

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2011 Legislative Session

Bill No. CB-15-2011

Chapter No. 13

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Member Turner

Co-Sponsors _____

Date of Introduction June 21, 2011

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, and

10 SUBTITLE 28. CIVIL MONETARY FINES OR
11 PENALTIES.

12 Section 28-261,

13 The Prince George's County Code
14 (2007 Edition, 2010 Supplement).

15 BY repealing:

16 SUBTITLE 4. BUILDING.

17 DIVISION 2. FLOODPLAIN ORDINANCE.

18 Sections 4-256 through 4-266,

19 DIVISION 3. GRADING, DRAINAGE, AND
20 POLLUTION CONTROL.

21 Sections 4-270 through 4-312,

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DIVISION 4. STORMWATER MANAGEMENT.
SUBDIVISION 1. GENERAL PROVISIONS.
Sections 4-316 through 4-321.01,
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, 2010 Supplement).

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 32-200,
DIVISION 4. FLOODPLAIN ORDINANCE.
Sections 32-202 through 32-212, and
DIVISION 5. NONTIDAL WETLAND

1 PROTECTION ORDINANCE.
2 Sections 32-216 through 32-241,
3 The Prince George's County Code
4 (2007 Edition, 2010 Supplement).

5 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
6 Maryland, that Sections 4-111, 4-352, and 28-261 of the Prince George's County Code be and
7 the same are hereby repealed and reenacted with the following amendments:

8 **SUBTITLE 4. BUILDING.**

9 **DIVISION 1. BUILDING CODE.**

10 **Subdivision 2. Amendments to the International Building Code.**

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

12 * * * * *

13 [(g) Section 105.4.1 is added to read as follows: "Chesapeake Bay Critical Area." Where
14 the property is located within a Chesapeake Bay Critical Area Overlay Zone, a Conservation
15 Plan and a Conservation Agreement prepared in accordance with the Conservation Manual shall
16 be submitted for approval and, wherever grading or construction are proposed, shall include an
17 approved technical erosion and sediment control plan and an approved stormwater design plan.
18 Where the Subdivision Review Committee has not reviewed and the Planning Board has not
19 approved the Conservation Plan and Conservation Agreement, these shall be transmitted in
20 accordance with the Conservation Manual to the Subdivision Review Committee for its review
21 and to the Planning Board for approval. The Planning Board shall approve the Conservation
22 Plan and Conservation Agreement prior to the issuance of a building and/or grading permit,
23 unless waived in accordance with the Conservation Manual. Where an approved Conservation
24 Plan and Conservation Agreement includes an approved technical erosion and sediment control
25 plan and stormwater design plan, the Building Official shall ensure that permits issued are
26 consistent with the approved Conservation Plan and Conservation Agreement. If an approved
27 Conservation Plan and Conservation Agreement do not include a technical erosion and sediment
28 control plan and a stormwater design plan, the Conservation Plan and Conservation Agreement
29 shall be revised to include these approved plans prior to the issuance of a building or grading
30 permit.]

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

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

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

18 [(4) In the event that the entire amount of the cash deposit or bond is expended prior to
19 the implementation of the Conservation Plan and Conservation Agreement, the applicant is
20 responsible for all additional monies required to fully implement the Conservation Plan and
21 Conservation Agreement. There is created a tax lien on the real property for monies expended
22 by the County for the implementation of the Conservation Plan and the Conservation Agreement.
23 Upon certification from the County Attorney that a tax lien has been created, the amount of such
24 lien shall be collected by the Director of Finance in the same manner as other County real estate
25 taxes.]

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

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

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

15 [(i)] (h) Section 105.5.1 is added to read as follows: "Expiration of Permit and Correction
16 of Code Violations." Any permit issued for residential property to correct a building code or
17 housing code violation issued pursuant to Subtitle 4 or Subtitle 13 of the County Code shall be
18 issued only for a period of time reasonably necessary to correct the violation, not to exceed
19 ninety (90) days. The initial period of the permit shall be established by the Building Official
20 based upon the extent of the work required to correct the violation. The permit may be extended
21 or renewed for an additional period of one hundred eighty (180) days if, in the opinion of the
22 Building Official, the applicant has demonstrated substantial progress to complete the work in
23 accordance with the permit and has demonstrated substantial justification for failure to complete
24 the work within the period of the permit. The Board of Administrative Appeals shall have no
25 authority to grant an extension to the period of the permit.

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

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

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

9 * * * * *

10 **DIVISION 5. ADMINISTRATIVE PROVISIONS.**

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

12 * * * * *

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

[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
 18 review by SCD in excess of the revenue received from the sediment control fees imposed for the
 19 first 200 acres of the subject site.]

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

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

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

28 [(n)] [(j) Boilers and vessels. The fee for inspection of boilers and vessels shall be as
 29 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

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

16 [(q)] (l) Stormwater Management Fee-In-Lieu: The fees-in-lieu authorized in Section
 17 4-324 (b) of this Code shall be as follows:

18 (1) The standard fee shall be as set forth in the table below, which is based upon the
 19 percentage of area which typically becomes impervious to infiltration when the property is
 20 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

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

3 (3) Fee Reductions and Credits

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

- 6 (i) Water quality management or LID;
- 7 (ii) One year extended detention or LID; or
- 8 (iii) Flood control facilities (10-year or 100-year stormwater management).

9 (B) The Director may reduce the fee:

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

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

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

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

3 [(r)] (m) Woodland Conservation Fee-in-Lieu: If required by an approved Type 2 Tree
 4 Conservation Plan, the woodland conservation fee-in-lieu as provided for in Division 2 of
 5 Subtitle 25, shall be collected by the County prior to the issuance of the first permit unless the
 6 project is phased. Phased projects may pay the fee-in-lieu amount for each phase prior to
 7 issuance of any permits for that phase if the entire fee is not paid prior to issuance of the first
 8 permit. The TCP2 shall show the breakdown of the fee-in-lieu payment due with each phase.

9 [(s)] (n) School Facilities Surcharges:

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

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

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

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

20 (D) Multifamily housing designated as student housing within one and one half
 21 (11/2) miles of the University of Maryland, College Park Campus, under the following
 22 conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 [(t)] (o) Public Safety Surcharge:

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

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

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

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

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

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

15 * * * * *

16 **SUBTITLE 28. CIVIL MONETARY FINES OR PENALTIES.**

17 **DIVISION 3. MISCELLANEOUS CIVIL VIOLATIONS**

18 **SUBDIVISION 2. SPECIFIC CIVIL PENALTIES PRESCRIBED.**

19 **Sec. 28-261. Grading, pollution, drainage, stormwater management, floodplain, and**
20 **erosion control violations.**

21 (a) Any person who violates any provision of the County Code concerning grading,
22 pollution, drainage, [stormwater management,] floodplain, and erosion control shall, upon
23 citation issued pursuant to Subdivision 1, be deemed to have committed a civil violation and
24 shall pay to the County a civil monetary fine in the amount prescribed by Subsection (b) of this
25 Section.

26 (1) Each separate day of violation that remains uncorrected is a distinct civil violation
27 subject to an additional citation and fine in the amount prescribed by Subsection (b) of this
28 Section.

29 (2) The penalty provided in Sections 1-123, 4-116, or 4-117 [or 4-340] of the County
30 Code shall not apply to enforcement of the County Code provisions concerning grading,
31 drainage, [stormwater management,] and erosion control as set forth in this Division.

(b) The civil monetary fine for each civil violation of the County Code concerning grading, drainage, [stormwater management,] floodplain, and erosion control shall be Two Hundred Fifty Dollars (\$250.00), except as provided in Subsection (c).

* * * * *

SECTION 2. BE IT FURTHER ENACTED by the County Council of Prince George's County, Maryland, that Division 2. FloodPlain Ordinance, Sections 4-256 through 4-266; Division 3. Grading, Drainage, And Pollution, Sections 4-270 through 4-312; Division 4. Stormwater Management, Subdivision 1. General Provisions, Sections 4-316 through 4-321.01, 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 of Subtitle 4 of the Prince George's County Code be and the same are hereby repealed:

SUBTITLE 4. BUILDING.

* * * * *

DIVISION 2. [FLOODPLAIN ORDINANCE.] Reserved.

[Sec. 4-256. through Sec. 4-266.] Reserved.

DIVISION 3. [GRADING, DRAINAGE, AND POLLUTION CONTROL.] Reserved.

[Sec. 4-270. through Sec. 4-312.] Reserved.

DIVISION 4. [STORMWATER MANAGEMENT.] Reserved.

[SUBDIVISION 1. GENERAL PROVISIONS.]

[Sec. 4-316. through 4-321.01.] Reserved.

[SUBDIVISION 2. STORMWATER CONCEPT AND DESIGN PLANS.]

[Sec. 4-322. through 4-329.02.] Reserved.

[SUBDIVISION 3. INSPECTION, MAINTENANCE, AND ENFORCEMENT.]

[Sec. 4-330. through 4-341.] Reserved.

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DIVISION 6. [NONTIDAL WETLAND PROTECTION ORDINANCE.] Reserved.

[Sec. 4-356. through 4-379.] Reserved.

SECTION 3. BE IT FURTHER ENACTED by the County Council of Prince George's County, Maryland, that Subtitle 32, Division 1. Administrative Provisions, Subdivision 1. Adoption by Reference, Sections 32-101 and 32-102; Subdivision 2. General Provisions,

1 Sections 32-103 through 32-120; Division 2. Grading, Drainage and Pollution Control; Sections
 2 32-124 through 32-166; Division 3. Stormwater Management; Subdivision 1. General
 3 Provisions, Sections 32-170 through 32-200; Division 4. Floodplain Ordinance, Sections 32-202
 4 through 32-212; and Division 5. Nontidal Wetland Protection Ordinance, Sections 32-216
 5 through 32-241 of the Prince George's County Code be and the same is hereby added:

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

7 **DIVISION 1. ADMINISTRATIVE PROVISIONS.**

8 **Subdivision 1. Adoption by Reference.**

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

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

14 COMAR 26.17.01 – Erosion and Sediment Control

15 COMAR 26.17.02 – Stormwater Management

16 COMAR 05.02.02 – Maryland Accessibility Code

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

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

20 **Subdivision 2. General Provisions.**

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

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

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

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

30 (a) The Director of Public Works and Transportation hereinafter referred to as “the
 31 Director,” and shall be interpreted to include any designee of the Director.

1 (b) The Director shall keep official records of applications received, permits and
 2 certificates issued, fees collected and reports of inspection hours. Construction documents shall
 3 be retained in accordance with the retention policies of the Department of Public Works and
 4 Transportation.

5 (c) The Director shall have the authority as necessary in the interest of public health, safety
 6 and general welfare, to adopt and promulgate rules and regulations, to interpret and implement
 7 the provisions of this Subtitle to secure the intent thereof, and to designate requirements
 8 applicable because of local climate or other conditions. Such rules shall not have the effect of
 9 waiving the provisions of COMAR that are specifically provided for in this Subtitle, nor shall
 10 such rules violate engineering practices involving public safety.

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

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

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

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

29 (d) A permit under which work has been started and later suspended or discontinued shall
 30 expire and become null and void six (6) months after the work has stopped. Work will be
 31 considered suspended when the permittee fails to prosecute the work so as to ensure completion

1 within a reasonable period of time.

2 (e) A permit issued in error or not in compliance with this Subtitle at the time of issuance
3 may be suspended by the Director.

4 (f) When a permit has expired for failure to commence work, it may be renewed within a
5 period of thirty (30) days from the date of expiration, if the conditions under which the permit
6 was originally issued have remained unchanged and there has been no change in law or
7 ordinance that would adversely affect the permit. A fee shall be collected for each renewal;
8 provided, however, that no permit may be renewed more than two (2) times.

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

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

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

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

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

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

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

25 (a) "Location of Underground Utility Lines Prior to Commencement of Work." For all
26 work that requires excavation deeper than twelve (12) inches, the permittee accepting the permit
27 agrees to contact the Utility Service Protection Center, "Miss Utility", and non-member utility
28 companies, as known, in due time prior to beginning any excavation work for the purpose of
29 having each utility companies locate its lines on site. In the event that the permittee fails to
30 obtain the services of the utilities, then in such event, and irrespective of whether or not a utility
31 line is ruptured, the Director may revoke the grading permit. In such event, all fees paid to the

1 County shall be forfeited and, in order to continue work, a new application with requisite fee for
 2 a permit shall be filed. Drawings shall be reexamined to determine that all utilities have been
 3 located and verified by the utility companies having knowledge of the location of such
 4 underground utilities. However, in the event any or all of the respective utility companies fail to
 5 furnish the requisite information to the permittee within a reasonable period of time as
 6 determined by the Director under all circumstances, then, in such event, the foregoing revocation
 7 provisions shall not apply.

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

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

12 Except as specifically provided otherwise in this Subtitle, any person, firm, association,
 13 partnership, corporation, or combination thereof, who shall violate a provision of COMAR or of
 14 this Subtitle, fail to comply with any of the requirements thereof, or violate a lawful order issued
 15 hereunder, shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand
 16 Dollars (\$1,000.00) or by imprisonment for six (6) months, or both. Each day that a violation
 17 continues shall be deemed a separate offense.

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

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

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

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

3 (d) Costs incurred in the performance of emergency work shall be paid from the treasury
4 of Prince George's County upon issuance of a certificate by the Director. The legal counsel of
5 the County shall institute appropriate action against the owner/permittee of the property where
6 the unsafe condition was located from recovery of such costs, including, but not limited to,
7 certification for a tax lien.

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

13 **Sec. 32-109. Accessibility.**

14 (a) The Department of Public Works and Transportation hereby adopts the Maryland
15 Accessibility Code as set forth in Sections 05.02.02 et seq. of the Code of Maryland Regulations.
16 Exit-way ramps shall have a width of not less than five (5) feet.

17 (b) The Department of Public Works and Transportation shall be responsible for enforcing
18 the Maryland Accessibility Code requirements pertaining only to areas outside of any building or
19 structure, except for any project that has only one (1) building on one (1) parcel, which shall be
20 the responsibility of the Department of Environmental Resources.

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

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

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

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

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

1 (a) The regulations contained in this Subtitle shall control all matters concerning grading,
 2 drainage and erosion control, except as otherwise provided for in the Prince George's County
 3 Code, in the rules and regulations of the Washington Suburban Sanitary District and all
 4 applicable State law.

5 (b) All work done under any grading permit issued under this Subtitle shall be in full
 6 compliance with this Subtitle, Subtitles 23 and 25, any other applicable Code provisions; and any
 7 applicable statute, ordinance or regulation adopted by the State, bi-county or county agencies.

8 (c) The Director is hereby authorized and directed to assist in the enforcement of such
 9 statutes, ordinances and regulations.

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

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

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

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

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

25 (a) Procedure. The County Council may exempt, upon specific request, from the
 26 requirements of this Subtitle, all grading within the corporate limits of a Prince George's County
 27 municipality, with planning and zoning authority, whenever the County Council determines, by
 28 resolution, that the grading regulations and administrative procedures of said municipality and
 29 the enforcement thereof are as adequate and equally effective as the County's grading
 30 regulations, any other applicable regulations and administrative procedures presently or hereafter
 31 enacted. Said exempting resolution may include any conditions, restrictions or requirements

1 deemed necessary by the County Council.

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

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

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

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

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

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

17 (b) The Director shall have the power and the duty to enforce the provisions of this
 18 Subtitle and all fees provided in this Subtitle shall be paid to the order of Prince George's
 19 County. All permits shall be issued by the Director in the name of Prince George's County,
 20 Maryland.

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

22 Whenever in the regulations provided for in this Subtitle it is provided that anything shall
 23 be done to the approval of or subject to the direction of the Director, this shall be construed to
 24 give the Director only the discretion of determining whether the rules and standards established
 25 by this Subtitle have been complied with, and no such provision shall be construed as giving any
 26 officer discretionary powers to establish such regulations or standards or power to require
 27 conditions nor prescribed by this Subtitle or any other ordinance of the County or to enforce any
 28 provisions of this Subtitle in an arbitrary or discriminatory manner.

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

30 (a) Whenever any work is being done in violation of the provisions of this Subtitle or is
 31 not in conformance with the term of any permit issued for such work, the Director or his duly

1 authorized representative may order all or part of the work on the job stopped until such violation
 2 or nonconformance is eliminated and any work or installation made in violation of this Subtitle is
 3 corrected. Such "Stop Work Order;" if oral, shall be followed by a written "Stop Work Order"
 4 within twenty-four (24) hours (excluding Saturday, Sunday or holidays).

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

8 (c) The "Stop Work Order" shall contain, or be accompanied by: a written notice
 9 indicating that there is a right to a hearing before the Director or his designee. Such request for a
 10 hearing may be filed in writing or in person at the Office of the Director. The owner/permittee
 11 affected by a "Stop Work Order" shall be entitled to such hearing as quickly as feasible, within
 12 twenty-four (24) hours of receipt of a request for a hearing by the Director. The Director, or a
 13 designated impartial member of his staff who has or is delegated authority to act, shall afford the
 14 owner/permittee a fair hearing with an opportunity to present evidence or testimony that is
 15 relevant to the "Stop Work Order." The owner/permittee shall be afforded reasonable notice of
 16 the time and place of the hearing in writing.

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

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

23 **Sec. 32-120. Fee Schedule.**

24 (a) The fee schedule for work performed in connection with the Grading, Drainage and
 25 Pollution Control Division shall be as follows:

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

1 months of the date of the application; otherwise, the permit application shall expire and the filing
2 fee shall be forfeited.

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

7 **TABLE 1**

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

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

12 (A) Certification by Soil Conservation District (SCD) of field review in
13 conjunction with Erosion and Sediment Control plan review: There is no certification fee
14 required if the land to be disturbed is 5,000 square feet or less. Certification fee shall be Two
15 Hundred Dollars (\$200.00) for the first acre or portion thereof of land, in excess of 5,000 square

1 feet, proposed to be disturbed in the submitted plan.

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

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

8 (D) Concept Sediment Control Plan will pay a flat fee of Three Hundred Dollars
9 (\$300.00). All subsequent site development plans shall pay one-half of fees required in Section
10 (3)(A), (B) and (C) above.

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

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

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

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

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

27 (7) Refunds. Except for stormwater management facilities, in any case where permits
28 have been issued and no work has begun hereunder, the person who has paid the fee for said
29 permit may return said permit for cancellation, and, upon the cancellation thereof, there will be
30 refunded to him/her the amount of said fees less the actual expenses (not to exceed fifty percent
31 (50%) of the fee paid, but not less than the filing fee) incident to the issuance of said permit as

1 determined by the Director; provided the application for such refund shall be made within six (6)
2 months after the issuance of said permit, after which time no refund may be made. No filing fee
3 of any kind shall be refunded.

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

19 (9) Stormwater Management Fee-In-Lieu. The fees-in-lieu authorized in Section 32-
20 179(b) of this Code shall be as follows:

21 (A) The standard fee shall be as set forth in the table below, which is based upon
22 the percentage area which typically becomes impervious to infiltration when the property is
23 developed as zoned, multiplied by \$16,000.
24

1 **TABLE 2**

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

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

4 (C) Fee Reduction and Credits.

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

- 7 (aa) Water quality management; or
- 8 (bb) One year extended detention; or
- 9 (cc) Flood control facilities (10-year or 100-year stormwater
 10 management).

1 (ii) The Director may adjust the fee:

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

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

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

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

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

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

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

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

29 **Sec. 32-124. Purpose.**

30 The purpose of this Division is to prevent property damage, protect living resources and
 31 prevent environmental degradation to safeguard the public’s health, safety, welfare and

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

9 **Sec. 32-125. Definitions.**

10 (a) Wherever the following words are used in, or in conjunction with, the administration of
 11 this Division, they shall have the following meaning:

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

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

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

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

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

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

28 (7) **Certification or to Certify.** A signed written statement that specific plans and
 29 specifications, construction, inspections, or tests have been prepared and performed, and that
 30 such comply with the requirements of this Division.

31 (8) **Chesapeake Bay Critical Area.** All waters of and lands under the Chesapeake

1 Bay and its tributaries to the head of tide as indicated on the State wetlands' maps; and all State
 2 and private wetlands designated under the Annotated Code of Maryland, Natural Resources
 3 Article, Title 9; and all land and water areas within one thousand (1,000) feet beyond the
 4 landward boundaries of State or private wetlands and heads of tide designated under the
 5 Annotated Code of Maryland, Natural Resources Article Title 9, as indicated on approved
 6 Chesapeake Bay Critical Area Overlay Zoning Map Amendments.

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

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

12 (11) **Class 3 Fill.** Common fills proposed for lawns, landscape plantings, or for other
 13 nonload-bearing usage.

14 (12) **Compaction.** Densification of soil or rock fills by mechanical or other acceptable
 15 procedures.

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

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

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

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

3 (17) **Department** - Department of Public Works and Transportation.

4 (18) **Director.** The Director of Public Works and Transportation or the Director's
5 designee.

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

10 (20) **Drainage.** Stormwater runoff, snow melt runoff, surface runoff or ground water
11 flows.

12 (21) **Drainage System.** Any natural system or man-made device, mechanism or
13 measure used in any manner for the collection, conveyance, management, treatment, disposition
14 or disposal of drainage.

15 (22) **Dust Free Surface.** A ground composed of rolled and compacted cinders,
16 gravels or other approved nonabsorbent materials to prevent rising of dust on roads, access ways,
17 driveways and parking lots.

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

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

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

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

29 (27) **Excavation or Cut.** An act, by which soil or rock is cut into, dug, quarried,
30 uncovered, removed, displaced or relocated and shall include the conditions resulting therefrom.

31 (28) **Existing Grade.** The vertical location of the existing ground surface prior to

1 excavating or filling.

2 (29) **Finished or Proposed Grade.** The final grade or elevation of the ground,
3 drainage or other structures conforming to the proposed design.

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

6 (31) **Grading.** Any stripping, removal of topsoil, excavating, filling, stockpiling or
7 any combination thereof, including the condition resulting therefrom.

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

11 (33) **Landscape Architect.** A person duly registered or authorized to practice
12 landscape architecture in the State of Maryland and qualified to prepare grading plans and
13 specifications.

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

17 (35) **Mitigation.** The offsetting of forest values lost due to the destruction of
18 woodlands without a permit or contrary to an approved Tree Conservation Plan by replanting
19 woodlands or agreed upon means.

20 (36) **Natural Ground Surface.** The ground surface in its original state before any
21 grading, excavation or filling.

22 (37) **Net Tract Area.** For the purposes of woodland conservation, the gross tract area
23 minus the approved one hundred (100) year floodplain and areas previously dedicated for public
24 use.

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

27 (39) **Open-Pit Mining.** The continuing or reoccurring removal of material from
28 below the ground surface by open excavation on a site for immediate or ultimate use at the same
29 or other site in processing and manufacturing of building and construction materials or any other
30 products, or at various locations elsewhere in its natural state.

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

1 (41) **Pollutant.** Sediment runoff due to erosion.

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

6 (43) **Prince George’s Soil Conservation District.** One (1) of twenty four (24) soil
 7 conservation districts created pursuant to Subtitle 3 of the Agricultural Article of the Annotated
 8 Code of Maryland.

9 (44) **Professional Engineer.** A person duly registered or otherwise authorized by the
 10 State of Maryland to practice in the field of engineering.

11 (45) **Reforestation.** The re-establishment of a biological community of perpetual
 12 woodlands through the planting of trees on areas from which trees were recently removed.

13 (46) **Refuse.** See “solid wastes (refuse).”

14 (47) **Sediment.** Soils or other surficial materials transported by surface water as a
 15 product of erosion.

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

18 (49) **Site.** Any lot or parcel of land combination of contiguous lots or parcels of land.

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

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

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

28 (53) **Soil Engineer.** A professional engineer who is qualified by education and
 29 experience to practice applied soil mechanics and foundation engineering.

30 (54) **Solid Wastes (Refuse).** The same as defined in Subtitle 21 of this Code.

31 (55) **Standards and Specifications.** The current version of the “Maryland Standards

1 and Specifications for Soil Erosion and Sediment Control” as adopted by the Prince George’s
 2 Soil Conservation District.

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

5 (57) **Structural Rock Fills.** Fills including limited amounts of rubble, broken asphalt,
 6 brick or concrete.

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

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

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

19 (61) **Tree Conservation Plan (TCP).** A site map that delineates woodland
 20 conservation areas and the associated text that details requirements, penalties, and mitigation as
 21 described in Subtitle 25.

22 (62) **Watercourse.** Any natural or improved stream, river, creek, ditch, channel,
 23 canal, conduit, culvert, drain, gully, swale or wash in which waters flow either continuously or
 24 intermittently.

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

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

29 (b) **Drainage System Connection Permit.** A permit is required to connect or discharge to
 30 any drainage system or watercourse within the County. This permit is to ensure that all drainage
 31 systems are to be used primarily for the control, disposition and management of drainage.

1 prohibit illegal discharge of pollutants and to safeguard water quality, living resources, public
 2 health and prevent damage to the drainage system.

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

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

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

12 (f) The information reflected in the permit shall be maintained factual and current by the
 13 permittee.

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

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

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

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

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

28 (3) Refuse disposal areas or sanitary landfills operated and conducted in accordance
 29 with the requirements, rules and ordinances adopted by Prince George's County.

30 (4) Grading for or by, and on land owned by, the United States of America or the
 31 State of Maryland when used exclusively for purposes originally acquired or consistent with

1 constitutional and statutory authorizations and limitations; or for, by or under permit from a
 2 municipality authority, State Highway Administration or the County Department of Public
 3 Works and Transportation to the extent such grading is within public right-of-way and adjacent
 4 slope easements or minimum slope areas only, and specifically exclusive of the remainder of the
 5 lot.

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

9 (A) Public right-of-ways and Washington Suburban Sanitary Commission
 10 easements; and

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

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

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

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

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

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

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

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

27 Permits issued pursuant to this Division do not relieve the owner/permittee of responsibility
 28 for securing required permits for work to be done which is regulated by any other applicable
 29 code, act or ordinance. The provisions of this Division shall not preclude the inclusion in such
 30 other permit of more stringent regulation or requirements concerning the grading of land.

31 **Sec. 32-129. Application.**

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

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

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

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

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

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

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

30 (4) A clear and definite delineation of limits of disturbance and areas where
 31 vegetation is to remain, in conformance with the approved Tree Conservation Plan if one is

1 required, along with a calculation of the disturbed area in square feet of the total site minus that
2 area to remain undisturbed and currently having an effective erosion resistant ground cover or
3 surface.

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

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

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

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

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

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

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

29 (12) A clear and definite delineation of the proposed subdivision of the site for the
30 purpose of staging, to minimize time of exposure to erosive actions, along with the construction
31 of the sequential order for the working of each, and a statement of their respective areas, minus

1 | the area therein to remain undisturbed, in square feet.

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

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

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

13 | **Sec. 32-131. Soils Investigation Report.**

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

26 | **Sec. 32-132. Waiver.**

27 | (a) The Director may waive or modify requirements of this Division on such conditions
 28 | and subject to submission of such reports deemed necessary to insure compliance with the intent
 29 | of this Subtitle. No waiver or modification will be considered, granted or approved unless:

30 | (1) Specifically requested in writing; and

31 | (2) Each such waiver or modification is specifically and separately approved in

1 writing by the Director. Approval of the plans will not constitute approval of any waiver or
2 modification of any requirement of this Subtitle that might otherwise be shown on the plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 No permit shall be issued for grading and other work covered within this Division until the
 17 fees established in Section 32-120 have been paid.

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

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

27 (b) Except as otherwise provided, the amount of any bond required to be posted under this
 28 Section shall be equal to or greater than the total cost of the project, as estimated by the
 29 Department, including an additional twenty-five percent (25%) of the estimated cost for
 30 contingencies, plus the current unit price per square foot of the area to be afforested or
 31 reforested.

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

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

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

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

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

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

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

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

27 (4) After evaluating the work to be performed as specified above, the Director shall
 28 develop an estimate of the costs for said work, to include an amount equal to twenty-five percent
 29 (25%) of the anticipated construction cost as contingency, and compare the estimated amount to
 30 the amount of the bond posted by the permittee.

31 (A) If the amount of the bond posted is in excess of the estimate, the Department

1 shall immediately move to collect the bonds and carry out the necessary work. The entire
2 amount of the bonds posted may be used either in or near the permit site as may be determined
3 by the Director to be necessary.

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

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

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

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

29 (f) Before acceptance, all bonds shall be approved by the Director and the County
30 Attorney. If a corporate bond is offered, it shall be executed by a surety or guaranty company
31 qualified to transact business in the State of Maryland. If a cash bond is offered, it shall be

1 deposited with the Office of Finance, Treasury Division, which shall give an official receipt
 2 therefore, stipulating that said cash has been deposited in compliance with, and subject to the
 3 provisions of this Section.

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

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

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

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

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

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

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

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

30 (3) Improvements of any existing grading, ground surface, or drainage condition on
 31 the site (not to exceed the area as proposed for work or development in the application) to meet

1 the standards required under this Division for new grading, drainage and pollution control.

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

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

8 **Sec. 32-137. Liability.**

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

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

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

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

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

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

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

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

9 **Sec. 32-140. Compliance.**

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

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

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

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

26 (c) Failure of the permittee to comply with the directives of this Section will constitute a
 27 violation to this Section, and the Director may cancel the permit and proceed with the necessary
 28 restoration of the site using the Development Bond funds provided under Section 32-135.

29 (d) Any discharge or connection to a drainage system or watercourse which is not
 30 permitted subject to the provisions of this Division or not permitted under other Divisions of this
 31 Code which is found to contain pollutants shall be considered illegal and in noncompliance, and

1 subject to enforcement and permitting actions set forth in this Code.

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

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

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

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

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

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

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

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

1 accordingly.

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

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

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

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

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

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

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

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

26 (d) Work shall not proceed beyond the stages outlined above until the Director inspects the
27 site and approves the work previously completed. Requests for inspections shall be made at least
28 twenty-four (24) hours in advance (exclusive of Saturdays, Sundays and holidays) of the time the
29 inspection is desired.

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

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

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

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

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

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

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

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

10 **Sec. 32-145. Reports.**

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

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

16 (2) Removal of unsuitable materials;

17 (3) Fill placement locations and depths;

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

20 (5) Elevations of all rough grading completed.

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

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

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

25 Upon completion of the work, the Director shall require a report from a registered
26 professional engineer, surveyor or architect certifying that all site work and facilities have been
27 completed in accordance with the conditions of the permit, the approved plans and
28 specifications, with the minimum standards of this Division, with a specific listing of all waivers
29 as might have been approved.

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

31 Upon receipt and approval of the final reports, if required by Section 32-147, and upon

1 determining that all permitted work has been satisfactorily completed in conformance with this
2 Subtitle, the Director will issue a certification of completion, the same being prerequisite to the
3 return of the cash deposit or release of bond in whole or part pursuant to Section 32-135.

4 **Sec. 32-149. Maintenance.**

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

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

11 (a) Remedy of Defects. Deficiencies, Discharges, Connections and Maintenance.

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

22 (b) Disregard of Notice to Remedy Condition; Penalty or Enforcement. Failure to
23 complete or undertake the required remedial work within the period specified shall constitute a
24 violation(s) pursuant to Sections 32-107 and 32-118 of this Subtitle. If an act, omission or
25 condition constituting a violation is of a continuing nature, each day that a violation continues
26 shall be deemed a separate offense. The actual application of the penalty provisions of these
27 Sections, or the possible prospective application thereof shall not preclude the enforced removal,
28 correction or abatement of prohibited conditions or use through appropriate proceedings in a
29 court of law. The notice provisions of Sections 32-107 and 32-118 and as amended herein shall
30 not be applicable when, in the determination of the Director, there is an unsafe condition of soil
31 or premises, or both, which constitutes a violation of one or more of the provisions of this

1 Division and is a serious, immediate threat to the health or safety of the general public or
 2 adjacent property.

3 (c) Emergency Measures. The application of such penalty shall not preclude the enforced
 4 removal, abatement or correction of the conditions which were found to be in noncompliance,
 5 through appropriate proceedings in a court of law. In addition, the County may take those
 6 actions necessary to correct the situation, and all costs incurred therefore shall be recovered from
 7 the responsible person in accordance with Section 32-108(e), or through other legal recourse.

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

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

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

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

20 **TABLE 4 – SITE SLOPE LIMITATIONS**

<u>FEATURE</u>	<u>MAXIMUM</u>	<u>MINIMUM</u>
<u>Setback of Building from edge Building Pad or Shelf</u>	-----	<u>10 ft. *</u>
<u>Slope of Pad or Shelf Away from Building, Residential</u>	<u>30" in 10'</u>	<u>10" in 10'</u>
<u>Slope of Pad or Shelf Away from Building, All Others</u>	-----	<u>10" in 10'</u>
<u>Yards or Lawns</u>	<u>3:1</u>	<u>2 ½%</u>
<u>Slope of Terraces, Slopes or Banks, Residential</u>	<u>3:1</u>	-----

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

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

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

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

8 **Sec. 32-152. Ground Stabilization.**

9 (a) All graded surfaces shall have suitable soil for permanent vegetative growth; free of
10 any rocks, stones or other nonirreducible/nonorganic matter larger than one and one-half (1 ½)
11 inches in diameter; diced and raked; and shall be limed, fertilized, seeded, mulched with tack or
12 sodded, planted or otherwise protected from erosion; and shall be watered, tended and
13 maintained until growth is well established.

14 (1) Topsoil shall be in accordance with the Maryland Department of the

1 Environment, Standards and Specifications for Soil Erosion and Sediment Control, 21.0 Standard
 2 and Specifications for Topsoil, or approved subsequent revisions thereof.

3 (2) Stabilization methods and materials shall be in accordance with the Maryland
 4 Department of the Environment, Standards and Specifications for Erosion and Sediment Control,
 5 20.0, Standards and Specifications for Vegetative Stabilization, or approved subsequent revisions
 6 thereof.

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

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

15 (a) No grading permit shall be issued for areas to be disturbed in excess of five thousand
 16 (5,000) square feet or one hundred (100) cubic yards of earth moved without an approved
 17 erosion and sediment control plan which meets the requirements of the Prince George's Soil
 18 Conservation District, this Division, the State Sediment Control Regulations, COMAR 26.17.01,
 19 and the Standards and Specifications. The plan shall include sufficient information to evaluate
 20 the environmental characteristics of the affected areas, the potential impacts of the proposed
 21 grading on water resources, and the effectiveness and acceptability of measures proposed to
 22 minimize soil erosion and off-site sedimentation. This plan shall serve as a basis for all
 23 subsequent grading and stabilization. The applicant shall certify on the plan that all clearing,
 24 grading, drainage, construction and development shall be conducted in strict accordance with the
 25 plan.

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

28 (1) A letter of transmittal;

29 (2) A vicinity sketch indicating north arrow, scale and other information necessary to
 30 easily locate the property;

31 (3) A plan at an appropriate scale indicating at least:

1 (A) Name, address and telephone number of:

2 (i) The owner of the property where the grading is proposed;

3 (aa) The applicant;

4 (B) The existing and proposed topography;

5 (C) The proposed grading and earth disturbance including:

6 (i) Surface area involved;

7 (ii) Excess spoil material;

8 (iii) Use of borrow material;

9 (iv) Specific limits of disturbance consistent to that shown on an approved

10 Type 2 Tree Conservation Plan; and

11 (v) A clear and definite delineation of all woodland conservation areas and
 12 areas to remain undisturbed consistent with the approved Type 2 Tree Conservation Plan;

13 (D) Storm drainage provisions, including:

14 (i) Velocities and quantities of flow at outfalls; and

15 (ii) Site conditions around points of all surface water discharge from the
 16 site;

17 (E) Erosion and sediment control provisions to minimize on-site erosion and
 18 prevent off-site sedimentation including:

19 (i) Provisions to preserve top soil and limit disturbance;

20 (ii) Details of grading practices;

21 (4) Design details for structural controls;

22 (5) Details of temporary and permanent stabilization measures including placement
 23 of the statement on the plan that following initial soil disturbance or redisturbance, permanent or
 24 temporary stabilization shall be completed within seven (7) calendar days for the surface of all
 25 perimeter dikes, swales, ditches, perimeter slopes and all slopes greater than 3 horizontal to 1
 26 vertical (3:1), and for all embankments of ponds, basins and traps; and fourteen (14) days for all
 27 other disturbed or graded areas on the project site provided that the requirements of this Section
 28 do not apply to those areas which are shown on the plan and are currently being used for material
 29 storage or for those areas on which actual construction activities are currently being performed or
 30 to interior areas of a surface mine site where the stabilization material would contaminate the
 31 recoverable resource;

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

5 (A) Clearing and grubbing for those areas necessary for installation of perimeter
6 controls;

7 (B) Construction of perimeter controls;

8 (C) Remaining clearing and grubbing;

9 (D) Road grading;

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

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

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

14 (H) Removal of controls;

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

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

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

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

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

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

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

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

14 (a) The entire area, or each subdivision thereof, included within the limits of proposed cut
15 and fill shall be stripped with particular emphasis on the removal of all root mat, trash, organic
16 matter, and otherwise objectionable, noncomplying and unsuitable materials and soils. All
17 previously placed uncontrolled fill shall be removed from areas to receive class 1 fill for a
18 building or structure that is to be erected. No building or structure shall be erected on class III
19 fill material.

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

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

25 (3) Natural and/or existing slopes steeper than five (5) horizontal to one (1) vertical
26 shall be benched or continuously stepped into competent materials prior to placing fill of any
27 class. Fills toeing out on natural slopes steeper than four (4) horizontal to one (1) vertical shall
28 not be made unless approved by the Director after receipt of a report by a soil engineer certifying
29 that he has investigated the property, made soil tests, and that, in his opinion, such steeper slopes
30 will safely support the proposed fill.

31 (4) All specimen trees within or adjacent to areas of proposed disturbance shall be

1 protected in accordance with the approved Type 2 Tree Conservation Plan. Where Type 2 Tree
 2 Conservation Plan is not required, all specimen trees within or adjacent to areas of disturbance
 3 shall be protected by appropriate tree protection devices placed outside the drip line of the tree.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) All Class 1 and 2 fills shall consist of readily compactable soils meeting the following
 8 minimum requirements:

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

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

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

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

27 **Sec. 32-158. Fill - Compaction.**

28 (a) Each layer of Class 1 and Class 2 fills shall be compacted at optimum moisture content
 29 (plus or minus two (2) percentage points), and to a minimum of ninety-five percent (95%) and
 30 ninety percent (90%), respectively, of maximum density as determined in the laboratory by the
 31 Standard Proctor Test (AASHTO T-99, ASTM D-698). Each layer of Class 3 fills shall be

1 compacted sufficiently to support customarily used tracked spreading equipment and upon
 2 completion to be stable and after planting to prevent erosion. Other methods of compaction that
 3 the Director deems appropriate and result in an equal or better quality of compaction for Class 1
 4 and 2 fills may be accepted.

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

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

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

15 **Sec. 32-159. Subgrade – Compaction.**

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

21 **Sec. 32-160. Slopes.**

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

25 (1) No fill or cut shall be made which creates an exposed surface steeper in slope than
 26 two (2) horizontal to one (1) vertical unless specifically waived by the Director after receipt of a
 27 report by a soil engineer certifying that the engineer has investigated the property, and that, in the
 28 engineer's opinion, such steeper slope will be structurally stable and that the ground cover to be
 29 used is of a low maintenance type and will effectively control erosion.

30 (2) The Director may require that slopes be constructed with exposed surface flatter
 31 than those shown in Section 32-151, or may require such other measures as the Director deems

1 necessary for stability and safety.

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

5 **Sec. 32-161. Slope – Setbacks.**

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

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

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

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

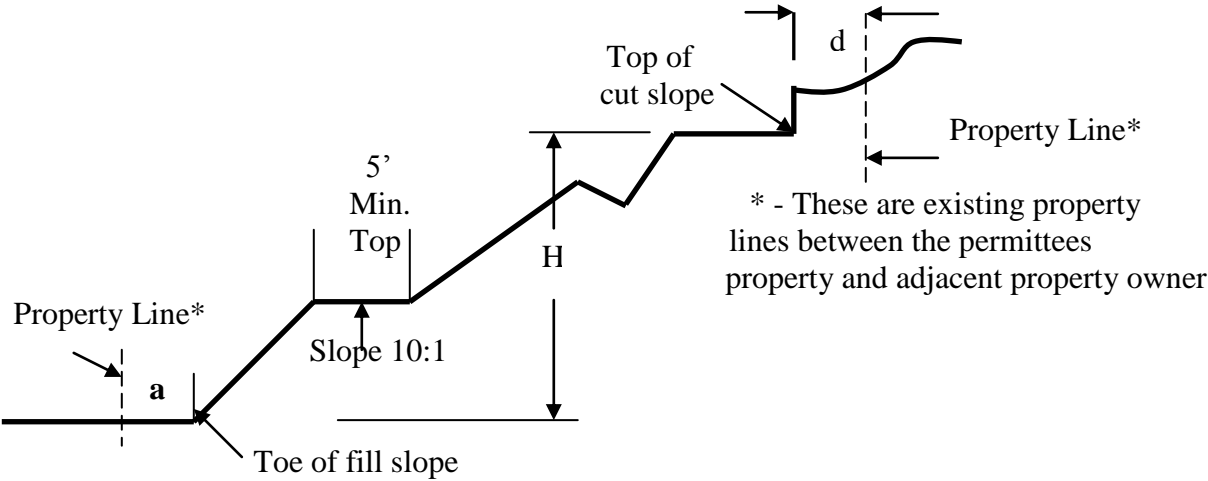
16 (A) The Director determines the necessity for the setback to be eliminated or
17 reduced by the construction of retaining walls or because the owner/permittee has the right to
18 extend slopes onto the adjacent property; or

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

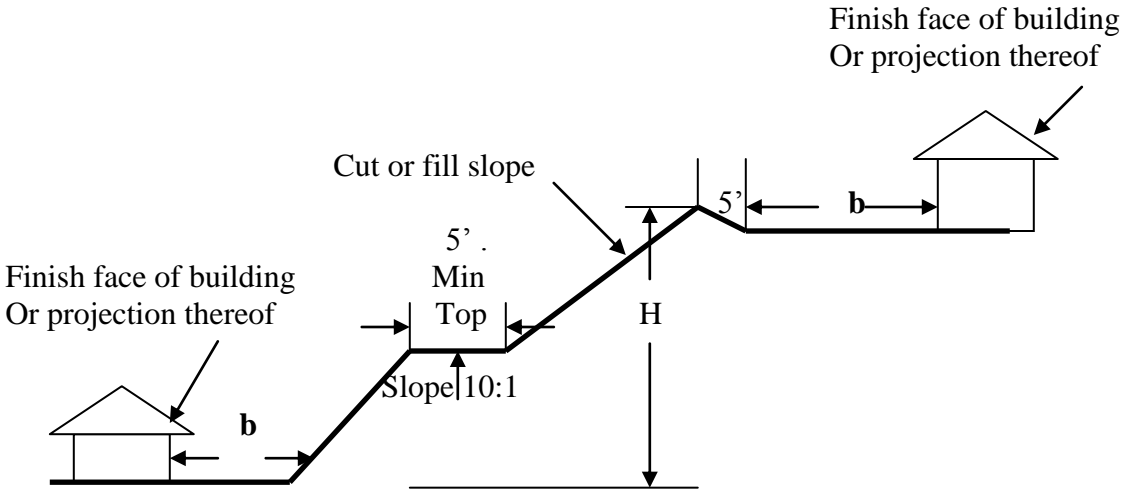
MINIMUM SETBACK REQUIREMENTS
for Slopes Steeper than 4:1

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 drainage terraces, nor shall
13 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 proposed 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, Maryland Standards and
 20 Specifications for Soil Erosion and Sediment Control (as amended).

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 (as
 23 amended).

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

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

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

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

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

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

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

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

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

16 **DIVISION 3. STORMWATER MANAGEMENT.**

17 **Subdivision 1. General Provisions.**

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

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

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

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

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

21 (d) The County may grant an administrative waiver to a development that received a
 22 preliminary project approval prior to May 4, 2010. Administrative waivers expire according to
 23 (1) of this Section and may be extended according to (2) of this Section.

24 (1) Expiration of Administrative Waivers.

25 (A) Except as provided in (2) of this Section, an administrative waiver shall
 26 expire on:

27 (i) May 4, 2013, if the development does not receive final project approval
 28 prior to that date; or

29 (ii) May 4, 2017, if the development receives final project approval prior to
 30 May 4, 2013;

31 (iii) An administrative waiver shall expire if there is a substantial change to

1 the proposed development after the preliminary project approval, as determined by the
 2 approving agency. A substantial change means:

- 3 (a) An increase in impervious surface by greater than 25%; and
 4 (b) A change in proposed drainage basin or watershed.

5 (B) Construction of stormwater management system facilities, in a final
 6 approved stormwater management plan under Section 32-182 (c), authorized pursuant to an
 7 administrative waiver must be completed by May 4, 2017 or, if the waiver is extended as
 8 provided in (2) of this Section, by the expiration date of the waiver extension.

9 (2) Extension of Administrative Waivers.

10 (A) Except as provided in subsection (d)(2)(B), an administrative waiver shall
 11 not be extended.

12 (B) An administrative waiver may only be extended, if, by May 4, 2010 the
 13 development:

- 14 (i) Has received a preliminary project approval; and
 15 (ii) Was subject to a Development Rights and Responsibilities Agreement,
 16 a Tax Increment Financing approval, or an Annexation Agreement.

17 (3) Administrative waivers extended under subsection (d)(2)(B) shall expire when the
 18 Development Rights and Responsibilities Agreement, the Tax Increment Financing approval, or
 19 the Annexation Agreement expires.

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

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

1 | reference:

2 | (1) The 2000 Maryland Stormwater Management Design Manual, Volumes I and II
3 | Maryland Department of the Environment (April 2000), as amended; and

4 | (2) The USDA Natural Resources Conservation Service Maryland Conservation
5 | Practice Standard Pond Code 378 (January 2000), as amended.

6 | (3) Adopted Comprehensive Watershed Management Plans:

7 | (A) CR-61-1986 – Piscataway Creek

8 | (B) CR-62-1986 – Henson Creek

9 | **Sec. 32-171. Definitions.**

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

12 | (1) **Administration** - the Maryland Department of the Environment (MDE) Water
13 | Management Administration (WMA).

14 | (2) **Administrative Waiver** - a decision by the Director pursuant to this regulation to
15 | allow the construction of a development to be governed by the stormwater management
16 | ordinance in effect as of May 4, 2009, in the County where the project will be located.

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

22 | (4) **Agricultural Land Management Practices** - those methods and procedures used
23 | in the cultivation of land in order to further crop and livestock production and conservation of
24 | related soil and water resources.

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

30 | (6) **Applicant** - any person, agent, firm or governmental agency that executes the
31 | necessary forms to procure official approval of a project, or a permit to carry out the construction

1 of a project.

2 (7) **Approval**

3 (A) “Approval” means a documented action by the Department following a
 4 review to determine and acknowledge the sufficiency of submitted material to meet the
 5 requirements of a state in the Department’s development review process.

6 (B) “Approval” does not mean an acknowledgment by the Department that
 7 submitted material has been received for review.

8 (8) **Aquifer** - porous water bearing geological formation generally restricted to
 9 materials capable of yielding an appreciable supply of water.

10 (9) **Best Management Practice (BMP)** – a structural device or nonstructural practice
 11 designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce
 12 pollution, and provide other amenities.

13 (10) **Bioretention** - a structural soil/plant device, source control, terrestrial base,
 14 filter/infiltrating device for managing stormwater runoff.

15 (11) **Channel Protection Storage Volume (Cp_v)** – the volume used to design
 16 structural management practices to control stream channel erosion. Methods for calculating the
 17 channel protection storage volume are specified in the 2000 Maryland Stormwater Management
 18 Design Manual.

19 (12) **Chesapeake Bay Critical Area** - all waters of and lands under the Chesapeake
 20 Bay and its tributaries to the head of tide as indicated on the State wetlands’ maps; and all State
 21 and private wetlands designated under the Annotated Code of Maryland, Natural Resources
 22 Article, Title 9; and all land and water areas within one thousand (1,000) feet beyond the
 23 landward boundaries of State or private wetlands and heads of tide designated under the
 24 Annotated Code of Maryland, Natural Resources Article Title 9, as indicated on approved
 25 Chesapeake Bay Critical Area Overlay Zoning Map Amendments.

26 (13) **Clearing** - the removal of trees and brush from land, but which does not include
 27 the ordinary mowing of grass.

28 (14) **Concept Plan** - the first of three required plan approvals that includes the
 29 information necessary to allow an initial evaluation of a proposed project.

30 (15) **Conservation Agreement** - a formal agreement that commits a grading or
 31 building permit applicant to the execution of various approved elements of a Conservation Plan.

1 including a stormwater concept management plan, an approved sediment and erosion control
 2 plan, a vegetation management plan and other plans that may be required by the Department or
 3 the Prince George's County Planning Board.

4 (16) **Conservation Plan** - a plan developed in accordance with Subtitle 5B, which
 5 demonstrates how a project has been designed to meet the specific Critical Area Commission
 6 criteria. The Conservation Plan consists of an approved stormwater management concept plan,
 7 an approved sediment and erosion control plan, a vegetation management plan, and such other
 8 plans relating to environmental systems as may be required by the Washington Suburban
 9 Sanitary Commission, the Maryland-National Capital Park and Planning Commission, the Prince
 10 George's County Health Department, the Department or the Prince George's Soil Conservation
 11 District.

12 (17) **County** - Prince George's County, Maryland.

13 (18) **County Engineer** - Department engineering staff.

14 (19) **Department** - Department of Public Works and Transportation.

15 (20) **Detention Structure** - a permanent structure for the temporary storage of runoff
 16 designed so as not to create a permanent pool of water.

17 (21) **Develop Land** - to change the runoff characteristics of a parcel of land in
 18 conjunction with residential, commercial, industrial, or institutional construction or alteration.

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

25 (23) **Direct Discharge** - the concentrated release of stormwater to tidal waters or
 26 vegetated tidal wetlands from new development or redevelopment projects in the Chesapeake
 27 Bay Critical Area.

28 (24) **Director** - the Director of the Department.

29 (25) **Drainage Area** - the area contributing runoff to a study point measured in a
 30 horizontal plane enclosed by a ridge line.

31 (26) **Easement** - a grant or reservation by the owner of land for the use of such land by

1 others for a specific purpose or purposes, the use of which must be included in the conveyance of
2 land affected by such easement.

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

7 (28) **Exemption** - those land development activities that are not subject to the
8 stormwater management requirements contained in this Division.

9 (29) **Extended Detention** - a stormwater design feature that provides gradual release
10 of a volume of water in order to increase settling of pollutants and protect downstream channels
11 from frequent storm events. (Methods for designing extended detention BMPs are specified in
12 the Maryland Design Manual).

13 (30) **Extreme Flood Volume (Qf)** - the storage volume required to control infrequent,
14 but large storm events in which overbank flow reaches or exceeds the boundaries of the 100-year
15 floodplain.

16 (31) **Filtration** - the attenuation of stormwater runoff pollutants by plant and/or
17 soil/sand complexes.

18 (32) **Final project approval** - approval of the final stormwater management plan and
19 erosion and sediment control plan required to construct a project's stormwater management
20 facilities that includes securing bonding or financing for final development plans if either is
21 required as a prerequisite for approval.

22 (33) **Final Stormwater Management Plan** - the last of the three required plan
23 approvals that includes the information necessary to allow all approvals and permits to be issued
24 by the Department.

25 (34) **Flow Attenuation** - prolonging the flow time of runoff to reduce the peak
26 discharge.

27 (35) **Grading** - any act by which soil is disturbed, cleared, stripped, grubbed,
28 excavated, scarified, filled or any combination thereof.

29 (36) **Impervious Area** – an area that is covered with solid material or is compacted to
30 the point where water cannot infiltrate underlying soils (e.g., parking lots, roads, houses, patios,
31 swimming pools, compacted gravel areas, and so forth) and where natural hydrologic patterns

1 are altered.

2 (37) **Infiltration** - the passage or movement of water into the soil surface.

3 (38) **Maryland Design Manual** - the latest edition of the 2000 Maryland Stormwater
 4 Design Manual, Volumes I and II, that serve as the State of Maryland's official guide for
 5 stormwater management principals, methods and practices.

6 (39) **Major Watersheds** - the forty-two (42) watersheds identified in the watershed
 7 management plan for the purposes of identifying the preferred stormwater management approach
 8 within that major watershed.

9 (40) **Maximum Extent Practicable (MEP)** - designing stormwater management
 10 systems so that all reasonable opportunities for using ESD planning techniques and treatment
 11 practices are exhausted and only where absolutely necessary, a structural BMP is implemented.

12 (41) **Natural Resource Inventory (NRI)** - a plan map and supporting documentation
 13 that provides all required information regarding the existing physical and environmental
 14 conditions on site and is approved by the Planning Director of the Maryland-National Capital
 15 Park and Planning Commission, or the Director's designee.

16 (42) **Off-Site Stormwater Management** - the design and construction of a regional
 17 facility necessary to control stormwater from more than one development which is to be located
 18 outside the proposed area of development.

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

21 (44) **On-Site Stormwater Management** - the design and construction of systems
 22 necessary to control stormwater within the proposed area of development.

23 (45) **Overbank Flood Protection Volume (Op)** - the volume controlled by structural
 24 practices to prevent an increase in the frequency of out-of-bank flooding generated by
 25 development. (Methods for calculating the overbank flood protection volume are specified in the
 26 Maryland Design Manual).

27 (46) **Permittee** - the individual or corporation officer that signs the stormwater
 28 management permit and is legally responsible for all activities pertaining to the permit.

29 (47) **Person** - the federal government, the State, any county, municipal corporation, or
 30 other political subdivision of the State, or any of their units, or an individual receiver, trustee,
 31 guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership.

1 firm, association, public or private corporation, or any other entity.

2 (48) **Planning Techniques** - a combination of strategies employed early in project
 3 design to reduce the impact from development and to incorporate natural features into a
 4 stormwater management plan.

5 (49) **Pollutant** - Sediment runoff due to erosion.

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

12 (51) **Pond** - any stormwater management device that meets the category definition of
 13 MD 378-USDA Natural Resources Conservation Service: Conservation Standard Pond.

14 (52) **Preliminary Plan** - the preliminary plan of subdivision submitted pursuant to the
 15 County's subdivision regulations.

16 (53) **Preliminary Project Approval** – approval of an Applicant's stormwater
 17 management concept plan, which includes:

18 (A) **Number of planned dwelling units or lots;**

19 (B) **Proposed project density;**

20 (C) **Proposed size and location of all land uses for the project;**

21 (D) **Plan that identifies:**

22 (i) **Proposed drainage patterns;**

23 (ii) **Location of all points of discharge from the site; and**

24 (iii) **The type, location, and size of all stormwater management measures**

25 based on site-specific stormwater management requirement computations; and

26 (E) **Any other information required by the Department including, but not limited**

27 to:

28 (i) **Proposed alignment, location, and construction type and standard for**
 29 **all roads, access ways and areas of vehicular traffic;**

30 (ii) **Demonstration that the methods by which the development will be**
 31 **supplied with water and wastewater service are adequate; and**

1 (iii) Size, type, and general location of all proposed wastewater and water
2 system infrastructure.

3 (54) **Recharge Volume (Re_v)** - that portion of the water quality volume used to
4 maintain groundwater recharge rates at development sites. (Methods for calculating the recharge
5 volume are specified in the Maryland Design Manual).

6 (55) **Redevelopment** - any construction, alteration or improvement performed on sites
7 where existing land use is commercial, industrial, institutional, or multifamily residential and
8 existing site impervious area within the limit of disturbance exceeds 40 percent.

9 (56) **Retention Structure** - a permanent structure that provides for the storage of
10 runoff and is designed to maintain a permanent pool of water.

11 (57) **Retrofitting** - the implementation of ESD practices, the construction of structural
12 BMP, or the modification of an existing structural BMP in a previously developed area to
13 improve water quality over current conditions.

14 (58) **Sediment** - soils or other surficial materials transported or deposited by the action
15 of wind, water, snow, ice or gravity as a product of erosion.

16 (59) **Site** - for new development, any tract, lot, or parcel of land or combination of
17 tracts, lots, parcels of land that are in one ownership or are contiguous and in diverse ownership,
18 where development is to be performed as a part of a unit, subdivision or project.

19 (60) **Site Development Plan** - the second of three required plan approvals that
20 includes the information necessary to allow a detailed evaluation of a proposed project.

21 (61) **Stabilization** - the prevention of soil movement by any of various vegetative
22 and/or structural means.

23 (62) **Stormwater** - water that originates from a precipitation event.

24 (63) **Stormwater Management (SWM)** - using ESD for the collection, conveyance,
25 storage, treatment and disposal of stormwater runoff in a manner to prevent accelerated channel
26 erosion, increased flood damage and/or degradation of water quality.

27 (64) **Stormwater Management Design Plan** - the set of drawings and other
28 documents that comprise all of the information and specifications for the systems, structures,
29 concepts, and techniques that will be used to control stormwater as required by the approved
30 concept plan and the Maryland Design Manual.

31 (65) **Stormwater Management System** - natural areas, ESD practices, stormwater

1 management measures, and any other structure through which stormwater flows, infiltrates or
 2 discharges from a site.

3 (66) **Stormwater Variance** - the modification of the minimum stormwater
 4 management requirements for specific circumstances such that strict adherence to the
 5 requirements would result in unnecessary hardship and not fulfill the intent of this Division.

6 (67) **Stream Restoration** - restoration and reconstruction of existing waterways to
 7 maintain the ecological features of the stream, to mitigate stream bed incision and stream wall
 8 erosion, to preserve the capacity and to enhance the water quality of the stream. Stream
 9 restoration shall address the following including, but not limited to, intervention and installation
 10 of measures to repair damages to the stream corridors, hydrology, hydraulics, sediment transport,
 11 geomorphology, aquatic ecology, fisheries and riparian ecology.

12 (68) **Stripping** - any activity that removes the vegetation surface cover including tree
 13 removal, clearing, grubbing and storage or removal of topsoil.

14 (69) **Subdivision** - the division of a lot, tract or parcel of land into two or more lots,
 15 plots, sites, parcels or other divisions by plat or deed.

16 (70) **Watercourse** - any natural or artificial stream, river, creek, ditch, channel, canal,
 17 conduit, culvert, drain, waterway, gully, ravine or wash, in and including any adjacent area that
 18 is subject to inundation from overflow or flood water.

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

22 (72) **Watershed** - the total drainage area contributing runoff to a single point.

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

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

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

1 (c) Each watershed plan shall contain stormwater management policies and
 2 recommendations for the implementation of these policies and shall be approved by the
 3 Administration.

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

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

8 (1) Include detailed hydrologic and hydraulic analyses to determine hydrograph
 9 timing;

10 (2) Evaluate both quantity and quality management and opportunities for ESD
 11 implementation;

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

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

15 (5) Be conducted at a reasonable scale;

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

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

20 (8) Be approved by the Administration.

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

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

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

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

28 (1) Agricultural land management practices;

29 (2) Additions or modifications to existing detached one-family dwellings provided
 30 that they comply with item (3) of this Subsection; and the subject site does not exceed the
 31 maximum allowable lot coverage allowed in Section 27-442 (c) Table II – Lot Coverage and

1 Green Area or Section 27-445.12 (a) (3) Table 2 Maximum Net Lot Coverage, whichever
 2 applies.

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

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

8 (5) Land development activities which the Administration determines will be
 9 regulated under specific state laws that provide for managing stormwater runoff.

10 (b) Where the property is located within a Chesapeake Bay Critical Area Overlay Zone,
 11 the development activities in Subsection (a), above, except for agricultural land management
 12 activities, shall comply with the stormwater management requirements of this Division and
 13 conform with the requirements of Subtitle 5B, and a Conservation Plan shall be required relating
 14 to the stormwater management activities. In all cases, the development activities located within
 15 the Chesapeake Bay Critical Area Overlay Zone, and are required to comply with stormwater
 16 management requirements, shall meet the requirements of this Division and conform to the
 17 requirements of Subtitle 5B.

18 **Sec. 32-175. Redevelopment.**

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

22 (b) All redevelopment designs shall:

23 (1) Reduce impervious area within the limit of disturbance (LOD) by at least 50
 24 percent according to the Maryland Design Manual;

25 (2) Implement ESD to the MEP to provide water quality treatment for at least 50
 26 percent of the existing impervious area within the LOD; or

27 (3) Use a combination of subsections (b) (1) and (2) for at least 50 percent of the
 28 existing site impervious area within the LOD; and

29 (4) Infiltrate into the ground 100 percent of the annual average predevelopment
 30 groundwater recharge volume if soil's infiltration is 1.02 inches per hour or greater.

31 (c) All redevelopment designs approved after May 4, 2016, shall:

1 (1) Reduce impervious area within the LOD by 75 percent in accordance with the
 2 Maryland Design Manual;

3 (2) Implement ESD to the MEP to provide water quality treatment for 75 percent of
 4 the existing impervious area within the LOD; or

5 (3) Use a combination of subsections (c) (1) and (2) to meet 75 percent of existing
 6 site impervious area within the LOD; and

7 (4) Infiltrate into the ground 100 percent of the annual average predevelopment
 8 groundwater recharge volume if soil's infiltration is 1.02 inches per hour or greater.

9 (d) All redevelopment designs approved after May 4, 2019, shall:

10 (1) Reduce impervious area within the LOD by 100 percent in accordance with the
 11 Maryland Design Manual;

12 (2) Implement ESD to the MEP to provide water quality treatment for 100 percent of
 13 the existing impervious area within the LOD; or

14 (3) Use a combination of subsection (d)(1) and (2) to meet 100 percent of existing
 15 site impervious area within the LOD.

16 The Director may consider a variance under Section 32-176 of this Division.

17 (e) To offset the cost and design impacts of achieving the requirements of subsection (b)
 18 and (c) of this section, redevelopment designs that exceed the County requirements by twenty-
 19 five (25) percent and that are approved after May 4, 2011, are eligible to receive, subject to
 20 Subtitle 27 of the County Code:

21 (1) Increased density through the public benefit credits, density increment
 22 factors or additional floor area ratios (FAR);

23 (2) Reduction in the number of spaces and design of on-site parking to
 24 accommodate ESD techniques;

25 (3) Priority consideration during the County's development review and
 26 permitting processes;

27 (4) Eligibility for residential revitalization tax credit under Subtitle 10, Subdivision
 28 5B and Section 27-445.10. of the County Code without Council approval;

29 (f) MEP shall be determined by the Director.

30 (g) All redevelopment projects shall reduce existing site stormwater runoff volume by
 31 implementing distributed ESD to the MEP. Where conditions prevent the implementation of

1 ESD techniques to reduce runoff, the Maryland Stormwater Design Manual criteria shall be
 2 implemented.

3 (h) Alternative stormwater management measures may be used to meet the requirements in
 4 subsections (a), (b), (c) and (l) if the owner/applicant satisfactorily demonstrates to the
 5 Department that impervious area reduction has been maximized and ESD has been implemented
 6 on-site to the MEP. Off-site ESD in the impacted watershed shall be the preferred alternative
 7 stormwater measure. Alternative stormwater management measures include, but are not limited
 8 to:

9 (1) An on-site structural BMP;

10 (2) An off-site structural BMP to provide water quality treatment for an
 11 area equal to or greater than 50 percent of the existing impervious area; or

12 (3) A combination of impervious area reduction, ESD implementation, and
 13 on-site or off-site structural BMP for an area equal to or greater than 50 percent of the existing
 14 site impervious area within the LOD;

15 (4) Participation in a stream restoration project;

16 (5) Pollution trading with another entity;

17 (6) Design criteria based on watershed management plans developed
 18 according to this Division;

19 (7) Fees paid that are dedicated exclusively to provide stormwater
 20 management; and

21 (8) Other appropriate practices.

22 (i) The Department shall develop policies for providing stormwater management for
 23 redevelopment projects if the requirements of subsections (a), (b), (c) and (l) are not met after all
 24 opportunities for using onsite and offsite ESD have been exhausted during the planning process.
 25 After being reviewed and approved by the Administration, these proposed policies will be
 26 provided to the County Council for its approval.

27 (j) The Department may consider factors, including, but not be limited to:

28 (1) Whether the project is in an area targeted for development incentives such as
 29 a Priority Funding Area, a designated Transit Oriented Development area, or a designated Base
 30 Realignment and Closure Revitalization and Incentive Zone;

31 (2) Whether the project is necessary to accommodate growth consistent with

1 comprehensive plans; or

2 (3) Whether bonding and financing have already been secured based on an
 3 approved development plan.

4 (4) In considering these factors in (1), (2) and (3) above in this subsection (j),
 5 the Department shall also consider the existing water quality, erosion, flooding and expected
 6 needs for County investment in stream restoration, erosion control and flood control in the areas
 7 affected by redevelopment.

8 (k) Stormwater management shall be addressed for the portion of the site within the limit
 9 of disturbance according to the new development requirements in the Maryland Design Manual
 10 for any net increase in impervious area.

11 (l) If the Department determines that existing flooding and/or erosion exist downstream of
 12 the proposed development, the Department:

13 (1) should require the applicant to manage the channel protection volume using
 14 ESD to the MEP; and

15 (2) has authority to require the applicant to attenuate the 2-year and 10-year
 16 storm runoff for downstream erosion for residual volume not addressed by ESD; and

17 (3) has authority to require the applicant to attenuate the 100-year frequency
 18 storm event for downstream flooding in accordance with the Maryland Design Manual.

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

20 The Department may grant a written variance from any requirement of this Division if there
 21 are exceptional circumstances applicable to the site such that strict adherence will result in
 22 unnecessary hardship and not fulfill the intent of the Division. A written request for a variance
 23 shall be provided to the Director stating the specific variance sought and appropriate
 24 justification. The Department shall not grant a variance unless and until sufficient justification is
 25 provided by the permittee developing land that the implementation of ESD to MEP has been
 26 investigated thoroughly and the Department has provided notice to the Council. The justification
 27 shall include an explanation of why the requirement of the Division cannot be met and the
 28 reasons why the alternative practices cannot be provided.

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

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

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

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

3 (c) The applicant shall submit a stormwater management design plan to the Department.

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

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

9 (a) The minimum control requirements established in this Section and the Maryland
10 Design Manual are as follows:

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

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

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

29 (b) Alternative minimum control requirements may be submitted for approval to the
30 Administration. A demonstration that alternative requirements will implement ESD to the MEP
31 and control flood damages, accelerated stream erosion, water quality, and sedimentation will be

1 required by the Department. Comprehensive watershed studies also may be required.

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

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

9 (e) Best management practices information for new developments and redevelopments
 10 shown on the approved final stormwater management plans, where applicable, shall be submitted
 11 by the Department to the Department of Environmental Resources for submission to the
 12 Administration under the requirements of the NPDES Program. The owner and/or applicant
 13 shall provide this information to the Department.

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

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

20 (a) ESD Planning Techniques and Practices.

21 (1) The following planning techniques shall be applied to MEP according to the
 22 Maryland Design Manual to satisfy the applicable minimum control requirements established in
 23 32-178 of this Division:

24 (A) Preserving and protecting natural resources;

25 (B) Conserving natural drainage patterns;

26 (C) Minimizing impervious area;

27 (D) Reducing runoff volume;

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

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

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

2 (H) Clustering development; and

3 (I) Any practices approved by the Administration.

4 (2) The following ESD treatment practices shall be designed to MEP according to the
 5 Maryland Design Manual to satisfy the applicable minimum control requirements established in
 6 32-178 of this Division:

7 (A) Disconnection of rooftop runoff;

8 (B) Disconnection of non-rooftop runoff;

9 (C) Sheet flow to conservation areas;

10 (D) Rainwater harvesting;

11 (E) Submerged gravel wetlands;

12 (F) Landscape infiltration;

13 (G) Infiltration berms;

14 (H) Dry wells;

15 (I) Micro-bioretenion;

16 (J) Rain gardens;

17 (K) Swales;

18 (L) Enhanced filters; and

19 (M) Any practice approved by the Administration.

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

24 (b) Structural Stormwater Management Measures.

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

28 (A) Stormwater management ponds;

29 (B) Stormwater management wetlands;

30 (C) Stormwater management infiltration;

31 (D) Stormwater management filtering systems; and

1 (E) Stormwater management open channel systems.

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

6 (3) Structural stormwater management practices shall be selected to accommodate the
7 unique hydrologic or geologic regions of the County.

8 (c) ESD planning techniques, treatment practices and structural stormwater management
9 measures used to satisfy the minimum requirements in 32-178 of this Division must be recorded
10 in the land records of the County through the execution of a maintenance agreement by the
11 permittee and remain unaltered by subsequent property owners. Prior approval from the
12 Department shall be obtained before any stormwater management practice is altered.

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

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

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

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

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

27 (a) The design of stormwater management design plans shall be prepared by any
28 individual whose qualifications are acceptable to the Department. The Department may require
29 that the design be prepared by either a professional engineer, professional land surveyor, or
30 landscape architect licensed in the State of Maryland, as necessary to protect the public or the
31 environment.

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

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

5 (a) Concept Plan.

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

10 (1) A vicinity map;

11 (2) An approved Natural Resources Inventory plan;

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

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

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

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

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

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

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

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

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

28 (12) Hydraulic computations;

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

31 (14) Preliminary estimates of stormwater management requirements, the selection and

1 location of ESD practices to be used, and the location of all points of discharge from the site;

2 (15) A narrative that supports the concept design and describes how ESD will be
 3 implemented to the MEP; and

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

5 (b) Site Development Plan.

6 Following concept plan approval by the Department, the owner/applicant shall submit
 7 technical plans that reflect the comments received from the previous concept plan review phase.

8 Plans submitted shall be of sufficient detail to allow site development to be reviewed and shall
 9 include but not be limited to:

10 (1) All information provided during the concept plan review phase;

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

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

18 (4) A narrative that supports the site development design, describes how ESD will be
 19 used to meet the minimum control requirements, and justifies any proposed structural stormwater
 20 management measure; and

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

22 (c) Final Stormwater Management Plan.

23 Following the site development plan review by the Department, the owner/applicant shall
 24 submit a final stormwater management plan for permit issuance. Plans submitted for permit
 25 issuance shall be of sufficient detail to allow all approvals and permits to be issued according to
 26 the following:

27 (1) Final erosion and sediment control plans shall be submitted according to COMAR
 28 26.17.01.05; and

29 (2) The final stormwater management plans shall be submitted for approval in the
 30 form of construction drawings and be accompanied by a report that includes sufficient
 31 information to evaluate the effectiveness of the proposed runoff control design.

1 (d) Reports submitted for an approval of final stormwater management plans shall include,
2 but are not limited to:

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

6 (2) Drainage area maps depicting predevelopment as applicable and post
7 development runoff flow path segmentation and land use;

8 (3) Hydrologic computations of the applicable ESD and unified sizing criteria
9 according to the Maryland Design Manual for all points of discharge from the site;

10 (4) Hydraulic and structural computations for all ESD practices and structural
11 stormwater management measures to be used;

12 (5) A narrative that supports the stormwater management design plan; and

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

14 (e) Construction drawings submitted for final stormwater management plan approval shall
15 include, but are not limited to:

16 (1) A vicinity map;

17 (2) Existing and proposed topography and proposed drainage areas, including areas
18 necessary to determine downstream analysis for proposed stormwater management facilities;

19 (3) Any proposed improvements including location of buildings or other structures,
20 impervious surfaces, storm drainage facilities, and all grading;

21 (4) The location of existing and proposed structures and utilities;

22 (5) Any easements and rights-of-way;

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

25 (7) Structural and construction details including representative cross sections for all
26 components of the proposed drainage system or systems, and stormwater management facilities;

27 (8) All necessary construction specifications;

28 (9) Sequence of construction;

29 (10) Data for total site area, disturbed area, new impervious area, and total impervious
30 area;

31 (11) A table showing the ESD and unified sizing criteria volumes required in the

1 Maryland Design Manual;

2 (12) A table of materials to be used for stormwater management facility planting;

3 (13) All soil boring logs and locations;

4 (14) An inspection and maintenance schedule;

5 (15) Certification by the owner/applicant that all stormwater management construction
6 will be done according to this plan;

7 (16) An as-built certification signature block to be executed after project completion;

8 and

9 (17) Any other information required by the Department.

10 (f) If a stormwater management design plan involves direction of some or all runoff from
11 the site, it is the responsibility of the applicant to obtain from adjacent property owners any
12 easements or other necessary property interests concerning flow of water. Approval of a
13 stormwater management plan does not create or affect any right to direct runoff onto adjacent
14 property without that property owner's permission.

15 (g) Notification

16 (1) The applicant shall send, within seven (7) days of filing of a stormwater concept
17 plan under this Section, by first class mail an informational mailing to all adjoining property
18 owners, including owners whose properties lie directly across a street, alley, or stream, to every
19 municipality located within one (1) mile of the applicant's property and to all civic associations
20 registered with the Maryland National Capital Park and Planning Commission pursuant to Sec.
21 17-125.01 of the County Code for the area which includes the property."

22 (2) The applicant shall file an affidavit of mailing with the Department prior to
23 approval of the stormwater concept plan. The affidavit shall give the names and addresses of all
24 persons sent informational mailings and the dates when they were sent.

25 (3) Before a stormwater concept plan is approved, the Department shall determine
26 that the applicant has complied with this section.

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

28 (a) All changes or modifications to the approved final stormwater management plans must
29 be submitted to and approved by the Department. All necessary substantiating reports shall be
30 submitted with any proposal to modify the approved plan. No grading or other work in
31 connection with any proposed modification shall be permitted without proper written approval of

1 the Department. If the revision where the limits of disturbance affects the tree conservation area
2 then a revised tree conservation plan shall also be required.

3 (b) When inspection of a site indicates that the approved final stormwater management
4 plan requires a revision or change, the revision shall be in compliance with this Division. To
5 obtain an approved revision, the permittee shall:

6 (1) Submit a request for a revision to the approved final stormwater management plan
7 to the Department to be processed appropriately. This includes revisions due to plan and site
8 discrepancies and inadequacies at controlling stormwater as revealed through inspection; or

9 (2) Request a field change approval for modifications to the approved final
10 stormwater management plan and obtain County Engineer's approval. The modification shall be
11 noted on a signed copy of the approved plan, signed and dated by a Department's inspector and
12 documented on a field inspection report. These field modifications may include change of
13 material type, adjustments to avoid field conflicts and other concerns that may not require
14 recalculations and will not affect stormwater management controls.

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

16 (a) A grading or building permit shall not be issued for any parcel or lot unless a final
17 erosion and sediment control plan has been approved by the Prince George's County Soil
18 Conservation District, and final stormwater management plan has been approved by the
19 Department as meeting all of the requirements of this Division. Where appropriate, building,
20 stormwater management or grading permits shall not be issued or modified without the
21 following:

22 (1) A performance bond acceptable to the County Attorney as required by this
23 Division, where applicable.

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

26 (3) Approved final stormwater management plan, provided that the Director may
27 accept a site grading plan that identifies the location and type of facilities to be constructed in
28 sufficient detail to accurately estimate construction costs.

29 (b) Notwithstanding any of the provisions herein, the Director may require an approved
30 final stormwater management plan and the recordation of all necessary easements prior to
31 issuance of a building permit or grading permit.

1 (c) In no event shall a use and occupancy permit be granted until all of the grading and
 2 stormwater management requirements are completed to the satisfaction of the Director.

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

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

7 (a) A nonrefundable fee shall be paid at the time of the final stormwater management plan
 8 or application for modification is submitted. The fee may provide for the cost of plan review,
 9 administration of the permitting process, inspection and enforcement of all projects subject to
 10 this Division. The fee shall be in the amount specified in Section 32-120.

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

14 (c) Special maintenance fees are required for all publicly maintained stormwater
 15 management ponds. The maintenance fee will be ten percent (10%) of the total estimated
 16 construction cost for all of the site's ponds, or \$10,000.00, whichever is greater. The fee will be
 17 payable by the applicant with all other fees prior to issuance of storm drain and stormwater
 18 management construction permits.

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

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

22 (a) Any violation(s) of the conditions of the approved final stormwater management plan,
 23 including the provisions of the Conservation Plan and Conservation Agreement, where
 24 applicable;

25 (b) Construction not in accordance with the approved final stormwater management plans
 26 or specifications;

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

29 (d) An immediate danger exists in a downstream area as determined by the Department; or

30 (e) Permits found to be issued in error when the original approval did not conform to the
 31 provisions of this Division or the approval was based on inaccurate information provided by the

1 | permittee.

2 | **Sec. 32-187 Permit Conditions.**

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

6 | **Sec. 32-188. Responsibility of Permittee.**

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

13 | (b) Public-ways. The permittee shall be responsible for the prompt removal of, and
 14 | damages resulting from, any soil, miscellaneous debris, and/or pollutant discharge, or other
 15 | materials washed, spilled, tracked, dumped or otherwise deposited on public streets, highways,
 16 | sidewalks, watercourses, or other public thoroughfares as an incident to construction activity, or
 17 | during transit to and from a construction site.

18 | **Subdivision 3. Inspection, Maintenance and Enforcement.**

19 | **Sec. 32-189. Performance Bond.**

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

24 | (b) The amount of the security shall not be less than the total construction cost of the
 25 | publicly maintained stormwater management facility as estimated by the Department.

26 | (c) The security shall include provisions concerning forfeiture for failure to complete work
 27 | specified in the approved final stormwater management plan, compliance with all the provisions
 28 | of this Division and other applicable laws and regulations, and any time limitations. Action on a
 29 | defaulted permit shall be taken in accordance with the provisions set forth in Section 32-135.

30 | (d) The security shall not be fully released without final inspection of completed work and
 31 | the acceptance of "as-built" plans.

1 (e) A provision may be made for the partial release of up to 75 percent of the amount of
2 the security.

3 **Sec. 32-190. Inspection Schedule and Reports.**

4 (a) The permittee shall notify the Department at least 48 hours before commencing any
5 work in conjunction with the site development, the stormwater management plan, and upon
6 completion of the project.

7 (b) Regular inspections shall be made and documented for each ESD planning technique
8 and practice at the stages of construction specified in the Maryland Design Manual by the
9 County, its authorized representatives, or certified by a professional engineer licensed in the
10 State of Maryland. At a minimum, all ESD and other nonstructural practices shall be inspected
11 upon completion of final grading, the establishment of stabilization, and before issuance of a use
12 and occupancy permit approval.

13 (c) Written reports shall include:

14 (1) The date and location of the inspection;

15 (2) Whether construction was in compliance with the approved final stormwater
16 management plan;

17 (3) Any variations from the approved construction specifications; and

18 (4) Any violations that exist.

19 (d) The owner/permittee and on-site personnel shall be notified in writing when violations
20 are observed. Written notification shall describe the nature of the violation and the required
21 corrective action.

22 (e) No work shall proceed on the next phase of development until the Department inspects
23 and approves the work previously completed and furnishes the permittee with the results of the
24 inspection reports after completion of each required inspection.

25 **Sec. 32-191. Inspection Requirements During Construction.**

26 (a) At a minimum, regular inspections shall be made and documented at the following
27 specified stages of construction:

28 (1) For ponds:

29 (A) Upon completion of excavation to sub-foundation and when required,
30 installation of structural supports or reinforcement for structures, including but not limited to:

31 (i) Core trenches for structural embankments;

1 (ii) Inlet and outlet structures, anti-seep collars or diaphragms, and
 2 watertight connectors on pipes; and

3 (iii) Trenches for enclosed storm drainage facilities;

4 (B) During placement of structural fill, concrete, and installation of piping and
 5 catch basins;

6 (C) During backfill of foundations and trenches;

7 (D) During embankment construction; and

8 (E) Upon completion of final grading and establishment of permanent
 9 stabilization.

10 (2) Wetlands – at stages specified for pond construction in Section 32-191 of this
 11 Division, during and after wetland reservoir area planting, and during the second growing season
 12 to verify a vegetation survival rate of at least 50 percent.

13 (3) For infiltration trenches:

14 (A) During excavation to subgrade;

15 (B) During placement and backfill of under drain systems and observation wells;

16 (C) During placement of geotextiles and all filter media;

17 (D) During construction of appurtenant conveyance systems such as diversion
 18 structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and

19 (E) Upon completion of final grading and establishment of permanent
 20 stabilization.

21 (4) For infiltration basins - at the stages specified for pond construction in Section
 22 32-191 of this Division and during placement and backfill of underdrain systems.

23 (5) For filtering systems:

24 (A) During excavation to subgrade;

25 (B) During placement and backfill of underdrain systems;

26 (C) During placement of geotextiles and all filter media;

27 (D) During construction of appurtenant conveyance systems such as flow
 28 diversion structures, pre-filters and filters, inlets, outlets, orifice, and flow distribution structures;

29 and

30 (E) Upon completion of final grading and establishment of permanent
 31 stabilization.

1 (6) For open channel systems:

2 (A) During excavation to subgrade;

3 (B) During placement and backfill of under drain system for dry swales;

4 (C) During installation of diaphragms, check dams, or weirs; and

5 (D) Upon completion of final grading and establishment of permanent
6 stabilization.

7 (b) The Department may, for enforcement purposes, use any one or a combination of the
8 following actions:

9 (1) A notice of violation shall be issued specifying the need for corrective action if
10 the final stormwater management plan noncompliance is identified;

11 (2) A Stop Work Order shall be issued for the site by the Director if a violation
12 persists;

13 (3) Bonds or securities shall be withheld or the case may be referred for legal action
14 if reasonable efforts to correct the violation have not been undertaken; or

15 (4) In addition to any other sanctions, a civil action or criminal prosecution may be
16 brought against any person in violation of this Code, the Maryland Design Manual, or this
17 Division.

18 (c) Any step in the enforcement process may be taken at any time, depending on the
19 severity of the violation.

20 (d) Once construction is complete, “as-built” plan certification shall be submitted by either
21 a professional engineer or professional land surveyor licensed in the State of Maryland to ensure
22 that ESD planning techniques, treatment practices, and structural stormwater management
23 measures and conveyance systems comply with the specifications contained in the approved
24 plans. At a minimum, “as-built” certification shall include a set of drawings comparing the
25 approved final stormwater management plan with what was constructed. The Department may
26 require additional information.

27 (e) The Department shall submit notice of construction completion to the Administration
28 on a form supplied by the Administration for each structural stormwater management practice
29 within 45 days of construction completion. The type, number, total drainage area, and total
30 impervious area treated by all ESD techniques and practices shall be reported to the
31 Administration on a site by site basis. If BMPs requiring Prince George’s Soil Conservation

1 District approval are constructed, notice of construction completion shall also be submitted to the
2 Soil Conservation District.

3 **Sec. 32-192. Final Inspection Reports.**

4 (a) The permittee shall provide "as-built" plans certified by a registered professional
5 engineer to be submitted upon completion of a stormwater management facility.

6 (b) The registered professional engineer shall certify that the facility has been constructed
7 as shown on the "as-built" plan and meets the approved final stormwater management plan and
8 specifications.

9 (c) A final inspection shall be conducted upon completion of the stormwater management
10 facility to determine if the completed work is constructed in accordance with the approved final
11 stormwater management plan.

12 (d) The Department shall maintain a permanent file of all inspection reports.

13 **Sec. 32-193. Acceptance of Certification in Lieu of Inspections.**

14 At the discretion of the Department, the certification of a professional engineer registered in
15 the State of Maryland may be accepted in lieu of any inspection required by this Division.

16 **Sec. 32-194. Ownership and Maintenance of Stormwater Management Facilities.**

17 (a) Any stormwater management measure which serves a single lot or facility shall be
18 privately owned and maintained.

19 (b) All stormwater management measures relying on vegetated areas or site features shall
20 be privately owned and maintained unless located on public property.

21 (c) All other stormwater management facilities shall be publicly owned and operated.

22 **Sec. 32-195. Maintenance Agreement.**

23 (a) Prior to the issuance of any building permit for which stormwater management is
24 required, the County shall require the applicant or owner to execute an inspection and
25 maintenance agreement to include an operation and maintenance plan binding on all subsequent
26 owners of land served by a private stormwater management facility. Such agreement shall
27 provide for access to the facility at reasonable times for regular inspections by the County or its
28 authorized representative to ensure that the facility is maintained in proper working condition to
29 meet design standards.

30 (b) The agreement shall be recorded by the applicant in the land records of the County
31 prior to the issuance of any Use and Occupancy permits for the project.

1 (c) The agreement shall also provide that, if after notice by the Department to correct a
 2 violation requiring maintenance work, satisfactory corrections are not made by the owner(s)
 3 within a reasonable period of time (30 days maximum), the County may perform all necessary
 4 work to place the facility in proper working condition. The owner(s) of the facility shall be
 5 assessed the cost of the work and any penalties. This may be accomplished by placing a lien on
 6 the property, which may be placed on the tax bill and collected as ordinary taxes by the County.

7 **Sec. 32-196. Inspection for Preventive Maintenance.**

8 (a) Preventive maintenance inspections of public infiltration systems, bioretention,
 9 retention or detention structures shall be made by the Department. Inspection reports for public
 10 facilities shall be maintained by the Department.

11 (b) Privately maintained facilities shall be inspected by the property owner of record. The
 12 Department of Environmental Resources shall create an inspection schedule requiring an
 13 inspection during the first year of operation and at least once every three (3) years thereafter.
 14 The inspection reports shall be submitted to the Department of Environmental Resources for
 15 evaluation to ensure compliance with the approved plans and maintenance agreement. Reports
 16 for private facilities shall be maintained by the Department of Environmental Resources.

17 (c) In lieu of the Department of Environmental Resources maintenance inspections, a
 18 licensed professional engineer may also perform maintenance inspections of private facilities and
 19 submit the appropriate reports to the Department of Environmental Resources. Inspections by a
 20 third-party shall be evaluated by the Department of Environmental Resources to ensure
 21 compliance with the approved plan and maintenance agreement.

22 (d) If, after an inspection, the condition of a facility presents an immediate danger to the
 23 public health or safety because of an unsafe condition or improper maintenance, for a publicly
 24 maintained facility, the Department or for a privately maintained facility, the Department of
 25 Environmental Resources as appropriate, shall take such action as may be necessary to protect
 26 the public and make the facility safe. Any cost incurred by the County shall be paid by the
 27 owner.

28 (e) Inspection reports for ESD treatment systems and structural stormwater management
 29 measures shall include the following:

30 (1) The date of inspection;

31 (2) Name of inspector;

1 (3) An assessment of the quality of the stormwater management system related to
 2 ESD treatment practice efficiency and the control of runoff to the MEP;

3 (4) The condition of:

4 (A) Vegetation or filter media;

5 (B) Fences or other safety devices;

6 (C) Spillways, valves, or other control structures;

7 (D) Embankments, slopes, and safety benches;

8 (E) Reservoir or treatment areas;

9 (F) Inlet and outlet channels or structures;

10 (G) Underground drainage;

11 (H) Sediment and debris accumulation in storage and forebay areas;

12 (I) Any nonstructural practices to the extent practicable; and

13 (J) Any other item that could affect the proper function of the stormwater

14 management system.

15 (5) Description of needed maintenance.

16 (f) Upon notifying an owner of the inspection results, the owner shall have 30 days, or
 17 other time frame mutually agreed to between the Department and the owner, to correct the
 18 deficiencies discovered. The Department shall conduct a subsequent inspection to ensure
 19 completion of the repairs.

20 (g) If repairs are not properly undertaken and completed, enforcement procedures of
 21 Section 32-195 of this Division shall be followed by the Department.

22 (h) If, after an inspection by the Department, the condition of a stormwater management
 23 facility is determined to present immediate danger to public health or safety because of an unsafe
 24 condition, improper construction, or poor maintenance, the Department shall take such action as
 25 may be necessary to protect the public and make the facility safe. Any cost incurred by the
 26 County shall be assessed against the owner(s), as provided in 32-195(c) of this Division.

27 **Sec. 32-197. Severability.**

28 If any portion of this Division is held invalid or unconstitutional by a court of competent
 29 jurisdiction, such portion shall not affect the validity of the remaining portions of this Division.
 30 It is the intent of the County that this Division shall stand, even if a section, subsection, sentence,
 31 clause, phrase, or portion may be found invalid.

1 **Sec. 32-198. Appeals.**

2 (a) Any violation notice issued pursuant to this Division may be appealed in writing to the
3 Board of Appeals of the County within ten (10) days of the date of the violation notice or such
4 period of time as may be specified in the violation notice.

5 (b) Any person aggrieved by the decision of the Director denying a waiver of the
6 requirements of this Division may appeal such decision to the Board of Appeals of the County,
7 in writing, within ten (10) days of the date of the written denial.

8 **Sec. 32-199. Penalties.**

9 (a) Any person convicted of violating the provisions of this Division shall be guilty of a
10 misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than Ten
11 Thousand Dollars (\$10,000.00), or imprisonment not exceeding one (1) year, or both, for each
12 violation, with costs imposed at the discretion of the court and not to exceed Fifty Thousand
13 Dollars (\$50,000.00).

14 (b) Each day that the violation continues shall be a separate offense.

15 (c) In addition, the County Attorney may institute injunctive mandamus or other
16 appropriate action or proceedings at law or equity for the enforcement of this Division or to
17 correct violations of this Division, and any court of competent jurisdiction shall have the right to
18 issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate
19 forms of remedy or relief.

20 **Sec. 32-200. Liability.**

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

26 **Sec. 32-201. Annual Report.**

27 Starting in 2013, the Department shall issue an annual report and analysis by December
28 31st to the County Executive and the County Council on the implementation of and compliance
29 with the stormwater management provisions contained in this Division, including projects that
30 received administrative waivers under Section 32-170 (d), incentives under Section 32-175 (e)
31 and variances under Section 32-176.

DIVISION 4. FLOODPLAIN ORDINANCE.

Sec. 32-202. Purpose; Scope; Application.

(a) The purpose of this Division is:

(1) To protect human life and health;

(2) To minimize public and private property damage;

(3) To encourage the use of appropriate construction practices in order to prevent or minimize flood damage in the future;

(4) To protect potential purchasers from unwittingly buying lands and structures which are unsuited for certain purposes because of flood hazards;

(5) To protect water supply, sanitary sewage disposal, and natural drainage;

(6) To reduce financial burdens imposed on the community, its governmental units, and its residents by preventing the unwise design and construction of development in areas subject to flooding;

(7) To increase public awareness of the flooding potential;

(8) To protect the biological and environmental quality of the watersheds or portions thereof located in Prince George's County; and

(9) To provide a unified comprehensive approach to floodplain management which addresses requirements of Federal and State programs concerned with floodplain management, including without limitations: the National Flood Insurance Program and the President's Executive Order 11988 of May 27, 1977, on floodplain management; the State Waterway Construction Permit Program, State Wetlands Permit Program, the U.S. Army Corps of Engineer's Section 10 and Section 404 permit programs; and the State Coastal Zone Management Program.

(b) The provisions of this Division shall apply to all parts of Prince George's County, except for that area of the County within the boundaries of the City of Laurel.

(c) The provisions of this Division shall be:

(1) Considered as minimum requirements;

(2) Construed in favor of proper flood hazard management in the County; and

(3) Deemed neither to limit nor repeal any other powers granted under the Annotated Code of Maryland.

(d) In the event that other provisions of this Code affect the application of this

1 Division, the more restrictive Code provisions shall apply.

2 (e) The granting of a permit or approval pursuant to this Division, shall not be a
 3 representation, guarantee, or warranty of any kind and shall create no liability upon the County,
 4 its officials or employees.

5 (f) This Division shall be applied and interpreted so as to meet or exceed the minimum
 6 requirements of federal and state floodplain regulations. In the event of a conflict between the
 7 minimum requirements of federal and state floodplain requirements, the more restrictive
 8 provisions shall prevail.

9 **Sec. 32-203. Definitions.**

10 (a) The following terms shall have the meanings indicated:

11 (1) **100 Year Flood or Base Flood** - the flood that has a one percent (1%) chance of
 12 being equaled or exceeded in any given year.

13 (2) **Accessory Structure** – (for FEMA purposes only), a detached structure on the
 14 same parcel of property as the principal structure, the use of which is incidental to the principal
 15 structure. (Examples would be a shed or detached garage, etc.)

16 (3) **Basement** - any area of a building having its floor subgrade (below ground level)
 17 on all sides.

18 (4) **Community** - (for FEMA purposes only) - any State or area or political
 19 subdivision thereof, which has authority to adopt and enforce flood plain management
 20 regulations for the areas within its jurisdiction.

21 (5) **County Floodplain or the Floodplain** - includes those areas within the County
 22 that will be inundated by the 100-year flood, as determined by FEMA or the County.

23 (6) **Department** - the Department of Public Works and Transportation.

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

30 (8) **Director** - the Director of Public Works and Transportation.

31 (9) **Elevation Certification** - the certificate that verifies the as-built elevation of a

1 structure using Mean Sea Level as established by the National Geodetic Vertical Datum (NGVD)
 2 of 1929, the North Atlantic Vertical Datum (NAVD) of 1988, or the WSSC Datum submitted by
 3 a registered land surveyor or professional engineer on the official form prepared and distributed
 4 by the Federal Emergency Management Agency.

5 (10) **FEMA** - the Federal Emergency Management Agency.

6 (11) **FEMA Maps** - the Flood Insurance Rate maps and the Flood Boundary and
 7 Floodway maps of the County prepared by FEMA and any subsequent amendments.

8 (12) **Flood** - the general and temporary condition of partial or complete inundation of
 9 normally dry land areas from overflow of inland or tidal waters, or rapid unusual accumulation
 10 of runoff from any source.

11 (13) **Flood Insurance Rate Map (FIRM)** - a map that depicts the minimum special
 12 flood hazard area to be regulated by this Ordinance (unless a floodway map is available).

13 (14) **Floodplain** means in general:

14 (A) Relatively flat or low land area adjoining a river, stream or other
 15 watercourse which is subject to partial or complete inundation;

16 (B) Area subject to the unusual and rapid accumulation or runoff of surface
 17 waters from any source; or

18 (C) Area subject to tidal surges or extreme tides.

19 (15) **Floodplain Buffer** - an area extending beyond and paralleling the County
 20 floodplain to maintain the stability of steep slopes, to preserve the environmental integrity of
 21 stream or wetland habitats associated with a floodplain, and to otherwise protect and maintain
 22 the public safety.

23 (16) **Floodproofing** - any combination of structural and nonstructural additions,
 24 changes or adjustments of properties and structures that reduce or eliminate flood damage to
 25 lands, water and sanitary facilities, structures, and contents of buildings.

26 (17) **Floodproofing Certificate** - a form supplied by FEMA to certify that a building
 27 has been designed and constructed to be structurally dry and floodproofed to the Flood
 28 Protection Elevation.

29 (18) **Flood Protection Elevation (FPE)** - the elevation of the base flood plus one-foot
 30 freeboard.

31 (19) **Floodway** - the channel and adjacent land area required to discharge the waters of

1 the 100-year flood of a watercourse without cumulatively increasing the water surface elevations
 2 more than a specified height.

3 (20) **Floodway Fringe** - that portion of the floodplain outside the floodway.

4 (21) **Floodway Map** - a map which depicts floodways and special flood hazard areas
 5 to be regulated.

6 (22) **Freeboard** - an increment of elevation added to the base flood elevation to
 7 provide a factor of safety for uncertainties in calculations, wave actions, subsidence, and other
 8 unpredictable effects.

9 (23) **Geographic Information System (GIS) Based Floodplain Model** – the
 10 hydrology and hydraulic models developed by the Department of Environmental Resources
 11 using GIS technologies and databases to determine peak discharges and flood elevations.

12 (24) **Historic Structure** - a structure listed individually on the National Register of
 13 Historic Places, the Maryland Inventory of Historic Properties, or the Historic Sites and Districts
 14 Plan of Prince George’s County.

15 (25) **Lowest Floor** - the lowest floor of the lowest enclosed area (including basement).
 16 An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or
 17 storage in an area other than a basement area and that is not considered a building’s lowest floor,
 18 provided that it is supplied with water equalizing vents.

19 (26) **Manufactured Home or Building** (for FEMA purposes only) - a structure
 20 transportable in one or more sections built on a permanent chassis and designed for use with or
 21 without a permanent foundation when connected to required utilities. For floodplain
 22 management purposes, the term “manufactured home or building” also includes park trailers,
 23 travel trailers, and other similar vehicles placed on a site for more than 180 consecutive days.

24 (27) **NGVD** - National Geodetic Vertical Datum of 1929 elevation reference points set
 25 by the national Geodetic Survey based on Mean Sea Level.

26 (27.1) **NAVD** - North Atlantic Vertical Datum 1988 is the vertical control datum
 27 established for vertical control surveying in the United States of America based upon the General
 28 Adjustment of the North American Datum of 1988.

29 (28) **New Construction** - a structure for which the start of construction commenced on
 30 or after the effective date of the adoption of a floodplain management ordinance and includes
 31 any subsequent improvements.

1 (29) **Permanent Construction** (for FEMA purposes only) - any structure occupying a
2 site for more than 180 consecutive days per year.

3 (30) **Proposed Condition Floodplain** - the 100-year floodplain conditions after the
4 proposed development is completed.

5 (31) **Recreation Vehicle** (for FEMA purposes only) - a vehicle built on a single
6 chassis that is 400 square feet or less at the longest horizontal projection, self-propelled or
7 towable, and designed primarily for temporary living while traveling or camping.

8 (32) **Registered Engineer, Registered Land Surveyor, or Registered Architect** - a
9 professional engineer, land surveyor, or architect licensed to practice said profession and in good
10 standing in the State of Maryland.

11 (33) **Special Flood Hazard Area** - an area within the County where, by local
12 knowledge, the County has reason to believe that there is a serious potential of flooding or flood
13 damage. (For FEMA purposes only, this definition includes an area that would be inundated by
14 the flood having a 1% chance of being equaled or exceeded in any given year and shown on the
15 latest adopted FEMA map.)

16 (34) **Start of Construction** (for FEMA purposes only) - the date the building permit
17 was issued, provided the actual start of construction, repair, reconstruction, placement,
18 substantial improvement, or other improvement occurs within 180-days of the permit date. The
19 actual start of construction means either the first placement of permanent construction of a
20 structure on a site such as the pouring of slab or footings, installation of piles, construction of
21 columns or any work beyond the stage of excavation, or placement of a manufactured home on a
22 foundation. Permanent construction, as used in this definition, does not include land preparation
23 such as clearing, grading, and filling, nor does it include the installation of streets and/or
24 walkways, excavation for basements, footings, piers, foundations or the erection of temporary
25 forms, or installation on the property of accessory buildings such as garages or sheds not
26 occupied as dwelling units or not as part of the main structure.

27 (35) **Structure** (for FEMA purposes only) - a walled and/or roofed building,
28 including, but not limited to, a gas or liquid storage tank, a building foundation, platform, deck,
29 fence, swimming pool, bulkhead, or greenhouse that is affixed to a permanent site or location.

30 (36) **Substantial Damage** - damage of any origin sustained by a structure whereby the
31 cost of restoring the structure to its condition before damage would equal or exceeds fifty percent

1 (50%) of the market value of the structure.

2 (37) **Substantial Improvement** (for FEMA purposes only) - any repair, reconstruction
 3 or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the
 4 market value of the structure (less land value) either:

5 (A) Before the improvement or repair is started; or

6 (B) If the structure has incurred substantial damage and has been restored, before
 7 the damage occurred. Substantial improvement occurs when the first alteration of any wall,
 8 ceiling, floor or other structural part of the building commences. The minimum repairs needed
 9 to correct previously identified violations of local health, safety, or sanitary codes and alterations
 10 to historic structures which do not preclude their continued designation as historic structures, are
 11 not considered substantial improvements.

12 (38) **Temporary Structure** (for FEMA purposes only) - any structure completely
 13 removed within 180-days from issuance of the permit.

14 (39) **Use and Occupancy Permit** - the official approval from the Department of
 15 Environmental Resources that the structure has been built consistent with approved plans and
 16 may be legally inhabited or used for the intended purpose.

17 (40) **Waiver** - the grant of relief from the terms of this floodplain management
 18 ordinance.

19 (41) **Wetland** - an area that is:

20 (A) Inundated or saturated by surface or ground water at a frequency and
 21 duration sufficient to support, and that under normal circumstances does support, a prevalence of
 22 vegetation typically adapted for life in saturated soil conditions, including swamps, marshes,
 23 bogs and similar areas;

24 (B) Considered “private wetland” or “State wetland” pursuant to Title 9,
 25 Wetlands and Riparian Rights, Natural Resources Article, Annotated Code of Maryland; or

26 (C) Defined as wetland under the procedures described in the “Federal
 27 Interagency Committee for Wetland Delineation” most updated version and as amended from
 28 time to time.

29 **Sec. 32-204. Establishment of the County Floodplain.**

30 (a) The Department shall establish as the County floodplain areas of the County that are
 31 subject to inundation by the 100-year flood and shall delineate these areas on the official

1 floodplain maps that shall be prepared and maintained in force as part of this Division. Where
2 flood elevations have been defined, the County floodplain shall be determined based on 100 year
3 flood elevations rather than the area graphically delineated on the official floodplain maps. The
4 County floodplain may also be determined using the County's GIS-based floodplain models.

5 (b) Area included. The County floodplain shall include all of the following areas:

6 (1) 100 year floodplain as determined by FEMA, including all of the following
7 FEMA subcategories:

8 (A) Approximate floodplain - areas subject to inundation by the 100-year flood
9 where a detailed study has not been performed but where a 100-year floodplain boundary has
10 been approximated and delineated on the FEMA Maps as Zone A.

11 (B) Floodway - areas required to carry and discharge the water of the 100-year
12 flood without increasing the water surface elevation at any point more than one (1) foot above
13 existing 100-year flood conditions where defined by FEMA and delineated on the FEMA Maps.

14 (C) Floodway Fringe - areas subject to the 100-year flood that lie beyond the
15 floodway where the floodway has been determined or where detailed study data, profiles and
16 100-year flood elevations have been established, and delineated on the FEMA maps as Zones A,
17 AE and A1-A30.

18 (D) Coastal floodplain - areas subject to coastal or tidal flooding by the 100-year
19 flood, where detailed study data are available, delineated on the FEMA Maps as Zones A, AE
20 and A1-A30.

21 (2) Special flood hazard areas, as defined herein and identified by the County.

22 (3) Wetland floodplains - areas of wetland subject to inundation by the 100-year
23 flood.

24 (4) Area delineated by approved County Comprehensive Watershed Management
25 Plans and supporting data to be subject to the 100-year flood or determined to be subject to the
26 100-year flood by any other floodplain study approved by the County.

27 (5) Areas delineated by any other floodplain studies prepared using the County's
28 GIS-based floodplain models.

29 (c) Danger reach of a dam - area that will be flooded when a dam has been breached by
30 flood waters, as established using the latest methodology of the Maryland Department of the
31 Environment.

1 (d) Floodplain buffer area - where proposed development is associated with a stream or
 2 tributary and the limits of the floodplain cannot be accurately determined because of the lack of
 3 detailed floodplain data and analysis or because of unknown effects of future development in the
 4 watershed, the Department may require that a floodplain buffer be established and maintained as
 5 part of the development.

6 (e) Areas excluded - areas associated with a watercourse having less than fifty (50) acres
 7 of watershed may be excluded, subject to the approval of the County.

8 (f) Sources - the County shall use the following sources for identifying the floodplain:

9 (1) Most current FEMA Flood Insurance Study for Prince George's County,
 10 Maryland;

11 (2) FEMA maps (the Floodway maps, if available, must be used rather than the
 12 Flood Insurance Rate Maps);

13 (3) Approved County comprehensive watershed management plans;

14 (4) Other floodplain studies approved by the County; and

15 (5) Other floodplain studies prepared by the County or its designee using the
 16 County's GIS-based floodplain models.

17 (g) Official floodplain maps shall be at a minimum the FEMA maps.

18 (h) Revisions of the County floodplain:

19 (1) The Department may amend the limits of the County floodplain to reflect the
 20 effect of specified flood protection measures recommended in adopted County watershed plans
 21 that have been included in an adopted Prince George's County Capital Improvement Program
 22 (CIP) for planning, design and construction, and for which the County has all necessary federal
 23 and state permits. However, the County floodplain may not be based upon flood elevations
 24 lower than shown on the currently adopted FEMA map until concurrence in the lowered
 25 elevations has been received from FEMA in accordance with applicable federal regulations.

26 (2) The County floodplain limits shall be amended by the Department where studies
 27 or information provided by a qualified agency or person document the need or possibility for
 28 such revision. Where there are no available studies, or where existing studies have been
 29 determined by the Department to be inadequate, a new study of the area shall be required. All
 30 such floodplain studies shall be performed in accordance with the Department's requirements and
 31 criteria, which shall include, without limitation:

1 (A) System within the drainage basin either existing or included in an adopted
 2 County CIP for planning, design and construction and, for which the County has all necessary
 3 federal and state permits; and

4 (B) Future land use based on existing zoning or based on adopted or approved
 5 master plans, or sectional map amendments, whichever best reflects future land use in the
 6 opinion of the County.

7 (3) Any proposed reduction or modification to any area of the County identified by
 8 FEMA as part of the 100-year floodplain must have the approval of FEMA. Proposed
 9 modifications must first be submitted to the Department for review, and the Department's
 10 recommendation on the proposed modification shall be transmitted to FEMA with a copy to the
 11 submitter. Any development in the floodplain, which may result in any increase in water surface
 12 elevations or change to the FEMA floodplain boundaries, must be submitted to FEMA for a
 13 Conditional Letter of Map Revision. Hydrologic and hydraulic analysis based on existing
 14 floodplain models and performed in accordance with standard engineering practices and certified
 15 by a registered professional engineer must be submitted. Failure to receive this letter shall be
 16 grounds for denial of the permit. The Department shall notify the Federal Insurance
 17 Administrator of revisions to the FEMA floodplain within six (6) months after the date of
 18 completion of the modification by submitting technical and scientific data in accordance with 44
 19 Code of Federal Regulations, Part 65. All revisions and modifications of the FEMA floodplain
 20 shall be subject to the review and approval of FEMA and Department.

21 (i) The Department shall provide public access to the County floodplain and stream
 22 erosion maps, including all areas delineated in and by this section, and shall provide this
 23 information for the County's Geographic Information System (GIS), operated by the Maryland
 24 National Capital Park and Planning Commission's Prince George's County Planning Department
 25 or its successors.

26 **Sec. 32-205. Development Regulations.**

27 (a) Within the County floodplain, no development shall be permitted except as provided in
 28 Subsection (b) unless a waiver is obtained from the Department which permits such
 29 development.

30 (b) Permitted Development. The following development shall be permitted:

31 (1) The modification, alteration, repair, reconstruction, or improvement of a structure

1 which does not constitute substantial improvement to the structure (including improvements to
 2 historic structures which do not affect the exterior dimensions). The improvements shall be
 3 elevated and/or flood proofed to the greatest extent possible. The elevation of the lowest floor
 4 shall be at least one (1) foot above the elevation of the 100 year flood or those parts of the
 5 improvement below the elevation of one (1) foot above the 100 year flood shall be dry flood
 6 proofed in accordance with the U.S. Army Corps of Engineers flood proofing regulations.

7 (2) Private and public utilities and facilities which conform to the construction,
 8 design, and flood proofing requirements of this Division.

9 (3) Private or public streets crossing the floodplain.

10 (4) Stormwater management facilities.

11 (5) Small projections leading off of the floodplain which would be enclosed by storm
 12 drainage pipes.

13 (6) Developments in which all structures will be elevated, by fill, to or above the
 14 flood protection elevations and will not be located within the proposed condition floodplain
 15 boundaries, provided that all development regulations stated in this Section are met.

16 (c) All areas within the County floodplain shall be dedicated to public use or for use as a
 17 park, or as a floodplain or conservation easement, whichever is appropriate; the dedication or
 18 easement shall meet the County requirements for form and content and shall be recorded among
 19 the Land Records of the County. The easement requirement may be waived when, in the opinion
 20 of the Department, the waiver would not compromise any public or private interests including
 21 the rights of the landowners, safety, and environmental protection; would not conflict with any
 22 Federal, State or County laws; and the establishment of an easement would constitute an
 23 unreasonable hardship on the applicant. A waiver may be granted only if the Department finds
 24 that the applicant has demonstrated the following:

25 (1) The property is already essentially developed and occupied by the applicant; or

26 (2) The proposed disturbed area is less than twenty percent (20%) of the total area of
 27 a single residential lot; and

28 (3) The floodplain is clear of proposed improvements, including access roads, to the
 29 extent the floodplain area is not used in conjunction with the proposed improvements; and

30 (4) The floodplain is not likely to increase in the future nor would it be damaged by
 31 continuing stream flows or flooding that may be caused, in part, by the existence of downgraded

1 or upgraded public storm drain systems or stormwater management facilities.

2 (d) Fences and other matters or enclosures which may impede, retard, or change the
3 direction of the flow of water, or that will catch or collect debris carried by such water, or that
4 are placed where the natural flow of the stream or flood waters would carry such impediments
5 downstream to the damage or detriment of either public or private property in or adjacent to the
6 floodplain shall not be permitted without a waiver and permit as provided in this Division.

7 (e) All development shall be designed to minimize floodplain disturbance and shall
8 conform to all other applicable codes, ordinances, regulations, flood management, watershed
9 management plans and the requirements of the permit programs of all applicable Federal, State
10 and local governments.

11 (f) Any new or substantially improved residential or nonresidential structures, including
12 manufactured homes, shall be located outside the floodplain and have the lowest floor and the
13 surrounding ground elevated, by fill, to or above the flood protected elevation. Basements are
14 not permitted. The elevation of the lowest floor shall be certified by a registered surveyor or
15 professional engineer on the as-built plan or after the lowest floor is in place. All new structures
16 in any subdivision shall be located outside the 100-year floodplain boundary. All residential
17 structures shall be set back 25 feet minimum from the 100-year floodplain. For every activity in
18 the floodplain, the conditions described below in subsections (g) and (h) below, and
19 Section 32-206 must be met.

20 (g) If floodplain storage is reduced because of the project, an equal amount of
21 compensatory storage within the floodplain shall be provided. A site grading plan prepared by a
22 professional engineer, showing a balance of cut-and-fill, shall also be submitted. The limits of
23 the floodplain before and after development shall be clearly shown on the site plan. A detailed
24 floodplain analysis shall be conducted to indicate that the new floodplain can carry the discharge
25 of the 100-year flood without increasing the water surface elevation at any point on other private
26 or public property either upstream or downstream from the tract to be developed, unless such
27 lands affected by an increase in water surface elevation are either acquired by the applicant or
28 reserved through acquisition of suitable floodplain easements, provided such increases will not,
29 in the determination of the Department, cause or aggravate damage to such properties. However,
30 development shall not increase water surface elevation of the base flood more than one (1) foot
31 at any point. The floodplain analysis shall consider backwater conditions, local obstructions and,

1 where required by the Department partial or complete failure or obstruction of any culvert or
 2 enclosed storm drainage system. The new floodplain shall be designed to prevent detrimental
 3 erosion, overflow, or nuisance of any kind and shall ultimately discharge into a storm drain
 4 facility or a watercourse in accordance with County standards and procedures.

5 (h) All proposals to offset the effects of development in the floodplain by construction of
 6 stream modifications shall be documented by an engineering study prepared by a professional
 7 engineer who fully evaluates the effects of such construction. The report shall use the 100-year
 8 flood and floodplain data prepared by FEMA, at a minimum, and other County-approved
 9 watershed studies. Evidence shall be provided that all adjacent communities and the Maryland
 10 Department of the Environment have been notified by certified mail and have approved of the
 11 proposed modification. Copies of these notifications shall then be forwarded to FEMA's Federal
 12 Insurance Administration. The Department or its designee will conduct a study to assure that the
 13 flood carrying capacity within the altered or relocated portion of the watercourse in question will
 14 be maintained. If required, the owner shall execute a stormwater management maintenance
 15 agreement with the County, which shall be recorded in the Land Records.

16 **Sec. 32-206. Waiver Requirements for Development in Floodplain.**

17 (a) In order to undertake any development in the County floodplain other than as permitted
 18 in the preceding Section, the applicant must obtain a waiver from the Director.

19 (b) The request for waiver shall include:

20 (1) The information required for a permit for development as set forth in this
 21 Division;

22 (2) A statement explaining the need for the development, any public benefit to be
 23 derived, and the actions that will be taken to reduce the threat of any potential flooding, flood
 24 damage, or adverse environmental impacts; and

25 (3) Plans and studies as required by the Department.

26 (c) Required plans and studies. The Department may require plans and studies to be
 27 submitted. All studies shall be subject to approval by the Department. All studies and
 28 calculations furnished to satisfy this provision shall become the property of the County and may
 29 be used by the County for reviewing other development or for other purposes.

30 (d) The Director shall grant a waiver only upon determining that:

31 (1) There is good and sufficient cause;

1 (2) The granting of the waiver will not result in additional threats to public safety,
2 increased flood elevations or discharges, or other adverse impacts on other public or private
3 property either upstream or downstream;

4 (3) The granting of the waiver will not result in fraud or victimization of the public;

5 (4) The waiver is the minimum necessary, considering the flood hazard, to afford
6 relief to the owner, and public funds shall not be expended to mitigate the results of the waiver;

7 (5) The development will not violate other Federal, State or local laws or regulations;
8 and

9 (6) The waiver does not violate the purpose and intent of this Division.

10 (e) Waivers will not be granted for any filling, or the construction or placement of any
11 structures or obstructions which will ultimately be located in the FEMA-designated Floodways,
12 or in the County designated Special Flood Hazard Areas which will increase the water surface
13 elevation of the base flood. Within the floodplain, waivers shall not be granted for any new
14 structures, the lowest floors of which are below flood protection elevations.

15 (f) If granted, a waiver shall involve only the least modification necessary to provide
16 relief. If it should become necessary to grant any variance, the applicant shall be required to
17 comply with all applicable requirements of the National Flood Insurance Program regulations
18 (60.3d) including the requirements for elevation, flood proofing and anchoring. The applicant
19 must also comply with any other requirements considered necessary by the Department.
20 Notwithstanding any of the above, however, all structures shall be designed and constructed so
21 as to have the capability of resisting the 100-year flood. Flood proofing is not an option in
22 residential construction. All residential structures must be elevated.

23 (g) A record of all waiver actions, including justifications for their issuance, shall be
24 maintained by the Department, shall be included in a bi-annual report submitted to the Federal
25 Insurance Administrator, and shall be available upon request by FEMA or its authorized agent
26 during periodic assessments of the County participation in the National Flood Insurance
27 Program.

28 (h) As a condition of the waiver, the owner of the property being developed shall be
29 required to execute covenants to provide notice of the waiver, the potential for higher insurance
30 premium rates, the flood hazard, and any responsibilities of the owner to maintain flood proofing
31 or stream modification facilities or systems, which covenants shall be recorded among the Land

1 Records of the County. Where there will be enclosed areas below the 100-year flood elevation,
 2 the owner shall provide a statement to be recorded in the Land Records of the County which
 3 reads, "No conversion of this area to habitable space is to occur unless the lowest floor is
 4 elevated to one (1) foot above the 100-year flood elevation. At this site the 100-year flood
 5 elevation is _____."

6 **Sec. 32-207. Construction and Design Standards within the Floodplain.**

7 (a) All development permitted in the County Floodplain shall comply with the following
 8 minimum standards where applicable.

9 (1) In general, all new construction and substantial improvements which are
 10 permitted in the floodplain by waiver pursuant to this Division shall be:

11 (A) Designed (or modified) and adequately anchored to prevent flotation,
 12 collapse, or lateral movement of the structure;

13 (B) Constructed and placed on the lots so as to offer the minimum obstruction to
 14 the flow and height of the flood water;

15 (C) Constructed with materials and utility equipment resistant to flood damage;
 16 and

17 (D) Constructed by methods and practices that minimize flood damage and
 18 adverse environmental impacts.

19 (2) The elevation of the lowest floor of all new or substantially improved structures,
 20 except for garages, storage and accessory structures, which are less than 300 square feet and not
 21 used for human habitation, shall be at least one (1) foot above the 100-year flood. Basements in
 22 buildings within the floodplain as herein defined are prohibited.

23 (3) Enclosures below the lowest floor. The new construction or substantial
 24 improvement of fully enclosed areas below the lowest floor, including but not limited to crawl
 25 spaces, solid footings and continuous foundations, shall be vented to equalize hydrostatic
 26 pressure by permitting the free entry and exit of floodwaters and shall include the following as a
 27 minimum:

28 (A) At least two openings having a total net area of not less than one square inch
 29 for every square foot of enclosed area subject to flooding shall be provided;

30 (B) The bottom of all openings shall be no higher than one foot above grade;

31 (C) Openings may be equipped with screens, louvers, valves, or other coverings

1 | or devices provided that they permit the automatic entry and exit of floodwaters; and

2 | (D) The owner shall include a statement on the building plans which states: “No
 3 | conversion of this area to habitable space is to occur unless the lowest floor is elevated to one (1)
 4 | foot above the 100 year flood elevation. At this site the 100-year flood elevation is _____.”

5 | (4) Accessory structures. The new construction or substantial improvement of
 6 | garages, storage sheds and similar accessory structures shall meet the requirements set forth in
 7 | Paragraph (3), above.

8 | (5) Storage. Storage for materials that are buoyant, flammable, explosive, or that in
 9 | times of flooding could be injurious to human, animal or plant life shall not be constructed or
 10 | permitted below one (1) foot above the level of the 100-year flood.

11 | (6) Fill.

12 | (A) Where allowed, fill material shall comply with the requirements of Sections
 13 | 32-156 through 32-158 of this Subtitle.

14 | (B) Fill slopes shall be no steeper than one (1) vertical to two (2) horizontal,
 15 | unless substantiating data justifying steeper slopes are submitted to and approved by the County.

16 | (C) Fill shall be used only to the extent to which it does not adversely affect
 17 | adjacent properties.

18 | (7) Landscape design.

19 | (A) Where permitted, disturbance or removal of the natural vegetation in the
 20 | floodplain shall be avoided or minimized.

21 | (B) Adequate ground cover shall be provided for soil stabilization.

22 | (C) Design of land contours and choice of plant materials shall direct surface
 23 | runoff away from structures and shall not increase surface runoff onto neighboring properties.

24 | (8) Electrical and plumbing systems.

25 | (A) All water heaters, furnaces, generators, heat pumps, air conditioners and
 26 | other permanent mechanical and electrical installations shall be permitted only at or above one
 27 | (1) foot above the elevation of the 100-year flood.

28 | (B) No electrical distribution panels shall be permitted at an elevation less than
 29 | three (3) feet above the elevation of the 100-year flood.

30 | (9) Public and private utilities. The design, placement and construction of all public
 31 | and private utilities and facilities shall meet the following requirements:

1 (A) New or replacement water supply systems and/or sanitary sewage systems
 2 shall be designed and flood proofed to eliminate or minimize infiltration of flood waters into the
 3 systems and discharges from the systems into the flood waters, and to avoid impairment during
 4 flooding and to minimize flood damage.

5 (i) Cesspools and seepage pits are prohibited.

6 (ii) Septic tanks are permitted provided they are securely anchored to resist
 7 buoyant forces during inundation.

8 (iii) All pipes connected to sewage systems shall be sealed to prevent
 9 leakage.

10 (B) All gas, electrical and other facility and utility systems shall be located,
 11 constructed and flood proofed to eliminate or minimize flood damage.

12 (C) All new storm drainage facilities within and leading to or from the County
 13 floodplain shall be adequately designed, flood proofed and installed to eliminate or minimize
 14 property damage resulting from the flood waters of the 100-year flood and to minimize adverse
 15 environmental impacts of their installation and use.

16 (10) Recreational vehicles located within the floodplain may be exempted from the
 17 elevation and anchoring requirements provided they are:

18 (A) Located on the site less than 180 consecutive days per year;

19 (B) Fully licensed and ready for highway use; and

20 (C) Properly permitted.

21 A recreational vehicle is ready for highway use if it is on its wheels and jacking system, is
 22 attached to the site by quick disconnect type utilities and securing devices, and has no
 23 permanently attached additions. If it cannot meet all of these criteria, the recreational vehicle
 24 must be considered a manufactured home and is subject to the elevation and construction
 25 standards of this Subtitle.

26 (11) All notice of the flood hazard and the waiver action shall be placed on the deed or
 27 other title document of the property on which the waiver is granted.

28 **Sec. 32-208. Coastal and Wetland Floodplain Regulations.**

29 (a) Any development and construction in the coastal and wetland floodplains which is
 30 permitted pursuant to Section 32-206 of this Division, shall, in addition to all other requirements
 31 of this Division, meet the requirements of this Section.

1 (b) The development shall be subject to the provisions of this Code regulating
2 development in the Chesapeake Bay Critical Areas.

3 (c) In the wetland floodplain the following regulations shall apply:

4 (1) The Department shall obtain, review and reasonably utilize any wetlands
5 classification data available from a Federal, State or other source to determine the boundaries
6 and characteristics of the wetland floodplain. When the boundary of the wetland floodplain is
7 unknown, obscure, or undefined, the Department, in cooperation with or with assistance from the
8 Maryland Department of the Environment, shall evaluate each site to determine the actual extent
9 of wetlands.

10 (2) Except where specifically allowed by the Department and the Maryland
11 Department of the Environment and the U.S. Army Corps of Engineers, the following shall be
12 prohibited:

13 (A) Filling, dumping or excavating of any kind;

14 (B) Drainage or alteration of the natural drainage and circulation of surface or
15 ground waters; and

16 (C) Removal of natural vegetation.

17 (3) The Department may approve development or construction upon determining that
18 the proposed uses:

19 (A) Require access to water or wetlands, or are water dependent;

20 (B) Have no prudent or feasible alternative site which does not involve wetland
21 areas;

22 (C) Will result in minimum feasible alteration or impairment to wetland
23 functional characteristics and existing contour, vegetation, fish and wildlife resources and
24 hydrologic conditions of the wetland area; and

25 (D) Meet all applicable regulations of Subtitle 5B when located in the
26 Chesapeake Bay Critical Area Overlay Zone.

27 (4) All buildings and structures shall be prohibited with the exception of catwalks,
28 piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges,
29 observation decks and shelters; and other similar water-related structures which are constructed
30 on pilings to permit the unobstructed flow of waters and preserve the natural contour of the
31 wetland area within the Chesapeake Bay Critical Area Overlay Zone.

1 **Sec. 32-209. Permit Requirements within the Floodplain.**

2 (a) A permit is required for all development (including, but not limited to, construction of
3 and/or substantial improvements to buildings and structures, placement of manufactured homes
4 or buildings, fill, temporary development, new or replacement infrastructure, or any combination
5 thereof) in the floodplain. However, for a development associated with a watercourse having a
6 drainage area of less than 50 acres, a detailed floodplain study may be waived, subject to the
7 approval of the Department.

8 (b) An application for a permit shall be submitted to the Department. The application shall
9 be part of the application for a building or grading permit when such a permit is otherwise
10 required for the proposed development.

11 (c) The following additional information shall be required, where applicable:

12 (1) If the development includes any grading, new construction, or exterior
13 modifications to existing structures, a site grading plan prepared by a professional engineer or
14 architect showing: the size and location of the proposed development and any existing buildings
15 or structures; the location, dimensions and elevation in mean sea level of the site in relation to
16 the stream channel, shoreline and the floodplain; the elevations of the 100-year flood, the
17 existing and proposed final grading and the lowest floor elevations of all structures; the method
18 of elevating the proposed structure, including proposed fills, retaining walls, foundations, erosion
19 protection measures; and such other information as may be required by the Department.

20 (2) For substantial improvement to existing structures, a summary description of the
21 proposed work and estimated cost.

22 (3) For new construction or substantial improvements of nonresidential structures
23 within the floodplain, certification by a professional engineer or architect that the nonresidential
24 structure will be dry flood proofed watertight in accordance with the specifications of the U.S.
25 Army Corps of Engineering to one (1) foot above the 100-year flood elevation.

26 (4) A plan showing the location of all existing and proposed public and private
27 utilities, facilities, drainage structures and road access. If the 100-year flood elevation has been
28 determined, it shall be delineated on the proposed plan. For all proposals associated with a
29 watercourse having a drainage area of 50 acres or more, the Department shall determine the 100-
30 year flood elevation using floodplain models and the applicant shall delineate it on the proposed
31 plan. Private consultant engineering studies and studies using the County's GIS-based

1 floodplain models will be accepted by the Department until a date certain established by the
2 Department. After the specified deadline and upon proper notice, only studies using the
3 County's GIS-based floodplain models will be accepted by the Department, unless the
4 Department grants an applicant's written request to use a private consultant to perform the study.
5 In addition, field survey information of structures, within the floodplain, as may be required by
6 the Department to complete the study, shall be supplied by the applicant. For all proposals
7 associated with a watercourse having a drainage area of 50 acres or less, the delineation of the
8 100-year flood elevation may be excluded upon the approval of the Department. All plans shall
9 be certified by a professional engineer.

10 (d) The application shall be reviewed by the Department to assure that:

11 (1) The proposed development is consistent with the construction and design
12 requirements of this Division;

13 (2) Adequate drainage is provided to reduce exposure to flood hazards;

14 (3) The plans provide at least one access which will permit safe vehicular ingress and
15 egress from the subdivision and/or new development during a 100-year flood;

16 (4) Adequate measures have been taken to minimize any potential adverse
17 environmental impacts of the proposed development; and

18 (5) The development complies with the requirements of this Division and all other
19 applicable codes and ordinances.

20 (e) No construction or development will occur until all other Federal, State and local
21 permits and approvals have been obtained.

22 (f) During the construction period, the Department shall inspect the premises to determine
23 that the work is progressing in compliance with the permit and with all applicable laws and
24 ordinances. The premises shall also be subject to inspection by the Maryland
25 Department of the Environment. In the event that the Department determines that the work is
26 not in compliance with the permit or all applicable laws and ordinances, or that there has been a
27 false statement or misrepresentation by the applicant, the Department shall report such fact to the
28 Maryland Department of the Environment for whatever action it considers necessary as well as
29 pursuing compliance as provided under this Division and Subtitle.

30 (g) A use and occupancy permit shall not be approved until the Department has been
31 provided with a completed elevation certificate prepared by a registered land surveyor or

1 engineer certifying the “as-built” elevation of the subject construction.

2 (h) A record or log of permits issued for development in the County floodplain shall be
 3 maintained by the Department and shall be available upon request to FEMA or its authorized
 4 agent (the Maryland Department of the Environment) during periodic assessments of the County
 5 participation in the National Flood Insurance Program. Such record shall include at a minimum
 6 the date the permit was issued, the “as-built” lowest floor elevation of all new construction or
 7 substantial improvement, the issuance date of the use and occupancy permit, a copy of the
 8 completed elevation certificate, and any map amendments issued by FEMA.

9 **Sec. 32-210. Appeals.**

10 (a) A person aggrieved by a decision of the Department under this Division may file an
 11 appeal in writing with the Board of Appeals for Prince George’s Department within ten (10) days
 12 of receiving notice of the Department’s decision.

13 (b) The Board may reverse, modify or remand the decision of the Department only if the
 14 decision of the Department is clearly erroneous, illegal, arbitrary or capricious or unsupported by
 15 any substantial evidence. The Board shall not have the authority to issue an order which is in
 16 conflict with a lawful order of the Department, the requirements and provisions of this Division,
 17 or the Federal or State floodplain regulations.

18 (c) Further appeals shall be to the Circuit Court pursuant to the Maryland Rules on
 19 Administrative Appeals.

20 **Sec. 32-211. Enforcement and Penalties.**

21 (a) The Department may issue a notice of violation to any person, firm, association or
 22 corporation who fails to comply with the standards and requirements of this Division for
 23 construction or development in the floodplain, which notice may provide a reasonable time in
 24 which to comply.

25 (b) Any person who fails to comply with a notice of violation or other lawful direction of
 26 the Director shall be subject to civil citation and a monetary fine pursuant to Section 28-261 of
 27 this Code.

28 (c) Any person who violates the provisions of this Division shall be guilty of a
 29 misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than One
 30 Thousand Dollars (\$1,000) or imprisonment not exceeding six (6) months, or both, for each
 31 violation, with costs imposed at the discretion of the Court. Each day that the violation continues

1 shall constitute a separate offense.

2 (d) The imposition of a civil or criminal fine or penalty for any violation or noncompliance
 3 with this Division shall not excuse the violator from the requirement to correct or remedy the
 4 violation within a reasonable time. The County Attorney may institute injunctive, mandamus or
 5 other appropriate action or proceedings at law or equity for the enforcement of this Ordinance,
 6 and any court of competent jurisdiction shall have the right to issue restraining orders, temporary
 7 or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

8 (e) The Department shall promptly notify the Federal Insurance Administrator and the
 9 Maryland Department of the Environment of any structure or development in the floodplain
 10 which is in violation of this Division in order that new or renewal National Flood Insurance on
 11 the subject property may be denied or other appropriate remedies may be pursued by these
 12 agencies.

13 **Sec. 32-212. Fees for Conducting the Floodplain Study.**

14 The fees for the Department to conduct a floodplain study using the GIS-based floodplain
 15 models pursuant to this Subtitle shall be adopted by resolution of the Prince George's County
 16 Council. The County Executive shall propose and recommend to the County Council a schedule
 17 of fees that reflects the actual costs associated with conducting the study and administering and
 18 maintaining the GIS database and hardware needed for the models pursuant to the floodplain
 19 study.

20 **Sec. 32-213. through 32-215. Reserved.**

21 **DIVISION 5. NONTIDAL WETLAND PROTECTION ORDINANCE.**

22 **Sec. 32-216. Short Title; Purpose.**

23 (a) The provisions of this Division shall constitute and be known as the "Nontidal Wetland
 24 Protection Ordinance" of Prince George's County, Maryland.

25 (b) Prince George's County has established a comprehensive program for the protection,
 26 conservation and regulation of nontidal wetlands. The goal of this program is to ensure no net
 27 loss of nontidal wetland acreage and function and to strive for a net resource gain in the County.
 28 This program is to be administered by the Department of Public Works and Transportation under
 29 the provisions of this Ordinance.

30 (c) It is the intent of Prince George's County to protect the County's nontidal wetland
 31 resources through a comprehensive Countywide program in cooperation with State and Federal

1 agencies. Through this program further degradation and losses of nontidal wetlands will be
 2 prevented wherever possible. Where losses are unavoidable, these losses will be offset through
 3 restoration or creation of nontidal wetlands.

4 (d) The provisions of this Ordinance are adopted pursuant to the Annotated Code of
 5 Maryland, Natural Resources Article, Section 8-1201, et seq., and Code of Maryland Regulations
 6 (COMAR) 08.05.04.22 and are subject to the provisions described therein.

7 **Sec. 32-217. Definitions.**

8 (a) Applicability of definitions. The definitions contained in Subtitle 32, Divisions 2 and 3
 9 of this Code may apply to this Division and shall be supplemented by the definitions in
 10 Subsection (b) of this Section.

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

13 (1) **Adaptive Vegetation** - plant species which are not native but provide similar
 14 value to native species and grow successfully in Maryland.

15 (2) **Adverse Impact** - any diminishment of nontidal wetland acreage or function.

16 (3) **Agricultural Activity** - aquaculture and farming activities including plowing,
 17 tillage, cropping, seeding, cultivating, and the grazing and raising of livestock, sod production
 18 and other products cultivated as part of a recognized commercial enterprise, and harvesting for
 19 production of food and fiber products, excluding forest products. The definition includes
 20 tobacco, nursery stock, Christmas trees, aquaculture ponds, and other ponds used to conduct
 21 farming activities. Activities that result in a change to a land use other than agriculture are not
 22 agricultural activities. Structures or temporary storage areas related to sale of products are
 23 excluded from this definition.

24 (4) **Agriculture** - a land use dominated by the production of food, fiber, aquaculture
 25 or livestock, and other products cultivated as part of a recognized commercial enterprise.

26 (5) **Applicant** - a person who signs the Nontidal Wetland Concept Plan and Nontidal
 27 Wetland Permit Application.

28 (6) **Aquaculture** - the commercial rearing of finfish, shellfish and aquatic plants for
 29 sale, trade, barter or shipment.

30 (7) **Aquaculture Facility** - a pond, impoundment, raceway or tank and their
 31 associated structures essential for the purpose of aquaculture.

1 (8) Areas that have Lain Fallow - areas used for agriculture or forestry activities
2 that are not in production for agriculture or forest products.

3 (9) Avoid - to refrain from conducting an activity that may adversely impact a
4 nontidal wetland.

5 (10) Best Management Practices - conservation practices or systems of practices and
6 management measures that:

7 (A) Control soil loss and reduce water quality degradation caused by nutrients,
8 animal waste, toxics and sediment; and

9 (B) Minimize adverse impacts to the surface water, groundwater flow, and
10 circulation patterns, and to the chemical, physical and biological characteristics of a nontidal
11 wetland.

12 (11) Bog - a nontidal wetland characterized by organic soils, accumulated peat, and
13 soils saturated to the surface through the year with minimal fluctuation in water level.

14 (12) Buffer - a regulated area 25 feet in width surrounding a nontidal wetland,
15 measured from the outer edge of the nontidal wetland.

16 (13) Clean Water Act - the Federal Water Pollution Control Act of 1972, as amended
17 by the Clean Water Act of 1977 and later amendments (33 U.S.C. 1251, et seq.).

18 (14) Comprehensive Watershed Management Plan - a plan developed in
19 cooperation with Federal, State and local agencies and approved by the County and Maryland
20 Department of Natural Resources (MDNR) that addresses nontidal wetland protection, creation,
21 restoration, enhancement, cumulative impacts, flood protection, water supply concerns and other
22 natural resource elements for a specific area or region.

23 (15) Corps Delineation Manual - the Corps of Engineers Wetlands Delineation
24 Manual, Technical Report Y-87-1 and any subsequent amendments, which is incorporated by
25 reference.

26 (16) Creation - actions performed which establish nontidal on upland sites.

27 (17) Critical Habitat - habitat necessary for the survival of threatened or endangered
28 species, or species in need of conservation.

29 (18) Department - the Prince George's County Department of Public Works and
30 Transportation.

31 (19) Destruction or Removal of Plant Life that would alter the Character of a

1 **Nontidal Wetland:**

2 (A) The physical removal of natural nontidal wetland vegetation; or

3 (B) Causing mortality of nontidal wetland vegetation by the application of
4 herbicides, hydrologic alteration, or by other means.

5 (20) **Director** - the Director of the Prince George's County Department of Public
6 Works and Transportation or the designee of the Director.

7 (21) **Discharge of Fill Material** - the addition of fill material, from any source, into a
8 nontidal wetland area. Activities that can result in the discharge of fill material include:

9 (A) Placement of fill necessary for the construction of any structure;

10 (B) Building or any structure or impoundment requiring rock, sand, dirt, or other
11 materials for its construction;

12 (C) Site development fills for recreational, industrial, commercial, residential,
13 and other uses;

14 (D) Causeways or road fills;

15 (E) Dams and dikes;

16 (F) Artificial islands;

17 (G) Property protection or reclamation devices, or both;

18 (H) Levees; and

19 (I) Fills for structures such as, and associated with, sewage treatment facilities
20 and intake and outfall pipes.

21 (22) **Disturbance of Water Level or Water Table** - the alteration of the existing
22 elevation of groundwater or surface water by:

23 (A) Adding or impounding a sufficient quantity of stormwater or water from
24 other sources to modify the existing vegetation, values or functions of the nontidal wetlands; or

25 (B) Draining, ditching, or otherwise causing the depletion of the existing
26 groundwater or surface water levels so that the activity would modify the existing vegetation.

27 (23) **Drainage basin** - an area drained by a river system. In Prince George's County
28 this includes the Anacostia, Patuxent and Potomac drainage basins.

29 (24) **Drainage of Nontidal Wetlands** - methods used to change the hydrologic
30 conditions of nontidal wetlands, including lowering groundwater or surface water levels through
31 pumping, piping, ditching or otherwise altering water flow patterns.

1 (25) **Emergent Nontidal Wetland** - that portion of a nontidal wetland dominated by
 2 erect, rooted, herbaceous vegetation as the uppermost vegetation strata.

3 (26) **Enhancement** - those actions performed to provide additional protection to, or to
 4 create, or improve the functions of a nontidal wetland or other aquatic sites or resources.

5 (27) **Excavation** - to dig or remove soil, rocks or other materials resulting in a change
 6 in all or part of the elevation of a site.

7 (28) **Expanded Buffer** - a regulated area of 100 feet in width surrounding a non-tidal
 8 wetland, measured from the wetland boundary and established because of the presence of steep
 9 slopes, highly erodible soils, other soils with development constraints, or the presence of
 10 Nontidal Wetlands of Special State Concern.

11 (29) **Extenuating Circumstances** - conditions as defined in Section 32-220(e) and (g)
 12 requiring extension of a set time limit to process an application, render decision, or conduct a
 13 public informational hearing.

14 (30) **Farmed Nontidal Wetland** - an area of Nontidal Wetland that is presently tilled,
 15 grazed, or under conservation tillage for agricultural activities or is lying fallow and has been out
 16 of production for agricultural activities for less than five (5) consecutive years.

17 (31) **FEMA Maps** - the Flood Insurance Rate Maps (FIRM) and the Flood Boundary
 18 and Floodway maps of the County prepared by FEMA (Federal Emergency Management
 19 Agency) and any subsequent amendments.

20 (32) **Fill** - any materials placed in an area which alters the elevation of the site,
 21 groundwater level, or the soil surface.

22 (33) **Floodplain or County Floodplain** - includes all those areas within the County
 23 which will be inundated by the 100-year flood, as determined by FEMA and the County.

24 (34) **Forested Nontidal Wetland** - that portion of a nontidal wetland dominated by
 25 woody vegetation greater than 20 feet in height.

26 (35) **Forestry Activity** - planting, cultivating, thinning, harvesting or any other
 27 activity undertaken to use forest resources or to improve their quality or productivity. Activities
 28 that change nontidal wetlands to another land use, including but not limited to agricultural or
 29 development, are not forestry activities.

30 (36) **Function** includes, but is not limited to, the roles nontidal wetlands serve through:

31 (A) **Reduction of pollutant loadings, including excess nutrients, sediment and**

1 toxics;

2 (B) Attenuation of floodwaters and stormwaters;

3 (C) Shoreline stabilization and erosion control;

4 (D) Breeding grounds and habitat for many species of plants and wildlife

5 including fish, game and nongame birds and mammals, including threatened and endangered
6 species and species in need of conservation;

7 (E) Food chain support; and

8 (F) Timber production.

9 (37) General Area - the geographic or market vicinity that has desired characteristics
10 for fulfilling the basic project purpose.

11 (38) Grazing - feeding on grass or other herbaceous plants in fields.

12 (39) Hydric Soils - soils that are saturated, flooded or ponded long enough during the
13 growing season to develop anaerobic conditions that favor the growth and regeneration of
14 hydrophytic vegetation as defined in the Corps Delineation Manual.

15 (40) Hydrologically Connected - a nontidal wetland:

16 (A) Contiguous to a watercourse, surface water body, tidal wetland or ditch
17 drainage;

18 (B) Within or connected to any 100 year floodplain as determined by calculation
19 or by FEMA Maps;

20 (C) Receives or discharges surface or groundwater as intermittent or perennial
21 flow from or to a surface water body, watercourse or other tidal or nontidal wetland as
22 demonstrated by the presence of an intermittent or perennial stream or spring flow; or

23 (D) Formerly contiguous to a surface water body, watercourse or a nontidal
24 wetland described in subsection (b)(40)(A) through (C) above, but is presently separated from
25 these areas by a man-made berm, fill, road or other structure.

26 (41) Hydrophyte - plant life adapted to growth and reproduction under periodically
27 saturated root zone conditions during at least a portion of the growing season. A listing of these
28 plants can be found in the "National List of Plant Species that Occur in Wetlands: 1988,
29 Maryland," which is incorporated by reference.

30 (42) Initial Planning Phase - the period of time in which the feasibility of a project is
31 evaluated before committing resources necessary for its implementation.

1 (43) **In kind** - a characteristic closely approximating those of a nontidal wetland
2 before it was adversely impacted by a regulated activity.

3 (44) **Intermittent Stream** - those areas that are surface waters, contained within a
4 defined channel or bed that flow at least once per year. A defined channel or bed is indicated by
5 hydraulically sorted sediment, or the removal of vegetative litter, or loosely rooted vegetation by
6 the action of moving water.

7 (45) **Isolated Nontidal Wetland** - a nontidal wetland that is not hydrologically
8 connected through surface or subsurface flow to streams, tidal or nontidal wetlands or tidal
9 waters.

10 (46) **Landscape Management** - to maintain or enhance vegetation that was planted or
11 manipulated for aesthetic purposes. Landscape management includes mowing, pruning and
12 private gardening, excluding agricultural activities.

13 (47) **Landscape Management Area** - an area predominately covered by grasses or
14 herbaceous ground cover established and maintained for horticultural purposes. The landscape
15 management area may include a lawn which contains trees, shrubs or other plants.

16 (48) **Loss of Nontidal Wetland:**

17 (A) Alteration of existing nontidal wetland vegetation or water levels that
18 significantly impairs or eliminates its principal functions, but excluding:

19 (i) Forestry activities conducted in accordance with a Prince George's Soil
20 Conservation District approved sediment and erosion control plan;

21 (ii) Restoration; and

22 (iii) Department or MDNR approved enhancement projects; or

23 (B) Alteration of an area so that it no longer meets the nontidal wetland
24 definition.

25 (49) **Maintenance** - activities undertaken to prevent the deterioration, impairment, or
26 need of a serviceable fill area, structure, right-of-way, or land use, which includes management
27 of vegetation and replacement of structural components.

28 (A) Maintenance does not include the following activities, unless conducted in a
29 temporary sediment control structure, wash pond or roadside ditch:

30 (i) Dredging;

31 (ii) Excavating; or

1 (iii) Filling.

2 (50) MDE - the Maryland Department of the Environment, Standards and Certification
3 Division.

4 (51) MDNR - the Maryland Department of Natural Resources, Water Resources
5 Administration, Nontidal Wetlands Division.

6 (52) Minimize - to reduce the adverse impact on a nontidal wetland to the greatest
7 practicable and reasonable degree.

8 (53) Mitigation - creation, restoration, or enhancement of nontidal wetlands that were
9 or will be lost due to regulated activities.

10 (54) Mitigation Bank - an area approved by the Department and used for wetland
11 mitigation projects required for future wetland impacts, usually from multiple projects, and
12 operated using a system of credits and debits based on acreage or functions as specified by the
13 Department.

14 (55) Mitigation Banking - wetland restoration, creation, or enhancement undertaken
15 expressly for the purpose of providing compensation credits for wetland losses from future
16 activities.

17 (56) Nontidal Wetland - an area that is inundated or saturated by surface water or
18 groundwater at a frequency and duration sufficient to support, and that under normal
19 circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil
20 conditions, and is determined according to the Corps Delineation Manual.

21 (57) Nontidal Wetland Concept Plan - a pre-application review process used to
22 provide the applicant with information about the presence of nontidal wetlands to determine: if
23 there are any potential adverse impacts on nontidal wetlands as a result of the proposed project;
24 if those impacts can be avoided; and if those impacts can then be minimized, before the applicant
25 has committed substantial resources in the project site. Use of the Nontidal Wetland Concept
26 Plan review is for guidance purposes only; it does not imply approval of a Unified Nontidal
27 Wetland Permit.

28 (58) Nontidal Wetlands of Special State Concern - those areas designated, based on
29 the criteria in COMAR 08.05.04.23 and listed in COMAR 08.05.04.26, as having exceptional
30 ecological or educational value of Statewide significance. Nontidal Wetlands of Special State
31 Concern in Prince George's County are listed in Section 32-239.

1 (59) **Off-Site** - not on the same parcel as the nontidal wetland which has been
 2 adversely impacted by a regulated activity.

3 (60) **On-Site** - the same parcel on which a nontidal wetland has been adversely
 4 impacted by a regulated activity.

5 (61) **Out of Kind** - biological characteristics not closely approximating those of the
 6 nontidal wetland before it was adversely impacted by a regulated activity.

7 (62) **Peat Mining** - the extraction of peat of a commercially valuable quality and
 8 quantity.

9 (63) **Person** - the federal government, the State, any county, municipal corporation, or
 10 other political subdivision of the State, or any of their units, or an individual receiver, trustee,
 11 guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership,
 12 firm, association, public or private corporation, or any other entity.

13 (64) **Practicable** - available and capable of being done after taking into consideration
 14 the costs, existing technology, and logistics in light of the overall project purpose.

15 (65) **Project** - the entire activity on a parcel of land, including all proposed and
 16 projected phases and sections of land subdivisions, of which all regulated or other activities
 17 conducted in a nontidal wetland, buffer or expanded buffer are a part.

18 (66) **Project Purpose** - the principal reason for conducting all regulated activities and
 19 other activities on a project site.

20 (67) **Regulated Activity:**

21 (A) Means any of the following activities which are directly undertaken or
 22 originate in a nontidal wetland, buffer or expanded buffer;

23 (i) Removal, excavation, or dredging of soil, sand, gravel, minerals,
 24 organic matter, or materials of any kind;

25 (ii) Change of existing drainage characteristics, sedimentation patterns or
 26 flood retention characteristics;

27 (iii) Disturbance of the water level or water table by drainage,
 28 impoundment or other means;

29 (iv) Dumping, discharging of material, or filling with material, including
 30 the driving of piles and placing of obstructions;

31 (v) Grading or removal of material that would alter existing topography;

1 and

2 (vi) Destruction or removal of plant life that would alter the character of a
 3 nontidal wetland.

4 (B) Does not include an agricultural activity or forestry activity as defined in this
 5 Ordinance.

6 (68) **Repair** - an activity that restores the character, scope, size, and design of a
 7 serviceable fill area, structure, or land use to its previously authorized and undamaged condition.
 8 Activities that change the size or scope of a project beyond the original design in order to drain,
 9 dredge, fill, flood, change the hydrology, or otherwise convert nontidal wetlands that were not
 10 previously impacted by the project are not included in this definition. Minor deviations to plans
 11 or specifications are allowed as long as no permanent nontidal wetland impact results from the
 12 deviation.

13 (69) **Restoration or Restore** - actions performed to return nontidal wetland acreage
 14 and function temporarily impacted by a regulated activity. Restoration also means actions
 15 performed to establish nontidal wetlands on former nontidal wetland sites.

16 (70) **Scrub-Shrub Wetland** - that portion of a nontidal wetland dominated by woody
 17 vegetation less than 20 feet in height as the uppermost strata.

18 (71) **Serviceable** - presently usable or currently fulfilling its basic, original purpose.

19 (72) **Significant Plant or Wildlife Value** - a nontidal wetland:

20 (A) Of the following unusual or unique community types:

21 (i) Bogs;

22 (ii) Areas with bald cypress (*Taxodium distichum*), Atlantic white cedar
 23 (*Chamaecyparis thyoides*), red spruce (*Picea rubens*), balsam fir (*Abies balsanea*), or American
 24 larch (*Larix laricina*) that contain at least 20 percent of these species in any strata as determined
 25 by the Corps Delineation Manual; or

26 (iii) Delmarva bays as defined in COMAR .08.05.04.01 B.21;

27 (B) With water discharge that maintains minimum stream base flow important
 28 for maintaining plant wildlife species;

29 (C) With threatened or endangered species, or species in need of conservation;

30 (D) Adjacent to Class III or Class IV waters as defined in COMAR 26.08.02.08;

31 (E) Of Special State Concern;

1 (F) That supports vernal pools as defined in COMAR 08.05.04.01 B.87; and

2 (G) That is regularly or periodically influenced by tidal waters.

3 (73) **Site Development** - any grading, grubbing or disturbance to remove unwanted
4 vegetation and other material from a parcel of land for development, maintenance or
5 reconstruction.

6 (74) **Soil Conservation and Water Quality Plan** - a land use plan for a farm that
7 shows a farmer how to make best possible use of soil and water resources while protecting and
8 conserving those resources for the future.

9 (75) **Spring** - a nontidal wetland that discharges groundwater at the surface to form a
10 pool or to provide intermittent or perennial surface flow, and is usually characterized by
11 saturated or organic soils.

12 (76) **State Water Quality Certification** - a certification issued by MDE pursuant to
13 the Clean Water Act, Section 401.

14 (77) **Structure** - anything constructed or built and affixed, except for those structures
15 built in order to maintain the wetland as part of an approved mitigation plan.

16 (78) **Utility Line** - any underground or overhead transmission line, pipe, cable, or wire
17 for the conveyance of public or private water or sewer, natural gas or the transmission of
18 electrical, radio or telecommunications service.

19 (79) **Water-Dependent Activity** - an activity for which the use of surface water is
20 essential to fulfill the basic purpose of the proposed project.

21 (80) **Watershed** - the area draining into a river, river system or body of water. A
22 watershed is a subunit of a drainage basin. Some examples of watersheds within Prince
23 George's County are Tinker's Creek, Piscataway Creek and Western Branch.

24 (81) **Wetland Boundary** - the point the ground at which a shift from wetlands to
25 nonwetlands occurs pursuant to the Corps Delineation Manual.

26 (82) **Wildlife** - any species of a vertebrate or invertebrate animal, excluding domestic
27 species.

28 **Sec. 32-218. Wetland Concept Plan.**

29 (a) The Wetland Concept Plan is an optional pre-application review process used to
30 provide the applicant with information about the presence of nontidal wetlands to determine: if
31 there are any potential adverse impacts on nontidal wetlands as the result of the proposed project;

1 if those impacts can be avoided; and if those impacts can be minimized. Consideration of
2 alternative sites at the earliest stage may enable the applicant to refrain from committing
3 substantial resources in the project site and retain the flexibility to avoid adverse impacts on
4 nontidal wetlands.

5 (b) Wetland Concept Plan Purpose.

6 (1) The purpose of the Wetland Concept Plan is to determine:

7 (A) If the proposed project includes any regulated activity;

8 (B) If the proposed project can be modified to first avoid and then to minimize
9 impacts on nontidal wetlands;

10 (C) If the proposed activity falls under the jurisdiction of a Unified Nontidal
11 Wetland permit, a State Nontidal Wetland permit or if a Federal Section 404 permit may be
12 required; and

13 (D) If the proposed activity is exempt or if it qualifies for a Letter of
14 Authorization.

15 (c) Beginning January 1, 1994, all persons involved with the development of a project
16 within Prince George's County are strongly encouraged to take advantage of the Wetland
17 Concept Plan review process before submitting an application for a Unified Nontidal Wetland
18 Permit, grading permit, building permit, or a preliminary plan of subdivision.

19 (d) Wetland Concept Plan Application.

20 (1) Applicants are encouraged to consult guidance maps prepared by MDNR to assist
21 in identifying and locating wetlands.

22 (2) If the proposed activity will require a Unified Nontidal Wetland Permit, the
23 Department will provide guidance on applying for the permit.

24 (3) The Wetland Concept Plan application form shall be furnished by the Department.

25 (A) The review process can be used to identify wetland areas, verify wetland
26 delineations, or assist the applicant in identifying the type of nontidal wetland permits required
27 for the proposed project.

28 (B) Submission requirements. The application and background information
29 shall include the name of the property; the name of the applicant; the name of the property owner
30 and their signatures; the name of the contract purchaser; a location map; the County Road Atlas
31 page number and grid coordinates; zoning classification; a site plan of all proposed regulated and

1 nonregulated activities, including, but not limited to the topography, natural features, location
 2 and dimensions of structures, driveways, pools, walk-ways, utility lines, septic systems and
 3 wells; a narrative of the proposed project's purpose; and any other information the Department
 4 may require.

5 (C) Additional submission requirements. If applicable, the following
 6 information shall also be submitted: the wetland report and delineation in accordance with the
 7 Corps of Engineers Wetland Delineation manual, Technical Report Y-87-1 and any subsequent
 8 amendments. Forest Stand Delineation and the proposed Type I or Type II Tree Conservation
 9 Plan; the proposed or approved preliminary plan of subdivision; soil map; drainage area map;
 10 and a 200 foot scale map of the project site if the proposed project involves a subdivision or a
 11 commercial or industrial use.

12 (D) If necessary to identify the potential impacts of a proposed project, the
 13 Department will request submission of one or more of the following: an analysis of pre- and
 14 post discharges to wetlands (changes to discharges, volumes and velocities); the total number of
 15 sites considered by an applicant along with the physical, economic and demographic
 16 characteristics of each site; the purpose of the proposed project and its relationship to the site; the
 17 location of any existing structural or natural features that constrain the placement or
 18 configuration of the proposed project; the spatial requirements of the proposed project; the
 19 sensitivity of the project design to the nontidal wetland(s); and any proposed phasing of the
 20 project (for larger projects which may not be completed within three (3) years, it is
 21 recommended that the project be phased).

22 (4) The Department, in reviewing and evaluating the Wetland Concept Plan, shall
 23 consider the following factors:

24 (A) Reduction in acreage of a nontidal wetland affected by a regulated activity;

25 (B) Harm to threatened or endangered species or species in need of conservation,
 26 or the critical habitat of these species;

27 (C) Movement of aquatic and wildlife species indigenous to the nontidal wetland
 28 or water body;

29 (D) Ability of the nontidal wetland to continue to support and provide habitat for
 30 those aquatic and wildlife species using the area;

31 (E) Hydrologic regime of the areas upstream and downstream of the area of

1 impact;

- 2 (F) Functions of the impacted and/or adjacent nontidal wetlands;
 3 (G) Passage of normal or expected high flows, or the relocation of water;
 4 (H) Subsurface water flow into or out of any nontidal wetland area;
 5 (I) Presence of, or potential for, supporting fish spawning areas;
 6 (J) Presence of areas having significant plant or wildlife value;
 7 (K) Cumulative impact to nontidal wetlands; and,
 8 (L) Impacts to the 100- year floodplain.

9 (e) Upon completion of the Wetland Concept Plan review, the Department will provide a
 10 letter to the applicant stating that:

- 11 (1) A Unified Wetland Permit is required;
 12 (2) A Letter of Authorization is required;
 13 (3) A MDNR Nontidal Wetland Permit is required;
 14 (4) A Federal Section 404 permit may be required; or
 15 (5) A Wetland Permit or Letter of Authorization is required.

16 (f) The Wetland Concept Plan letter shall be valid for three (3) years from the date of
 17 issuance and may, upon review, be renewed for additional three (3) year periods.

18 (g) The Wetland Concept Plan review is for guidance purposes only and does not grant
 19 approval of a Unified Nontidal Wetland Permit.

20 **Sec 32-219. Application Requirements for Regulated Activities.**

21 (a) A person may not conduct a regulated activity in a nontidal wetland, buffer, or
 22 expanded buffer unless the Department has determined that the activity is exempted or has issued
 23 a permit or a Letter of Authorization. Any County grading or building permit to conduct a
 24 regulated activity in a wetland, buffer, or expanded buffer is invalid unless the Department or the
 25 MDNR has issued a Nontidal Wetland Permit or a Letter of Authorization.

26 (b) Any fee structure for the nontidal wetland permit process shall be established by
 27 resolution of the County Council, and such fees shall be payable to Prince George's County.

28 (c) Application Forms.

29 (1) An application for a nontidal wetland permit shall be on a unified Federal, State
 30 and County permit application form furnished by the Department and shall include all
 31 information required in subsection (d) and any additional information required by the

1 Department in subsection (e).

2 (2) The Department shall coordinate with other Federal, State and County agencies to
 3 expedite review of associated permits.

4 (3) The person signing the application form shall be:

5 (A) An officer or authorized agent, if the applicant is a corporation;

6 (B) A legally authorized official, if the applicant is a County agency or
 7 municipal government;

8 (C) An authorized partner, if the applicant is an association or a partnership; or

9 (D) An individual or his/her legally authorized representative, if the applicant is
 10 an individual.

11 (4) The person who signs the application shall be responsible for the truth, accuracy
 12 and completeness of all information in the application.

13 (d) An applicant for a permit or a Letter of Authorization shall submit all of the
 14 information required by the application form.

15 (e) An applicant for a Unified Nontidal Wetland Permit or Letter of Authorization may be
 16 required to submit one or more of the following items of information for an application to be
 17 considered complete and the delineation correct:

18 (1) The Wetland Concept Plan letter and all information submitted at the Concept
 19 Plan stage;

20 (2) Name of the property owner and contract purchaser;

21 (3) Legal description of the project location;

22 (4) Description of the project purpose including a discussion of the project's spatial
 23 requirements and the sensitivity of the project design to the nontidal wetland area;

24 (5) A composite site plan at a scale of one inch equals 200 feet drawn by a licensed
 25 surveyor or engineer to show the overall project and layout;

26 (6) A site plan at a scale of one inch equals 30 feet or 50 feet drawn by a licensed
 27 surveyor or engineer that includes the following:

28 (A) Nontidal wetland boundary, as marked by flags in the field, based on field
 29 delineation and in accordance with the Corps Delineation Manual, including the buffer and
 30 expanded buffer. The applicant shall maintain the boundary flags in place until notified by the

31 Department;

- 1 (B) Location of all existing and proposed structures;
- 2 (C) Location of all proposed regulated and nonregulated activities;
- 3 (D) Property Lines of all adjacent and/or impacted properties;
- 4 (E) Names of adjacent property owners;
- 5 (F) Location of Nontidal Wetlands of Special State Concern;
- 6 (G) Location and number of all soil samples;
- 7 (H) Location of the County's approved 100 year floodplain boundary based on
 8 the proposed condition;
- 9 (I) Existing topography (2 foot field run contours, 5 foot contours or aerial as
 10 needed); and
- 11 (J) Type I and II Tree Conservation Plan or a valid letter of exemption;
- 12 (7) Proposed or approved preliminary plan of subdivision or lot layout;
- 13 (8) Drainage area map;
- 14 (9) Alternative site analysis including the physical, economic and demographic
 15 character of each site;
- 16 (10) An Avoidance and Minimization Analysis (A discussion of potential impacts and
 17 the steps taken, first to avoid, and then to minimize, impacts for each site);
- 18 (11) Demonstration of public need, as applicable, by showing;
- 19 (A) The present or future availability of projects with the same or similar public
 20 need; and
- 21 (B) A demand for the project in the general area;
- 22 (12) Representative photograph of the affected nontidal wetland area;
- 23 (13) A Phase I Mitigation Plan;
- 24 (14) Other information an applicant deems appropriate;
- 25 (15) A cross section of proposed final elevation after filling, grading or excavating;
- 26 (16) A description of the type and quantity of fill material to be used;
- 27 (17) Acreage, function and type of nontidal wetland area, buffer, and expanded buffer
 28 that will be affected permanently or temporarily by the regulated activity;
- 29 (18) Data from soil samples which will be:
- 30 (A) Taken from a minimum depth of 20 inches and include a description of soil
 31 colors and textures as obtained from borings sufficient to verify hydric or nonhydric conditions;

1 (B) On transects perpendicular to the nontidal wetland boundary, starting within
 2 the nontidal wetland area and moving towards the upland; and

3 (C) Numbered and accompanied by a soil description log indicating the observed
 4 or estimated depth to the highest water table during the year;

5 (19) Data sheets from the Corps Delineation Manual identifying and describing
 6 hydrology and vegetation along the transects required in subsection (e) (18);

7 (20) Identification of nontidal wetlands known or believed to have significant plant or
 8 wildlife value;

9 (21) Description of available utilities, site access, type and acreage of the nontidal
 10 wetland, and description of potential impacts for each alternative site considered by the
 11 applicant;

12 (22) Map of, and narrative statement regarding, the geographic boundaries of the
 13 general area where the proposed project could be undertaken and still meet the project purpose;

14 (23) Brief discussion of demographic factors which are critical to the success of the
 15 project, including data, statistics or marketing studies;

16 (24) Description of water, wastewater, community facilities, schools, transportation, or
 17 other public facility requirements of the project;

18 (25) An assessment of on-site and adjacent nontidal wetland buffer and expanded
 19 buffer functions;

20 (26) Field survey of animal species and/or the natural characteristics of the site;

21 (27) Soil infiltration rates as determined in the field; or

22 (28) Larger scale or more detailed engineering design plans or maps.

23 (f) Confidential Information.

24 (1) Except as provided in subsection (f) (2), information submitted to the Department
 25 under this regulation shall be made available for public inspection and copying.

26 (2) An applicant may request in writing, at the time the application is submitted, that
 27 confidential information submitted as part of an application not be disclosed. The Department
 28 shall determine if the information is confidential under State Government Article Section 10-611
 29 et seq., Annotated Code of Maryland, and other applicable law. If the Department denies the
 30 applicant's request for nondisclosure, the applicant may withdraw an application or seek review
 31 of the Department's determination under applicable law. If the applicant withdraws an

1 application, the Department shall, at the request of the applicant, return any documents
 2 designated as confidential.

3 **Sec. 32-220. Application Processing Procedures for the Department.**

4 (a) The Department shall acknowledge receipt of the application in writing, within ten (10)
 5 days by fax or regular mail.

6 (b) The Department shall consider an application complete if it contains all of the
 7 information required under Section 32-119 and is sufficient for the Department to process the
 8 application.

9 (c) The Department shall notify an applicant for a permit in writing, within 45 days of
 10 receipt of an application stating whether the application is complete and the wetland delineation
 11 correct.

12 (1) If the application is incomplete or information submitted is insufficient, the
 13 Department shall notify the applicant, in writing, of the additional information needed.

14 (2) If the wetland delineation is incorrect, the Department shall so notify the applicant
 15 and require the applicant to correct the delineation.

16 (d) If the Department fails to notify an applicant of the need for additional information
 17 and/or correction of the wetland delineation within 45 days of receipt of the application, the
 18 application shall be considered complete and the delineation correct.

19 (e) The Department, upon written notice to the applicant, may extend the 45 day time
 20 period when at least one of the following extenuating circumstances prevent consideration of the
 21 application:

22 (1) Inclement weather conditions;

23 (2) Review required by Federal or State agencies; or

24 (3) Additional information must be submitted by the applicant to clarify or complete
 25 the information in the application.

26 (f) Public Notice.

27 (1) After the Department has determined that an application is complete and the
 28 wetland delineation is correct, the Department shall issue, at the applicant's expense, a public
 29 notice of an opportunity to submit written comments or request a public informational hearing
 30 about the application. The time period for submitting written comments or requesting a hearing
 31 shall not exceed 30 days. Public notice and a public informational hearing may not be required

1 for activities that qualify for a Letter of Authorization under Section 32-226.

2 (2) The public notice shall contain:

3 (A) The name and address of the applicant;

4 (B) A description of the nature and location of the proposed project;

5 (C) A description of the proposed mitigation plan, if applicable.

6 (D) Instructions of how to submit written comments, request a public
7 informational hearing, and/or how to place one's name on the interested person's mailing list;

8 (E) The expiration date for the opportunity to comment on the wetland
9 delineation or to request a public informational hearing regarding same;

10 (F) A statement that any further notices concerning actions on the application
11 will be provided only by mail to those persons on the interested persons mailing list; and

12 (G) The name, address and telephone number of person in the Department from
13 which information about the application may be obtained.

14 (3) The public may be notified by any of the following methods:

15 (A) Selected mailing to Federal, State, County, or municipal authorities; persons
16 on the interested persons mailing list; and adjacent property owners;

17 (B) Publication for at least one (1) business day in a newspaper of record;

18 (C) Joint notice with other Federal, State or County agencies; or

19 (D) Joint notice with other units or programs within the Department.

20 (4) The Department shall provide MDNR with a copy of the public notice for any
21 completed application.

22 (g) Public Informational hearing.

23 (1) Any interested person may request, in writing, a public informational hearing.

24 (2) If requested, a public informational hearing shall be held within 45 days of the
25 expiration date specified in the public notice. The Department shall mail the notice specifying
26 the location, date and time of the public informational hearing to those persons on the interested
27 person's mailing list.

28 (3) The Department may extend the time period for the public informational hearing
29 for the following extenuating circumstances:

30 (A) Circumstances listed in subsection (e); or

31 (B) A request by an applicant.

1 (4) The Director may hold a public informational hearing and shall be designated as
 2 the presiding official.

3 (5) An applicant and any interested person shall be given an opportunity at the public
 4 informational hearing to present facts and make statements for or against granting the permit.
 5 Questions may be asked of, and directed to, the presiding official, but cross examination may not
 6 be conducted. The hearing is not a contested case hearing.

7 (6) The presiding official may determine the order of presentation of comments and
 8 questions at the public informational hearing. The public informational hearing may be
 9 conducted in the following order:

10 (A) Introduction by the Department.

11 (B) Presentation or proposed project by the applicant;

12 (C) Comments and questions by public officials;

13 (D) Comments and questions by other persons; and

14 (E) Closing of the public informational hearing by the presiding official;

15 (7) The presiding official has the authority and duty to:

16 (A) Conduct a full and fair public informational hearing;

17 (B) Act to avoid unnecessary delay and to maintain order; and

18 (C) Regulate the course of the public informational hearing and the conduct of
 19 the participants.

20 (8) The presiding official shall prepare an official record of the public informational
 21 hearing.

22 (9) The official record of the public informational hearing may not be transcribed
 23 unless the Department, the applicant, or a participant in the hearing requests a transcript. Costs
 24 of transcription shall be paid by the person requesting the transcript.

25 (h) In calculating any time period provided for in this Ordinance, if the last day falling
 26 within the time period falls on a Saturday, Sunday or a County or State holiday, the time period
 27 will be extended until the next normal business day.

28 (i) Letter of Authorization.

29 (1) Within 45 days of the Department's determination that the application is complete
 30 and the wetland delineation correct, the Department shall notify the applicant, in writing,
 31 whether the activity qualifies for a Letter of Authorization and, if so, what best management

1 practices, if any, will be required.

2 (2) The Department's Letter of Authorization shall be void if the information
 3 submitted is later shown to have been false, misleading or inaccurate. The Department shall
 4 pursue an appropriate enforcement action under Section 32-236 as to any activities that have
 5 been undertaken under the void Letter of Authorization.

6 (3) If the Department determines that the proposed activity does not qualify for a
 7 Letter of Authorization, it shall notify the applicant of the need to apply for a permit under
 8 Section 32-219.

9 (4) The Department shall specify in the Letter of Authorization the time period for
 10 which it is valid.

11 (5) If an applicant applies for a Letter of Authorization and a permit, the Department
 12 may withhold its decision on the Letter of Authorization pending a final permit decision.

13 (j) Interested person's mailing list. Upon written request, the Department may add
 14 additional names to the list. Those wishing to have their names placed on the list may send a
 15 written request to the Department.

16 **Sec. 32-221. Permit Decision and Reconsideration.**

17 (a) Permit Decision.

18 (1) The Department shall, after the closing date for receipt of written comments or
 19 after a public informational hearing if requested:

20 (A) Consider the written comments, testimony and other information received;

21 and

22 (B) Render a decision to grant, deny or condition a permit within:

23 (i) 60 days of the Department's determination that an application is
 24 complete and the delineation correct, if no hearing is requested; or

25 (ii) 45 days of a public informational hearing.

26 (2) The Department may extend the time period in which to render a decision for an
 27 additional 30 days for the following extenuating circumstances:

28 (A) Review required by a Federal or State agency; or

29 (B) Request by an applicant.

30 (3) The Department may afford the applicant an opportunity to provide, or the
 31 Department may request the applicant to provide, additional information to address concerns

1 raised in written comments.

2 (4) The applicant may request, in writing, that the Department withhold making a
3 final permit decision on the application until additional information can be provided. The
4 Department may withhold making its permit decision for six (6) months, after which the
5 application shall be deemed withdrawn and a new application must be submitted, unless
6 otherwise determined by the Department.

7 (5) Written notice of the permit decision shall be mailed to the applicant and to all
8 persons on the interested person's mailing list. Notice of the permit decision need not be
9 published.

10 (6) Work authorization under a permit shall be completed within the time period
11 specified in the permit.

12 (7) An applicant may not submit a new permit application for the same scope of work
13 where a permit application has been denied for six (6) months from the date of denial unless
14 there is a substantive change in the application.

15 (8) A permit may not be issued and work may not begin unless a final site plan or any
16 other necessary information is provided to the Department.

17 (b) Permit Reconsideration.

18 (1) A person who has the legal rights, duties, interests or privileges different from the
19 general public, which are adversely affected by the Department's decision to grant, deny, or
20 condition a permit, may request a reconsideration of the decision to the Director.

21 (2) The request for reconsideration shall be in writing and filed with the Department
22 within 30 days of the permit decision.

23 (3) The request for reconsideration shall contain:

24 (A) The name, address and telephone number of the person making the request;

25 (B) The name, address and telephone number of any attorney representing the
26 person making the request;

27 (C) A description of the grounds for the request, including the specific legal
28 right, duty, privilege or interest which may be adversely affected by the permit determination,
29 and which is different from those interests held by the general public;

30 (D) A statement of the specific relief desired as a result of the reconsideration;

31 and

1 (E) A general outline of the evidence supporting the desired relief, including the
 2 names and addresses of those that can verify the information submitted for the reconsideration.

3 (4) The Director shall review a request for reconsideration to determine whether the
 4 person requesting it has:

5 (A) A specific legal right, duty, privilege, or interest which is or may be
 6 adversely affected by the permit determination and which is different from that held by the
 7 general public;

8 (B) Raised at least one issue that is related to the subject of the permit and arises
 9 under this Ordinance; and

10 (C) Made a request for reconsideration within 30 days of the date the permit was
 11 issued or denied as specified under this subsection.

12 (5) The Director shall determine whether to grant or deny the relief requested in the
 13 reconsideration. If the determination is to deny the request, the determination shall be in writing
 14 and mailed by certified mail to the person requesting the reconsideration.

15 (6) Notification of the determination to deny the relief requested in the
 16 reconsideration shall contain the following:

17 (A) The specific reasons for the denial;

18 (B) A statement that if appeal under this regulation is not sought, the denial shall
 19 be the Department's final decision on the request for reconsideration.

20 (c) Appeal of Permit Decision or Appeal of Reconsideration.

21 (1) Any person adversely affected by the determination to grant or deny the permit or
 22 the reconsideration has the right to appeal to the Prince George's County Board of Appeals.
 23 Such action shall be taken within ten (10) calendar days of the receipt of the notice of decision.

24 (2) The Board may reverse, modify or remand the decision of the Director only if the
 25 decision of the Director is clearly erroneous, illegal, arbitrary or capricious, or unsupported by
 26 any substantial evidence. The Board shall not have the authority to issue an order which is in
 27 conflict with a lawful order of the Director, or the requirements and provisions of this Ordinance.

28 **Sec. 32-222. Criteria for Review of Nontidal Wetland Permit Applications.**

29 (a) The Department may not issue a permit for a regulated activity unless the Department
 30 finds the applicant has demonstrated that the:

31 (1) Proposed project is water-dependent and requires access to a nontidal wetland as a

1 central element of its basic function under the criteria in subsection (b) and (c) below, or is not
2 water-dependent and has no practicable alternative under the criteria in subsection (d);

3 (2) Regulated activity will first avoid and then minimize adverse impacts to the
4 nontidal wetland based on consideration of existing topography, vegetation, fish and wildlife
5 resources and hydrological conditions under the criteria in Section 32-223(b);

6 (3) Regulated activity does not cause or contribute to degradation of groundwater or
7 surface water under the criteria in Section 32-224(a); and

8 (4) Proposed project is consistent with an applicable comprehensive watershed
9 management plan.

10 (b) Water Dependency.

11 (1) A proposed project shall be considered water-dependent if the use of surface
12 water or a nontidal wetland is essential to fulfill the basic purpose of the proposed project.

13 (2) The Department shall apply the following criteria in determining if a proposed
14 project is water-dependent:

15 (A) Whether an alternative water source is available for use, including surface
16 runoff or groundwater, that may have fewer adverse impacts on nontidal wetlands; and

17 (B) Whether the use of a nontidal wetland would only enhance a project rather
18 than being essential to it.

19 (3) In determining whether a proposed project is water-dependent, the Department
20 shall consider the applicant's definition of the project purpose but may independently determine
21 whether the proposed project is water-dependent.

22 (4) For a multiple use project which has both water-dependent and nonwater
23 dependent features, the Department shall determine which features are water-dependent.

24 (c) Access Test.

25 (1) In determining whether the proposed project requires access to a nontidal wetland
26 as a central element of its basic function, the Department shall consider whether access could be
27 accomplished at another location that would first avoid and then minimize nontidal wetland
28 impacts.

29 (2) A water-dependent project, which the Department determines requires access to a
30 nontidal wetland, shall be exempted from the requirements of Subsection (d), but shall comply
31 with all other requirements referenced in Subsection (a).

1 (d) Practicable Alternative Analysis.

2 (1) The applicant shall demonstrate to the satisfaction of the Department that
3 practicable alternatives, including both alternative site analysis and on-site minimization, have
4 been analyzed and that the proposed regulated activity has no practicable alternative.

5 (2) In determining whether the proposed regulated activity has a practicable
6 alternative, the Department shall consider whether:

7 (A) The project purpose can be reasonably accomplished using one or more
8 alternative sites in the same general area as the proposed site that would avoid or result in
9 less adverse impact to the nontidal wetland(s) under the criteria in Section 32-223. The
10 Department shall consider the applicant's definition of "general area" but may take its
11 own independent determination of what the "general area" is;

12 (B) The reduction in the size, scope, configuration or density of the proposed
13 project and all alternative designs would avoid or minimize impact to the nontidal wetland but
14 would not accomplish the basic purpose of the project under the criteria of Section 32-223(b);

15 (C) The applicant has made a reasonable effort to accommodate site restraints
16 such as zoning regulations, infrastructure or parcel size which caused an alternative site to be
17 rejected. To determine if an applicant has made a reasonable effort to accommodate constraints,
18 the Department shall consider any pertinent information, including:

19 (i) Correspondence or other written documentation between an applicant
20 and the County, including a request for a special exception or other Zoning variance;

21 (ii) Evidence of efforts to modify the local infrastructure, including future
22 planned expansions or redesign of the project because of a nontidal wetland impact; and

23 (iii) Written documentation of the effort undertaken to acquire another site
24 or to reconfigure the proposed project to accommodate the constraint.

25 (D) The regulated activity is necessary to meet a demonstrated public need. The
26 following apply:

27 (i) To determine if the regulated activity is necessary for the proposed
28 project to meet a demonstrated public need, the Department shall consider any pertinent
29 information, including the economic value contributed by the proposed project to an identified
30 State or local economic priority and if the proposed project promotes public health, safety or
31 welfare.

1 (ii) In weighing the economic value of the proposed project with respect to
 2 meeting a demonstrated public need in the general area, and the ecological and economic value
 3 associated with the nontidal wetland, the Department shall consider the functions of, benefits and
 4 the economic value provided to the general public by the nontidal wetland adversely impacted by
 5 the regulated activity and the ability of the nontidal wetland to continue to provide the identified
 6 functions and benefits to the general public.

7 **Sec. 32-223. Alternative Site; Avoidance and Minimization Analysis.**

8 (a) Alternative Site Analysis.

9 (1) An applicant shall prove to the Department's satisfaction that alternative sites for
 10 the proposed project have been examined during the initial planning phase.

11 (2) An applicant shall search during the initial planning phase for one or more
 12 alternative sites that meet the project purpose and would result in the least adverse impact to
 13 nontidal wetlands.

14 (3) Determining the Initial Planning Phase.

15 (A) The intent of the initial planning phase is to require an applicant to evaluate
 16 the feasibility of the project and the adverse impact on nontidal wetlands at the earliest stage of
 17 the development process, before the applicant has committed substantial resources in the project
 18 site. Consideration of alternative sites at the earliest stage enables the applicant to retain the
 19 flexibility to avoid adverse impacts to nontidal wetlands.

20 (B) An applicant shall select the earliest of the following times as the initial
 21 planning phase for the proposed project:

22 (i) When an applicant conducts a formal or informal feasibility or market
 23 study, prepares an environmental impact statement or assessment, or a similar study for the
 24 project;

25 (ii) When an applicant enters into an option agreement or contract of sale
 26 for the property;

27 (iii) When an applicant applies for a Wetland Concept Plan review, a
 28 building permit, subdivision or infrastructure approval, zoning change or any other local
 29 governmental approvals for the project;

30 (iv) At the time an applicant applies for a Unified Nontidal Wetland Permit
 31 under this Ordinance;

1 (v) When a budget or financing request is secure; or

2 (vi) Any other appropriate time selected by the applicant.

3 (C) For the time selected in subsection (a)(3)(B), an applicant shall provide a
4 written justification of the selection, including copies of any documentation supporting the
5 selection and an explanation of why earlier times would be inappropriate or inapplicable to the
6 proposed project.

7 (D) While the Director will give serious consideration to the initial planning
8 phase selected by the applicant, the Department reserves the right to require additional
9 information from the applicant concerning the initial planning phase selection or to
10 independently determine the appropriate time.

11 (4) To determine if the purpose of the proposed project cannot be reasonably
12 accomplished by using another site, the Department shall consider:

13 (A) Whether an applicant has made, and can document, a reasonable effort to
14 analyze alternative sites in the general area during the initial planning phase to first avoid
15 adverse impacts and then to minimize adverse impacts to nontidal wetlands;

16 (B) Whether an applicant has made, and can document, attempts to obtain land
17 ownership interests or other rights to conduct the proposed project on alternative sites which first
18 avoid adverse impacts and then minimize adverse impacts to nontidal wetlands;

19 (C) The total number of alternative sites and the physical, economic and
20 demographic characteristics of those sites considered by an applicant;

21 (D) The physical, economic and demographic requirements of the proposed
22 project relative to the alternative sites analyzed;

23 (E) The degree to which use of alternative sites is constrained by other
24 governmentally imposed restrictions and requirements, including concern for avoidance of other
25 environmental, social, community, archaeological, historic and park land impacts;

26 (F) Efforts undertaken to reduce adverse impacts to nontidal wetlands through
27 consideration of reducing density, other site designs or project configurations on each alternative
28 site analyzed; and

29 (G) The costs of fulfilling mitigation requirements for each alternative site.

30 (5) An alternative site may not be excluded from consideration because it includes or
31 requires an area not owned by the applicant which could be reasonably obtained, used, expanded

1 or managed to fulfill the basic purpose of the proposed project.

2 (b) Avoidance and Minimization Analysis.

3 (1) The applicant shall demonstrate to the Department's satisfaction that all necessary
 4 steps have been taken to first avoid and then to minimize adverse impacts to nontidal wetlands.
 5 Losses of nontidal wetlands shall be permitted only when adverse impacts to nontidal wetlands
 6 are necessary and unavoidable.

7 (2) In reviewing the sufficiency of the applicant's efforts to first avoid and then to
 8 minimize adverse impacts to a nontidal wetland through reduction of the project size, scope, or
 9 density or by an alternative configuration or design, the Department shall consider:

10 (A) The spatial requirements of the proposed project;

11 (B) The location of any existing structural or natural features that may dictate the
 12 placement or configuration of the proposed project;

13 (C) The purpose of the proposed project and how the purpose relates to
 14 placement, configuration or density;

15 (D) Sensitivity of the site design to nontidal wetlands;

16 (E) An applicant's efforts to:

17 (i) Reduce the scope of the proposed project;

18 (ii) Remove or accommodate site constraints including zoning regulations,
 19 infrastructures, access or natural features;

20 (iii) Otherwise avoid or minimize adverse impact; and

21 (F) The costs of fulfilling potential mitigation requirements based on project
 22 configuration or design versus the alternative project configuration or design.

23 (3) The Department shall consider pertinent factors when evaluating the extent to
 24 which a proposed project has avoided or the regulated activity has minimized, direct or indirect
 25 adverse impacts to nontidal wetlands under this Section, including:

26 (A) Reduction in acreage of a nontidal wetland affected by a regulated activity;

27 (B) Harm to a threatened or endangered species in need of conservation, or to
 28 the critical habitat of these species;

29 (C) Movement of aquatic and wildlife species indigenous to the nontidal wetland
 30 or water body;

31 (D) Ability of the nontidal wetland to continue to support and provide habitat for

1 those aquatic and wildlife species using the area;

2 (E) Hydrologic regime of the areas upstream and downstream of the area of
 3 impact;

4 (F) Functions of the impacted or adjacent nontidal wetlands;

5 (G) Passage of normal or expected high flows, or the relocation of water;

6 (H) Subsurface water flow into or out of any nontidal wetland areas;

7 (I) Presence of, or potential for, supporting fish spawning areas;

8 (J) Presence of areas having significant plant or wildlife value;

9 (K) Cumulative impact to nontidal wetlands; and

10 (L) Impacts to the 100-year floodplain.

11 **Sec. 32-224. Water Quality and Watershed Management Plans.**

12 (a) To meet the requirements of Section 32-222 (a) (3), a regulated activity may not:

13 (1) As determined by the Department, MDNR or MDE, cause an individual or
 14 cumulative effect that degrades:

15 (A) Aquatic ecosystem diversity, productivity and stability;

16 (B) Plankton, fish, shellfish and wildlife;

17 (C) Recreational and economic values; and

18 (D) Public welfare; or

19 (2) As determined by MDE or the Department, cause an individual or cumulative
 20 effect that:

21 (A) Violates any applicable State water quality standard, the Environment
 22 Article of the Annotated Code of Maryland, or the Clean Water Act; and

23 (B) Degrades surface and groundwater quality.

24 (b) To meet the requirements of Section 32-222(a) (4), a regulated activity shall be
 25 consistent with the applicable comprehensive watershed management plan. Comprehensive
 26 watershed management plans shall meet the following criteria:

27 (1) Comprehensive watershed management plans may be prepared by Federal, State
 28 and local agencies;

29 (2) A private property owner may request to assist in the preparation of a
 30 comprehensive watershed management plan when the entire watershed is owned by the private
 31 property owner; and:

1 (A) When the Department, after consultation with MDNR and appropriate
 2 Federal, State and local government agencies, approves the request;

3 (B) A private property owner agrees to assist in the preparation of the
 4 comprehensive watershed management plan in accordance with this subsection; and

5 (C) The comprehensive watershed management plan meets the requirements of
 6 subsection (b) (3) through (5).

7 (3) Comprehensive watershed management plans shall be prepared in cooperation
 8 with Federal, State and local agencies and approved by the County and MDNR.

9 (4) The County and MDNR may not adopt or approve a comprehensive watershed
 10 management plan before conducting a public informational hearing on the proposed plan.

11 (5) A comprehensive watershed management plan shall include the following
 12 elements:

13 (A) A functional assessment of nontidal wetlands within the watershed;

14 (B) The location of potential mitigation sites;

15 (C) Protection of nontidal wetlands;

16 (D) A plan for limiting cumulative impacts to nontidal wetlands;

17 (E) Water supply management; and

18 (F) Flood management.

19 **Sec. 32-225. Exemptions from Permit Requirements.**

20 (a) The following activities shall be exempt from the Unified Nontidal Wetland Permit and
 21 mitigation requirements of this Ordinance, but are subject to MDNR regulations under COMAR
 22 08.05.04.13 and .15 through .18;

23 (1) Forestry activities conducted in accordance with COMAR 08.05.04.20 and .21;

24 (2) Agricultural activities in Regulation COMAR .08.05.04.19B. All other
 25 agricultural activities shall be exempt from the permit requirements of this Ordinance, but are
 26 subject to the mitigation requirements of COMAR .08.05.04.13 and.15 through .18;

27 (3) Activities conducted by State agencies; and

28 (4) Activities conducted in Nontidal Wetlands of Special State Concern.

29 (b) Any proposed regulated activity conducted by a person who has applied to the U.S.
 30 Army Corps of Engineering by December 31, 1990, for a permit under Section 404 of the Clean
 31 Water Act is exempt from the Joint State/County Wetland permit requirement provided that the

1 following conditions are satisfied:

2 (1) The U.S. Army Corps of Engineers ultimately issues a permit or other document
3 under subsection (b)(3)(C);

4 (2) The applicant does not alter the scope of the regulated activity originally applied
5 for without authorization from the U.S. Army Corps of Engineers.

6 (3) A person submits the following information to the Department, as may be
7 applicable, and as may be requested by the Department:

8 (A) A copy of a dated application for a permit under Section 404 of the Clean
9 Water Act;

10 (B) A copy of the plans for the project which were submitted to the Corps; and

11 (C) A letter from the Corps describing the project and proposed activity and
12 stating either:

13 (i) The project and proposed activity is authorized by the Corps; or

14 (ii) The proposed activity is exempt from Section 404 permit requirements.

15 (c) The following activities shall be exempt from the Unified Nontidal Wetland Permit,
16 provided they do not result in cumulative direct or indirect adverse impacts:

17 (1) Construction of additions, outbuildings and accessories to existing structures
18 within a landscape management area which impacts less than 1,000 square feet of nontidal
19 wetlands;

20 (2) Construction placed on existing impervious surfaces or on structures within the
21 buffer or expanded buffer;

22 (3) Removal of 30 percent of the trees in the buffer provided that:

23 (A) The density, but not the areal extent of the trees, is reduced;

24 (B) No more than 30 percent of the understory is removed; and

25 (C) Clearing is in conformance with the applicable Type I and/or Type II Tree

26 Conservation Plan;

27 (4) Moving or other forms of vegetation control on existing rights-of-way;

28 (5) The control of State designated noxious weeds;

29 (6) Landscape management in the nontidal wetland, buffer or expanded buffer;

30 (7) Soil investigations;

31 (8) Percolation tests for sewage disposal fields;

1 (9) Survey markers or survey monuments;

2 (10) Other similar activities with minimal adverse impacts as approved by the

3 Department and MDNR;

4 (11) The maintenance of the following serviceable structures or fills:

5 (A) Above and underground utilities;

6 (B) Structures in rights-of-way;

7 (C) Railroad beds;

8 (D) Road beds, roadside ditches, culverts, outlet ditches, wash ponds and

9 temporary sediment control structures;

10 (E) Bridges;

11 (F) Dams;

12 (G) Dikes;

13 (H) Levees;

14 (I) Water and wastewater control structures; and

15 (J) Facilities designed for stormwater management.

16 **Sec. 32-226. Activities Requiring a Letter of Authorization.**

17 (a) Except for regulated activities proposed within the Chesapeake Bay Critical Area, an
 18 activity that qualifies for a Letter of Authorization is exempt from the permit and mitigation
 19 requirements of this Ordinance. Activities proposed in the Chesapeake Bay Critical Area are not
 20 exempt from the mitigation requirements of Sections 32-230 through 32-234.

21 (b) Upon application, the following activities may qualify for a Letter of Authorization
 22 provided that the conditions in Section 32-227(b) are satisfied and best management practices,
 23 which may be required by the Department, are all met:

24 (1) Activities in isolated nontidal wetlands of less than one acre and having no
 25 significant plant or wildlife value. An applicant's determination of whether an area is an isolated
 26 nontidal wetland shall be based on published hydrologic and hydraulic data or data obtained in
 27 the field which shows whether the nontidal wetland is hydrologically connected. The applicant's
 28 determination shall be verified by the Department.

29 (2) Activities whose cumulative loss of nontidal wetlands and buffer, which contains
 30 no significant plant or wildlife value is:

31 (A) Less than 5,000 square feet; or

1 (B) Greater than 5,000 square feet; and

2 (i) The actual loss of nontidal wetland is less than 5,000 square feet; and

3 (ii) Activities in the buffer result in minimal additional adverse impacts to

4 nontidal wetlands as determined by the Department.

5 (3) Installation of utility lines.

6 (A) The installation of utility lines including the following activities:

7 (i) Trenching, jetting, jack hammering or plowing of nontidal wetlands;

8 (ii) Laying of pipe, cable or wire;

9 (iii) Backfilling of the excavated trench containing the pipe, cable or wire;

10 (iv) Placement of the riprap; and

11 (v) Restoration of nontidal wetland areas which have been disturbed.

12 (B) Utility lines do not include:

13 (i) Intake and outfall structures;

14 (ii) Pipe or pipeline used to transport any liquid or slurry substance except
 15 as associated with water and sewage lines;

16 (iii) Natural gas lines greater than 12 inches in diameter; or

17 (iv) Stormwater conveyance systems.

18 (4) Construction of overhead power transmission lines.

19 (5) Mitigation projects not required under this Ordinance.

20 (6) Regulated activities which impact the buffer and less than two (2) acres of farmed
 21 nontidal wetlands with 15 or more consecutive days on inundation during the growing season,
 22 except in Nontidal Wetlands of Special State Concern or their expanded buffer.

23 (7) The repair of the following serviceable structures or fills:

24 (A) Above and underground utilities;

25 (B) Structures in rights-of-way;

26 (C) Railroad beds;

27 (D) Road beds, roadside ditches, culverts and outlet ditches;

28 (E) Bridges;

29 (F) Dams;

30 (G) Dikes;

31 (H) Levees;

1 (I) Water and wastewater control structures; and

2 (J) Facilities designed for stormwater management.

3 (8) Activities which will result in the loss of nontidal wetlands that have been
4 temporarily created by a permitted or authorized construction activity or as a result of a
5 permitted activity, including wetlands created:

6 (A) Incidental to mining activities that were conducted under an approved
7 mining plan or permit, or wetlands that have been created incidental to a mining activity, and that
8 will be impacted during implementation of an approved reclamation plan;

9 (B) As a result of the construction of an approved sediment control structure;
10 and

11 (C) For a specific purpose that will remain for a specified period of time,
12 including wash ponds and grassed waterways.

13 (c) The following conditions apply to the activities listed in subsection (b) (7).

14 (1) If the structure or fill has been put to uses other than the use originally intended or
15 authorized for the original construction, and the repair activity will alter or impair any additional
16 nontidal wetland area, the repair of the structure may not qualify for a Letter of Authorization.

17 (2) Repairs to be made more than three (3) years after damage occurs or is first
18 identified does not qualify for a Letter of Authorization.

19 (d) An applicant seeking a Letter of Authorization under Subsection (b) (8) shall submit
20 the following:

21 (1) Information regarding the creation of the wetland;

22 (2) The purpose of the wetland creation, if applicable;

23 (3) The length of time the wetland has existed;

24 (4) A copy of the approved site plan, erosion and sediment control plan, mining plan
25 or reclamation plan;

26 (5) A description of the function the created wetland has served;

27 (6) A request for the length of time the Letter of Authorization is to be valid; and

28 (7) Justification for conducting the regulated activity in the nontidal wetland.

29 (e) Structures that have been placed in nontidal wetlands (for example, sediment traps), or
30 that have impacted nontidal wetlands through their construction or operation, do not qualify for a
31 Letter of Authorization under subsection (b)(8).

1 (f) A Letter of Authorization issued under subsection (b)(8) is in effect for a period of up
 2 to five years and may be extended for one additional five-year period. No Letter of
 3 Authorization granted under subsection (b)(8) may be extended for more than one five-year
 4 period, for a total of ten years, unless the regulated activity is part of a permitted mining activity
 5 or involves implementation of a mining reclamation plan.

6 **Sec. 32-227. Best Management Practices for Letters of Authorization.**

7 (a) If a Letter of Authorization is granted, the Department may require an applicant to
 8 comply with best management practices, including one or more of the following:

9 (1) Conduct the regulated activity in a manner that does not pose any harm to a
 10 threatened or endangered species, or species in need of conservation, or alter or impair the
 11 critical habitat of these species;

12 (2) Properly maintain the structure or fill;

13 (3) Design the project to first avoid and then minimize any adverse impacts to the
 14 nontidal wetlands' existing topography, vegetation, fish and wildlife resources, and hydrologic
 15 conditions;

16 (4) Conduct the regulated activity in a manner that does not restrict or impede the:

17 (A) Movement of wildlife indigenous to the nontidal wetland or adjacent water;

18 or

19 (B) Passage of normal or expected high water flow;

20 (5) Adhere to time of year restrictions as required by the MDE under COMAR
 21 26.08.02;

22 (6) Avoid any disturbances in breeding areas for migratory waterfowl;

23 (7) Maintain the hydrologic regime of the nontidal wetland upstream, downstream or
 24 adjacent to the exempted activity;

25 (8) Remove excess fill or construction material or debris to an upland disposal area;

26 (9) Place materials in a location and manner which will not adversely impact surface
 27 or subsurface water flow into or out of the nontidal wetland;

28 (10) If backfill is obtained from sources other than the originally excavated material,
 29 use clean material free of waste metal products, unsightly debris, toxic material, or any other
 30 deleterious substance;

31 (11) Place heavy equipment on mats or suitably design the equipment to prevent

1 damage to the nontidal wetlands;

2 (12) Repair and maintain any serviceable structures or fills in a manner that does not
 3 result in a substantial deviation from the plans or specifications of the original structure or fill.

4 Minor deviations due to changes in materials or construction techniques, and which are
 5 necessary for repair and maintenance, are permitted;

6 (13) Restore any nontidal wetlands temporarily impacted by a proposed repair and
 7 maintenance activity;

8 (14) Repair and maintain any serviceable structures or fills so that there is no
 9 permanent loss of nontidal wetlands in excess of nontidal wetlands lost due under the original
 10 construction or fill;

11 (15) Conduct the activity in a manner that does not cause or contribute to a degradation
 12 of water quality as determined by the Department and MDE;

13 (16) For installation of utility lines, make post-construction grades and elevations of
 14 nontidal wetlands the same as the original grades and elevations.

15 (b) A proposed activity may not qualify for a Letter of Authorization if the Department
 16 determines that the activity:

17 (1) Does not qualify under Section 32-226;

18 (2) May result in significant individual or cumulative impacts to nontidal wetlands
 19 attributable to an entire and complete project; or

20 (3) Will not comply with the best management practices in Subsection (a).

21 (c) Activities of a similar nature.

22 (1) Applicants proposing to conduct repeated activities of a similar nature that may
 23 qualify for a Letter of Authorization may submit a single application to the Department.

24 (2) The department may issue a single Letter of Authorization for these activities.

25 (3) Activities may include:

26 (A) Structural repair and maintenance; or

27 (B) Work within rights-of-way.

28 **Sec. 32-228. Permit Modifications.**

29 (a) The Department may require modification of a nontidal wetland permit to ensure
 30 compliance with this Ordinance.

31 (b) The Department may make modifications to a permit:

1 (1) Upon written request by the permittee; or

2 (2) When the rights of the permittee under the permit have not vested, and the

3 Department:

4 (A) Receives new, relevant information; or

5 (B) Has amended the regulation under which the permit was issued.

6 (c) A permittee may apply for a permit modification of an unexpired permit. Modification
 7 requests shall be in writing and contain the following information:

8 (1) A description of the requested modification;

9 (2) A statement of the reasons and need for the requested modification; and

10 (3) A statement of the wetland and buffer impacts associated with the requested
 11 modification.

12 (d) An applicant shall provide additional information requested by the Department.

13 (e) Within 30 days of receiving a request for permit modification, or of receiving
 14 additional information, if any, the Department shall notify the permittee if the modification is
 15 major or minor and of its decision to grant, deny or condition the request.

16 (f) Within 15 days of receipt of notification, a permittee may request reconsideration of a
 17 complete or partial denial of a request to modify a permit. The reconsideration shall be
 18 conducted in conformance with Section 32-221(b) and (c).

19 (g) Minor Modifications.

20 (1) Minor modifications are changes to the original permit which do not constitute a
 21 significant departure from its terms and conditions, including:

22 (A) Correction of typographical errors;

23 (B) Changes in frequency of monitoring by the permittee;

24 (C) Changes of land ownership or permittee;

25 (D) Extension or reduction of the terms or conditions of the permit;

26 (E) Minor filed modifications, including substitution of comparable materials,
 27 structural realignments and sediment and erosion control corrections not affecting the design and
 28 performance of wetland protection measures or mitigation plans approved by the Department;
 29 and

30 (F) Relocation of the proposed project where the adverse impact is equal to or
 31 less than originally permitted.

1 (2) The Department may make minor modifications without notice or review.

2 (h) Major Modifications.

3 (1) Major modifications are changes to the original permit which constitutes a
 4 significant departure from its terms and conditions including changes in the scope of the project
 5 which result in a greater adverse impact than originally permitted.

6 (2) Major modifications are subject to the public notice and hearing procedures
 7 required for permit applications under Section 32-220(f) and (g).

8 (3) Major changes to the project may require reevaluation of the original permit
 9 approval.

10 (i) Notice to permittee of required modifications.

11 (1) The Department shall notify a permittee, in writing, if a modification to the permit
 12 or Letter of Authorization is required.

13 (2) Within 15 days of receipt of notification that a modification is required, a
 14 permittee may request reconsideration of the modification. The reconsideration shall be
 15 conducted in accordance with Section 32-221(b) and (c).

16 **Sec. 32-229. Temporary Emergency Nontidal Wetland Permit.**

17 (a) The Department may issue a temporary emergency nontidal wetland permit if:

18 (1) A threat to life, severe loss, or damage of property, or a threat to public safety or
 19 public work is imminent; and

20 (2) The anticipated threat, loss or damage may occur before a permit can be issued
 21 under the procedures otherwise required by this Ordinance.

22 (b) Permit requirements. The temporary emergency permit shall:

23 (1) Incorporate, to the greatest extent practical and feasible, the standards and criteria
 24 required for nonemergency regulated activities;

25 (2) Be limited in duration to the time required to complete the authorized emergency
 26 activity, not to exceed 90 days;

27 (3) Require restoration of nontidal wetlands with temporary adverse impacts;

28 (4) Require mitigation for nontidal wetland losses pursuant to Section 32-230 through
 29 32-234 of this Ordinance.

30 (c) Temporary Emergency Procedure.

31 (1) Not later than the next business day after beginning an emergency regulated

1 activity, a temporary emergency permit shall be requested.

2 (2) A temporary emergency permit request may be made orally. However, the
3 applicant shall submit a written request to the Department within three days of the oral request.

4 (3) The request in subsection (c) (2) shall include the:

5 (A) Applicant's name;

6 (B) Location of the emergency activity;

7 (C) Extent of work to be done;

8 (D) Anticipated adverse impact on nontidal wetlands; and

9 (E) Reason for the emergency.

10 (4) The temporary emergency permit may be granted orally or in writing. If oral
11 approval is granted, the Department shall issue a written emergency permit within three (3) days
12 of the approval.

13 (5) If oral approval is not granted, the Department shall issue a written temporary
14 emergency permit within ten (10) days of the request if the temporary emergency permit is
15 approved by the Department.

16 (d) The Department shall provide public notice and opportunity for comment on the
17 issuance of a temporary emergency permit in a local newspaper of general circulation, not later
18 than 15 days after the issuance of a permit.

19 (e) Upon written request by a permittee, the Department may extend the temporary
20 emergency permit if more time is required to complete the work authorized or to restore the site.

21 (f) The Department may suspend or revoke a temporary emergency permit in conformance
22 with Section 32-237.

23 (g) Work performed under a temporary emergency permit shall conform to conditions
24 specified by the Department.

25 (h) A person shall apply for a nontidal wetland permit if:

26 (1) The person intends to conduct an additional regulated activity at the site which
27 does not qualify for a temporary emergency permit;

28 (2) A temporary emergency permit is denied;

29 (3) Work authorized under a temporary emergency permit is conducted beyond the
30 90 day period under subsection (b) (2) without approval from the Department; or

31 (4) Mitigation is required under subsection (b) (4).

1 **Sec. 32-230. Mitigation for Regulated Activities.**

2 (a) Exemptions. Mitigation or monetary compensation for nontidal wetland loss is not
3 required for regulated activities that:

4 (1) Are exempted under Sections 32-225 and 32-226, except where specified;

5 (2) Do not result in a loss of nontidal wetlands;

6 (3) Occur only in the buffer or expanded buffer.

7 (b) Requirements.

8 (1) A permittee shall take all necessary steps to first avoid adverse impacts and then
9 to minimize impact to nontidal wetlands. If the permittee demonstrates to the Department's
10 satisfaction that losses of nontidal wetlands are unavoidable and necessary, the Department shall
11 require the permittee to develop and implement mitigation.

12 (2) The Department shall require a permittee, as a condition of the permit, to mitigate
13 or monetarily compensate for nontidal wetland losses caused by regulated activities not listed as
14 exemptions in Subsection (a).

15 (3) The Department may waive some or all of the off-site mitigation requirements for
16 up to one (1) acre of nontidal wetland lost for construction of special wastewater disposal
17 facilities in a nontidal wetland on residential property. The waiver is conditioned upon the
18 applicant siting the special wastewater disposal facility so as to first avoid and then minimize
19 impacts to nontidal wetlands, and upon performance of on-site mitigation to the maximum extent
20 practicable.

21 (4) The Department may reduce mitigation requirements if the regulated activity
22 provides a significant environmental benefit of the proposed mitigation project and has a
23 likelihood of success, as determined by the Department.

24 (5) The Department shall require a permittee to develop and submit a mitigation plan
25 for review and approval. The plan shall be consistent with the following:

26 (A) Standards of Section 32-231;

27 (B) Plan requirements in Section 32-233; and

28 (C) Monitoring and bonding requirements in Section 32-232.

29 (6) The Department may accept monetary compensation only if it is determined that
30 creation, restoration or enhancement of nontidal wetlands is not a feasible alternative. Monetary
31 compensation shall only be accepted under specific conditions and shall be based on the fee

1 structure guidelines described in Section 32-234.

2 (7) The Department may not base a final permit decision on the environmental
 3 benefits of a mitigation proposal or the financial benefits of monetary compensation proposals.

4 (8) If the Department denies approval of a mitigation plan and the permittee is
 5 aggrieved by the decision, the permittee may request reconsideration of the denial under the
 6 procedures of Section 32-221(b). The Department may order cessation of the permitted activity
 7 or interim stabilization measures, or rescind any other permits or approvals granted for the
 8 subject property, pending resolution of the request for reconsideration of the Department's
 9 decision.

10 (9) The Department may approve of mitigation bank sites in consultation with
 11 appropriate Federal, State and local agencies for the purpose of providing mitigation for
 12 identified projects. Mitigation bank sites for identified projects are required to meet the
 13 standards of Section 32-231(i) and (j) and the monitoring requirements of Section 32-232(a).
 14 Wetland bank sites will not obligate the County to issue a nontidal wetland permit for a future
 15 project that will cause nontidal wetland loss.

16 **Sec. 32-231. Mitigation Standards.**

17 (a) It is the goal of this Ordinance to attain a no net overall loss in nontidal wetland
 18 acreage and function, and to strive for a net resource gain in nontidal wetlands within Prince
 19 George's County. Achievement of the goal will occur through the regulatory components of this
 20 Ordinance and other County initiatives which incorporate nontidal wetland creation, restoration
 21 and enhancement projects outside of the regulatory framework.

22 (b) Mitigation standards shall be determined in part through the use of acreage replacement
 23 ratios. Acreage replacement ratios are expressed as a relationship between two numbers. The
 24 first number shall specify the acreage of nontidal wetlands to be mitigated, and the second shall
 25 specify the acreage of nontidal wetlands lost.

26 (c) The Department shall consider the mitigation requirement for replacing the loss of
 27 nontidal wetlands to be fulfilled when:

28 (1) The in-kind creation or restoration of nontidal wetlands meets the following
 29 replacement ratios:

30 (A) Emergent nontidal wetlands 1:1;

31 (B) Scrub-shrub nontidal wetlands 2:1;

1 (C) Forested nontidal wetlands 2:1;

2 (D) Emergent nontidal wetlands designated as Nontidal Wetlands of Special
 3 State Concern 2:1;

4 (E) Scrub-shrub nontidal wetlands designated as Nontidal Wetlands of Special
 5 State Concern 3:1; and

6 (F) Forested nontidal wetlands designated as Nontidal Wetlands of Special State
 7 Concern 3:1; or

8 (2) A minimum in-kind acreage replacement ratio of 1:1 has been met; and lost
 9 nontidal wetland functions have been replaced through additional creation, restoration or
 10 enhancement activities; or

11 (3) The Department has determined on an individual basis that enhancement is the
 12 only mitigation option, and has specified mitigation requirements which have been met by the
 13 permittee;

14 (4) The Department has specified mitigation requirements which have been agreed to
 15 and implemented by the permittee.

16 (d) The Department shall consider the mitigation requirements for replacing a loss of
 17 farmed nontidal wetlands to be fulfilled when the following replacement ratios have been met
 18 through:

19 (1) Enhancement of farmed nontidal wetlands 1:1;

20 (2) Creation or restoration of emergent, scrub-shrub, or forested nontidal wetlands
 21 1:1.

22 (e) In order for enhancement activities to be acceptable for the replacement of lost nontidal
 23 wetland functions, the permittee may be required to:

24 (1) Perform a functional assessment based on site assessment techniques acceptable
 25 to the Department; and

26 (2) Identify how enhancement activities are to replace lost nontidal wetland
 27 functions.

28 (f) An enhancement activity may be accepted for replacement of lost nontidal wetland
 29 functions when the activity provides additional protection to, creates or improves the functions
 30 of, a nontidal wetland. Activities may include:

31 (1) Enhancement of farmed wetlands;

1 (2) Enhancement of degraded nontidal wetlands and buffers;

2 (3) Best management practices for agricultural activities;

3 (4) Creation of wildlife ponds approved by the Prince George's Soil Conservation

4 District and MDNR;

5 (5) Purchase or preservation of upland buffers adjacent to existing, created, restored
6 or enhanced nontidal wetlands;

7 (6) Purchase or preservation of existing nontidal wetlands; and

8 (7) Activities consistent with the plans and agreements to create or improve water-
9 fowl habitats in Maryland.

10 (g) In determining if enhancement activities will replace lost nontidal wetland acreage and
11 function, the Department shall consider the:

12 (1) Degree to which the enhancement activity replaces the functions of the lost
13 nontidal wetland;

14 (2) Benefits of the enhancement activity in rehabilitating or maintaining the nontidal
15 wetland;

16 (3) Scope and extent of the enhancement activity;

17 (4) Proximity of the enhancement activity to the nontidal wetland lost;

18 (5) Technical merits of the enhancement activity and its likelihood of long term
19 success;

20 (6) Adverse impact of the enhancement activity on natural resources;

21 (7) Relationship of the enhancement activity to ongoing natural resource management
22 activities; and

23 (8) Compatibility of the enhancement activity to ongoing natural resource
24 management, if applicable.

25 (h) Mitigation projects shall be connected to existing nontidal wetlands, waterways or 100
26 year floodplains. Projects may be located on multiple parcels. Projects shall be located
27 according to the following geographic location in order of preference, unless otherwise
28 determined by the Department:

29 (1) On site;

30 (2) Off site, in a location approved under a Comprehensive Watershed management

31 Plan;

1 (3) Off site, in a location identified in plans and agreements to create or improve
 2 waterfowl habitats in Maryland and approved by the Department and MDNR.

3 (4) Where the Department has determined, in consultation with other Federal, State,
 4 County and local agencies, that regional needs for nontidal wetland functions strongly justify the
 5 siting of mitigation projects, and the mitigation project is located:

6 (A) In the watershed where the nontidal wetland loss occurred;

7 (B) In the drainage basin where the nontidal wetland loss occurred; or

8 (C) Outside the drainage basin where the nontidal wetland loss occurred,
 9 preferably within the County.

10 (i) Mitigation projects for regulated activities in the Chesapeake Bay Critical Area shall be
 11 located in the Critical Area according to Subsection (h) (1)-(3);

12 (j) Siting Within Geographic Locations. In selecting sites, a permittee shall pursue
 13 mitigation projects on upland sites which have undergone significant human disturbances. A
 14 permittee shall avoid, whenever possible, siting mitigation projects on:

15 (1) Forested lands;

16 (2) Lands used for dredge disposal, mine refuse or other purposes where
 17 contamination problems may exist; or

18 (3) Lands which are existing or potential habitat for plant or animal species:

19 (A) Listed as endangered or threatened by the U.S. Fish and Wildlife Service;

20 (B) Listed as endangered or threatened or species listed as in need of
 21 conservation by the Department and MDNR; or

22 (C) Considered as a candidate for listing by the U.S. Fish and Wildlife Service,
 23 or considered to be locally unusual or rare by the Department and MDNR.

24 (k) Project Standards.

25 (1) The permittee shall successfully implement the approved mitigation plan within
 26 the time period specified by the Department based on the mitigation plan.

27 (2) Created or restored nontidal wetlands shall meet the following plant survival
 28 criteria:

29 (A) After five (5) years greater than 85 percent of the site shall be vegetated by
 30 planted species approved by the Department or by a species composition agreed to by the
 31 Department;

1 (B) Allowances shall be made for natural species changes as long as the plant
 2 communities are similar to those lost; and

3 (C) After five (5) years, the nontidal wetland shall be dominated by native or
 4 adaptive vegetation.

5 (3) In the case where a permittee has proposed the use of natural re-vegetation as part
 6 of the creation, restoration or enhancement of the project, greater than 85 percent of the site
 7 shall, after five (5) years, be:

8 (A) Vegetated by species similar to those that are found in the nontidal wetland
 9 area that was lost or by a species composition agreed to by the Department; and

10 (B) Dominated by native or adaptive vegetation.

11 (4) In the case where the nontidal wetland was dominated by exotic or nuisance
 12 plants, the Department shall accept out-of-kind mitigation.

13 (5) The Department may not approve mitigation plans that include exotic or nuisance
 14 plant species.

15 (l) Protection Mechanisms.

16 (1) The permittee shall provide mechanisms to assure the protection of created,
 17 restored or enhanced nontidal wetlands in perpetuity. This may be achieved through protection
 18 mechanisms, including:

19 (A) Deed restrictions;

20 (B) Conservation easements;

21 (C) Deeding the created, restored or enhanced nontidal wetland to an
 22 organization or public agency capable of protecting the area in perpetuity; or

23 (D) Restrictive covenants.

24 (2) Any protection mechanism under subsection (1) above shall include the following
 25 provisions:

26 (A) Language granting the Department, or any successor agency, access to the
 27 mitigation site for inspections during the construction and monitoring period of the mitigation
 28 project, if the permittee forfeits a bond and the Department decides to complete the construction
 29 of the mitigation project;

30 (B) In the case of an easement agreement, language allowing assignment of a
 31 permittee's interest under the easement agreement to the Department, if the bond is forfeited and

1 the Department decides to complete construction of the mitigation project;

2 (C) An absolute prohibition on the draining, dredging, removal or filling of the
 3 created nontidal wetland site; and

4 (D) Language that the restriction is perpetual, binding on the grantor's personal
 5 representative, heirs, successors and assigns and runs with the land.

6 **Sec. 32-232. Monitoring and Bonding.**

7 (a) Monitoring of Mitigation Projects.

8 (1) The permittee shall submit to the Department annual monitoring reports, on dates
 9 to be specified by the Director, for five (5) years from the completion of the construction of the
 10 mitigation project unless the permittee has received written notice from the Department that the
 11 monitoring requirements have been fulfilled in less than five (5) years.

12 (2) Through written notification to the permittee, the Department may extend the
 13 required monitoring period for not more than an additional three (3) year period if the mitigation
 14 project fails to comply with Section 32-231(k).

15 (3) Annual monitoring reports submitted to the Department shall include the
 16 following information:

17 (A) A description of how the mitigation project meets the mitigation project
 18 standards in Section 32-231(k);

19 (B) Photographs of the mitigation project;

20 (C) The commercial source of planting stock whenever planting is required;

21 (D) A description of any midcourse corrections which have been taken, or need
 22 to be taken, to implement the mitigation plan or a component thereof to meet the standards of
 23 Section 32-231(k); and

24 (E) An "as-built" site design plan.

25 (4) The Department reserves the right to inspect the mitigation project at any time
 26 during its construction, during the required monitoring period, and at any time after that to assess
 27 the long term viability of the mitigation project.

28 (5) The permittee shall consider monitoring requirements fulfilled only upon receipt
 29 of written notice from the Department.

30 (b) Bonding.

31 (1) This Subsection does not apply to agencies of any Federal, State, County or

1 Municipal government.

2 (2) Within sixty (60) days of the Department's approval of Phase II of the mitigation
3 plan, a permittee shall file with the Department a surety bond on a form to be prescribed and
4 furnished by the Department.

5 (3) The surety bond shall be payable to the Prince George's County Government and
6 conditioned upon the successful completion of construction of the mitigation project according to
7 an approved mitigation plan.

8 (4) Upon approval by the Director and the County Attorney, the Department may
9 accept one of the following alternative forms of security:

10 (A) A deposit of cash or negotiable bonds of the U.S. Government having a
11 market value equal to the acceptable bond amount accompanied by a written agreement of the
12 bank to pay the County on demand in the event of forfeiture;

13 (B) A certificate of deposit equal to the required bond issued by a bank in the
14 State of Maryland and accompanied by a written agreement of the bank to pay the County on
15 demand in the event of forfeiture; or

16 (C) An irrevocable letter of credit that is equivalent to the required bond issued
17 by a bank or financial institution organized or authorized to do business in the State of Maryland
18 that expressly states that the total sum is guaranteed to be available and payable directly to the
19 County on demand in the event of forfeiture. The irrevocable letter of credit may not expire until
20 all mitigation and monitoring requirements have been fulfilled to the Department's satisfaction.

21 (5) Upon approval by the Director and the County Attorney, the Department may
22 accept the following alternatives to posting a surety bond before work is begun under a permit:

23 (A) The grant to the Department, in trust, of a deed, by an easement or other
24 interest in upland property owned by the permittee, that has at least the same monetary value as
25 the selected mitigation site.

26 (B) Fulfillment of mitigation requirements before the permitted activity results
27 in a loss of nontidal wetlands.

28 (C) The Department shall obtain possession of, and keep in custody; all
29 alternative forms of security deposited by the permittee under subsection (b) (4) (A) through (C)
30 until authorized for release. All alternative forms of security may not expire until construction of
31 the mitigation project has been successfully completed pursuant to the approved mitigation plan.

1 as may be modified under Section 32-233(c).

2 (6) The amount of the bond shall be set at \$20,000 per acre of nontidal wetland
3 mitigation required under the permit. For permits that will impact less than one (1) acre, but no
4 less than one-quarter acre of nontidal wetlands, the bond shall be set at \$5,000 per one-quarter
5 acre. The permittee may request the Department to reduce the required bonding amount based
6 on estimated or actual costs of the mitigation project and any other relevant information. In no
7 event may the amount of security required be less than the total costs of the mitigation
8 requirements, taking into account the following:

9 (A) Number of acres to be mitigated;

10 (B) The cost of land in the area of the mitigation site;

11 (C) The proposed method of mitigation; and

12 (D) Any other relevant factors, including reduction of the bond amount for
13 projects with a high likelihood of success.

14 (7) Liability under the bond shall continue until all mitigation and monitoring work
15 has been successfully completed, and the work has been accepted as final by the Department.

16 (8) A bond or other alternative form of security shall contain a provision that it
17 cannot be canceled by the surety, bank, or other issuing entity, except after not less than 90 days
18 written notice to the Department and to the permittee. At least 45 days prior to the cancellation
19 date indicated in the notice, the permittee shall file with the Department a commitment from a
20 surety, bank, or other issuing entity to provide a substitute bond or other security which will be
21 effective on the cancellation date in the notice.

22 (9) The amount of the bond posted by a permittee may be adjusted by the Department
23 based on the actual costs of the mitigation design plan or if the cost of future mitigation work
24 changes. The Department shall notify the permittee of any proposed bond adjustment and
25 provide an opportunity for an informal conference on the adjustment. A permittee may request
26 reduction of the bond amount upon submission of evidence to the Department that proves the
27 costs to complete the mitigation plan have been reduced. Such requests shall be considered as a
28 request for a partial bond release.

29 (10) The surety bond shall be fully or partially released to the obligee upon receipt of
30 written notice from the Department which states that all mitigation requirements have been
31 satisfactorily fulfilled or that a partial release is appropriate under subsection (b)(9). The written

1 notice for a full bond release shall be sent at the end of the required five (5) year monitoring
 2 period, a lesser monitoring period as described under subsection (a)(1), or the extended
 3 monitoring period as described under subsection (a)(2).

4 (c) Bond Forfeiture.

5 (1) The bond or other instrument securing compliance with a permit may be subject
 6 to forfeiture upon:

7 (A) Revocation of a nontidal wetland permit;

8 (B) Failure of the permittee to comply with an administrative order; or

9 (C) Failure to comply with any element of the approved mitigation plan and an
 10 approved modification.

11 (2) The Department shall notify the permittee and the surety or other financial
 12 institution in writing, by certified mail, of its intention to initiate forfeiture proceedings.

13 (3) The permittee shall have 30 days from receipt of the notice of forfeiture to show
 14 cause why the bond or other instrument should not be forfeited. If the permittee fails to show
 15 cause, the bond or other instrument shall be forfeited.

16 (4) On showing cause, the Department shall provide for a reasonable time for the
 17 permittee, surety or other financial institution, to correct the problem.

18 (5) If the permittee fails to show cause, the bond or other instrument shall be forfeited
 19 nisi and the Department shall notify the permittee, surety or other financial institution, of the
 20 forfeiture. If a showing of an intention to correct the problem in compliance with the mitigation
 21 project is not submitted to the Department within 30 days from forfeiture nisi, the bond or other
 22 security shall be forfeited absolute.

23 (d) To avoid double bonding, the Department shall work with an applicant required to post
 24 bond under other Department programs requiring a bond.

25 (e) A permittee may not conduct a regulated activity in a nontidal wetland if the permittee
 26 previously forfeited any bond or alternate security under this Ordinance, unless the permittee
 27 repays the Department the cost of completing the mitigation project in excess of the forfeited
 28 bond or alternative security plus interest at the rate set in the Courts and Judicial Proceedings
 29 Article, Section 11-107(a), Annotated Code of Maryland. If the mitigation project is still not
 30 completed, the permittee shall complete the mitigation project at its expense according to the
 31 approved mitigation plan and any approved modifications.

1 **Sec. 32-233. Mitigation Plan.**

2 (a) Phase I Mitigation Plan.

3 (1) A permittee shall submit a Phase I Mitigation Plan as part of the nontidal wetland
4 permit application.

5 (2) Phase I Mitigation Plans shall include all of the following information:

6 (A) Names, addresses and telephone numbers of the principals associated with
7 project implementation;

8 (B) A proposal, if applicable, to use monetary compensation consistent with
9 Section 32-221 to fulfill mitigation requirements;

10 (C) A photograph and description of the type and acreage of the proposed
11 nontidal wetland losses;

12 (D) A description of the activity causing the nontidal wetland loss;

13 (E) A description of mitigation projects proposed to fulfill the required
14 replacement of nontidal wetland acreage and/or functions. The description shall include a
15 project location map, showing the geographic relationship between the area of proposed nontidal
16 wetland loss and the proposed mitigation site or sites; and

17 (F) A description of the site selection process and a justification of the selection
18 of the proposed mitigation site based on Section 32-231(h) and (j);

19 (G) A description of the selected protection mechanisms required in Section 32-
20 231(1).

21 (3) The Department shall render a decision concerning the acceptability of the Phase I
22 Mitigation Plan as part of the final permit decision.

23 (4) In rendering a decision on the Phase I Mitigation Plan, the Department shall
24 provide guidance to the applicant on the content, timing and necessity of proceeding with the
25 Phase II Mitigation Plan.

26 (b) Phase II Mitigation Plan.

27 (1) A permittee may submit the Phase II Mitigation Plan as part of the permit
28 application.

29 (2) Unless otherwise determined by the Department, the Phase II Mitigation Plan
30 shall be submitted within three (3) months of the Department's final permit determination. The
31 design plan shall include all of the following information:

- 1 (A) Plan view scaled drawings prepared by a licensed surveyor or engineer that
 2 include:
 3 (i) A vicinity map showing the project location, existing land use and
 4 zoning;
 5 (ii) The location, type and acreage of proposed nontidal wetland mitigation
 6 activities;
 7 (iii) The location of proposed stockpile areas;
 8 (iv) The location of proposed sediment and erosion control devices;
 9 (v) The location of all areas to be used to store machinery, equipment or
 10 supplies;
 11 (vi) The proposed source of borrow materials;
 12 (vii) The proposed location, spacing and type of propagules for each plant
 13 species; and
 14 (viii) Other information pertinent to a Phase II Mitigation Plan as required by
 15 the Department;
 16 (B) Cross section drawing showing existing and proposed final site conditions
 17 including grade, elevation and slope;
 18 (C) Description of how enhancement activities will replace lost nontidal wetland
 19 acreage and functions;
 20 (D) If applicable, a description of how the enhancement of farmed nontidal
 21 wetlands will replace lost nontidal wetland acreage and function;
 22 (E) Construction schedule, which includes estimated start and completion dates;
 23 (F) Hydrology, which includes:
 24 (i) Estimated elevation of surface and groundwater, as measured from the
 25 soil surface, bimonthly from November to May and monthly from June to October;
 26 (ii) The source of the water, such as precipitation, surface water, or
 27 ground-water, over various seasons of the year;
 28 (iii) The reliability of the hydrologic sources throughout various seasons of
 29 the year; and
 30 (iv) Relevant precipitation data;
 31 (G) Substrate conditions, including a description of:

1 (i) Existing soil and substrate conditions; and
 2 (ii) Soil and substrate amendments needed to meet hydric soil
 3 characteristics and maintain the specified plant species;

4 (H) Vegetation to be planted, including all of the following:

5 (i) The scientific and common name of plant species. All plants shall be
 6 native or adaptive to the State;

7 (ii) Planting dates for each species according to propagation methods; and

8 (iii) Planting stock fertilizer requirements for the entire five (5) year
 9 monitoring period;

10 (I) A five (5) year monitoring schedule establishing responsibility for the
 11 removal of exotic and nuisance vegetation, and permanent establishment of the nontidal wetland
 12 system and its component parts. The Department shall encourage the permittee to provide for
 13 the long-term maintenance and monitoring of mitigation sites beyond the required monitoring
 14 period;

15 (J) A detailed budget of the proposed mitigation project costs, including:

16 (i) Land acquisition; and

17 (ii) Design, which includes construction, monitoring and maintenance;

18 (K) A description of protection mechanisms required in Section 32-231(1).

19 (3) The permittee shall present evidence of a legal right to implement the proposed
 20 mitigation plan on the selected site by providing:

21 (A) An executed deed conveying title of the selected site to the permittee;

22 (B) An executed conservation easement agreement;

23 (C) Written evidence of the landowner's consent for use of the selected site;

24 (D) A fully executed option agreement, long-term lease agreement, sales
 25 contract for the selected site; or

26 (E) Other written evidence of a possessor ownership interest in the selected site.

27 (4) The Department may waive all or part of the requirements of a Phase II
 28 Mitigation Plan.

29 (5) The Department may not release a bond or terminate monitoring without receipt
 30 of a legally binding deed, long-term lease, or conservation easement on those lands where
 31 mitigation will occur.

1 (6) The Department shall render a decision concerning the acceptability of the Phase
 2 II Mitigation Plan within 45 days of receipt of a completed plan, unless a final permit decision
 3 has not been made. If the Department fails to notify the applicant within the 45 day period, the
 4 plan shall be considered acceptable unless a final permit decision has not been made.

5 (c) Mitigation Plan Modification.

6 (1) The Department may require, and a permittee may request, modifications to an
 7 approved mitigation plan or component during construction to ensure compliance with this
 8 Ordinance. Modification, substitution, or other deviations from an approved mitigation plan or
 9 component may not be made without approval under this Section.

10 (2) A modification request may be made orally and followed up in writing.

11 (3) A written request shall contain the following information:

12 (A) The name of the permittee;

13 (B) Location of the mitigation project;

14 (C) A description of proposed modification; and

15 (D) A justification for the modification.

16 (4) The Department's decision may be given orally or in writing. The Department
 17 shall notify a permittee of its decision within ten (10) days of a written request. If an oral
 18 decision is made, the Department shall confirm its decision, in writing, within ten (10) days. The
 19 Department's decision, whether oral or written, is binding on the permittee.

20 **Sec. 32-234. Nontidal Wetland Compensation Fund.**

21 (a) The Department may accept monetary compensation if it determines that mitigation for
 22 nontidal wetland loss is not a feasible alternative. Monetary compensation may not be suitable
 23 for the requirement to first avoid adverse impacts and then to minimize nontidal wetland losses.

24 (b) When a permittee maintains that mitigation is not a feasible alternative based on the
 25 requirements of Subsection (c), the permittee shall propose that the Department accept monetary
 26 compensation. A proposal for acceptance of monetary compensation shall be submitted as part
 27 of a Phase I Mitigation Plan.

28 (c) Monetary compensation may be accepted under one or more of the following
 29 circumstances:

30 (1) The size of the nontidal wetland loss is less than one (1) acre;

31 (2) In-kind mitigation is technically not feasible; or

1 (3) An acceptable mitigation site cannot be located within the County. The permittee
 2 shall demonstrate compliance with Section 32-231, including submission of the following
 3 information:

4 (A) Number of sites evaluated. A minimum of seven (7) sites is required;

5 (B) A map and description of sites rejected;

6 (C) Justification of why each site was unsuitable for mitigation; and

7 (D) Other information required by the Department;

8 (4) The Department recommends use of the compensation fund.

9 (d) Monetary compensation proposals may be rejected if the Department determines that:

10 (1) Mitigation requirements can be fulfilled on-site; or

11 (2) Conditions in Subsection (c) are not fulfilled.

12 (e) The Department shall render decisions on proposals to accept monetary compensation
 13 based on subsection (b) as part of a final permit decision.

14 (f) The Nontidal Wetland Compensation Fund shall include:

15 (1) Monetary compensation paid by a permittee instead of engaging in the creation,
 16 restoration or enhancement of nontidal wetlands;

17 (2) Civil or criminal penalties imposed by a court pursuant to Sections 32-236 or 32-
 18 237; and

19 (3) Other monetary contributions to the fund from other sources.

20 (g) Funds in the Nontidal Wetland Compensation Fund may only be used for the creation,
 21 restoration or enhancement of nontidal wetlands. This includes the location and acquisition of
 22 land, design, construction, monitoring, maintenance and the development of mitigation plans.

23 (h) The Department may base monetary compensation on anticipated costs for
 24 development and construction of mitigation projects, including location and acquisition of land,
 25 design, maintenance and monitoring costs. The Department may use the following to determine
 26 costs:

27 (1) Land acquisition costs derived from fair market value of the converted nontidal
 28 wetland by the permittee, based on at least two independent appraisals or other evidence
 29 of land value which may be acceptable to the Department;

30 (2) Design costs derived from a percentage of construction costs or actual costs for
 31 projects similar in size and complexity that have been completed by other permittees or the

1 Department;

2 (3) Construction costs derived on a case by case basis, taking into account the
3 following factors:

4 (A) Nontidal wetland type, size and functions;

5 (B) Amount of planting, grading and other site preparations; and

6 (C) Costs of similar mitigation projects completed by other permittees or the

7 Department; and

8 (4) Monitoring and maintenance costs derived from a percentage of construction
9 costs or actual costs for projects similar in size and complexity completed by other permittees or
10 the Department.

11 (i) Funds credited, and any interest accrued, to the Nontidal Wetland Compensation Fund
12 shall remain available until expended, and may not revert to the General Fund or to the
13 Stormwater Enterprise Fund.

14 (j) The Department shall prepare an annual report by the end of the County's fiscal year
15 on the Nontidal Wetland Compensation Fund that includes an accounting of:

16 (1) Financial receipts and expenditures to and from the fund; and

17 (2) Mitigation projects completed and in progress.

18 (k) The Department shall provide a copy of the annual report to the County Council,
19 MDNR, and make it available to the general public.

20 **Sec. 32-235. Expanded Buffer.**

21 (a) The buffer for nontidal wetlands with adjacent areas containing steep slopes or highly
22 erodible soils shall be expanded to 100 feet.

23 (b) Nontidal Wetlands with Steep Slopes and Highly Erodible Soils.

24 (1) The following criteria may be used by the Department in designating nontidal
25 wetlands with steep slopes or highly erodible soils:

26 (A) Slopes immediately adjacent to the nontidal wetlands in excess of 15
27 percent; or

28 (B) Soils adjacent to a nontidal wetland with an erodibility factor greater than
29 0.35 as determined by the Prince George's Soil Conservation District.

30 (2) Specific nontidal wetland sites with steep slopes and highly erodible soils
31 identified by the Department shall be designated by regulation.

1 **Sec. 32-236. Enforcement.**

2 (a) Enforcement Authority. The Department shall have the duty and means of enforcing
3 all regulations of this Ordinance.

4 (b) Inspection and Complaints.

5 (1) The Department shall conduct an Enforcement Program to assure continuing
6 compliance with this Ordinance.

7 (2) The Department shall conduct inspections and file reports for periodic inspections
8 as necessary during the construction of permitted projects and approved mitigation plans to
9 assure compliance with the permit or the Letter of Authorization.

10 (3) The Department shall perform a final inspection upon completion of the permitted
11 project and mitigation plans approved by the Department. The final inspection will determine if
12 the completed work has been constructed in accordance with the permit, the Letter of
13 Authorization, or the approved mitigation plan.

14 (4) In addition to all other remedies provided by State or County law, the County
15 Attorney, on behalf of the Department, may institute injunction, mandamus or other appropriate
16 action.

17 (c) Violations and Penalties.

18 (1) The Department may revoke a permit for cause including violation of permit
19 conditions, obtaining a permit by misrepresentation, failing to disclose a relevant or material fact,
20 or a change in conditions. The Department shall notify the violator, in writing, and provide an
21 opportunity for a hearing.

22 (2) The Department may issue a Stop Work Order against any person who, or project
23 that, violates any provision of this Ordinance, or any regulation, order, or permit under this
24 Ordinance, related to a regulated activity.

25 (3) A person who violates any provision of this Ordinance, or any rule, regulation,
26 order or permit under this Ordinance is liable for the penalties set forth in subsection (c)(4)
27 below, which may be recovered in a civil action brought by the Department. Each day a
28 violation continues is a separate violation under this subsection.

29 (4) A person who violates any provision of, or fails to perform any duty imposed by,
30 this Ordinance, or by a rule, regulation, order, or permit under this Ordinance, is guilty of a
31 misdemeanor and, on conviction, is subject to:

1 (A) For a first offense, a fine not to exceed \$10,000; or

2 (B) For a second offense or subsequent offense, a fine not to exceed \$25,000.

3 (d) All enforcement fines, fees and bond forfeitures collected will be credited to the
 4 Nontidal Wetland Compensation Fund as described in Section 32-234.

5 **Sec. 32-237. Permit Suspension and Revocation.**

6 (a) Grounds for Permit Suspension or Revocation.

7 (1) The Department may suspend or revoke a Unified Nontidal Wetland Permit, after
 8 written notice to the permittee, if the Department determines that any of the following has
 9 occurred:

10 (A) The permittee has failed to post the bond required under Section 32-232(b);

11 (B) The permittee has failed to comply with the requirements of an
 12 administrative action or order under this Ordinance or for a violation of this Ordinance;

13 (C) The permit application misrepresented or failed to disclose a relevant or
 14 material fact;

15 (D) The requirements of the permit have been violated;

16 (E) There has been substantial deviation from the plans, specifications or
 17 requirements of the permit or the Letter of Authorization;

18 (F) The permittee has prevented a representative of the Department from
 19 entering the activity site to make reasonable inspections; or

20 (G) The permittee's rights under the permit have not vested and new
 21 information, changes in site conditions, or amended regulatory requirements necessitate
 22 revocation or suspension.

23 (b) Written notice.

24 (1) Except as provided for under Subsection (d), Emergency Action, the Department
 25 may not suspend or revoke a nontidal wetland permit or Letter of Authorization unless the
 26 Department notifies a permittee of the suspension or revocation by certified mail. The notice
 27 shall include:

28 (A) The specific facts that warrant the suspension or revocation; and

29 (B) An opportunity for the permittee to appeal the action.

30 (c) Hearings.

31 (1) Upon receipt of written notice to suspend or revoke a permit, the permittee shall

1 have ten (10) days to request a contested case hearing.

2 (2) A hearing under this Subsection shall be conducted according to Section 32-
3 221(c).

4 (3) If the Department does not receive a request for a hearing, the permit shall be
5 revoked or suspended.

6 (d) Emergency Action.

7 (1) The Department may order the immediate suspension or revocation of a permit or
8 Letter of Authorization if the Department:

9 (A) Finds that public health, safety or welfare requires the emergency action; and

10 (B) Promptly gives the permittee written notice of the emergency action.

11 (2) A notice of emergency action shall include a statement of:

12 (A) The specific facts upon which the emergency action is based; and

13 (B) The permittee's opportunity to be heard in accordance with subsection (c).

14 **Sec 32-238. Nontidal Wetland Protection Program Reporting.**

15 (a) The Department shall submit an annual report to MDNR that evaluates the
16 administration of the program, coinciding with the State fiscal year. The report shall include the
17 following information:

18 (1) Number of permits issued, modified and denied;

19 (2) Types of activities;

20 (3) Location of activities;

21 (4) Number of violations identified plus the number and nature of enforcement
22 actions taken;

23 (5) Comments from the regulated community and members of the public, including
24 copies of any written complaints about the County's administration of the program;

25 (6) Acreage totals of nontidal wetland losses by type;

26 (7) Mitigation actions, including acreage totals of mitigation projects by type of
27 project;

28 (8) Examples of minimization efforts;

29 (9) Number of conditioned exemptions granted and nontidal wetlands lost as a result;
30 and

31 (10) A report on the Department's Nontidal Wetland Compensation Fund in

1 accordance with Section 32-234.

2 **Sec. 32-239. Nontidal Wetlands of Special State Concern.**

3 Maps of areas designated as Nontidal Wetlands of Special State Concern shall be
 4 maintained by the Department and MDNR and available for public review. Areas designated in
 5 Prince George’s County as Nontidal Wetlands of Special State concern are:

	<u>Site Name</u>	<u>U.S.G.S. Quad Name</u>
(1)	<u>Beck Woods</u>	<u>Laurel</u>
(2)	<u>Belt Woods</u>	<u>Lanham</u>
(3)	<u>Beltsville Airport Bog</u>	<u>Laurel</u>
(4)	<u>Beltsville Bottomland Forest</u>	<u>Laurel/Beltsville</u>
(5)	<u>Beltsville Forest and Meadow</u>	<u>Laurel</u>
(6)	<u>Beltsville Seasonal Pond</u>	<u>Laurel</u>
(7)	<u>Buck Lodge Road Bog</u>	<u>Beltsville</u>
(8)	<u>Chews Lake</u>	<u>Bristol</u>
(9)	<u>Fort Ravine</u>	<u>Mount Vernon</u>
(10)	<u>Johnson’s Gully</u>	<u>Mount Vernon</u>
(11)	<u>Huntington Park Woods</u>	<u>Laurel</u>
(12)	<u>Magruder Ferry Seep</u>	<u>Lower Marlboro</u>
(13)	<u>Mockley Swamp</u>	<u>Mount Vernon</u>
(14)	<u>Patuxent Maple Swamp</u>	<u>Bowie</u>
(15)	<u>Patuxent W.R.C.</u>	<u>Laurel</u>
(16)	<u>Route I-95 Bog</u>	<u>Beltsville</u>
(17)	<u>Southwest Branch Bottomland Forest</u>	<u>Lanham/Upper Marlboro</u>
(18)	<u>Suitland Bog</u>	<u>Anacostia</u>
(19)	<u>Upper Patuxent Marshes Natural heritage Area</u>	<u>Bristol</u>
(20)	<u>Watkins Regional Park</u>	<u>Mitchellville</u>
(21)	<u>Zekiah Swamp</u>	<u>Brandywine</u>

6 SECTION 4. BE IT FURTHER ENACTED that the Department shall appoint a
 7 workgroup, consisting of interested stakeholders, including representatives of the environmental,
 8 development, municipal governments and the public, to review any changes or amendments to
 9 the Department’s 2001 Stormwater Management Design Manual that must be reviewed and

1 approved by the County Council prior to adoption of any such changes or amendments.

2 SECTION 5. BE IT FURTHER ENACTED that the provisions of this Act are hereby
3 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
4 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
5 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
6 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
7 Act, since the same would have been enacted without the incorporation in this Act of any such
8 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

9 SECTION 6. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
10 calendar days after it becomes law.

Adopted this 19th day of July, 2011.

COUNTY COUNCIL OF
PRINCE GEORGE'S COUNTY, MARYLAND

BY: _____
Ingrid M. Turner
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
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.