of Environmental Resources, the condition
 16 of a stormwater management facility is determined to present immediate danger to public health
 17 or safety because of an unsafe condition, improper construction, or poor maintenance, the
 18 Department of Environmental Resources shall take such action as may be necessary to protect
 19 the public and make the facility safe. Any cost incurred by the County shall be assessed against
 20 the owner(s), as provided in 32-195(c) of this Division.

21 **Sec. 32-197. Appeals.**

22 (a) Any violation notice issued pursuant to this Division may be appealed in writing to the
 23 Board of Appeals of the County within ten (10) days of the date of the violation notice or such
 24 lesser period of time as may be specified on the violation notice.

25 (b) Any person aggrieved by the decision of the Director denying a modification of the
 26 requirements of this Division may appeal such decision to the Board of Appeals of the County,
 27 in writing, within ten (10) days of the date of the written denial.

28 **Sec. 32-198. Penalties.**

29 (a) Any person convicted of violating the provisions of this Division shall be guilty of a
 30 misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than Five
 31 Thousand Dollars (\$5,000.00), or imprisonment not exceeding one (1) year, or both, for each

1 violation, with costs imposed at the discretion of the court and not to exceed Fifty Thousand
 2 Dollars (\$50,000.00).

3 (b) Each day that the violation continues shall be a separate offense.

4 (c) In addition, the County Attorney may institute injunctive mandamus or other
 5 appropriate action or proceedings at law or equity for the enforcement of this Division or to
 6 correct violations of this Division, and any court of competent jurisdiction shall have the right to
 7 issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate
 8 forms of remedy or relief.

9 **Sec. 32-199. Liability.**

10 Neither the issuance of a permit under the provisions of this Division nor compliance with
 11 the provisions hereto or with any condition imposed by the Director hereunder shall relieve any
 12 person from responsibility for damage to persons, property, drainage systems, living resources or
 13 general environment nor impose any liability upon the County for damages to personal or
 14 property.

15 **Sec. 32-200 through Sec. 32-201. Reserved.**

16 **DIVISION 4. FLOODPLAIN ORDINANCE.**

17 **Sec. 32-202. Purpose; Scope; Application.**

18 (a) The purpose of this Division is:

19 (1) To protect human life and health;

20 (2) To minimize public and private property damage;

21 (3) To encourage the use of appropriate construction practices in order to prevent or
 22 minimize flood damage in the future;

23 (4) To protect potential purchasers from unwittingly buying lands and structures
 24 which are unsuited for certain purposes because of the flood hazards;

25 (5) To protect water supply, sanitary sewage disposal, and natural drainage;

26 (6) To reduce financial burdens imposed on the community, its governmental units,
 27 and its residents by preventing the unwise design and construction of development in areas
 28 subject to flooding;

29 (7) To increase public awareness of the flooding potential;

30 (8) To protect the biological and environmental quality of the watersheds or portions
 31 thereof located in Prince George's County; and

1 (9) To provide a unified comprehensive approach to floodplain management which
 2 addresses requirements of Federal and State programs concerned with floodplain management,
 3 including without limitations: the National Flood Insurance Program and the President's
 4 Executive Order 11988 of May 27, 1977, on floodplain management; the State Waterway
 5 Construction Permit Program, State Wetlands Permit Program, the U.S. Army Corps of
 6 Engineer's Section 10 and Section 404 permit programs; and the State Coastal Zone
 7 Management Program.

8 (b) The provisions of this Division shall apply to all parts of Prince George's County,
 9 except for that area of the County within the boundaries of the City of Laurel.

10 (c) The provisions of this Division shall be:

11 (1) Considered as minimum requirements;

12 (2) Construed in favor of proper flood hazard management in the County; and

13 (3) Deemed neither to limit nor repeal any other powers granted under the

14 Annotated Code of Maryland.

15 (d) In the event that other provisions of this Code affect the application of this
 16 Division, the more restrictive Code provisions shall apply.

17 (e) The granting of a permit or approval pursuant to this Division, shall not be a
 18 representation, guarantee, or warranty of any kind and shall create no liability upon the County,
 19 its officials or employees.

20 (f) This Division shall be applied and interpreted so as to meet or exceed the minimum
 21 requirements of federal and state floodplain regulations. In the event of a conflict between the
 22 minimum requirements of federal and state floodplain requirements, the more restrictive
 23 provisions shall prevail.

24 **Sec. 32-203. Definitions.**

25 (a) The following terms shall have the meanings indicated:

26 (1) **100 Year Flood or Base Flood** - the flood that has a one percent (1%) chance of
 27 being equaled or exceeded in any given year.

28 (2) **Accessory Structure** - for FEMA purposes only, a detached structure on the
 29 same parcel of property as the principal structure, the use of which is incidental to the principal
 30 structure. (Examples would be a shed or detached garage, etc.)

31 (3) **Basement** - any area of a building having its floor subgrade (below ground level)

1 on all sides.

2 (4) **Community** (for FEMA purposes only) - any State or area or political
 3 subdivision thereof, which has authority to adopt and enforce flood plain management
 4 regulations for the areas within its jurisdiction.

5 (5) **County Floodplain** or the **Floodplain** – includes those areas within the County
 6 that will be inundated by the 100-year flood, as determined by FEMA or the County.

7 (6) **Department** – the Department of Public Works and Transportation.

8 (7) **Development** – any man-made change to improved or unimproved real estate
 9 including, but not limited to, any construction, reconstruction, modification, extension or
 10 expansion of buildings or other structures, placement of fill or concrete, construction of new or
 11 replacement infrastructure, dumping, mining, dredging, grading, paving, drilling operations,
 12 storage of materials, land excavation, land clearing, land improvement, landfill operation, or any
 13 combination thereof.

14 (8) **Director** – the Director of Public Works and Transportation.

15 (9) **Elevation Certification** – the certificate that verifies the as-built elevation of a
 16 structure using Mean Sea Level as established by the National Geodetic Vertical Datum (NGVD)
 17 of 1929, the North Atlantic Vertical Datum (NAVD) of 1988, or the WSSC Datum submitted by
 18 a registered land surveyor or professional engineer on the official form prepared and distributed
 19 by the Federal Emergency Management Agency.

20 (10) **FEMA** – the Federal Emergency Management Agency.

21 (11) **FEMA Maps** – the Flood Insurance Rate maps and the Flood Boundary and
 22 Floodway maps of the County prepared by FEMA and any subsequent amendments.

23 (12) **Flood** – the general and temporary condition of partial or complete inundation of
 24 normally dry land areas from overflow of inland or tidal waters, or rapid unusual accumulation
 25 of runoff from any source.

26 (13) **Flood Insurance Rate Map (FIRM)** – a map that depicts the minimum special
 27 flood hazard area to be regulated by this Ordinance (unless a floodway map is available).

28 (14) **Floodplain** means in general:

29 (A) Relatively flat or low land area adjoining a river, stream or other
 30 watercourse which is subject to partial or complete inundation;

31 (B) Area subject to the unusual and rapid accumulation or runoff of surface

1 waters from any source; or

2 (C) Area subject to tidal surges or extreme tides.

3 (15) **Floodplain Buffer** – an area extending beyond and paralleling the County
 4 floodplain to maintain the stability of steep slopes, to preserve the environmental integrity of
 5 stream or wetland habitats associated with a floodplain, and to otherwise protect and maintain
 6 the public safety.

7 (16) **Floodproofing** – any combination of structural and nonstructural additions,
 8 changes or adjustments of properties and structures that reduce or eliminate flood damage to
 9 lands, water and sanitary facilities, structures, and contents of buildings.

10 (17) **Floodproofing Certificate** – a form supplied by FEMA to certify that a building
 11 has been designed and constructed to be structurally dry and floodproofed to the Flood
 12 Protection Elevation.

13 (18) **Flood Protection Elevation (FPE)** – the elevation of the base flood plus one-foot
 14 freeboard.

15 (19) **Floodway** – the channel and adjacent land area required to discharge the waters
 16 of the 100-year flood of a watercourse without cumulatively increasing the water surface
 17 elevations more than a specified height.

18 (20) **Floodway Fringe** – that portion of the floodplain outside the floodway.

19 (21) **Floodway Map** – a map which depicts floodways and special flood hazard areas
 20 to be regulated.

21 (22) **Freeboard** – an increment of elevation added to the base flood elevation to
 22 provide a factor of safety for uncertainties in calculations, wave actions, subsidence, and other
 23 unpredictable effects.

24 (23) **Geographic Information System (GIS) Based Floodplain Model** – the
 25 hydrology and hydraulic models developed by the Department of Environmental Resources
 26 using GIS technologies and databases to determine peak discharges and flood elevations.

27 (24) **Historic Structure** – a structure listed individually on the National Register of
 28 Historic Places, the Maryland Inventory of Historic Properties, or the Historic Sites and Districts
 29 Plan of Prince George’s County.

30 (25) **Lowest Floor** – the lowest floor of the lowest enclosed area (including basement).
 31 An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or

1 storage in an area other than a basement area and that is not considered a building's lowest floor,
2 provided that it is supplied with water equalizing vents.

3 (26) **Manufactured Home or Building** (for FEMA purposes only) – a structure
4 transportable in one or more sections built on a permanent chassis and is designed for use with or
5 without a permanent foundation when connected to required utilities. For floodplain
6 management purposes, the term “manufactured home or building” also includes park trailers,
7 travel trailers, and other similar vehicles placed on a site for more than 180 consecutive days.

8 (27) **NGVD** – National Geodetic Vertical Datum of 1929 elevation reference points set
9 by the national Geodetic Survey based on Mean Sea Level.

10 (27.1) **NAVD**- North Atlantic Vertical Datum 1988 is the vertical control datum
11 established for vertical control surveying in the United States of America based upon the General
12 Adjustment of the North American Datum of 1988.

13 (28) **New Construction** – a structure for which the start of construction commenced
14 on or after the effective date of the adoption of a floodplain management ordinance and includes
15 any subsequent improvements.

16 (29) **Permanent Construction** (for FEMA purposes only) – any structure occupying a
17 site for more than 180-days per year.

18 (30) **Proposed Condition Floodplain** – the 100-year floodplain conditions after the
19 proposed development is completed.

20 (31) **Recreation Vehicle** (for FEMA purposes only) – a vehicle built on a single
21 chassis that is 400 square feet or less at the longest horizontal projection, self-propelled or
22 towable, and designed primarily for temporary living while traveling or camping.

23 (32) **Registered Engineer, Registered Land Surveyor, or Registered Architect** – a
24 professional engineer, land surveyor, or architect licensed to practice said profession and in good
25 standing in the state of Maryland.

26 (33) **Special Flood Hazard Area** – an area within the County where, by local
27 knowledge, the county has reason to believe that there is a serious potential of flooding or flood
28 damage. (For FEMA purposes only, this definition includes an area that would be inundated by
29 the flood having a 1% chance of being equaled or exceeded in any given year and shown on the
30 latest adopted FEMA map.)

31 (34) **Start of Construction** (for FEMA purposes only) – the date the building permit

1 was issued, provided the actual start of construction, repair, reconstruction, placement,
 2 substantial improvement, or other improvement occurs within 180-days of the permit date. The
 3 actual start of construction means either the first placement of permanent construction of a
 4 structure on a site such as the pouring of slab or footings, installation of piles, construction of
 5 columns or any work beyond the stage of excavation, or placement of a manufactured home on a
 6 foundation. Permanent construction, as used in this definition, does not include land preparation
 7 such as clearing, grading, and filling, nor does it include the installation of streets and/or
 8 walkways, excavation for basements, footings, piers, foundations or the erection of temporary
 9 forms, or installation on the property of accessory buildings such as garages or sheds not
 10 occupied as dwelling units or not as part of the main structure.

11 (35) **Structure (for FEMA purposes only)** – a walled and/or roofed building,
 12 including, but not limited to, a gas or liquid storage tank, a building foundation, platform, deck,
 13 fence, swimming pool, bulkhead, or greenhouse that is affixed to a permanent site or location.

14 (36) **Substantial Damage** – damage of any origin sustained by a structure whereby the
 15 cost of restoring the structure to its condition before damage would equal or exceeds fifty percent
 16 (50%) of the market value of the structure.

17 (37) **Substantial Improvement (for FEMA purposes only)** – any repair,
 18 reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the
 19 market value of the structure (less land value) either:

20 (A) Before the improvement or repair is started; or

21 (B) If the structure has incurred substantial damage and has been restored, be-
 22 fore the damage occurred. Substantial improvement occurs when the first alteration of any wall,
 23 ceiling, floor or other structural part of the building commences. The minimum repairs needed
 24 to correct previously identified violations of local health, safety, or sanitary codes and alterations
 25 to historic structures which do not preclude their continued designation as historic structures, are
 26 not considered substantial improvements.

27 (38) **Temporary Structure (for FEMA purposes only)** – any structure completely
 28 removed within 180-days from issuance of the permit.

29 (39) **Use and Occupancy Permit** – the official approval from the Department of
 30 Environmental Resources that the structure has been built consistent with approved plans and
 31 may be legally inhabited or used for the intended purpose.

1 (40) **Waiver** – the grant of relief from the terms of this floodplain management
2 ordinance.

3 (41) **Wetland** – an area that is:

4 (A) Inundated or saturated by surface or ground water at a frequency and
5 duration sufficient to support, and that under normal circumstances does support, a prevalence of
6 vegetation typically adapted for life in saturated soil conditions, including swamps, marshes,
7 bogs and similar areas;

8 (B) Considered “private wetland” or “State wetland” pursuant to Title 9,
9 Wetlands and Riparian Rights, Natural Resources Article, Annotated Code of Maryland; or

10 (C) Defined as wetland under the procedures described in the “Federal
11 Interagency Committee for Wetland Delineation” most updated version and as amended from
12 time to time.

13 **Sec. 32-204. Establishment of the County Floodplain.**

14 (a) The Department of Environmental Resources shall establish as the County floodplain
15 areas of the County that are subject to inundation by the 100-year flood and shall delineate these
16 areas on the official floodplain maps that shall be prepared and maintained in force as part of this
17 Division. Where flood elevations have been defined, the County floodplain shall be determined
18 based on 100 year flood elevations rather than the area graphically delineated on the official
19 floodplain maps. The County floodplain may also be determined using the County’s GIS-based
20 floodplain models.

21 (b) Area included. The County floodplain shall include all of the following areas:

22 (1) 100 year floodplain as determined by FEMA, including all of the following
23 FEMA subcategories:

24 (A) Approximate floodplain – areas subject to inundation by the 100-year flood
25 where a detailed study has not been performed but where a 100-year floodplain boundary has
26 been approximated and delineated on the FEMA Maps as Zone A.

27 (B) Floodway – areas required to carry and discharge the water of the 100 year
28 flood without increasing the water surface elevation at any point more than one (1) foot above
29 existing 100 year flood conditions where defined by FEMA and delineated on the FEMA Maps.

30 (C) Floodway Fringe – areas subject to the 100 year flood that lie beyond the
31 Floodway where the floodway has been determined or where detailed study data, profiles and

1 100-year flood elevations have been established, delineated on the FEMA maps as Zones A, AE
 2 and A1-A30.

3 (D) Coastal floodplain – areas subject to coastal or tidal flooding by the 100 year
 4 flood, where detailed study data are available, delineated on the FEMA Maps as Zones A, AE
 5 and A1-A30.

6 (2) Special flood hazard areas, as defined herein and identified by the County.

7 (3) Wetland floodplains – areas of wetland subject to inundation by the 100 year
 8 flood.

9 (4) Area delineated by approved County Comprehensive Watershed Management
 10 Plans and supporting data to be subject to the 100 year flood or determined to be subject to the
 11 100-year flood by any other floodplain study approved by the County.

12 (5) Areas delineated by any other floodplain studies prepared using the County’s
 13 GIS-based floodplain models.

14 (c) Danger reach of a dam – area that will be flooded when a dam has been breached by
 15 flood waters, as established using the latest methodology of the Maryland Department of the
 16 Environment.

17 (d) Floodplain buffer area - where proposed development is associated with a stream or
 18 tributary and the limits of the floodplain cannot be accurately determined because of the lack of
 19 detailed floodplain data and analysis or because of unknown effects of future development in the
 20 watershed, the Department may require that a floodplain buffer be established and maintained as
 21 part of the development.

22 (e) Areas excluded – areas associated with a watercourse having less than fifty (50) acres
 23 of watershed may be excluded, subject to the approval of the County.

24 (f) Sources - the County shall use the following sources for identifying the floodplain:

25 (1) Most current FEMA Flood Insurance Study for Prince George’s County,
 26 Maryland;

27 (2) FEMA maps (the Floodway maps, if available, must be used rather than the
 28 Flood Insurance Rate Maps);

29 (3) Approved County comprehensive watershed management plans;

30 (4) Other floodplain studies approved by the County; and

31 (5) Other floodplain studies prepared by the County or its designee using the

1 County's GIS-based floodplain models.

2 (g) Official floodplain maps shall be at a minimum the FEMA maps.

3 (h) Revisions of the County floodplain:

4 (1) The County may amend the limits of the County floodplain to reflect the effect of
5 specified flood protection measures recommended in adopted County watershed plans that have
6 been included in an adopted Prince George's County Capital Improvement Program (CIP) for
7 planning, design and construction, and for which the County has all necessary federal and state
8 permits. However, the County floodplain may not be based upon flood elevations lower than
9 shown on the currently adopted FEMA map until concurrence in the lowered elevations has been
10 received from FEMA in accordance with applicable federal regulations.

11 (2) The County floodplain limits shall be amended by the Department where studies
12 or information provided by a qualified agency or person document the need or possibility for
13 such revision. Where there are no available studies, or where existing studies have been
14 determined by the Department to be inadequate, a new study of the area shall be required. All
15 such floodplain studies shall be performed in accordance with the Department's requirements and
16 criteria, which shall include, without limitation:

17 (A) System within the drainage basin either existing or included in an adopted
18 County CIP for planning, design and construction and, for which, the County has all necessary
19 federal and state permits; and

20 (B) Future land use based on existing zoning or based on adopted or approved
21 master plans, or sectional map amendments, whichever best reflects future land use in the
22 opinion of the County.

23 (3) Any proposed reduction or modification to any area of the County identified by
24 FEMA as part of the 100 year floodplain must have the approval of FEMA. Proposed
25 modifications must first be submitted to the County for review, and the County's
26 recommendation on the proposed modification shall be transmitted to FEMA with a copy to the
27 submitter. Any development in the floodplain, which may result in any increase in water surface
28 elevations or change to the FEMA floodplain boundaries, must be submitted to FEMA for a
29 Conditional Letter of Map Revision. Hydrologic and hydraulic analysis based on existing
30 floodplain models and performed in accordance with standard engineering practices and certified
31 by a registered professional engineer must be submitted. Failure to receive this letter shall be

1 grounds for denial of the permit. The County shall notify the Federal Insurance Administrator of
 2 revisions to the FEMA floodplain within six (6) months after the date of completion of the
 3 modification by submitting technical and scientific data in accordance with 44 Code of Federal
 4 Regulations, Part 65. All revisions and modifications of the FEMA floodplain shall be subject to
 5 the review and approval of FEMA and the Maryland Department of the Environment.

6 **Sec. 32-205. Development Regulations.**

7 (a) Within the County floodplain, no development shall be permitted except as provided in
 8 Subsection (b) unless a waiver is obtained from the County which permits such development.

9 (b) Permitted Development. The following development shall be permitted:

10 (1) The modification, alteration, repair, reconstruction, or improvement of a structure
 11 which does not constitute substantial improvement to the structure (including improvements to
 12 historic structures which do not affect the exterior dimensions). The improvements shall be
 13 elevated and/or flood proofed to the greatest extent possible. The elevation of the lowest floor
 14 shall be at least one (1) foot above the elevation of the 100 year flood or those parts of the
 15 improvement below the elevation of one (1) foot above the 100 year flood shall be dry flood
 16 proofed in accordance with the U.S. Army Corps of Engineers flood proofing regulations.

17 (2) Private and public utilities and facilities which conform to the construction,
 18 design, and flood proofing requirements of this Division.

19 (3) Private or public streets crossing the floodplain.

20 (4) Stormwater management facilities.

21 (5) Small projections leading off of the floodplain which would be enclosed by storm
 22 drainage pipes.

23 (6) Developments in which all structures will be elevated, by fill, to or above the
 24 flood protection elevations and will not be located within the proposed condition floodplain
 25 boundaries, provided that all development regulations stated in this Section are met.

26 (c) All areas within the County floodplain shall be dedicated to public use or for use as a
 27 park, or as a floodplain or conservation easement, whichever is appropriate; the dedication or
 28 easement shall meet the County requirements for form and content and shall be recorded among
 29 the Land Records of the County. The easement requirement may be waived when, in the opinion
 30 of the County, the waiver would not compromise any public or private interests including the
 31 rights of the landowners, safety, and environmental protection; would not conflict with any

1 Federal, State or County laws; and the establishment of an easement would constitute an
2 unreasonable hardship on the applicant. A waiver may be granted only if the County finds that
3 the applicant has demonstrated the following:

4 (1) The property is already essentially developed and occupied by the applicant; or

5 (2) The proposed disturbed area is less than 20% of the total area of a single
6 residential lot; and

7 (3) The floodplain is clear of proposed improvements, including access roads, to the
8 extent the floodplain area is not used in conjunction with the proposed improvements; and

9 (4) The floodplain is not likely to increase in the future nor would it be damaged by
10 continuing stream flows or flooding that may be caused, in part, by the existence of downgraded
11 or upgraded public storm drain systems or Stormwater management facilities.

12 (d) Fences and other matters or enclosures which may impede, retard, or change the
13 direction of the flow of water, or that will catch or collect debris carried by such water, or that
14 are placed where the natural flow of the stream or flood waters would carry such impediments
15 downstream to the damage or detriment of either public or private property in or adjacent to the
16 floodplain shall not be permitted without a waiver and permit as provided in this Division.

17 (e) All development shall be designed to minimize floodplain disturbance and shall
18 conform to all other applicable codes, ordinances, regulations, flood management and watershed
19 management plans where they have been prepared, and the requirements of the permit programs
20 of all applicable Federal, State and local governments.

21 (f) Any new or substantially improved residential or nonresidential structures, including
22 manufactured homes, shall be located outside the floodplain and have the lowest floor and the
23 surrounding ground elevated, by fill, to or above the flood protected elevation. Basements are
24 not permitted. The elevation of the lowest floor shall be certified by a registered surveyor or
25 professional engineer on the as-built plan or after the lowest floor is in place. All new structures
26 in any subdivision shall be located outside the 100 year floodplain boundary. All residential
27 structures shall be set back 25 feet minimum from the 100 year floodplain. For every activity in
28 the floodplain, the conditions described in Sections 32-205(g), 32-205(h), and 32-106(a)(6) must
29 be met.

30 (g) If floodplain storage is reduced because of the project, an equal amount of
31 compensatory storage within the floodplain shall be provided. A site grading plan prepared by a

1 registered engineer, showing a balance of cut-and-fill, shall also be submitted. The limits of the
 2 floodplain before and after development shall be clearly shown on the site plan. A detailed
 3 floodplain analysis shall be conducted to indicate that the new floodplain can carry the discharge
 4 of the 100 year flood without increasing the water surface elevation at any point on other private
 5 or public property either upstream or downstream from the tract to be developed, unless such
 6 lands affected by an increase in water surface elevation are either acquired by the applicant or
 7 reserved through acquisition of suitable floodplain easements, provided such increases will not,
 8 in the determination of the County, cause or aggravate damage to such properties. However,
 9 development shall not increase water surface elevation of the base flood more than one foot at
 10 any point. The floodplain analysis shall consider backwater conditions, local obstructions and,
 11 where required by the County partial or complete failure or obstruction of any culvert or
 12 enclosed storm drainage system. The new floodplain shall be designed to prevent detrimental
 13 erosion, overflow, or nuisance of any kind and shall ultimately discharge into a storm drain
 14 facility or a watercourse in accordance with County standards and procedures.

15 (h) All proposals to offset the effects of development in the floodplain by construction of
 16 stream modifications shall be documented by an engineering study prepared by a registered
 17 engineer who fully evaluates the effects of such construction. The report shall use the 100 year
 18 flood and floodplain data prepared by FEMA, at a minimum, and other County-approved
 19 watershed studies. Evidence shall be provided that all adjacent communities and the Maryland
 20 Department of the Environment have been notified by certified mail and have approved of the
 21 proposed modification. Copies of these notifications shall then be forwarded to FEMA's Federal
 22 Insurance Administration. The County or its designee will conduct a study to assure that the
 23 flood carrying capacity within the altered or relocated portion of the watercourse in question will
 24 be maintained. If required, the owner shall execute a Stormwater management maintenance
 25 agreement with the County, which shall be recorded in the Land Records.

26 **Sec. 32-206. Waiver Requirements for Development in Floodplain.**

27 (a) In order to undertake any development in the County floodplain other than as permitted
 28 in the preceding Section, the applicant must obtain a waiver from the Director.

29 (b) The request for waiver shall include:

30 (1) The information required for a permit for development as set forth in this

31 Division;

1 (2) A statement explaining the need for the development, any public benefit to be
2 derived, and the actions that will be taken to reduce the threat of any potential flooding, flood
3 damage, or adverse environmental impacts; and

4 (3) Plans and studies as required by the County.

5 (c) Required plans and studies. The County may require plans and studies to be submitted.
6 All studies shall be subject to approval by the County. All studies and calculations furnished to
7 satisfy this provision shall become the property of the County and may be used by the County for
8 reviewing other development or for other purposes.

9 (d) The Director shall grant a waiver only upon determining that:

10 (1) There is good and sufficient cause;

11 (2) The granting of the waiver will not result in additional threats to public safety,
12 increased flood elevations or discharges, or other adverse impacts on other public or private
13 property either upstream or downstream;

14 (3) The granting of the waiver will not result in fraud or victimization of the public;

15 (4) The waiver is the minimum necessary, considering the flood hazard, to afford
16 relief to the owner, and public funds shall not be expended to mitigate the results of the waiver;

17 (5) The development will not violate other Federal, State or local laws or regulations;

18 and

19 (6) The waiver does not violate the purpose and intent of this Division.

20 (e) Waivers will not be granted for any filling, or the construction or placement of any
21 structures or obstructions which will ultimately be located in the FEMA-designated Floodways,
22 or in the County designated Special Flood Hazard Areas which will increase the water surface
23 elevation of the base flood. Within the floodplain, waivers shall not be granted for any new
24 structures, the lowest floors of which are below flood protection elevations.

25 (f) If granted, a waiver shall involve only the least modification necessary to provide
26 relief. If it should become necessary to grant any variance, the applicant shall be required to
27 comply with all applicable requirements of the National Flood Insurance Program regulations
28 (60.3d) including the requirements for elevation, flood proofing and anchoring. The applicant
29 must also comply with any other requirements considered necessary by the County.

30 Notwithstanding any of the above, however, all structures shall be designed and constructed so
31 as to have the capability of resisting the 100 year flood. Flood proofing is not an option in

1 residential construction. All residential structures must be elevated.

2 (g) A record of all waiver actions, including justifications for their issuance, shall be
 3 maintained by the County, shall be included in the Biannual report submitted to the Federal
 4 Insurance Administrator, and shall be available upon request by FEMA or its authorized agent
 5 during periodic assessments of the County participation in the National Flood Insurance
 6 Program.

7 (h) As a condition of the waiver, the owner of the property being developed shall be
 8 required to execute covenants to provide notice of the waiver, the potential for higher insurance
 9 premium rates, the flood hazard, and any responsibilities of the owner to maintain flood proofing
 10 or stream modification facilities or systems, which covenants shall be recorded among the Land
 11 Records of the County. Where there will be enclosed areas below the 100 year flood elevation, a
 12 statement shall be recorded in the Land records of the County which reads, "No conversion of
 13 this area to habitable space is to occur unless the lowest floor is elevated to one (1) foot above
 14 the 100 year flood elevation. At this site the 100 year flood elevation is _____."

15 **Sec. 32-207. Construction and Design Standards within the Floodplain.**

16 (a) All development permitted in the County Floodplain shall comply with the following
 17 minimum standards where applicable.

18 (1) In general, all new construction and substantial improvements which are
 19 permitted in the floodplain by waiver pursuant to this Division shall be:

20 (A) Designed (or modified) and adequately anchored to prevent flotation,
 21 collapse, or lateral movement of the structure;

22 (B) Constructed and placed on the lots so as to offer the minimum obstruction to
 23 the flow and height of the flood water;

24 (C) Constructed with materials and utility equipment resistant to flood damage;
 25 and

26 (D) Constructed by methods and practices that minimize flood damage and
 27 adverse environmental impacts.

28 (2) The elevation of the lowest floor of all new or substantially improved structures,
 29 except for garages, storage and accessory structures, which are less than 300 square feet and not
 30 used for human habitation, shall be at least one (1) foot above the 100 year flood. Basements in
 31 buildings within the floodplain as herein defined are prohibited.

1 (3) Enclosures below the lowest floor. The new construction or substantial
 2 improvement of fully enclosed areas below the lowest floor, including but not limited to crawl
 3 spaces, solid footings and continuous foundations, shall be vented to equalize hydrostatic
 4 pressure by permitting the free entry and exit of floodwaters and shall include the following as a
 5 minimum:

6 (A) At least two openings having a total net area of not less than one square inch
 7 for every square foot of enclosed area subject to flooding shall be provided;

8 (B) The bottom of all openings shall be no higher than one foot above grade;

9 (C) Openings may be equipped with screens, louvers, valves, or other coverings
 10 or devices provided that they permit the automatic entry and exit of floodwaters; and

11 (D) A statement shall be included on the building plans which states: “No
 12 conversion of this area to habitable space is to occur unless the lowest floor elevated to one (1)
 13 foot above the 100 year flood elevation. At this site the 100 year flood elevation is
 14 _____.”

15 (4) Accessory structures. The new construction or substantial improvement of
 16 garages, storage sheds and similar accessory structures shall meet the requirements set forth in
 17 Paragraph (3), above.

18 (5) Storage. Storage for materials that are buoyant, flammable, explosive, or that in
 19 times of flooding could be injurious to human, animal or plant life shall not be constructed or
 20 permitted below one (1) foot above the level of the 100 year flood.

21 (6) Fill.

22 (A) Where allowed, fill material shall comply with the requirements of Sections
 23 32-156 through 32-158 of this Subtitle.

24 (B) Fill slopes shall be no steeper than one (1) vertical to two (2) horizontal,
 25 unless substantiating data justifying steeper slopes are submitted to and approved by the County.

26 (C) Fill shall be used only to the extent to which it does not adversely affect
 27 adjacent properties.

28 (7) Landscape design.

29 (A) Where permitted, disturbance or removal of the natural vegetation in the
 30 floodplain shall be avoided or minimized.

31 (B) Adequate ground cover shall be provided for soil stabilization.

1 (C) Design of land contours and choice of plant materials shall direct surface
 2 runoff away from structures and shall not increase surface runoff onto neighboring properties.

3 (8) Electrical and plumbing systems.

4 (A) All water heaters, furnaces, generators, heat pumps, air conditioners and
 5 other permanent mechanical and electrical installations shall be permitted only at or above one
 6 (1) foot above the elevation of the 100 year flood.

7 (B) No electrical distribution panels shall be permitted at an elevation less than
 8 three (3) feet above the elevation of the 100 year flood.

9 (9) Public and private utilities. The design, placement and construction of all public
 10 and private utilities and facilities shall meet the following requirements:

11 (A) New or replacement water supply systems and/or sanitary sewage systems
 12 shall be designed and flood proofed to eliminate or minimize infiltration of flood waters into the
 13 systems and discharges from the systems into the flood waters, and to avoid impairment during
 14 flooding and to minimize flood damage.

15 (i) Cesspools and seepage pits are prohibited.

16 (ii) Septic tanks are permitted provided they are securely anchored to resist
 17 buoyant forces during inundation.

18 (iii) All pipes connected to sewage systems shall be sealed to prevent
 19 leakage.

20 (B) All gas, electrical and other facility and utility systems shall be located,
 21 constructed and flood proofed to eliminate or minimize flood damage.

22 (C) All new storm drainage facilities within and leading to or from the County
 23 floodplain shall be adequately designed, flood proofed and installed to eliminate or minimize
 24 property damage resulting from the flood waters of the 100 year flood and to minimize adverse
 25 environmental impacts of their installation and use.

26 (10) Recreational vehicles located within the floodplain may be exempted from the
 27 elevation and anchoring requirements provided they are:

28 (A) Located on the site less than 180 consecutive days per year;

29 (B) Fully licensed and ready for highway use; and

30 (C) Properly permitted.

31 A recreational vehicle is ready for highway use if it is on its wheels and jacking system, is

1 attached to the site by quick disconnect type utilities and securing devices, and has no
 2 permanently attached additions. If it cannot meet all of these criteria, the recreational vehicle
 3 must be considered a manufactured home and is subject to the elevation and construction
 4 standards of this Code.

5 (11) All notice of the flood hazard and the waiver action shall be placed on the deed or
 6 other title document of the property on which the waiver is granted.

7 **Sec. 32-208. Coastal and Wetland Floodplain Regulations.**

8 (a) Any development and construction in the coastal and wetland floodplains which is
 9 permitted pursuant to Section 32-206 of this Division, shall, in addition to all other requirements
 10 of this Division, meet the requirements of this Section.

11 (b) The development shall be subject to the provisions of this Code regulating
 12 development in the Chesapeake Bay Critical Areas.

13 (c) In the wetland floodplain the following regulations shall apply:

14 (1) The County shall obtain, review and reasonably utilize any wetlands classification
 15 data available from a Federal, State or other source to determine the boundaries and
 16 characteristics of the wetland floodplain. When the boundary of the wetland floodplain is
 17 unknown, obscure, or undefined, the County, in cooperation with or with assistance from the
 18 Maryland Department of the Environment, shall evaluate each site to determine the actual extent
 19 of wetlands.

20 (2) Except where specifically allowed by the County and the Maryland Department
 21 of the Environment and the U.S. Army Corps of Engineers, the following shall be prohibited:

22 (A) Filling, dumping or excavating of any kind;

23 (B) Drainage or alteration of the natural drainage and circulation of surface or
 24 ground waters; and

25 (C) Removal of natural vegetation.

26 (3) The County may approve development or construction upon determining that the
 27 proposed uses:

28 (A) Require access to water or wetlands, or are water dependent;

29 (B) Have no prudent or feasible alternative site which does not involve wetland
 30 areas; and

31 (C) Will result in minimum feasible alteration or impairment to wetland

1 functional characteristics and existing contour, vegetation, fish and wildlife resources and
 2 hydrologic conditions of the wetland area.

3 (D) Meet all applicable regulations of Subtitle 5B when located in the
 4 Chesapeake Bay Critical Area Overlay Zone.

5 (4) All buildings and structures shall be prohibited with the exception of catwalks,
 6 piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges,
 7 observation decks and shelters; and other similar water-related structures which are constructed
 8 on pilings to permit the unobstructed flow of waters and preserve the natural contour of the
 9 wetland area within the Chesapeake Bay Critical Area Overlay Zone.

10 **Sec. 32-209. Permit Requirements within the Floodplain.**

11 (a) A permit is required for all development (including, but not limited to, construction of
 12 and/or substantial improvements to buildings and structures, placement of manufactured homes
 13 or buildings, fill, temporary development, new or replacement infrastructure, or any combination
 14 thereof) in the floodplain. However, for a development associated with a watercourse draining
 15 less than 50 acres of land, a detailed floodplain study may be waived, subject to the approval of
 16 the County.

17 (b) An application for a permit shall be submitted to the County. The application shall be
 18 part of the application for a building or grading permit when such a permit is otherwise required
 19 for the proposed development.

20 (c) The following additional information shall be required, where applicable:

21 (1) If the development includes any grading, new construction, or exterior
 22 modifications to existing structures, a site grading plan prepared by a registered engineer or
 23 architect showing: the size and location of the proposed development and any existing buildings
 24 or structures; the location, dimensions and elevation in mean sea level of the site in relation to
 25 the stream channel, shoreline and the floodplain; the elevations of the 100 year flood, the
 26 existing and proposed final grading and the lowest floor elevations of all structures; the method
 27 of elevating the proposed structure, including proposed fills, retaining walls, foundations, erosion
 28 protection measures; and such other information as may be required by the County.

29 (2) For substantial improvement to existing structures, a summary description of the
 30 proposed work and estimated cost.

31 (3) For new construction or substantial improvements of nonresidential structures

1 within the floodplain, certification by a registered engineer or architect that the nonresidential
 2 structure will be dry flood proofed watertight in accordance with the specifications of the U.S.
 3 Army Corps of Engineering to one (1) foot above the 100 year elevation.

4 (4) A plan showing the location of all existing and proposed public and private
 5 utilities, facilities, drainage structures and road access. If the 100 year flood elevation has been
 6 determined, it shall be delineated on the proposed plan. For all proposals associated with a
 7 watercourse having a drainage area of 50 acres or more, the County shall determine the 100 year
 8 flood elevation using floodplain models and the applicant shall delineate it on the proposed plan.
 9 Private consultant engineering studies and studies using the County's GIS-based floodplain
 10 models will be accepted by the County until a date certain established by the County. After the
 11 specified deadline and upon proper notice, only studies using the County's GIS-based floodplain
 12 models will be accepted by the County, unless the County grants as applicant's written request to
 13 use a private consultant to perform the study. In addition, field survey information of structures,
 14 within the floodplain, as may be required by the County to complete the study, shall be supplied
 15 by the applicant. For all proposals associated with a watercourse having a drainage area of 50
 16 acres or less, the delineation of the 100 year flood elevation may be excluded upon the approval
 17 of the County. All plans shall be certified by a registered engineer.

18 (d) The application shall be reviewed by the County to assure that:

- 19 (1) The proposed development is consistent with the construction and design
 20 requirements of this Division;
 21 (2) Adequate drainage is provided to reduce exposure to flood hazards;
 22 (3) The plans provide at least one access which will permit safe vehicular ingress and
 23 egress from the subdivision and/or new development during a 100 year flood;
 24 (4) Adequate measures have been taken to minimize any potential adverse
 25 environmental impacts of the proposed development; and
 26 (5) The development complies with the requirements of this Division and all other
 27 applicable codes and ordinances.

28 (e) No construction or development will occur until all other Federal, State and local
 29 permits and approvals have been obtained.

30 (f) During the construction period, the County shall inspect the premises to determine that
 31 the work is progressing in compliance with the permit and with all applicable laws and

1 ordinances. The premises shall also be subject to inspection by the Maryland
2 Department of the Environment. In the event that the County determines that the work is not in
3 compliance with the permit or all applicable laws and ordinances, or that there has been a false
4 statement or misrepresentation by the applicant, the County shall report such fact to the
5 Maryland Department of the Environment for whatever action it considers necessary as well as
6 pursuing compliance as provided under this Division and Subtitle.

7 (g) A use and occupancy permit shall not be approved until the County has been provided
8 with a completed elevation certificate prepared by a registered land surveyor or engineer
9 certifying the “as-built” elevation of the subject construction.

10 (h) A record or log of permits issued for development in the County floodplain shall be
11 maintained by the County and shall be available upon request to FEMA or its authorized agent
12 (the Maryland Department of the Environment) during periodic assessments of the County
13 participation in the National Flood Insurance Program. Such record shall include at a minimum
14 the date the permit was issued, the as-built lowest floor elevation of all new construction or
15 substantial improvement, the issuance date of the use and occupancy permit, a copy of the
16 completed elevation certificate, and any map amendments issued by FEMA.

17 **Sec. 32-210. Appeals.**

18 (a) A person aggrieved by a decision of the County under this Division may file an appeal
19 in writing with the Board of Appeals for Prince George’s County within ten (10) days of
20 receiving notice of the County’s decision.

21 (b) The Board may reverse, modify or remand the decision of the County only if the
22 decision of the County is clearly erroneous, illegal, arbitrary or capricious or unsupported by any
23 substantial evidence. The Board shall not have the authority to issue an order which is in conflict
24 with a lawful order of the County, the requirements and provisions of this Ordinance, or the
25 Federal or State floodplain regulations.

26 (c) Further appeals shall be to the Circuit Court pursuant to the Maryland Rules on
27 Administrative Appeals.

28 **Sec. 32-211. Enforcement and Penalties.**

29 (a) The County may issue a notice of violation to any person, firm, association or
30 corporation who fails to comply with the standards and requirements of this Division for
31 construction or development in the floodplain, which notice may provide a reasonable time in

1 which to comply.

2 (b) Any person who fails to comply with a notice of violation or other lawful direction of
 3 the Director shall be subject to civil citation and a monetary fine pursuant to Section 28-261 of
 4 this code.

5 (c) Any person who violates the provisions of this Division shall be guilty of a
 6 misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than One
 7 Thousand Dollars (\$1,000) or imprisonment not exceeding six (6) months, or both, for each
 8 violation, with costs imposed in the discretion of the Court. Each day that the violation
 9 continues shall constitute a separate offense.

10 (d) The imposition of a civil or criminal fine or penalty for any violation or noncompliance
 11 with this Division shall not excuse the violator from the requirement to correct or remedy the
 12 violation within a reasonable time. The County Attorney may institute injunctive, mandamus or
 13 other appropriate action or proceedings at law or equity for the enforcement of this ordinance,
 14 and any court of competent jurisdiction shall have the right to issue restraining orders, temporary
 15 or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

16 (e) The County shall promptly notify the Federal Insurance Administrator and the
 17 Maryland Department of the Environment of any structure or development in the floodplain
 18 which is in violation of this Division in order that new or renewal National Flood Insurance on
 19 the subject property may be denied or other appropriate remedies may be pursued by these
 20 agencies.

21 **Sec. 32-212. Fees for Conducting the Floodplain Study.**

22 The fees for the County to conduct a floodplain study using the GIS-based floodplain
 23 models pursuant to this Subtitle shall be adopted by resolution of the Prince George's County
 24 Council. The County Executive shall propose and recommend to the County Council a schedule
 25 of fees that reflects the actual costs associated with conducting the study and administering and
 26 maintaining the GIS database and hardware needed for the models pursuant to the floodplain
 27 study.

28 **Sec. 32-213. through 32-215. Reserved.**

29 **DIVISION 5. NONTIDAL WETLAND PROTECTION ORDINANCE.**

30 **Sec. 32-216. Short Title; Purpose.**

31 (a) The provisions of this Division shall constitute and be known as the "Nontidal Wetland

1 Protection Ordinance” of Prince George’s County, Maryland.

2 (b) Prince George’s County has established a comprehensive program for the protection,
 3 conservation and regulation of nontidal wetlands. The goal of this program is to ensure no net
 4 loss of nontidal wetland acreage and function and to strive for a net resource gain in the County.
 5 This program is to be administered by the Department of Public Works and Transportation under
 6 the provisions of this Ordinance.

7 (c) It is the intent of Prince George’s County to protect the County’s nontidal wetland
 8 resources through a comprehensive Countywide program in cooperation with State and Federal
 9 agencies. Through this program further degradation and losses of nontidal wetlands will be
 10 prevented wherever possible. Where losses are unavoidable, these losses will be offset through
 11 restoration or creation of nontidal wetlands.

12 (d) The provisions of this Ordinance are adopted pursuant to the Annotated Code of
 13 Maryland, Natural Resources Article, Section 8-1201, et seq., and Code of Maryland Regulations
 14 (COMAR) 08.05.04.22 and are subject to the provisions described therein.

15 **Sec. 32-217. Definitions.**

16 (a) Applicability of definitions. The definitions contained in Subtitle 32, Divisions 2 and 3
 17 of this Code may apply to this Division and shall be supplemented by the definitions in
 18 Subsection (b) of this Section.

19 (b) Terms Defined. Wherever the following words are used in, or in conjunction with, the
 20 administration of this Division, they shall have the meaning ascribed to them in this Section.

21 (1) **Adaptive Vegetation** - plant species which are not native but provide similar
 22 value to native species and grow successfully in Maryland.

23 (2) **Adverse Impact** - any diminishment of nontidal wetland acreage or function.

24 (3) **Agricultural Activity** - aquaculture and farming activities including plowing,
 25 tillage, cropping, seeding, cultivating, and the grazing and raising of livestock, sod production
 26 and other products cultivated as part of a recognized commercial enterprise, and harvesting for
 27 production of food and fiber products, excluding forest products. The definition includes
 28 tobacco, nursery stock, Christmas trees, aquaculture ponds, and other ponds used to conduct
 29 farming activities. Activities that result in a change to a land use other than agriculture are not
 30 agricultural activities. Structures or temporary storage areas related to sale of products are
 31 excluded from this definition.

- 1 (4) **Agriculture** - a land use dominated by the production of food, fiber, aquaculture
2 or livestock, and other products cultivated as part of a recognized commercial enterprise.
- 3 (5) **Applicant** - a person who signs the Nontidal Wetland Concept Plan and Nontidal
4 Wetland Permit Application.
- 5 (6) **Aquaculture** - the commercial rearing of finfish, shellfish and aquatic plants for
6 sale, trade, barter or shipment.
- 7 (7) **Aquaculture Facility** - a pond, impoundment, raceway or tank and their
8 associated structures essential for the purpose of aquaculture.
- 9 (8) **Areas that have Lain Fallow** - areas used for agriculture or forestry activities
10 that are not in production for agriculture or forest products.
- 11 (9) **Avoid** - to refrain from conducting an activity that may adversely impact a
12 nontidal wetland.
- 13 (10) **Best Management Practices** - conservation practices or systems of practices and
14 management measures that:
- 15 (A) Control soil loss and reduce water quality degradation caused by nutrients,
16 animal waste, toxics and sediment; and
- 17 (B) Minimize adverse impacts to the surface water, groundwater flow, and
18 circulation patterns, and to the chemical, physical and biological characteristics of a nontidal
19 wetland.
- 20 (11) **Bog** - a nontidal wetland characterized by organic soils, accumulated peat, and
21 soils saturated to the surface through the year with minimal fluctuation in water level.
- 22 (12) **Buffer** - a regulated area 25 feet in width surrounding a nontidal wetland,
23 measured from the outer edge of the nontidal wetland.
- 24 (13) **Clean Water Act** - the Federal Water Pollution Control Act of 1972, as amended
25 by the Clean Water Act of 1977 and later amendments (33 U.S.C. 1251, et seq.).
- 26 (14) **Comprehensive Watershed Management Plan** - a plan developed in
27 cooperation with Federal, State and local agencies and approved by the County and Maryland
28 Department of Natural Resources (MDNR) that addresses nontidal wetland protection, creation,
29 restoration, enhancement, cumulative impacts, flood protection, water supply concerns and other
30 natural resource elements for a specific area or region.
- 31 (15) **Corps Delineation Manual** - the Corps of Engineers Wetlands Delineation

1 Manual, Technical Report Y-87-1 and any subsequent amendments, which is incorporated by
 2 reference.

3 (16) **Creation** - actions performed which establish nontidal on upland sites.

4 (17) **Critical Habitat** - habitat necessary for the survival of threatened or endangered
 5 species, or species in need of conservation.

6 (18) **Department** - the Prince George's County Department of Public and
 7 Transportation Works and Transportation.

8 (19) **Destruction or Removal of Plant Life that would alter the Character of a**
 9 **Nontidal Wetland:**

10 (A) The physical removal of natural nontidal wetland vegetation; or

11 (B) Causing mortality of nontidal wetland vegetation by the application of
 12 herbicides, hydrologic alteration, or by other means.

13 (20) **Director** - the Director of the Prince George's County Department of Public
 14 Works and Transportation or the designee of the Director.

15 (21) **Discharge of Fill Material** - the addition of fill material, from any source, into a
 16 nontidal wetland area. Activities that can result in the discharge of fill material include:

17 (A) Placement of fill necessary for the construction of any structure;

18 (B) Building or any structure or impoundment requiring rock, sand, dirt, or other
 19 materials for its construction;

20 (C) Site development fills for recreational, industrial, commercial, residential,
 21 and other uses;

22 (D) Causeways or road fills;

23 (E) Dams and dikes;

24 (F) Artificial islands;

25 (G) Property protection or reclamation devices, or both;

26 (H) Levees; and

27 (I) Fills for structures such as, and associated with, sewage treatment facilities
 28 and intake and outfall pipes.

29 (22) **Disturbance of Water Level or Water Table** - the alteration of the existing
 30 elevation of groundwater or surface water by:

31 (A) Adding or impounding a sufficient quantity of stormwater or water from

1 other sources to modify the existing vegetation, values or functions of the nontidal wetlands; or

2 (B) **Draining, ditching, or otherwise causing the depletion of the existing**
 3 groundwater or surface water levels so that the activity would modify the existing vegetation.

4 (23) **Drainage** basin - an area drained by a river system. In Prince George's County
 5 this includes the Anacostia, Patuxent and Potomac drainage basins.

6 (24) **Drainage of Nontidal Wetlands** - methods used to change the hydrologic
 7 conditions of nontidal wetlands, including lowering groundwater or surface water levels through
 8 pumping, piping, ditching or otherwise altering water flow patterns.

9 (25) **Emergent Nontidal Wetland** - that portion of a nontidal wetland dominated by
 10 erect, rooted, herbaceous vegetation as the uppermost vegetation strata.

11 (26) **Enhancement** - those actions performed to provide additional protection to, or to
 12 create, or improve the functions of a nontidal wetland or other aquatic sites or resources.

13 (27) **Excavation** - to dig or remove soil, rocks or other materials resulting in a change
 14 in all or part of the elevation of a site.

15 (28) **Expanded Buffer** - a regulated area of 100 feet in width surrounding a non-tidal
 16 wetland, measured from the wetland boundary and established because of the presence of steep
 17 slopes, highly erodible soils, other soils with development constraints, or the presence of
 18 Nontidal Wetlands of Special State Concern.

19 (29) **Extenuating Circumstances** - conditions as defined in Section 32-220(e) and (g)
 20 requiring extension of a set time limit to process an application, render decision, or conduct a
 21 public informational hearing.

22 (30) **Farmed Nontidal Wetland** - an area designated under Subsection (b)(56) that is
 23 presently tilled, grazed, or under conservation tillage for agricultural activities or is lying fallow
 24 and has been out of production for agricultural activities for less than five consecutive years.

25 (31) **FEMA Maps** - the Federal Insurance Rate Maps (FIRM) and the Flood Boundary
 26 and Floodway maps of the County prepared by FEMA (Federal Emergency Management
 27 Agency) and any subsequent amendments.

28 (32) **Fill** - any materials placed in an area which alters the elevation of the site,
 29 groundwater level, or the soil surface.

30 (33) **Floodplain or County Floodplain** - includes all those areas within the County
 31 which will be inundated by the 100 year flood, as determined by FEMA and the County.

1 (34) **Forested Nontidal Wetland** - that portion of a nontidal wetland dominated by
2 woody vegetation greater than 20 feet in height.

3 (35) **Forestry Activity** - planting, cultivating, thinning, harvesting or any other
4 activity undertaken to use forest resources or to improve their quality or productivity. Activities
5 that change nontidal wetlands to another land use, including but not limited to agricultural or
6 development, are not forestry activities.

7 (36) **Function** includes, but is not limited to, the roles nontidal wetlands serve through:

8 (A) Reduction of pollutant loadings, including excess nutrients, sediment and
9 toxics;

10 (B) Attenuation of floodwaters and stormwaters;

11 (C) Shoreline stabilization and erosion control;

12 (D) Breeding grounds and habitat for many species of plants and wildlife
13 including fish, game and nongame birds and mammals, including threatened and endangered
14 species and species in need of conservation;

15 (E) Food chain support; and

16 (F) Timber production.

17 (37) **General Area** - the geographic or market vicinity that has desired characteristics
18 for fulfilling the basic project purpose.

19 (38) **Grazing** - feeding on grass or other herbaceous plants in fields.

20 (39) **Hydric Soils** - soils that are saturated, flooded or ponded long enough during the
21 growing season to develop anaerobic conditions that favor the growth and regeneration of
22 hydrophytic vegetation as defined in the Corps Delineation Manual.

23 (40) **Hydrologically Connected** - a nontidal wetland:

24 (A) Contiguous to a watercourse, surface water body, tidal wetland or ditch
25 drainage;

26 (B) Within or connected to any 100 year floodplain as determined by calculation
27 or by Federal Emergency Management Maps;

28 (C) receives or discharges surface or groundwater as intermittent or perennial
29 flow from or to a surface water body, watercourse or other tidal or nontidal wetland as
30 demonstrated by the presence of an intermittent or perennial stream or spring flow; or

31 (D) Formerly contiguous to a surface water body, watercourse or a nontidal

1 wetland described in Subsection (b) (39) (A)-(C), and is presently separated from these areas by
 2 a man-made berm, fill, road or other structure.

3 (41) **Hydrophyte** - plant life adapted to growth and reproduction under periodically
 4 saturated root zone conditions during at least a portion of the growing season. A listing of these
 5 plants can be found in the “National List of Plant Species that Occur in Wetlands: 1988,
 6 Maryland,” which is incorporated by reference.

7 (42) **Initial Planning Phase** - the period of time in which the feasibility of a project is
 8 evaluated before committing resources necessary for its implementation.

9 (43) **In kind** - a characteristic closely approximating those of a nontidal wetland
 10 before it was adversely impacted by a regulated activity.

11 (44) **Intermittent Stream** - those areas that are surface waters, contained within a
 12 defined channel or bed that flow at least once per year. A defined channel or bed is indicated by
 13 hydraulically sorted sediment, or the removal of vegetative litter, or loosely rooted vegetation by
 14 the action of moving water.

15 (45) **Isolated Nontidal Wetland** - a nontidal wetland that is not hydrologically
 16 connected through surface or subsurface flow to streams, tidal or nontidal wetlands or tidal
 17 waters.

18 (46) **Landscape Management** - to maintain or enhance vegetation that was planted or
 19 manipulated for aesthetic purposes. Landscape management includes mowing, pruning and
 20 private gardening, excluding agricultural activities.

21 (47) **Landscape Management Area** - an area predominately covered by grasses or
 22 herbaceous ground cover established and maintained for horticultural purposes. The landscape
 23 management area may include a lawn which contains trees, shrubs or other plants.

24 (48) **Loss of Nontidal Wetland:**

25 (A) **Alteration of existing nontidal wetland vegetation or water levels that**
 26 significantly impairs or eliminates its principal functions, but excluding;

27 (i) **Forestry activities conducted in accordance with a Prince George’s Soil**
 28 Conservation District approved sediment and erosion control plan;

29 (ii) **Restoration; and**

30 (iii) **Department or MDNR approved enhancement projects; or**

31 (B) **Alteration of an area so that it no longer meets the nontidal wetland**

1 definition.

2 (49) **Maintenance** - activities undertaken to prevent the deterioration, impairment, or
 3 need of a serviceable fill area, structure, right-of-way, or land use, which includes management
 4 of vegetation and replacement of structural components.

5 (A) Maintenance does not include the following activities, unless conducted in a
 6 temporary sediment control structure, wash pond or roadside ditch:

7 (i) Dredging;

8 (ii) Excavating; or

9 (iii) Filling.

10 (50) **MDE** - the Maryland Department of the Environment, Standards and Certification
 11 Division.

12 (51) **MDNR** - the Maryland Department of Natural Resources, Water Resources
 13 Administration, Nontidal Wetlands Division.

14 (52) **Minimize** - to reduce the adverse impact on a nontidal wetland to the greatest
 15 practicable and reasonable degree.

16 (53) **Mitigation** - creation, restoration, or enhancement of nontidal wetlands that were
 17 or will be lost due to regulated activities.

18 (54) **Mitigation Bank** - an area approved by the Department and used for wetland
 19 mitigation projects required for future wetland impacts, usually from multiple projects, and
 20 operated using a system of credits and debits based on acreage or functions as specified by the
 21 Department.

22 (55) **Mitigation Banking** - wetland restoration, creation, or enhancement undertaken
 23 expressly for the purpose of providing compensation credits for wetland losses from future
 24 activities.

25 (56) **Nontidal Wetland** - an area that is inundated or saturated by surface water or
 26 groundwater at a frequency and duration sufficient to support, and that under normal
 27 circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil
 28 conditions, and is determined according to the Corps Delineation Manual.

29 (57) **Nontidal Wetland Concept Plan** - a pre-application review process used to
 30 provide the applicant with information about the presence of nontidal wetlands to deter-mine: if
 31 there are any potential adverse impacts on nontidal wetlands as a result of the proposed project;

1 if those impacts can be avoided; and if those impacts can then be minimized, before the applicant
 2 has committed substantial **resources** in the project site. Use of the Nontidal Wetland Concept
 3 Plan review is for guidance purposes only; it does not imply approval of a Unified Nontidal
 4 Wetland Permit.

5 (58) **Nontidal Wetlands of Special State Concern** - those areas designated, based on
 6 the criteria in COMAR 08.05.04.23 and listed in COMAR 08.05.04.26, as having exceptional
 7 ecological or educational value of Statewide significance. Nontidal Wetlands of Special State
 8 Concern in Prince George's County are listed in Section 32-239.

9 (59) **Off-Site** - not on the same parcel as the nontidal wetland which has been
 10 adversely impacted by a regulated activity.

11 (60) **On-Site** - the same parcel on which a nontidal wetland has been adversely
 12 impacted by a regulated activity.

13 (61) **Out of Kind** - biological characteristics not closely approximating those of the
 14 nontidal wetland before it was adversely impacted by a regulated activity.

15 (62) **Peat Mining** - the extraction of peat of a commercially valuable quality and
 16 quantity.

17 (63) **Person** - the Federal Government, the State, and county, municipal corporation,
 18 or other political subdivision of the State, or any of their units, or an individual, receiver, trustee,
 19 guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership,
 20 firm, association, public or private corporation, or any other entity.

21 (64) **Practicable** - available and capable of being done after taking into consideration
 22 the costs, existing technology, and logistics in light of the overall project purpose.

23 (65) **Project** - the entire activity on a parcel of land, including all proposed and
 24 projected phases and sections of land subdivisions, of which all regulated or other activities
 25 conducted in a nontidal wetland, buffer or expanded buffer are a part.

26 (66) **Project Purpose** means the principal reason for conducting all regulated activities
 27 and other activities on a project site.

28 (67) **Regulated Activity:**

29 (A) **Means any of the following activities which are directly undertaken or**
 30 originate in a nontidal wetland, buffer or expanded buffer;

31 (i) **Removal, excavation, or dredging of soil, sand, gravel, minerals,**

1 organic matter, or materials of any kind;

2 (ii) Change of existing drainage characteristics, sedimentation patterns or
 3 flood retention characteristics;

4 (iii) Disturbance of the water level or water table by drainage,
 5 impoundment or other means;

6 (iv) Dumping, discharging of material, or filling with material, including
 7 the driving of piles and placing of obstructions;

8 (v) Grading or removal of material that would alter existing topography;
 9 and

10 (vi) Destruction or removal of plant life that would alter the character of a
 11 nontidal wetland;

12 (B) Does not include an agricultural activity or forestry activity as defined in this
 13 Ordinance.

14 (68) **Repair** - an activity that restores the character, scope, size, and design of a
 15 serviceable fill area, structure, or land use to its previously authorized and undamaged condition.
 16 Activities that change the size or scope of a project beyond the original design in order to drain,
 17 dredge, fill, flood, change the hydrology, or otherwise convert nontidal wetlands that were not
 18 previously impacted by the project are not included in this definition. Minor deviations to plans
 19 or specifications are allowed as long as no permanent nontidal wetland impact results from the
 20 deviation.

21 (69) **Restoration or Restore** - actions performed to return nontidal wetland acreage
 22 and function temporarily impacted by a regulated activity. Restoration also means actions
 23 performed to establish nontidal wetlands on former nontidal wetland sites.

24 (70) **Scrub-Shrub Wetland** - that portion of a nontidal wetland dominated by woody
 25 vegetation less than 20 feet in height as the uppermost strata.

26 (71) Serviceable - presently usable or currently fulfilling its basic, original purpose.

27 (72) **Significant Plant or Wildlife Value** - a nontidal wetland:

28 (A) Of the following unusual or unique community types:

29 (i) Bogs;

30 (ii) Areas with bald cypress (Taxodium distichum), Atlantic white cedar
 31 (Chamaecyparis thyoides), red spruce (Picea rubens, balsam fir (Abies balsanea), or American

1 larch (*Larix laricina*) that contain at least 20 percent of these species in any strata as determined
 2 by the Corps Delineation Manual; or

3 (iii) Delmarva bays as defined in COMAR .08.05.04.01 B.21;

4 (B) With water discharge that maintains minimum stream base flow important
 5 for maintaining plant wildlife species;

6 (C) With threatened or endangered species, or species in need of conservation;

7 (D) Adjacent to Class III or Class IV waters as defined in COMAR 26.08.02.08;

8 (E) Of Special State Concern;

9 (F) That supports vernal pools as defined in COMAR 08.05.04.01 B.87;

10 (G) That is regularly or periodically influenced by tidal waters.

11 (73) **Site Development** - any grading, grubbing or disturbance to remove unwanted
 12 vegetation and other material from a parcel of land for development, maintenance or
 13 reconstruction.

14 (74) **Soil Conservation and Water Quality Plan** - a land use plan for a farm that
 15 shows a farmer how to make best possible use of soil and water resources while protecting and
 16 conserving those resources for the future.

17 (75) **Spring** - a nontidal wetland that discharges groundwater at the surface to form a
 18 pool or to provide intermittent or perennial surface flow, and is usually characterized by
 19 saturated or organic soils.

20 (76) **State Water Quality Certification** - a certification issued by MDE pursuant to
 21 the Clean Water Act, Section 401.

22 (77) **Structure** - anything constructed or built and affixed, except for those structures
 23 built in order to maintain the wetland as part of an approved mitigation plan.

24 (78) **Utility Line** means any underground or overhead transmission line, pipe, cable, or
 25 wire for the conveyance of public or private water or sewer, natural gas or the trans-mission of
 26 electrical, radio or telecommunications service.

27 (79) **Water-Dependent Activity** means an activity for which the use of surface water
 28 is essential to fulfill the basic purpose of the proposed project.

29 (80) **Watershed** means the area draining into a river, river system or body of water. A
 30 watershed is a subunit of a drainage basin. Some examples of watersheds within Prince
 31 George's County are Tinker's Creek, Piscataway Creek and Western branch.

1 (81) **Wetland Boundary** means the point the ground at which a shift from wet-lands
 2 to nonwetlands occurs pursuant to the Corps Delineation Manual.

3 (82) **Wildlife** means any species of a vertebrate or invertebrate animal, excluding
 4 domestic species.

5 **Sec. 32-218. Wetland Concept Plan.**

6 (a) The Wetland Concept Plan is an optional pre-application review process used to
 7 provide the applicant with information about the presence of nontidal wetlands to deter-mine: if
 8 there are any potential adverse impacts on nontidal wetlands as the result of the proposed project;
 9 if those impacts can be avoided; and if those impacts can be minimized. Consideration of
 10 alternative sites at the earliest stage may enable the applicant to refrain from committing
 11 substantial resources in the project site and retain the flexibility to avoid adverse impacts on
 12 nontidal wetlands.

13 (b) **Wetland Concept Plan Purpose.**

14 (1) The purpose of the Wetland Concept Plan is to determine:

15 (A) If the proposed project includes any regulated activity;

16 (B) If the proposed project can be modified to first avoid and then to minimize
 17 impacts on nontidal wetlands;

18 (C) If the proposed activity falls under the jurisdiction of a Unified Nontidal
 19 Wetland Permit, a State Nontidal Wetland permit or if a Federal Section 404 permit may be
 20 required; and

21 (D) If the proposed activity is exempt or if it qualifies for a Letter of
 22 Authorization.

23 (c) Beginning January 1, 1994, all persons involved with the development of a project
 24 within Prince George's County are strongly encouraged to take advantage of the Wetland
 25 Concept Plan review process before submitting an application for a Unified Nontidal Wetland
 26 Permit, grading permit, building permit, or a preliminary plan of subdivision.

27 (d) **Wetland Concept Plan Application.**

28 (1) Applicants are encouraged to consult guidance maps prepared by MDNR to assist
 29 in identifying and locating wetlands.

30 (2) If the proposed activity will require a Unified Nontidal Wetland Permit, the
 31 Department will provide guidance on applying for the permit.

1 (3) The Wetland Concept Plan application form shall be furnished by the Department.

2 (A) The review process can be used to identify wetland areas, verify wetland
3 delineations, or assist the applicant in identifying the type of nontidal wetland permits required
4 for the proposed project.

5 (B) Submission requirements. The application and background information
6 shall include the name of the property; the name of the applicant; the name of the property owner
7 and their signatures; the name of the contract purchaser; a location map; the County Road Atlas
8 page number and grid coordinates; zoning classification; a site plan of all proposed regulated and
9 nonregulated activities, including, but not limited to the topography, natural features, location
10 and dimensions of structures, driveways, pools, walk-ways, utility lines, septic systems and
11 wells; a narrative of the proposed project's purpose; and any other information the Department
12 may require.

13 (C) Additional submission requirements. If applicable, the following
14 information shall also be submitted: the wetland report and delineation in accordance with the
15 Corps of Engineers Wetland Delineation manual, Technical Report Y-87-1 and any subsequent
16 amendments. Forest Stand Delineation and the proposed Type I or Type II Tree Conservation
17 Plan; the proposed or approved preliminary plan of subdivision; soil map; drainage area map;
18 and a 200 foot scale map of the project site if the proposed project involves a subdivision or a
19 commercial or industrial use.

20 (D) If necessary to identify the potential impacts of a proposed project, the
21 Department will request submission of one or more of the following: an analysis of pre- and
22 post discharges to wetlands (changes to discharges, volumes and velocities); the total number of
23 sites considered by an applicant along with the physical, economic and demo-graphic
24 characteristics of each site; the purpose of the proposed project and its relation-ship to the site;
25 the location of any existing structural or natural features that constrain the placement or
26 configuration of the proposed project; the spatial requirements of the pro-posed project; the
27 sensitivity of the project design to the nontidal wetland(s); and any proposed phasing of the
28 project (for larger projects which may not be completed within three (3) years, it is
29 recommended that the project be phased).

30 (4) The Department, in reviewing and evaluating the Wetland Concept Plan, shall
31 consider the following factors:

1 (A) Reduction in acreage of a nontidal wetland affected by a regulated activity;

2 (B) Harm to threatened or endangered species or species in need of conservation,
 3 or the critical habitat of these species;

4 (C) Movement of aquatic and wildlife species indigenous to the nontidal wetland
 5 or water body;

6 (D) Ability of the nontidal wetland to continue to support and provide habitat for
 7 those aquatic and wildlife species using the area;

8 (E) Hydrologic regime of the areas upstream and downstream of the area of
 9 impact;

10 (F) Functions of the impacted and/or adjacent nontidal wetlands;

11 (G) Passage of normal or expected high flows, or the relocation of water;

12 (H) Subsurface water flow into or out of any nontidal wetland area;

13 (I) Presence of, or potential for, supporting fish spawning areas;

14 (J) Presence of areas having significant plant or wildlife value;

15 (K) Cumulative impact to nontidal wetlands; and,

16 (L) Impacts to the 100 year floodplain.

17 (e) Upon completion of the Wetland Concept Plan review, the Department will provide a
 18 letter to the applicant stating that:

19 (1) A Unified Wetland Permit is required;

20 (2) A Letter of Authorization is required;

21 (3) A MDNR Nontidal Wetland Permit is required;

22 (4) A Federal Section 404 permit may be required; or

23 (5) A Wetland Permit or Letter of Authorization is not required.

24 (f) The Wetland Concept Plan letter shall be valid for three (3) years from the date of
 25 issuance and may, upon review, be renewed for additional three (3) year periods.

26 (g) The Wetland Concept Plan review is for guidance purposes only and does not grant
 27 approval of a Unified Nontidal Wetland Permit.

28 **Sec 32-219. Application Requirements for Regulated Activities.**

29 (a) A person may not conduct a regulated activity in a non-tidal wetland, buffer, or
 30 expanded buffer unless the Department has determined that the activity is exempted or has issued
 31 a permit or a Letter of Authorization. Any County grading or building permit to conduct a

1 regulated activity in a wetland, buffer, or expanded buffer is invalid unless the Department or the
 2 MDNR has issued a Nontidal Wetland Permit or a Letter of Authorization.

3 (b) Any fee structure for the nontidal wetland permit process shall be established by
 4 Resolution of the County Council, and such fees shall be payable to Prince George's County.

5 (c) Application Forms.

6 (1) An application for a nontidal wetland permit shall be on a unified Federal, State
 7 and County permit application form furnished by the Department and shall include all in-
 8 formation required in Subsection (d) and any additional information required by the Department
 9 in Subsection (e).

10 (2) The Department shall coordinate with other Federal, State and County agencies to
 11 expedite review of associated permits.

12 (3) The person signing the application form shall be:

13 (A) An officer or authorized agent, if the applicant is a corporation;

14 (B) A legally authorized official, if the applicant is a County agency or
 15 municipal government;

16 (C) An authorized partner, if the applicant is an association or a partnership; or

17 (D) An individual or his/her legally authorized representative, if the applicant is
 18 an individual.

19 (4) The person who signs the application shall be responsible for the truth, accuracy
 20 and completeness of all information in the application.

21 (d) An applicant for a permit or a Letter of Authorization shall submit all of the
 22 information required by the application form.

23 (e) An applicant for a Unified Nontidal Wetland Permit or Letter of Authorization may be
 24 required to submit one or more of the following items of information for an application to be
 25 considered complete and the delineation correct:

26 (1) The Wetland Concept Plan letter and all information submitted at the Concept
 27 stage;

28 (2) Name of the property owner and contract purchaser;

29 (3) Legal description of the project location;

30 (4) Description of the project purpose including a discussion of the project's spatial
 31 requirements and the sensitivity of the project design to the nontidal wetland area;

1 (5) A composite site plan at a scale of one inch equals 200 feet drawn by a licensed
 2 surveyor or engineer to show the overall project and layout;

3 (6) A site plan at a scale of one inch equals 30 feet or 50 feet drawn by a licensed
 4 surveyor or engineer that includes the following:

5 (A) Nontidal wetland boundary, as marked by flags in the field, based on field
 6 delineation and in accordance with the Corps Delineation Manual, including the buffer and
 7 expanded buffer. The applicant shall maintain the boundary flags in place until notified by the
 8 Department;

9 (B) Location of all existing and proposed structures;

10 (C) Location of all proposed regulated and nonregulated activities;

11 (D) Property Lines of all adjacent and/or impacted properties;

12 (E) Names of adjacent property owners;

13 (F) Location of Nontidal Wetlands of Special State Concern;

14 (G) Location and number of all soil samples;

15 (H) Location of the County's approved 100 year floodplain boundary based on
 16 the proposed condition;

17 (I) Existing topography (2 foot field run contours, 5 foot contours or aerial as
 18 needed); and

19 (J) Type I and II Tree Conservation Plan or a valid letter of exemption;

20 (7) Proposed or approved preliminary plan of subdivision or lot layout;

21 (8) Drainage area map;

22 (9) Alternative site analysis including the physical, economic and demographic
 23 character of each site. The analysis shall also include a discussion of potential impacts and the
 24 steps taken, first to avoid, and then to minimize, impacts for each site;

25 (10) An Avoidance and Minimization Analysis;

26 (11) Demonstration of public need, as applicable, by showing;

27 (A) The present or future availability of projects with the same or similar public
 28 need; and

29 (B) A demand for the project in the general area;

30 (12) representative photograph of the affected nontidal wetland area;

31 (13) A Phase I Mitigation Plan;

- 1 (14) Other information an applicant deems appropriate;
2 (15) A cross section of proposed final elevation after filling, grading or excavating;
3 (16) A description of the type and quantity of fill material to be used;
4 (17) Acreage, function and type of nontidal wetland area, buffer, and expanded buffer
5 that will be affected permanently or temporarily by the regulated activity;
6 (18) Data from soil samples which will be:
7 (A) Taken from a minimum depth of 20 inches and include a description of soil
8 colors and textures as obtained from borings sufficient to verify Hydric or nonhydric conditions;
9 (B) On transects perpendicular to the nontidal wetland boundary, starting within
10 the nontidal wetland area and moving towards the upland; and
11 (C) Numbered and accompanied by a soil description log indicating the observed
12 or estimated depth to the highest water table during the year;
13 (19) Data sheets from the Corps delineation Manual identifying and describing
14 hydrology and vegetation along the transects required in Subsection (e) (18);
15 (20) Identification of nontidal wetlands known or believed to have significant plant or
16 wildlife value;
17 (21) Description of available utilities, site access, type and acreage of the nontidal
18 wetland, and description of potential impacts for each alternative site considered by the
19 applicant;
20 (22) Map of, and narrative statement regarding, the geographic boundaries of the
21 general area where the proposed project could be undertaken and still meet the project purpose;
22 (23) Brief discussion of demographic factors which are critical to the success of the
23 project, including data, statistics or marketing studies;
24 (24) Description of water, wastewater, community facilities, schools, transportation, or
25 other public facility requirements of the project;
26 (25) An assessment of on-site and adjacent nontidal wetland buffer and expanded
27 buffer functions;
28 (26) Field survey of animal species and/or the natural characteristics of the site;
29 (27) Soil infiltration rates as determined in the field; or
30 (28) Larger scale or more detailed engineering design plans or maps.
31 (f) Confidential Information.

1 (1) Except as provided in Subsection (f) (2), information submitted to the Department
2 under this regulation shall be made available for public inspection and copying.

3 (2) An applicant may request in writing, at the time the application is submitted, that
4 confidential information submitted as part of an application not be disclosed. The Department
5 shall determine if the information is confidential under State Government Article Section 10-611
6 et seq., Annotated Code of Maryland, and other applicable law. If the Department denies the
7 applicant's request for nondisclosure, the applicant may with-draw an application or seeks
8 review of the Department's determination under applicable law. If the applicant withdraws an
9 application, the Department shall, at the request of the applicant, return any documents
10 designated as confidential.

11 **Sec. 32-220. Application Processing Procedures for the Department.**

12 (a) The Department shall acknowledge receipt of the application in writing, within ten (10)
13 days by fax or regular mail.

14 (b) The Department shall consider an application complete if it contains all of the
15 information required under Section 32-220(d); information requested under Section 32-219(e);
16 and is sufficient for the Department to process the application.

17 (c) The Department shall notify an applicant for a permit in writing, within 45 days of
18 receipt of an application stating, whether the application is complete and the wetland delineation
19 correct.

20 (1) If the application is incomplete or information submitted is insufficient, the
21 Department shall notify the applicant, in writing, of the additional information needed.

22 (2) If the wetland delineation is incorrect, the Department shall so notify the applicant
23 and require the applicant to correct the delineation.

24 (d) If the Department fails to notify an applicant of the need for additional information
25 and/or correction of the wetland delineation within 45 days of receipt of the application, the
26 application shall be considered complete and the delineation correct.

27 (e) The Department, upon written notice to the applicant, may extend the 45 day time
28 period when at least one of the following extenuating circumstances prevent consideration of the
29 application:

30 (1) Inclement weather conditions;

31 (2) Review required by Federal or State agencies; or

1 (3) Additional information must be submitted by the applicant to clarify or complete
2 the information in the application.

3 (f) Public Notice.

4 (1) After the Department has determined that an application is complete and the
5 wetland delineation is correct, the Department shall issue, at the applicant's expense, a public
6 notice of an opportunity to submit written comments or request a public informational hearing
7 about the application. The time period for submitting written comments or requesting a hearing
8 shall not exceed 30 days. Public notice and a public informational hearing may not be required
9 for activities that qualify for a Letter of Authorization under Section 32-226.

10 (2) The public notice shall contain:

11 (A) The name and address of the applicant;

12 (B) A description of the nature and location of the proposed project;

13 (C) A description of the proposed mitigation plan, if applicable.

14 (D) Instructions of how to submit written comments, request a public
15 informational hearing, and/or how to place one's name on the interested person's mailing list;

16 (E) The expiration date for the opportunity to comment on the wetland
17 delineation or to request a public informational hearing regarding same;

18 (F) A statement that any further notices concerning actions on the application
19 will be provided only by mail to those persons on the interested persons mailing list; and

20 (G) The name, address and telephone number of person in the Department from
21 which information about the application may be obtained.

22 (3) The public may be notified by any of the following methods:

23 (A) Selected mailing to Federal, State, County, or municipal authorities; persons
24 on the interested persons mailing list; and adjacent property owners;

25 (B) Publication for at least one (1) business day in a newspaper of record;

26 (C) Joint notice with other Federal, State or County agencies; or

27 (D) Joint notice with other units or programs within the Department.

28 (4) The Department shall provide MDNR with a copy of the public notice for any
29 completed application.

30 (g) Public Informational hearing.

31 (1) Any interested person may request, in writing, a public informational hearing.

1 (2) If requested, a public informational hearing shall be held within 45 days of the
2 expiration date specified in the public notice. The Department shall mail the notice specifying
3 the location, date and time of the public informational hearing to those persons on the interested
4 person's mailing list.

5 (3) The Department may extend the time period for the public informational hearing
6 for the following extenuating circumstances:

7 (A) Circumstances listed in Subsection (e); or

8 (B) A request by an applicant.

9 (4) The Director may hold a public informational hearing and shall be designated as
10 the presiding official.

11 (5) An applicant and any interested person shall be given an opportunity at the public
12 informational hearing to present facts and make statements for or against granting the permit.
13 Questions may be asked of, and directed to, the presiding official, but cross examination may not
14 be conducted. The hearing is not a contested case hearing.

15 (6) The presiding official may determine the order of presentation of comments and
16 questions at the public informational hearing. The public informational hearing may be
17 conducted in the following order:

18 (A) Introduction by the Department.

19 (B) Presentation or proposed project by the applicant;

20 (C) Comments and questions by public officials;

21 (D) Comments and questions by other persons; and

22 (E) Closing of the public informational hearing by the presiding official;

23 (7) The presiding official has the authority and duty to:

24 (A) Conduct a full and fair public informational hearing;

25 (B) Act to avoid unnecessary delay and to maintain order; and

26 (C) Regulate the course of the public informational hearing and the conduct of
27 the participants.

28 (8) The presiding official shall prepare an official record of the public informational
29 hearing.

30 (9) The official record of the public informational hearing may not be transcribed
31 unless the Department, the applicant, or a participant in the hearing requests a transcript. Costs

1 of transcription shall be paid by the person requesting the transcript.

2 (h) In calculating any time period provided for in this ordinance, if the last day falling
 3 within the time period falls on a Saturday, Sunday or a County or State holiday, the time period
 4 will be extended until the next normal business day.

5 (i) Letter of Authorization.

6 (1) Within 21 days of the Department's determination that the application is complete
 7 and the wetland delineation correct, the Department shall notify the applicant, in writing,
 8 whether the activity qualifies for a Letter of Authorization and, if so, what best management
 9 practices, if any, will be required.

10 (2) The Department's Letter of Authorization shall be void if the information
 11 submitted is later shown to have been false, misleading or inaccurate. The Department shall
 12 pursue an appropriate enforcement action under Section 32-236 as to any activities that have
 13 been undertaken under the void Letter of Authorization.

14 (3) If the Department determines that the proposed activity does not qualify for a
 15 Letter of Authorization, it shall notify the applicant of the need to apply for a permit under
 16 Section 32-219.

17 (4) The Department shall specify in the Letter of Authorization the time period for
 18 which it is valid.

19 (5) If an applicant applies for a Letter of Authorization and a permit, the Department
 20 may withhold its decision on the Letter of Authorization pending a final permit decision.

21 (j) Interested person's mailing list. Upon written request, the Department may add
 22 additional names to the list. Those wishing to have their names placed on the list may send a
 23 written request to the Department.

24 **Sec. 32-221. Permit Decision and Reconsideration.**

25 (a) Permit Decision.

26 (1) The Department shall, after the closing date for receipt of written comments or
 27 after a public informational hearing if requested:

28 (A) Consider the written comments, testimony and other information received;
 29 and

30 (B) Render a decision to grant, deny or condition a permit within:

31 (i) 60 days of the Department's determination that an applicant is

1 complete and the delineation correct, if no hearing is requested; or

2 (ii) 45 days of a public informational hearing.

3 (2) The department may extend the time period in which to render a decision for an
4 additional 30 days for the following extenuating circumstances:

5 (A) Review required by a Federal or State agency; or

6 (B) Request by an applicant.

7 (3) The Department may afford the applicant an opportunity to provide, or the
8 Department may request the applicant to provide, additional information to address concerns
9 raised in written comments.

10 (4) The applicant may request, in writing, that the Department withhold making a
11 final permit decision on the application until additional information can be provided. The
12 Department may withhold making its permit decision for 6 months, after which the application
13 shall be deemed withdrawn and a new application must be submitted, unless otherwise
14 determined by the Department.

15 (5) Written notice of the permit decision shall be mailed to the applicant and to all
16 persons on the interested person's mailing list. Notice of the permit decision need not be
17 published.

18 (6) Work authorization under a permit shall be completed within the time period
19 specified in the permit.

20 (7) An applicant may not submit a new permit application for the same scope of work
21 where a permit application has been denied for six (6) months from the date of denial unless
22 there is a substantive change in the application.

23 (8) A permit may not be issued and work may not begin unless a final site plan or any
24 other necessary information is provided to the Department.

25 (b) Permit Reconsideration.

26 (1) A person who has the legal rights, duties, interests or privileges different from the
27 general public, which are adversely affected by the Department's decision to grant, deny, or
28 condition a permit, may request a reconsideration of the decision to the Director.

29 (2) The request for reconsideration shall be in writing and filed with the Department
30 within 30 days of the permit decision.

31 (3) The request for reconsideration shall contain:

1 (A) The name, address and telephone number of the person making the request;

2 (B) The name, address and telephone number of any attorney representing the
 3 person making the request;

4 (C) A description of the grounds for the request, including the specific legal
 5 right, duty, privilege or interest which may be adversely affected by the permit determination,
 6 and which is different from those interests held by the general public;

7 (D) A statement of the specific relief desired as a result of the reconsideration;
 8 and

9 (E) A general outline of the evidence supporting the desired relief, including the
 10 names and addresses of those that can verify the information submitted for the reconsideration.

11 (4) The Director shall review a request for reconsideration to determine whether the
 12 person requesting it has:

13 (A) A specific legal right, duty, privilege, or interest which is or may be
 14 adversely affected by the permit determination and which is different from that held by the
 15 general public;

16 (B) Raised at least one issue that is related to the subject of the permit and arises
 17 under this Ordinance; and

18 (C) Made a request for reconsideration within 30 days of the date the permit was
 19 issued or denied as specified under Subsection (b).

20 (5) The Director shall determine whether to grant or deny the relief requested in the
 21 reconsideration. If the determination is to deny the request, the determination shall be in writing
 22 and mailed by certified mail to the person requesting the reconsideration.

23 (6) Notification of the determination to deny the relief requested in the
 24 reconsideration shall contain the following:

25 (A) The specific reasons for the denial;

26 (B) A statement that if review under this regulation is not sought, the denial shall
 27 be the Department's final decision on the request for reconsideration.

28 (c) Appeal of Permit Decision or Appeal of Reconsideration.

29 (1) Any person adversely affected by the determination to grant or deny the permit or
 30 the reconsideration has the right to appeal to the Prince George's County Board of Appeals.

31 Such action shall be taken within ten (10) calendar days of the receipt of the notice of decision.

1 (2) The Board may reverse, modify or remand the decision of the Director only if the
 2 decision of the Director is clearly erroneous, illegal, arbitrary or capricious, or unsupported by
 3 any substantial evidence. The Board shall not have the authority to issue an order which is in
 4 conflict with a lawful order of the Director, or the requirements and provisions of this Ordinance.

5 **Sec. 32-222. Criteria for Review of Nontidal Wetland Permit Applications.**

6 (a) The Department may not issue a permit for a regulated activity unless the Department
 7 finds the applicant has demonstrated that the:

8 (1) Proposed project is water-dependent and requires access to a nontidal wetland as a
 9 central element of its basic function under the criteria in Subsection (b) and (c), or is not water-
 10 dependent and has no practicable alternative under the criteria in Subsection (d);

11 (2) Regulated activity will first avoid and then minimize adverse impacts to the
 12 nontidal wetland based on consideration of existing topography, vegetation, fish and wildlife
 13 resources and hydrological conditions under the criteria in Section 32-223(b);

14 (3) Regulated activity does not cause or contribute to degradation of groundwater or
 15 surface water under the criteria in Section 32-224(a); and

16 (4) Proposed project is consistent with an applicable comprehensive watershed
 17 management plan.

18 (b) Water Dependency.

19 (1) A proposed project shall be considered water-dependent if the use of surface
 20 water or a nontidal wetland is essential to fulfill the basic purpose of the proposed project.

21 (2) The Department shall apply the following criteria in determining if a proposed
 22 project is water-dependent:

23 (A) Whether an alternative water source is available for use, including surface
 24 runoff or groundwater, that may have fewer adverse impacts on nontidal wetlands; and

25 (B) Whether the use of a nontidal wetland would only enhance a project rather
 26 than being essential to it.

27 (3) In determining whether a proposed project is water-dependent, the Department
 28 shall consider the applicant's definition of the project purpose but may independently determine
 29 whether the proposed project is water-dependent.

30 (4) For a multiple use project which has both water-dependent and nonwater
 31 dependent features, the Department shall determine which features are water-dependent.

1 (c) Access Test.

2 (1) In determining whether the proposed project requires access to a nontidal wetland
3 as a central element of its basic function, the Department shall consider whether access could be
4 accomplished at another location that would first avoid and then minimize nontidal wetland
5 impacts.

6 (2) A water-dependent project, which the Department determines requires access to a
7 nontidal wetland, shall be exempted from the requirements of Subsection (d), but shall comply
8 with all other requirements referenced in Subsection (a).

9 (d) Practicable Alternative Analysis.

10 (1) The applicant shall demonstrate to the satisfaction of the Department that
11 practicable alternatives, including both alternative site analysis and on-site minimization, have
12 been analyzed and that the proposed regulated activity has no practicable alter-native.

13 (2) In determining whether the proposed regulated activity has a practicable alter-
14 native, the Department shall consider whether:

15 (A) The project purpose can be reasonably accomplished using one or more
16 alternative sites in the same general area as the proposed site that would avoid or result in
17 less adverse impact to the nontidal wetland(s) under the criteria in Section 32-223. The
18 Department shall consider the applicant's definition of "general area" but may take its
19 own independent determination of what the "general area" is;

20 (B) The reduction in the size, scope, configuration or density of the proposed
21 project and all alternatives designs would avoid or minimize impact to the nontidal wetland but
22 would not accomplish the basic purpose of the project under the criteria of Section 32-223(b);

23 (C) The applicant has made a good faith effort to accommodate site restraints
24 such as zoning regulations, infrastructure or parcel size which caused an alternative site to be
25 rejected. To determine if an applicant has made a reasonable effort to accommodate constraints,
26 the Department shall consider any pertinent information, including:

27 (i) Correspondence or other written documentation between an applicant
28 and the County, including a request for a special exception or other Zoning variance;

29 (ii) Evidence of efforts to modify the local infrastructure, including future
30 planned expansions or redesign of the project because of a nontidal wetland impact; and

31 (iii) Written documentation of the effort undertaken to acquire another site

1 or to reconfigure the proposed project to accommodate the constraint.

2 (D) The regulated activity is necessary to meet a demonstrated public need. The
 3 following apply:

4 (i) To determine if the regulated activity is necessary for the proposed
 5 project to meet a demonstrated public need, the Department shall consider any pertinent
 6 information, including the economic value contributed by the proposed project to an identified
 7 State or local economic priority and if the proposed project promotes public health, safety or
 8 welfare.

9 (ii) In weighing the economic value of the proposed project with respect to
 10 meeting a demonstrated public need in the general area, and the ecological and economic value
 11 associated with the nontidal wetland, the Department shall consider the functions of, benefits and
 12 the economic value provided to the general public by the nontidal wet-land adversely impacted
 13 by the regulated activity and the ability of the nontidal wetland to continue to provide the
 14 identified functions and benefits to the general public.

15 **Sec. 32-223. Alternative Site; Avoidance and Minimization Analysis.**

16 (a) Alternative Site Analysis.

17 (1) An applicant shall prove to the Department's satisfaction that alternative sites for
 18 the proposed project have been examined during the initial planning phase.

19 (2) An applicant shall search during the initial planning phase for one or more
 20 alternative sites that meet the project purpose and would result in the latest adverse impact to
 21 nontidal wetlands.

22 (3) Determining the Initial Planning Phase.

23 (A) The intent of the initial planning phase is to require an applicant to evaluate
 24 the feasibility of the project and the adverse impact on nontidal wetlands at the earliest stage of
 25 the development process, before the applicant has committed substantial resources in the project
 26 site. Consideration of alternative sites at the earliest stage enables the applicant to retain the
 27 flexibility to avoid adverse impacts to nontidal wetlands.

28 (B) An applicant shall select the earliest of the following times as the initial
 29 planning phase for the proposed project:

30 (i) When an applicant conducts a formal or informal feasibility or market
 31 study, prepares an environmental impact statement or assessment, or a similar study for the

1 project;

2 (ii) When an applicant enters into an option agreement or contract of sale
 3 for the property;

4 (iii) When an applicant applies for a Wetland Concept Plan review, a
 5 building permit, subdivision or infrastructure approval, zoning change or any other local
 6 governmental approvals for the project;

7 (iv) At the time an applicant applies for a Unified Nontidal Wetland Permit
 8 under this Ordinance;

9 (v) When a budget or financing request is secure; or

10 (vi) Any other appropriate time selected by the applicant.

11 (C) For the time selected in Subsection (a)(3)(B), an applicant shall provide a
 12 written justification of the selection, including copies of any documentation supporting the
 13 selection and an explanation of why earlier times would be inappropriate or inapplicable to the
 14 proposed project.

15 (D) While the Director will give serious consideration to the initial planning
 16 phase selected by the applicant, the Department reserves the right to require additional
 17 information from the applicant concerning the initial planning phase selection or to in-
 18 dependently determine the appropriate time.

19 (4) To determine if the purpose of the proposed project cannot be reasonably
 20 accomplished by using another site, the Department shall consider:

21 (A) Whether an applicant has made, and can document, a good faith effort to
 22 analyze alternative sites in the general area during the initial planning phase to first avoid
 23 adverse impacts and then to minimize adverse impacts to nontidal wetlands;

24 (B) Whether an applicant has made, and can document, attempts to obtain land
 25 ownership interests or other rights to conduct the proposed project on alternative sites which first
 26 avoid adverse impacts and then minimize adverse impacts to nontidal wet-lands;

27 (C) The total number of alternative sites and the physical, economic and demo-
 28 graphic characteristics of those sites considered by an applicant;

29 (D) The physical, economic and demographic requirements of the proposed
 30 project relative to the alternative sites analyzed;

31 (E) The degree to which use of alternative sites is constrained by other govern-

1 mentally imposed restrictions and requirements, including concern for avoidance of other
 2 environmental, social, community, archaeological, historic and park land impacts;

3 (F) Efforts undertaken to reduce adverse impacts to nontidal wetlands through
 4 consideration of reducing density, other site designs or project configurations on each alternative
 5 site analyzed; and

6 (G) The costs of fulfilling mitigation requirements for each alternative site.

7 (5) An alternative site may not be excluded from consideration because it includes or
 8 requires an area not owned by the applicant who could be reasonably obtained, used, expanded
 9 or managed to fulfill the basic purpose of the proposed project.

10 (b) Avoidance and Minimization Analysis.

11 (1) The applicant shall demonstrate to the Department's satisfaction that all necessary
 12 steps have been taken to first avoid and then to minimize adverse impacts to nontidal wetlands.
 13 Losses of nontidal wetlands shall be permitted only when adverse impacts to nontidal wetlands
 14 are necessary and unavoidable.

15 (2) In reviewing the sufficiency of the applicant's efforts to first avoid and then to
 16 minimize adverse impacts to a nontidal wetland through reduction of the project size, scope, or
 17 density or by an alternative configuration or design, the Department shall consider:

18 (A) The spatial requirements of the proposed project;

19 (B) The location of any existing structural or natural features that may dictate the
 20 placement or configuration of the proposed project;

21 (C) The purpose of the proposed project and how the purpose relates to
 22 placement, configuration or density;

23 (D) Sensitivity of the site design to nontidal wetlands;

24 (E) An applicant's efforts to:

25 (i) Reduce the scope of the proposed project;

26 (ii) Remove or accommodate site constraints including zoning regulations,
 27 infrastructures, access or natural features; and

28 (iii) Otherwise avoid or minimize adverse impact, and

29 (F) The costs of fulfilling potential mitigation requirements based on project
 30 configuration or design versus the alternative project configuration or design.

31 (3) The Department shall consider pertinent factors when evaluating the extent to

1 which a proposed project has avoided or the regulated activity has minimized, direct or indirect
 2 adverse impacts to nontidal wetlands under this Section, including:

3 (A) reduction in acreage of a nontidal wetland affected by a regulated activity;

4 (B) Harm to a threatened or endangered species in need of conservation, or to
 5 the critical habitat of these species;

6 (C) Movement of wildlife species indigenous to the nontidal wetland or water
 7 body;

8 (D) Ability of the nontidal wetland to continue to support and provide habitat for
 9 those aquatic and wildlife species using the area;

10 (E) Hydrologic regime of the areas upstream and downstream of the area of
 11 impact;

12 (F) Functions of the impacted or adjacent nontidal wetlands;

13 (G) Passage of normal or expected high flows, or the relocation of water;

14 (H) Subsurface water flow into or out of any nontidal wetland areas;

15 (I) Presence of, or potential for, supporting fish spawning areas;

16 (J) Presence of areas having significant plant or wildlife value;

17 (K) Cumulative impact to nontidal wetlands; and

18 (L) Impacts to the 100 year floodplain.

19 **Sec. 32-224. Water Quality and Watershed Management Plans.**

20 (a) To meet the requirements of Section 32-222 (a) (3), a regulated activity may not;

21 (1) As determined by the Department, MDNR or MDE, cause an individual or
 22 cumulative effect that degrades;

23 (A) Aquatic ecosystem diversity, productivity and stability;

24 (B) Plankton, fish, shellfish and wildlife;

25 (C) Recreational and economic values; and

26 (D) Public welfare; or

27 (2) As determined by MDE or the Department, cause an individual or cumulative
 28 effect that;

29 (A) Violates any applicable State water quality standard, the Environment
 30 Article of the Annotated Code of Maryland, or the Clean Water Act; and

31 (B) Degrades surface and groundwater quality.

1 **(b) To meet the requirements of Section 32-222(a) (4), a regulated activity shall be**
 2 **consistent with the applicable comprehensive watershed management plan. Comprehensive**
 3 **watershed management plans shall meet the following criteria:**

4 **(1) Comprehensive watershed management plans may be prepared by Federal, State**
 5 **and local agencies;**

6 **(2) A private property owner may request to assist in the preparation of a**
 7 **comprehensive watershed management plan when the entire watershed is owned by the private**
 8 **property owner; and:**

9 **(A) When the Department, after consultation with MDNR and appropriate**
 10 **Federal, State and local government agencies, approved the request;**

11 **(B) A private property owner agrees to assist in the preparation of the**
 12 **comprehensive watershed management plan in accordance with this Subsection; and**

13 **(C) The comprehensive watershed management plan meets the requirements of**
 14 **Subsection (b) (3) through (5).**

15 **(3) Comprehensive watershed management plans shall be prepared in cooperation**
 16 **with Federal, State and local agencies and approved by the County and MDNR.**

17 **(4) The County and MDNR may not adopt or approve a comprehensive watershed**
 18 **management plan before conducting a public informational hearing on the proposed plan.**

19 **(5) A comprehensive watershed management plan shall include the following**
 20 **elements:**

21 **(A) A functional assessment of nontidal wetlands within the watershed;**

22 **(B) The location of potential mitigation sites;**

23 **(C) Protection of nontidal wetlands;**

24 **(D) A plan for limiting cumulative impacts to nontidal wetlands;**

25 **(E) Water supply management; and**

26 **(F) Flood management.**

27 **Sec. 32-225. Exemptions from Permit Requirements.**

28 **(a) The following activities shall be exempt from the Unified Nontidal Wetland Permit and**
 29 **mitigation requirements of this Ordinance, but are subject to MDNR regulations under COMAR**
 30 **08.05.04.13 and .15 through .18;**

31 **(1) Forestry activities conducted in accordance with COMAR 08.05.04.20 and .21;**

1 (2) Agricultural activities in Regulation COMAR .08.05.04.19B. All other
 2 agricultural activities shall be exempt from the permit requirements of this Ordinance, but are
 3 subject to the mitigation requirements of COMAR .08.05.04.13 and.15 through .18;

4 (3) Activities conducted by State agencies; and

5 (4) Activities conducted in Nontidal Wetlands of Special State Concern.

6 (b) Any proposed regulated activity conducted by a person who has applied to the U.S.
 7 Army Corps of Engineering by December 31, 1990, for a permit under Section 404 of the Clean
 8 Water Act is exempt from the Joint State/County Wetland permit requirement provided that the
 9 following conditions are satisfied:

10 (1) The U.S. Army Corps of Engineers ultimately issues a permit or other document
 11 under Subsection (b) (3);

12 (2) The applicant does not alter the scope of the regulated activity originally applied
 13 for without authorization from the U.S. Army Corps of Engineers.

14 (3) A person submits the following information to the Department, as may be
 15 applicable, and as may be requested by the Department:

16 (A) A copy of a dated application for a permit under Section 404 of the Clean
 17 Water Act;

18 (B) A copy of the plans for the project which were submitted to the Corps; and

19 (C) A letter from the Corps describing the project and proposed activity and
 20 stating either:

21 (i) The project and proposed activity is authorized by the Corps; or

22 (ii) The proposed activity is exempt from Section 404 permit requirements.

23 (c) The following activities shall be exempt from the Unified Nontidal Wetland Permit,
 24 provided they do not result in cumulative direct or indirect adverse impacts:

25 (1) Construction of additions, outbuildings and accessories to existing structures
 26 within a landscape management area which impacts less than 1,000 square feet of non-tidal
 27 wetlands;

28 (2) Construction placed on existing impervious surfaces or on structures within the
 29 buffer or expanded buffer;

30 (3) Removal of 30 percent of the trees in the buffer provided that:

31 (A) The density, but not the areal extent of the trees, is reduced;

1 (B) No more than 30 percent of the understory is removed; and

2 (C) Provided that clearing is in conformance with the applicable Type I and/or

3 Type II Tree Conservation Plan;

4 (4) Moving or other forms of vegetation control on existing rights-of-way;

5 (5) The control of State designated noxious weeds;

6 (6) Landscape management in the nontidal wetland, buffer or expanded buffer;

7 (7) Soil investigations;

8 (8) Percolation tests for sewage disposal fields;

9 (9) Survey markers or survey monuments;

10 (10) Other similar activities with minimal adverse impacts as approved by the

11 Department and MDNR;

12 (11) The maintenance of the following serviceable structures or fills:

13 (A) Above and underground utilities;

14 (B) Structures in rights-of-way;

15 (C) Railroad beds;

16 (D) Road beds, roadside ditches, culverts, outlet ditches, wash ponds and

17 temporary sediment control structures;

18 (E) Bridges;

19 (F) Dams;

20 (G) Dikes;

21 (H) Levees;

22 (I) Water and wastewater control structures; and

23 (J) Facilities designed for stormwater management.

24 **Sec. 32-226. Activities Requiring a Letter of Authorization.**

25 (a) Except for regulated activities proposed within the Chesapeake Bay Critical Area, an
 26 activity that qualifies for a Letter of Authorization is exempt from the permit and mitigation
 27 requirements of this Ordinance. Activities proposed in the Chesapeake Bay Critical Area are not
 28 exempt from the mitigation requirements of Sections 32-230 through 32-234.

29 (b) Upon application, the following activities may qualify for a Letter of Authorization
 30 provided that the conditions in Section 32-227(b) are satisfied and best management practices,
 31 which may be required by the Department, are all met:

1 (1) Activities in isolated nontidal wetlands of less than one acre and having no
2 significant plant or wildlife value. An applicant's determination of whether an area is an isolated
3 nontidal wetland shall be based on published hydrologic and hydraulic data or data obtained in
4 the field which shows whether the nontidal wetland is hydrologically connected. The applicant's
5 determination shall be verified by the Department.

6 (2) Activities whose cumulative loss of nontidal wetlands and buffer, which contains
7 no significant plant or wildlife value is:

8 (A) Less than 5,000 square feet; or

9 (B) Greater than 5,000 square feet; or

10 (i) The actual loss of nontidal wetland is less than 5,000 square feet; and

11 (ii) Activities in the buffer result in minimal additional adverse impacts to
12 nontidal wetlands as determined by the Department.

13 (3) Installation of utility lines.

14 (A) The installation of utility lines including the following activities:

15 (i) Trenching, jetting, jack hammering or plowing of nontidal wetlands;

16 (ii) Laying of pipe, cable or wire;

17 (iii) Backfilling of the excavated trench containing the pipe, cable or wire;

18 (iv) Placement of the riprap; and

19 (v) Restoration of nontidal wetland areas which have been disturbed.

20 (B) Utility lines do not include:

21 (i) Intake and outfall structures;

22 (ii) Pipe or pipeline used to transport any liquid or slurry substance except
23 as associated with water and sewage lines;

24 (iii) Natural gas lines greater than 12 inches in diameter; or

25 (iv) Stormwater conveyance systems.

26 (4) Construction of overhead power transmission lines.

27 (5) Mitigation projects not required under this Ordinance.

28 (6) Regulated activities which impact the buffer and less than two acres of farmed
29 nontidal wetlands with 15 or more consecutive days on inundation during the growing season,
30 except in Wetlands of Special State Concern or their expanded buffer.

31 (7) The repair of the following serviceable structures or fills:

- 1 (A) Above and underground utilities;
- 2 (B) Structures in rights-of-way;
- 3 (C) Railroad beds;
- 4 (D) Road beds, roadside ditches, culverts and outlet ditches;
- 5 (E) Bridges;
- 6 (F) Dams;
- 7 (G) Dikes;
- 8 (H) Levees;
- 9 (I) Water and wastewater control structures; and
- 10 (J) Facilities designed for stormwater management.

11 (8) Activities which will result in the loss of nontidal wetlands that have been
 12 temporarily created by a permitted or authorized construction activity or as a result of a
 13 permitted activity, including wetlands created:

14 (A) Incidental to mining activities that were conducted under an approved
 15 mining plan or permit, or wetlands that have been created incidental to a mining activity, and that
 16 will be impacted during implementation of an approved reclamation plan;

17 (B) As a result of the construction of an approved sediment control structure;
 18 and

19 (C) For a specific purpose that will remain for a specified period of time,
 20 including wash ponds and grassed waterways.

21 (c) The following conditions apply to the activities listed in Subsection (b) (7).

22 (1) If the structure or fill has been put to uses other than the use originally intended or
 23 authorized for the original construction, and the repair activity will alter or impair any additional
 24 nontidal wetland area, the repair of the structure may not qualify for a Letter of Authorization.

25 (2) Repairs to be made more than three years after damage occurs or is first identified
 26 does not qualify for a Letter of Authorization.

27 (d) An applicant seeking a Letter of Authorization under Subsection (b) (8) shall submit
 28 the following:

29 (1) Information regarding the creation of the wetland;

30 (2) The purpose of the wetland creation, if applicable;

31 (3) The length of time the wetland has existed;

1 (4) A copy of the approved site plan, erosion and sediment control plan, mining plan
 2 or reclamation plan;

3 (5) A description of the function the created wetland has served;

4 (6) A request for the length of time the Letter of Authorization is to be valid; and

5 (7) Justification for conducting the regulated activity in the nontidal wetland.

6 (e) Structures that have been placed in nontidal wetlands (for example, sediment traps), or
 7 that have impacted nontidal wetlands through their construction or operation, do not qualify for a
 8 Letter of Authorization under Subsection (b) (8).

9 (f) A Letter of Authorization issued under Subsection (b) (8) is in effect for a period of up
 10 to five years and may be extended for one additional five-year period. No Letter of
 11 Authorization granted under Subsection (b)(8) may be extended for more than one five-year
 12 period, for a total of ten years, unless the regulated activity is part of a permitted mining activity
 13 or involves implementation of a mining reclamation plan.

14 **Sec. 32-227. Best Management Practices for Letters of Authorization.**

15 (a) If a Letter of Authorization is granted, the Department may require an applicant to
 16 comply with best management practices, including one or more of the following:

17 (1) Conduct the regulated activity in a manner that does not pose any harm to a
 18 threatened or endangered species, or species in need of conservation, or alter or impair the
 19 critical habitat of these species;

20 (2) Properly maintain the structure or fill;

21 (3) Design the project to first avoid and then minimize any adverse impacts to the
 22 nontidal wetlands' existing topography, vegetation, fish and wildlife resources, and hydrologic
 23 conditions;

24 (4) Conduct the regulated activity in a manner that does not restrict or impede the:

25 (A) Movement of wildlife indigenous to the nontidal wetland or adjacent water;

26 or

27 (B) Passage of normal or expected high water flow;

28 (5) Adhere to time of year restrictions as required by the MDE under COMAR
 29 26.08.02;

30 (6) Avoid any disturbances in breeding areas for migratory waterfowl;

31 (7) Maintain the hydrologic regime of the nontidal wetland upstream, downstream or

1 adjacent to the exempted activity;

2 (8) Remove excess fill or construction material or debris to an upland disposal area;

3 (9) Place materials in a location and manner which will not adversely impact surface
4 or subsurface water flow into or out of the nontidal wetland;

5 (10) If backfill is obtained from sources other than the originally excavated material,
6 use clean material free of waste metal products, unsightly debris, toxic material, or any other
7 deleterious substance;

8 (11) Place heavy equipment on mats or suitably design the equipment to prevent
9 damage to the nontidal wetlands;

10 (12) Repair and maintain any serviceable structures or fills in a manner that does not
11 result in a substantial deviation from the plans or specifications of the original structure or fill.
12 Minor deviations due to changes in materials or construction techniques, and which are
13 necessary for repair and maintenance, are permitted;

14 (13) Restore any nontidal wetlands temporarily impacted by a proposed repair and
15 maintenance activity;

16 (14) Repair and maintain any serviceable structures or fills so that there is no
17 permanent loss of nontidal wetlands in excess of nontidal wetlands lost due under the original
18 construction or fill;

19 (15) Conduct the activity in a manner that does not cause or contribute to a degradation
20 of water quality as determined by the Department and MDE;

21 (16) For installation of utility lines, make post-construction grades and elevations of
22 nontidal wetlands the same as the original grades and elevations.

23 (b) A proposed activity may not qualify for a Letter of Authorization if the Department
24 determines that the activity:

25 (1) Does not qualify under Section 32-226;

26 (2) May result in significant individual or cumulative impacts to nontidal wetlands
27 attributable to an entire and complete project; or

28 (3) Will not comply with the best management practices in Subsection (a).

29 (c) Activities of a similar nature.

30 (1) Applicants proposing to conduct repeated activities of a similar nature that may
31 qualify for a Letter of Authorization may submit a single application to the Department.

1 (2) The department may issue a single Letter of Authorization for these activities.

2 (3) Activities may include:

3 (A) Structural repair and maintenance; or

4 (B) Work within rights-of-way.

5 **Sec. 32-228. Permit Modifications.**

6 (a) The Department may require modification of a nontidal wetland permit to ensure
7 compliance with this Ordinance.

8 (b) The Department may make modifications to a permit:

9 (1) Upon written request by the permittee; or

10 (2) When the rights of the permittee under the permit have not vested, and the

11 Department:

12 (A) Receives new, relevant information; or

13 (B) Has amended the regulation under which the permit was issued.

14 (c) A permittee may apply for a permit modification of an unexpired permit. Modification
15 requests shall be in writing and contain the following information:

16 (1) A description of the requested modification.

17 (2) A statement of the reasons and need for the requested modification; and

18 (3) A statement of the wetland and buffer impacts associated with the requested

19 modification.

20 (d) An applicant shall provide additional information requested by the Department.

21 (e) Within 30 days of receiving a request for permit modification, or of receiving
22 additional information, if any, the Department shall notify the permittee if the modification is
23 major or minor and of its decision to grant, deny or condition the request.

24 (f) Within 15 days of receipt of notification, a permittee may request reconsideration of a
25 complete or partial denial of a request to modify a permit. The reconsideration shall be
26 conducted in conformance with Section 32-222(b) and (c).

27 (g) Minor Modifications.

28 (1) Minor modifications are changes to the original permit which do not constitute a
29 significant departure from its terms and conditions, including:

30 (A) Correction of typographical errors;

31 (B) Changes in frequency of monitoring by the permittee;

1 (C) Changes of land ownership or permittee;

2 (D) Extension or reduction of the terms or conditions of the permit;

3 (E) Minor filed modifications, including substitution of comparable materials,
 4 structural realignments and sediment and erosion control corrections not affecting the design and
 5 performance of wetland protection measures or mitigation plans approved by the Department;
 6 and

7 (F) Relocation of the proposed project where the adverse impact is equal to or
 8 less than originally permitted.

9 (2) The Department may make minor modifications without notice or review.

10 (h) Major Modifications.

11 (1) Major modifications are changes to the original permit which constitutes a
 12 significant departure from its terms and conditions including changes in the scope of the project
 13 which result in a greater adverse impact than originally permitted.

14 (2) Major modifications are subject to the public notice and hearing procedures
 15 required for permit applications under Section 32-220(f) and (g).

16 (3) Major changes to the project may require reevaluation of the original permit
 17 approval.

18 (i) Notice to permittee of required modifications.

19 (1) The Department shall notify a permittee, in writing, if a notification to the permit
 20 or Letter of Authorization is required under Subsection (b) (2).

21 (2) Within 15 days of receipt of notification that a modification is required, a
 22 permittee may request reconsideration of the modification. The reconsideration shall be
 23 conducted in accordance with Section 32-221(b) and (c).

24 **Sec. 32-229. Temporary Emergency Nontidal Wetland Permit.**

25 (a) The Department may issue a temporary emergency nontidal wetland permit if:

26 (1) A threat to life, severe loss, or damage of property, or a threat to public safety or
 27 public work is imminent; and

28 (2) The anticipated threat, loss or damage may occur before a permit can be issued
 29 under the procedures otherwise required by this Ordinance.

30 (b) Permit requirements. The temporary emergency permit shall:

31 (1) Incorporate, to the greatest extent practical and feasible, the standards and criteria

1 required for nonemergency regulated activities;

2 (2) Be limited in duration to the time required to complete the authorized emergency
3 activity, not to exceed 90 days;

4 (3) Require restoration for nontidal wetlands with temporary adverse impacts;

5 (4) Require mitigation for nontidal wetland losses pursuant to Section 32-230 through
6 32-234 of this Ordinance.

7 (c) Temporary Emergency Procedure.

8 (1) Not later than the next business day after beginning an emergency regulated
9 activity, a temporary emergency permit shall be requested.

10 (2) A temporary emergency permit request may be made orally. However, the
11 applicant shall submit a written request to the Department within three days of the oral request.

12 (3) The request in Subsection (c) (2) shall include the:

13 (A) Applicant's name;

14 (B) Location of the emergency activity;

15 (C) Extent of work to be done;

16 (D) Anticipated adverse impact on nontidal wetlands; and

17 (E) Reason for the emergency.

18 (4) The temporary emergency permit may be granted orally or in writing. If oral
19 approval is granted, the Department shall issue a written emergency permit within three days of
20 the approval.

21 (5) If oral approval is not granted, the Department shall issue a written temporary
22 emergency permit within ten days of the request if the temporary emergency permit is approved
23 by the Department.

24 (d) The Department shall provide public notice and opportunity for comment on the
25 issuance of a temporary emergency permit in a local newspaper of general circulation, not later
26 than 15 days after the issuance of a permit.

27 (e) Upon written request by a permittee, the Department may extend the temporary
28 emergency permit if more time is required to complete the work authorized or to restore the site.

29 (f) The Department may suspend or revoke a temporary emergency permit in conformance
30 with Section 32-237.

31 (g) Work performed under a temporary emergency permit shall conform to conditions

1 specified by the Department.

2 (h) A person shall apply for a nontidal wetland permit if:

3 (1) The person intends to conduct an additional regulated activity at the site which
4 does not qualify for a temporary emergency permit;

5 (2) A temporary emergency permit is denied;

6 (3) Work authorized under temporary emergency permit is conducted beyond the 90
7 day period under Subsection (b) (2) without approval from the Department; or

8 (4) Mitigation is required under Subsection (b) (4).

9 **Sec. 32-230. Mitigation for Regulated Activities.**

10 (a) Exemptions. Mitigation or monetary compensation for nontidal wetland loss is not
11 required for regulated activities that:

12 (1) Are exempted under Sections 32-225 and 32-226, except where specified;

13 (2) Do not result in a loss of nontidal wetlands;

14 (3) Occur only in the buffer or expanded buffer.

15 (b) Requirements.

16 (1) A permittee shall take all necessary steps to first avoid adverse impacts and then
17 to minimize impact to nontidal wetlands. If the permittee demonstrates to the Department's
18 satisfaction that losses of nontidal wetlands are unavoidable and necessary, the Department shall
19 require the permittee to develop and implement mitigation.

20 (2) The Department shall require a permittee, as a condition of the permit, to mitigate
21 or monetarily compensate for nontidal wetland losses caused by regulated activities not listed as
22 exemptions in Subsection (a).

23 (3) The Department may waive some or all of the off-site mitigation requirements for
24 up to one (1) acre of nontidal wetland lost for construction of special wastewater disposal
25 facilities in a nontidal wetland on residential property. The waiver is conditioned upon the
26 applicant siting the special wastewater disposal facility so as to first avoid and then top minimize
27 impacts to nontidal wetlands, and upon performance of on-site mitigation to the maximum extent
28 practicable.

29 (4) The Department may reduce mitigation requirements if the regulated activity
30 provides a significant environmental benefit of the proposed mitigation project has a likelihood
31 of success, as determined by the Department.

1 (5) The Department shall require a permittee to develop and submit a mitigation plan
 2 for review and approval. The plan shall be consistent with the following:

3 (A) Standards of Section 32-231;

4 (B) Plan requirements in Section 32-233; and

5 (C) Monitoring and bonding requirements in Section 32-232.

6 (6) The Department may accept monetary compensation only if it is determined that
 7 creation; restoration or enhancement of nontidal wetlands is not a feasible alternative. Monetary
 8 compensation shall only be accepted under specific conditions and shall be based on the fee
 9 structure guidelines described in Section 32-234.

10 (7) The Department may not base a final permit decision on the environmental
 11 benefits of a mitigation proposal or the financial benefits of monetary compensation proposals.

12 (8) If the Department denies approval of a mitigation plan and the permittee is
 13 aggrieved by the decision, the permittee may request reconsideration of the denial under the
 14 procedures of Section 32-221(b). The Department may order cessation of the per-mitted activity
 15 or interim stabilization measures, or rescind any other permits or approvals granted for the
 16 subject property, pending resolution of the request for reconsideration of the Department's
 17 decision.

18 (9) The Department may approve of mitigation bank sites in consultation with
 19 appropriate Federal, State and local agencies for the purpose of providing mitigation for
 20 identified projects. Mitigation bank sites for identified projects are required to meet the
 21 standards of Section 32-231(i) and (j) and the monitoring requirements of Section 32-232(a).
 22 Wetland bank sites will not obligate the County to issue a nontidal wetland permit for the future
 23 project that will cause nontidal wetland loss.

24 **Sec. 32-231. Mitigation Standards.**

25 (a) It is the goal of this Ordinance to attain a no net overall loss in nontidal wetland
 26 acreage and function, and to strive for a net resource gain in nontidal wetlands within Prince
 27 George's County. Achievement of the goal will occur through the regulatory components of this
 28 Ordinance and other County initiatives which incorporate nontidal wetland creation, restoration
 29 and enhancement projects outside of the regulatory framework.

30 (b) Mitigation standards shall be determined in part through the use of acreage re-
 31 placement ratios. Acreage replacement ratios are expressed as a relationship between two

1 numbers. The first number shall specify the acreage of nontidal wetlands to be mitigated, and
 2 the second shall specify the acreage of nontidal wetlands lost.

3 (c) The Department shall consider the mitigation requirement for replacing the loss of
 4 nontidal wetlands to be fulfilled when:

5 (1) The in-kind creation or restoration of nontidal wetlands meets the following
 6 replacement ratios:

7 (A) Emergent nontidal wetlands 1:1;

8 (B) Scrub-shrub nontidal wetlands 2:1;

9 (C) Forested nontidal wetlands 2:1;

10 (D) Emergent nontidal wetlands designated as Nontidal Wetlands of Special
 11 State Concern 2:1;

12 (E) Scrub-shrub nontidal wetland designated as Nontidal Wetlands of Special
 13 State Concern 3:1; and

14 (F) Forested nontidal wetlands designated as Nontidal Wetlands of Special State
 15 Concern 3:1; or

16 (2) A minimum in-kind acreage replacement ratio of 1:1 has been met; and lost
 17 nontidal wetland functions have been replaced through additional creation, restoration or
 18 enhancement activities; or

19 (3) The Department has determined on an individual basis that enhancement is the
 20 only mitigation option, and has specified mitigation requirements which have been met by the
 21 permittee;

22 (4) The Department has specified mitigation requirements which have been agreed to
 23 and implemented by the permittee.

24 (d) The Department shall consider the mitigation requirements for replacing a loss of
 25 farmed nontidal wetlands to be fulfilled when the following replacement ratios have been met
 26 through:

27 (1) Enhancement of farmed nontidal wetlands – 1:1;

28 (2) Creation or restoration of emergent, scrub-shrub, or forested nontidal wetlands –

29 1:1.

30 (e) In order for enhancement activities to be acceptable for the replacement of lost nontidal
 31 wetland functions, the permittee may be required to:

1 (1) Perform a functional assessment based on site assessment techniques acceptable
 2 to the Department: and

3 (2) Identify how enhancement activities are to replace lost nontidal wetland
 4 functions;

5 (f) An enhancement activity may be accepted for replacement of lost nontidal wetland
 6 functions when the activity provides additional protection to, creates or improves the functions
 7 of, a nontidal wetland. Activities may include:

8 (1) Enhancement of farmed wetlands;

9 (2) Enhancement of degraded nontidal wetlands and buffers;

10 (3) Best management practices for agricultural activities;

11 (4) Creation of wildlife ponds approved by the Prince George’s Soil Conservation
 12 District and MDNR;

13 (5) Purchase or preservation of upland buffers adjacent to existing, created, re-stored
 14 or enhanced nontidal wetlands;

15 (6) Purchase or preservation of existing nontidal wetlands; and

16 (7) Activities consistent with the plans and agreements to create or improve water-
 17 fowl habitats in Maryland;

18 (g) In determining if enhancement activities will replace lost nontidal wetland acreage and
 19 function, the Department shall consider the:

20 (1) Degree to which the enhancement activity replaces the functions of the lost
 21 nontidal wetland;

22 (2) Benefits of the enhancement activity in rehabilitating or maintaining the non-tidal
 23 wetland;

24 (3) Scope and extent of the enhancement activity;

25 (4) Proximity of the enhancement activity to the nontidal wetland lost;

26 (5) Technical merits of the enhancement activity and its likelihood of long term
 27 success;

28 (6) Adverse impact of the enhancement activity on natural resources;

29 (7) Relationship of the enhancement activity to ongoing natural resource management
 30 activities; and

31 (8) Compatibility of the enhancement activity to ongoing natural resource

1 management, if applicable.

2 (h) Mitigation projects shall be connected to existing nontidal wetlands, waterways or 100
 3 year floodplains. Projects may be located on multiple parcels. Projects shall be located
 4 according to the following geographic location in order of preference, unless otherwise
 5 determined by the Department;

6 (1) On site;

7 (2) Off site, in a location approved under a Comprehensive Watershed management
 8 Plan;

9 (3) Off site, in a location identified in plans and agreements to create or improve
 10 waterfowl habitats in Maryland and approved by the Department and MDNR.

11 (4) Where the Department has determined, in consultation with other Federal, State,
 12 County and local agencies, that regional needs for nontidal wetland functions strongly justify the
 13 siting of mitigation projects, and the mitigation project is located:

14 (A) In the watershed where the nontidal wetland loss occurred;

15 (B) In the drainage basin where the nontidal wetland loss occurred; or

16 (C) Outside the drainage basin where the nontidal wetland loss occurred,
 17 preferably within the County.

18 (i) Mitigation projects for regulated activities in the Chesapeake Bay Critical Area shall be
 19 located in the Critical Area according to Subsection (h) (1)-(3);

20 (j) Siting Within Geographic Locations. In selecting sites, a permittee shall pursue
 21 mitigation projects on upland sites which have undergone significant human disturbances. A
 22 permittee shall avoid, whenever possible, siting mitigation projects on:

23 (1) Forested lands;

24 (2) Lands used for dredge disposal, mine refuse or other purposes where
 25 contamination problems may exist; or

26 (3) Lands which are existing or potential habitat for plant or animal species:

27 (A) Listed as endangered or threatened by the U.S. Fish and Wildlife Service;

28 (B) Listed as endangered or threatened or species listed as in need of
 29 conservation by the Department and MDNR; or

30 (C) Considered as a candidate for listing by the U.S. Fish and Wildlife Service,
 31 or considered to be locally unusual or rare by the Department and MDNR.

1 (k) Project Standards.

2 (1) The permittee shall successfully implement the approved mitigation plan within
3 the time period specified by the Department based on the mitigation plan.

4 (2) Created or restored nontidal wetlands shall meet the following plant survival
5 criteria:

6 (A) After five (5) years greater than 85 percent of the site shall be vegetated by
7 planted species approved by the Department or by a species composition agreed to by the
8 Department;

9 (B) Allowances shall be made for natural species changes as long as the plant
10 communities are similar to those lost; and

11 (C) After five (5) years, the nontidal wetland shall be dominated by native or
12 adaptive vegetation.

13 (3) In the case where a permittee has proposed the use of natural re-vegetation as part
14 of the creation, restoration or enhancement project, greater than 85 percent of the site shall, after
15 five (5) years, be:

16 (A) Vegetated by species similar to those that are found in the nontidal wetland
17 area that was lost or by a species composition agreed to by the Department; and

18 (B) Dominated by native or adaptive vegetation.

19 (4) In the case where the nontidal wetland was dominated by exotic or nuisance
20 plants, the Department shall accept out-of-kind mitigation.

21 (5) The Department may not approve mitigation plans that include exotic or nuisance
22 plant species:

23 (l) Protection Mechanisms.

24 (1) The permittee shall provide mechanisms to assure the protection of created,
25 restored or enhanced nontidal wetlands in perpetuity. This may be achieved through protection
26 mechanisms, including:

27 (A) Deed restrictions;

28 (B) Conservation easements;

29 (C) Deeding the created, restored or enhanced nontidal wetland to an
30 organization or public agency capable of protecting the area in perpetuity; or

31 (D) Restrictive covenants.

1 (2) Any protection mechanism under Subsection (1) (1) shall include the following
 2 provisions:

3 (A) Language granting the Department, or any successor agency, access to the
 4 mitigation site for inspections during the construction and monitoring period of the mitigation
 5 project, if the permittee forfeits a bond and the Department decides to complete the construction
 6 of the mitigation project;

7 (B) In the case of an easement agreement, language allowing assignment of a
 8 permittee's interest under the easement agreement to the Department, if the bond is forfeited and
 9 the Department decides to complete construction of the mitigation project;

10 (C) An absolute prohibition on the draining, dredging, removal or filling of the
 11 created nontidal wetland site; and

12 (D) Language that the restriction is perpetual, binding on the grantor's personal
 13 representative, heirs, successors and assigns and runs with the land.

14 **Sec. 32-232. Monitoring and Bonding.**

15 (a) Monitoring of Mitigation Projects.

16 (1) The permittee shall submit to the Department annual monitoring reports for five
 17 (5) years from the completion of the construction of the mitigation project unless the permittee
 18 has received written notice from the Department that the monitoring requirements have been
 19 fulfilled in less than five (5) years.

20 (2) Through written notification to the permittee, the Department may extend the
 21 required monitoring period for not more than an additional three (3) year period if the mitigation
 22 project fails to comply with Section 32-231(k).

23 (3) Annual monitoring reports submitted to the Department shall include the
 24 following information:

25 (A) A description of how the mitigation project meets the mitigation project
 26 standards in Section 32-231(k);

27 (B) Photographs of the mitigation project;

28 (C) The commercial source of planting stock whenever planting is required;

29 (D) A description of any midcourse corrections which have been taken, or need
 30 to be taken, to implement the mitigation plan or a component thereof to meet the standards of
 31 Section 32-231(k); and

1 (E) An “as-built” site design plan.

2 (4) The Department reserves the right to inspect the mitigation project at any time
3 during its construction, during the required monitoring period, and at any time after that to assess
4 the long term viability of the mitigation project.

5 (5) The permittee shall consider monitoring requirements fulfilled only upon receipt
6 of written notice from the Department.

7 (b) Bonding.

8 (1) This Subsection does not apply to agencies of any Federal, State, County or
9 Municipal government.

10 (2) Within 60 days of the Department’s approval of Phase II of the mitigation plan, a
11 permittee shall file with the Department a surety bond on a form to be prescribed and furnished
12 by the Department.

13 (3) The surety bond shall be payable to the Prince George’s County Government and
14 conditioned upon the successful completion of construction of the mitigation project according to
15 an approved mitigation plan, as it may be modified under Section 23-268(c).

16 (4) Upon approval by the Director and the County Attorney, the Department may
17 accept one of the following alternative forms of security:

18 (A) A deposit of cash or negotiable bonds of the U.S. Government having a
19 market value equal to the acceptable bond amount accompanied by a written agreement of the
20 bank to pay the County on demand in the event of forfeiture;

21 (B) A certificate of deposit equal to the required bond issued by a bank in the
22 State of Maryland and accompanied by a written agreement of the bank to pay the County on
23 demand in the event of forfeiture; or

24 (C) An irrevocable letter of credit that is equivalent to the required bond issued
25 by a bank or financial institution organized or authorized to do business in the State of Maryland
26 that expressly states that the total sum is guaranteed to be available and payable directly to the
27 County on demand in the event of forfeiture. The irrevocable letter of credit may not expire until
28 all mitigation and monitoring requirements have been fulfilled to the Department’s satisfaction.

29 (5) Upon approval by the Director and the County Attorney, the Department may
30 accept the following alternatives to posting a surety bond before work is begun under a permit:

31 (A) The grant to the Department, in trust, of a deed, by an easement or other

1 interest in upland property owned by the permittee, that has at least the same monetary value as
2 the selected mitigation site.

3 (B) Fulfillment of mitigation requirements before the permitted activity results
4 in a loss of nontidal wetlands.

5 (C) The Department shall obtain possession of, and keep in custody; all
6 alternative forms of security deposited by the permittee under Subsection (b) (4) (A)-(C) until
7 authorized for release. All alternative forms of security may not expire until construction of the
8 mitigation project has been successfully completed pursuant to the approved litigation plan, as
9 may be modified under Section 32-233(c).

10 (6) The amount of the bond shall be set at \$20,000 per acre of nontidal wetland
11 mitigation required under the permit. For permits that will impact less than one (1) acre, but no
12 less than one-quarter acre of nontidal wetlands, the bond shall be set at \$5,000 per one-quarter
13 acre. The permittee may request the Department to reduce the required bonding amount based
14 on estimated or actual costs of the mitigation project and any other relevant information. In no
15 event may the amount of security required be less than the total costs of the mitigation
16 requirements, taking into account the following:

17 (A) Number of acres to be mitigated.

18 (B) The cost of land in the area of the mitigation site;

19 (C) The proposed method of mitigation; and

20 (D) Any other relevant factors, including reduction of the bond amount for
21 projects with a high likelihood of success.

22 (7) Liability under the bond shall continue until all mitigation and monitoring work
23 has been successfully completed, and the work has been accepted as final by the Department.

24 (8) A bond or other alternative form of security shall contain a provision that it
25 cannot be canceled by the surety, bank, or other issuing entity, except after not less than 90 days
26 written notice to the Department and to the permittee. At least 45 days prior to the cancellation
27 date indicated in the notice, the permittee shall file with the Department a commitment from a
28 surety, bank, or other issuing entity to provide a substitute bond or other security which will be
29 effective on the cancellation date in the notice.

30 (9) The amount of the bond posted by a permittee may be adjusted by the Department
31 based on the actual costs of the mitigation design plan or if the cost of future mitigation work

1 changes. The Department shall notify the permittee of any proposed bond adjustment and
 2 provide an opportunity for an informal conference on the adjustment. A permittee may request
 3 reduction of the bond amount upon submission of evidence to the Department that proves the
 4 costs to complete the mitigation plan have been reduced. Such requests shall be considered as a
 5 request for a partial bond release.

6 (10) The surety bond shall be fully or partially released to the obligee upon receipt of
 7 written notice from the Department which states that all mitigation requirements have been
 8 satisfactorily fulfilled or that a partial release is appropriate under Subsection (b)(9). The written
 9 notice for a full bond release shall be sent at the end of the required five (5) year monitoring
 10 period, a lesser monitoring period as described under Subsection (a)(1), or the extended
 11 monitoring period as described under Subsection (a)(2).

12 (c) Bond Forfeiture.

13 (1) The bond or other instrument securing compliance with a permit may be subject
 14 to forfeiture upon:

15 (A) Revocation of a nontidal wetland permit;

16 (B) Failure of the permittee to comply with an administrative order; or

17 (C) Failure to comply with any element of the approved mitigation plan and an
 18 approved modification.

19 (2) The Department shall notify the permittee and the surety or other financial
 20 institution in writing, by certified mail, of its intention to initiate forfeiture proceedings.

21 (3) The permittee shall have 30 days from receipt of the notice of forfeiture to show
 22 cause why the bond or other instrument should not be forfeited. If the permittee fails to show
 23 cause, the bond or other instrument shall be forfeited.

24 (4) On showing cause, the Department shall provide for a reasonable time for the
 25 permittee, surety or other financial institution, to correct the problem.

26 (5) If the permittee fails to show cause, the bond or other instrument shall be forfeited
 27 nisi and the Department shall notify the permittee, surety or other financial institution, of the
 28 forfeiture. If a showing of an intention to correct the problem in compliance with the mitigation
 29 is not submitted to the Department within 30 days from forfeiture nisi, the bond or other security
 30 shall be forfeited absolute.

31 (d) To avoid double bonding, the Department shall work with an applicant required to post

1 bond under other Department programs requiring a bond.

2 (e) A permittee may not conduct a regulated activity in a nontidal wetland if the permittee
 3 previously forfeited any bond or alternate under this Ordinance, unless the permittee repays the
 4 Department the cost of completing the mitigation project in excess of the forfeited bond or
 5 alternative security plus interest at the rate set in the Courts and Judicial Proceedings Article,
 6 Section 11-107(a), Annotated Code of Maryland. If the mitigation project is still not completed,
 7 the permittee shall complete the mitigation project at its expense according to the approved
 8 mitigation plan and any approved modifications.

9 **Sec. 32-233. Mitigation Plan.**

10 (a) Phase I Mitigation Plan.

11 (1) A permittee shall submit a Phase I Mitigation Plan as part of the nontidal wet-land
 12 permit application.

13 (2) Phase I Mitigation Plans shall include all of the following information:

14 (A) Names, addresses and telephone numbers of the principals associated with
 15 project implementation;

16 (B) A proposal, if applicable, to use monetary compensation consistent with
 17 Section 32-221 to fulfill mitigation requirements;

18 (C) A photograph and description of the type and acreage of the proposed non-
 19 tidal wetland losses;

20 (D) A description of the activity causing the nontidal wetland loss;

21 (E) A description of mitigation projects proposed to fulfill the required
 22 replacement of nontidal wetland acreage and/or functions. The description shall include a
 23 project location map, showing the geographic relationship between the area of proposed nontidal
 24 wetland loss and the proposed mitigation site or sites; and

25 (F) A description of the site selection process and a justification of the selection
 26 of the proposed mitigation site based on Section 32-231(h) and (j);

27 (G) A description of the selected protection mechanisms required in Section 32-
 28 231(1).

29 (3) The Department shall render a decision concerning the acceptability of the Phase I
 30 Mitigation Plan as part of the final permit decision.

31 (4) In rendering a decision on the Phase I Mitigation Plan, the Department shall

1 provide guidance to the applicant on the content, timing and necessity of proceeding with the
 2 Phase II Mitigation Plan.

3 (b) Phase II Mitigation Plan.

4 (1) A permittee may submit the Phase II Mitigation Plan as part of the permit
 5 application;

6 (2) Unless otherwise determined by the Department, the Phase II Mitigation Plan
 7 shall be submitted within three (3) months of the Department's final permit determination. The
 8 design plan shall include all of the following information:

9 (A) Plan view scaled drawings prepared by a licensed surveyor or engineer that
 10 include;

11 (i) A vicinity map showing the project location, existing land use and
 12 zoning;

13 (ii) The location, type and acreage of proposed nontidal wetland mitigation
 14 activities;

15 (iii) The location of proposed stockpile areas;

16 (iv) The location of proposed sediment and erosion control devices;

17 (v) The location of all areas to be used to store machinery, equipment or
 18 supplies;

19 (vi) The proposed source of borrow materials;

20 (vii) The proposed location, spacing and type of propagules for each plant
 21 species; and

22 (viii) Other information pertinent to a Phase II Mitigation Plan as required by
 23 the Department;

24 (B) Cross section drawing showing existing and proposed final site conditions
 25 including grade, elevation and slope;

26 (C) Description of how enhancement activities will replace lost nontidal wet-
 27 land acreage and functions;

28 (D) If applicable, a description of how the enhancement of farmed nontidal wet-
 29 lands will replace lost nontidal wetland acreage and function;

30 (E) Construction schedule, which includes estimated start and completion dates;

31 (F) Hydrology, which includes:

1 (i) Estimated elevation of surface and groundwater, as measured from the
 2 soil surface, bimonthly from November to May and monthly from June to October;

3 (ii) The source of the water, such as precipitation, surface water, or
 4 ground-water, over various seasons of the year;

5 (iii) The reliability of the hydrologic sources throughout various seasons of
 6 the year; and

7 (iv) Relevant precipitation data;

8 (G) Substrate conditions, including a description of:

9 (i) Existing soil and substrate conditions; and

10 (ii) Soil and substrate amendments needed to meet hydric soil
 11 characteristics and maintain the specified plant species;

12 (H) Vegetation to be planted, including all of the following:

13 (i) The scientific and common name of plant species. All plants shall be
 14 native or adaptive to the State;

15 (ii) Planting dates for each species according to propagation methods; and

16 (iii) Planting stock fertilizer requirements for the entire five (5) year
 17 monitoring period;

18 (I) A five (5) year monitoring schedule establishing responsibility for the
 19 removal of exotic and nuisance vegetation, and permanent establishment of the nontidal wetland
 20 system and its component parts. The Department shall encourage the permittee to provide for
 21 the long-term maintenance and monitoring of mitigation sites beyond the required monitoring
 22 period;

23 (J) A detailed budget of the proposed mitigation project costs, including;

24 (i) Land acquisition; and

25 (ii) Design, which includes construction, monitoring and maintenance;

26 (K) A description of protection mechanisms required in Section 32-231(1).

27 (3) The permittee shall present evidence of a legal right to implement the proposed
 28 mitigation plan on the selected site by providing:

29 (A) An executed deed conveying title of the selected site to the permittee;

30 (B) An executed conservation easement agreement;

31 (C) Written evidence of the landowner's consent for use of the selected site;

1 (D) A fully executed option agreement, long-term lease agreement, sales
 2 contract for the selected site; or

3 (E) Other written evidence of a possessor ownership interest in the selected site.

4 (4) The Department may waive all or part of the requirements of a Phase II
 5 Mitigation Plan.

6 (5) The Department may not release a bond or terminate monitoring without receipt
 7 of a legally binding deed, long-term lease, or conservation easement on those lands where
 8 mitigation will occur.

9 (6) The Department shall render a decision concerning the acceptability of the Phase
 10 II Mitigation Plan within 45 days of receipt of a completed plan; unless a final permit decision
 11 has not been made. If the Department fails to notify the applicant within the 45 day period, the
 12 plan shall be considered acceptable unless a final permit decision has not been made.

13 (c) Mitigation Plan Modification.

14 (1) The Department may require, and a permittee may request, modifications to an
 15 approved mitigation plan or component during construction to ensure compliance with this
 16 Ordinance. Modification, substitution, or other deviations from an approved mitigation plan or
 17 component may not be made without approval under this Section.

18 (2) A modification request may be made orally and followed up in writing.

19 (3) A written request shall contain the following information:

20 (A) The name of the permittee;

21 (B) Location of the mitigation project;

22 (C) A description of proposed modification; and

23 (D) A justification for the modification.

24 (4) The Department's decision may be given orally or in writing. The Department
 25 shall notify a permittee of its decision within ten (10) days of a written request. If an oral
 26 decision is made, the Department shall confirm its decision, in writing, within ten (10) days. The
 27 Department's decision, whether oral or written, is binding on the permittee.

28 **Sec. 32-234. Nontidal Wetland Compensation Fund.**

29 (a) The Department may accept monetary compensation if it determines that mitigation for
 30 nontidal wetland loss is not a feasible alternative. Monetary compensation may not be suitable
 31 for the requirement to first avoid adverse impacts and then to minimize nontidal wetland losses.

1 (b) When a permittee maintains that mitigation is not a feasible alternative based on the
 2 requirements of Subsection (c), the permittee shall propose that the Department accept monetary
 3 compensation. A proposal for acceptance of monetary compensation shall be submitted as a part
 4 of a Phase I Mitigation Plan.

5 (c) Monetary compensation may be accepted under one or more of the following
 6 circumstances:

7 (1) The size of the nontidal wetland loss is less than one (1) acre;

8 (2) In-kind mitigation is technically not feasible; or

9 (3) An acceptable mitigation site cannot be located within the County. The permittee
 10 shall demonstrate compliance with Section 32-231, including submission of the following
 11 information:

12 (A) Number of sites evaluated. A minimum of seven (7) sites is required;

13 (B) A map and description of sites rejected;

14 (C) Justification of why each site was unsuitable for mitigation; and

15 (D) Other information required by the Department;

16 (4) The Department recommends use of the compensation fund.

17 (d) Monetary compensation proposals may be rejected if the Department determines that;

18 (1) Mitigation requirements can be fulfilled on-site; or

19 (2) Conditions in Subsection (c) are not fulfilled.

20 (e) The Department shall render decisions on proposals to accept monetary compensation
 21 based on Subsection (b) as part of a final permit decision.

22 (f) The Nontidal Wetland Compensation Fund shall include:

23 (1) Monetary compensation paid by a permittee instead of engaging in the creation,
 24 restoration or enhancement of nontidal wetlands;

25 (2) Civil or criminal penalties imposed by a court pursuant to Sections 32-236 or 32-
 26 237; and

27 (3) Other monetary contributions to the fund from other sources.

28 (g) Funds in the Nontidal Wetland Compensation Fund may only be used for the creation,
 29 restoration or enhancement of nontidal wetlands. This includes the location and acquisition of
 30 land, design, construction, monitoring, maintenance and the development of mitigation plans.

31 (h) The Department may base monetary compensation on anticipated costs for

1 development and construction of mitigation projects, including location and acquisition of land,
 2 design, maintenance and monitoring costs. The Department may use the following to determine
 3 costs:

4 (1) Land acquisition costs derived from fair market value of the converted nontidal
 5 wetland by the permittee, based on at least two independent appraisals or other evidence
 6 of land value which may be acceptable to the Department;

7 (2) Design costs derived from a percentage of construction costs or actual costs for
 8 projects similar in size and complexity that have been completed by other permittee's or the
 9 Department;

10 (3) Construction costs derived on a case by case basis, taking into account the
 11 following factors:

12 (A) Nontidal wetland type, size and functions;

13 (B) Amount of planting, grading and other site preparations; and

14 (C) Costs of similar mitigation projects completed by other permittee's or the
 15 Department; and

16 (4) Monitoring and maintenance costs derived from a percentage of construction
 17 costs or actual costs for projects similar in size and complexity completed by other permittee's or
 18 the Department.

19 (i) Funds credited, and any interest accrued, to the Nontidal Wetland Compensation Fund
 20 shall remain available until expended, and may not revert to the general fund or to the
 21 Stormwater Enterprise Fund.

22 (j) The Department shall prepare an annual report on the Nontidal Wetland Compensation
 23 Fund that includes an accounting of:

24 (1) Financial receipts and expenditures to and from the fund; and

25 (2) Mitigation projects completed and in progress.

26 (k) The Department shall provide a copy of the annual report to the County Council,
 27 MDNR, and make it available to the general public.

28 **Sec. 32-235. Expanded Buffer.**

29 (a) The buffer for nontidal wetlands with adjacent areas containing steep slopes or highly
 30 erodible soils shall be expanded to 100 feet.

31 (b) Nontidal Wetlands with Steep Slopes and Highly Erodible Soils.

1 (1) The following criteria may be used by the Department in designating nontidal
 2 wetlands with steep slopes or highly erodible soils;

3 (A) Slopes immediately adjacent to the nontidal wetlands in excess of 15
 4 percent; or

5 (B) Soils adjacent to a nontidal wetland with an erodibility factor greater than
 6 0.35 as determined by the Prince George's Soil Conservation District.

7 (2) Specific nontidal wetland sites with steep slopes and highly erodible soils
 8 identified by the Department shall be designated by regulation.

9 **Sec. 32-236. Enforcement.**

10 (a) Enforcement Authority. The Department shall have the duty and means of en-forcing
 11 all regulations of this Ordinance.

12 (b) Inspection and Complaints.

13 (1) The Department shall conduct an Enforcement Program to assure continuing
 14 compliance with this Ordinance.

15 (2) The Department shall conduct inspections and file reports for periodic inspections
 16 as necessary during the construction of permitted projects and approved mitigation plans to
 17 assure compliance with the permit or the Letter of Authorization.

18 (3) The Department shall perform a final inspection upon completion of the permit-
 19 ted project and mitigation plans approved by the Department. The final inspection will
 20 determine if the completed work has been constructed in accordance with the permit, the Letter
 21 of Authorization, and the approved mitigation plan.

22 (4) In addition to all other remedies provided by State or County law, the County
 23 Attorney, on behalf of the Department, may institute injunction, mandamus or other appropriate
 24 action.

25 (c) Violations and Penalties.

26 (1) The Department may revoke a permit for cause including violation of permit
 27 conditions, obtaining a permit by misrepresentation, failing to disclose a relevant or material fact,
 28 or a change in conditions. The Department shall notify the violator, in writing, and provide an
 29 opportunity for a hearing.

30 (2) The Department may issue a stop work order against any person who, or project
 31 that, violates any provision of this Ordinance, or any regulation, order, or permit under this

1 Ordinance, related to a regulated activity.

2 (3) A person who violates any provision of this Ordinance, or any rule, regulation,
 3 order or permit under this Ordinance is liable for a penalty not exceeding \$10,000, which may be
 4 recovered in a civil action brought by the Department. Each day a violation continues is a
 5 separate violation under this Subsection.

6 (4) A person who violates any provision of, or fails to perform any duty imposed by,
 7 this Ordinance, or by a rule, regulation, order, or permit under this Ordinance, is guilty of a
 8 misdemeanor and, on conviction, is subject to:

9 (A) For a first offense, a fine not to exceed \$10,000; or

10 (B) For a second offense or subsequent offense, a fine not to exceed \$25,000.

11 (d) All enforcement fines, fees and bond forfeitures collected will be credited to the
 12 Wetland Compensation Fund as described in Section 32-234.

13 **Sec. 32-237. Permit Suspension and Revocation.**

14 (a) Grounds for Permit Suspension or Revocation.

15 (1) The Department may suspend or revoke a Unified Nontidal Wetland Permit, after
 16 written notice to the permittee, if the Department determines that any of the following has
 17 occurred:

18 (A) The permittee has failed to post the bond required under Section 32-232(b);

19 (B) The permittee has failed to comply with the requirements of an
 20 administrative action or order under this Ordinance or for a violation of this Ordinance;

21 (C) The permit application misrepresented or failed to disclose a relevant or
 22 material fact;

23 (D) The requirements of the permit have been violated;

24 (E) There has been substantial deviation from the plans, specifications or
 25 requirements of the permit or the Letter of Authorization;

26 (F) The permittee has prevented a representative of the Department from
 27 entering the activity site to make reasonable inspections; or

28 (G) The permittee's rights under the permit have not vested and new
 29 information, changes in site conditions, or amended regulatory requirements necessitate
 30 revocation or suspension.

31 (b) Written notice.

1 (1) Except as provided for under Subsection (d), Emergency Action, the Department
 2 may not suspend or revoke a nontidal wetland permit or Letter of Authorization unless the
 3 Department notifies a permittee of the suspension or revocation by certified mail. The notice
 4 shall include:

5 (A) The specific facts that warrant the suspension or revocation; and

6 (B) An opportunity for the permittee to appeal the action.

7 (c) Hearings.

8 (1) Upon receipt of written notice to suspend or revoke a permit, the permittee shall
 9 have ten (10) days to request a contested case hearing.

10 (2) A hearing under this Subsection shall be conducted according to Section 32-
 11 221(c).

12 (3) If the Department does not receive a request for a hearing, the permit shall be
 13 revoked or suspended.

14 (d) Emergency Action.

15 (1) The Department may order the immediate suspension or revocation of a permit or
 16 Letter of Authorization if the Department:

17 (A) Finds that public health, safety or welfare requires the emergency action; and

18 (B) Promptly gives the permittee written notice of the emergency action; and

19 (2) A notice of emergency action shall include a statement of:

20 (A) The specific facts upon which the emergency action is based; and

21 (B) The permittee's opportunity to be heard in accordance with Subsection (c).

22 **Sec 32-238. Nontidal Wetland Protection Program Reporting.**

23 (a) The Department shall submit an annual report to MDNR that evaluates the
 24 administration of the program, coinciding with the State fiscal year. The report shall include the
 25 following information:

26 (1) Number of permits issued, modified and denied;

27 (2) Types of activities;

28 (3) Location of activities;

29 (4) Number of violations identified plus the number and nature of enforcement
 30 actions taken;

31 (5) Comments from the regulated community and members of the public, including

1 copies of any written complaints about the County’s administration of the program;

2 (6) Acreage totals of nontidal wetland losses by type;

3 (7) Mitigation actions, including acreage totals of mitigation projects by type of
 4 project;

5 (8) Examples of minimization efforts;

6 (9) Number of conditioned exemptions granted and nontidal wetlands lost as a result;

7 and

8 (10) A report on the Department’s Nontidal Wetland Compensation Fund in
 9 accordance with Section 23-269.

10 **Sec. 32-239. Nontidal Wetlands of Special State Concern.**

11 Maps of areas designated as Nontidal Wetlands of Special State Concern shall be
 12 maintained by the Department and MDNR and available for public review. Areas designated in
 13 Prince George’s County as Nontidal Wetlands of Special State concern are:

	Site Name	U.S.G.S. Quad Name
(1)	Beck Woods	Laurel
(2)	Belt Woods	Lanham
(3)	Beltsville Airport Bog	Laurel
(4)	Beltsville Bottomland Forest	Laurel/Beltsville
(5)	Beltsville Forest and Meadow	Laurel
(6)	Beltsville Seasonal Pond	Laurel
(7)	Buck Lodge Road Bog	Beltsville
(8)	Chews Lake	Bristol
(9)	Fort Ravine	Mount Vernon
(10)	Johnson’s Gully	Mount Vernon
(11)	Huntington Park Woods	Laurel
(12)	Magruder Ferry Seep	Lower Marlboro
(13)	Mockley Swamp	Mount Vernon
(14)	Patuxent Maple Swamp	Bowie
(15)	Patuxent W.R.C.	Laurel
(16)	Route I-95 Bog	Beltsville
(17)	Southwest Branch Bottomland Forest	Lanham/Upper Marlboro

(18)	Suitland Bog	Anacostia
(19)	Upper Patuxent Marshes Natural heritage Area	Bristol
(20)	Watkins Regional Park	Lanham
(21)	Zekiah Swamp	Brandywine

1 SECTION 4. BE IT FURTHER ENACTED that the provisions of this Act are hereby
2 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
3 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
4 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
5 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
6 Act, since the same would have been enacted without the incorporation in this Act of any such
7 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

8 SECTION 5. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
9 calendar days after it becomes law.

10

Adopted this ____ day of _____, 2010.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.