

## CHAPTER 1-15.2: STORMWATER MANAGEMENT

*Editor's note:*

*Section 1 of Ord. 10-09-544, adopted May 20, 2010, repealed Chapter 1-15.2 in its entirety and enacted similar provisions to read as herein set out. Section 1 of Ord. 01-10-284, adopted June 5, 2001, had previously repealed Chapter 1-15.2 in its entirety and enacted similar provisions. Former Chapter 1-15.2 derived from Ord. 90-18-616, adopted May 15, 1990; Ord. 91-11-011, adopted May 7, 1991; and Ord. 98-04-206, adopted April 7, 1998.*

### ARTICLE I: GENERAL

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Section

1-15.2-1.0 Purpose and authority

**Cross references:**

*Buildings, see Chapter 1-6, Chapter 2-4;*

*Grading and sediment control, see Chapter 1-10;*

*Planning and development, see Chapter 1-13;*

*Subdivision rules and regulations, see Chapter 1-16;*

*Water, sewers and drains, see Chapter 2-13;*

*Water, sewers and sewage disposal, see Chapter 1-18;*

*Zoning, see Chapter 1-19*

**Statutory reference:**

*Storm water management, see Md. Code Ann., Environment Art., §§ 4-201 et seq.*

#### **§ 1-15.2-1.0. PURPOSE AND AUTHORITY.**

(A) The purpose of this chapter is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures that control the adverse impacts associated with increased stormwater runoff. The goal is to manage stormwater by using environmental site design (ESD) to the maximum extent practicable (MEP) to maintain after development as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, and to use appropriate structural best management practices (BMPs) only when necessary. This will restore, enhance, and maintain the chemical, physical, and biological integrity of streams, minimize damage to public and private property, and reduce the impacts of land development.

(B) The provisions of this chapter, pursuant to the Md. Code Ann., Environment Article, Title 4, Subtitle 2, 2009 replacement volume, are adopted by the county and shall apply to all development occurring within the unincorporated areas of Frederick County and may apply to the incorporated areas within the geographical limits of Frederick County, if the municipal government adopts these regulations and enters into an enforcement agreement with the county. The application of this chapter and provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. The Frederick County Community Development Division (the "Division") shall be responsible for the coordination and enforcement of the provisions of this chapter.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## Section

## 1-15.2-2.0 Definitions

**§ 1-15.2-2.0. DEFINITIONS.**

The following definitions are provided for the terms used in this chapter:

**100-YEAR FLOODPLAIN.** That area defined by an elevation established from the Federal Emergency Management Agency (FEMA) maps or a state- approved hydrologic and hydraulic study that would be inundated by water runoff from a storm equivalent to the heaviest rainfall in a 100-year period.

**ADMINISTRATION.** The Maryland Department of the Environment (MDE) Water Management Administration (WMA).

**ADVERSE IMPACT.** Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

**AGRICULTURAL LAND MANAGEMENT PRACTICES.** Those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

**APPLICANT.** Any person, firm, or governmental agency that is authorized to and executes the necessary forms to procure approval of a development or a permit to carry out construction of a development.

**APPROVING AGENCY.** The entity responsible for the review and approval of plans submitted for stormwater management.

**BEST MANAGEMENT PRACTICE (BMP).** A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution directly or indirectly to stormwater, receiving waters, and stormwater conveyance systems, and provide other amenities.

**CHANNEL PROTECTION STORAGE VOLUME (CPV).** The volume used to design structural management practices to control stream channel erosion. Methods for calculating the channel protection storage volume are specified in the 2000 Maryland Stormwater Design Manual.

**CONCEPT PLAN or SWM CONCEPT PLAN.** A plan that is typically the first of three required stormwater-related plan approvals and includes the information necessary to allow an initial evaluation of a proposed development.

**COUNTY.** Frederick County, Maryland.

**COUNTY COUNCIL.** County Council of Frederick County, Maryland.

**COUNTY EXECUTIVE.** County Executive of Frederick County, Maryland.

**COUNTY GOVERNING BODY.** County Council and County Executive of Frederick County, Maryland.

**DESIGN MANUAL.** The 2000 Maryland Stormwater Design Manual, and all subsequent revisions, that serves as the official guide for stormwater management principles, methods, and practices.

**DEVELOP LAND or DEVELOPMENT.** To change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, institutional or other construction or alteration, and includes redevelopment, infill, paving of existing gravel and new impervious areas.

**DEVELOPER.** A person, firm, or governmental agency undertaking or proposing the construction of a structure, a development consisting of interrelated structures or other construction, and who has primary financial responsibility for the proposal.

**DIRECTOR.** The Director of the Community Development Division or his or her designee.

**DISTURB or DISTURBANCE.** For the purposes of this chapter, to develop land. See the definition of "develop land" above.

**DIVISION.** The Frederick County Community Development Division.

**DRAINAGE AREA.** That area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

**EASEMENT.** A written grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes which is recorded in the land records. The benefits and burdens of an easement transfer with the land to subsequent owners.

**ENGINEER.** Any professional engineer duly registered by the State of Maryland to practice professional engineering under the requirements of Business Occupations and Professions, Md. Ann. Code, Title 14.

**ENVIRONMENTAL SITE DESIGN (ESD).** Using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. Methods for designing ESD practices are specified in the Design Manual.

**EROSION.** The process by which the ground surface is worn away by the action of wind and/or water.

**EXEMPTION.** Those land development activities that are not subject to the stormwater management requirements contained in this chapter.

**EXTENDED DETENTION.** A stormwater design feature that provides gradual release of a volume of water in order to increase settling of pollutants and protect downstream channels from frequent storm events. Methods for designing extended detention BMPs are specified in the Design Manual.

**EXTREME FLOOD VOLUME ( $Q_f$ ).** The storage volume required to control those infrequent but large storm events in which overbank flows reach or exceed the boundaries of the 100-year floodplain.

**FINAL SUBDIVISION PLAT.** A final plat submitted in accordance with Chapter 1-16 of the Frederick County Code.

**FINAL SWM PLAN.** The last of three required plan approvals that includes drawings and other documents submitted by a registered professional pertaining to construction of stormwater management systems and facilities. The final SWM plan contains all of the information and specifications necessary to allow all SWM approvals and permits to be issued by the approving agency.

**GRADING.** Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled, or any combination thereof.

**GRADING PERMIT.** Any permit validly issued by the Division for Erosion and Sediment Control, Stormwater Management or Public Improvements.

**ILLICIT CONNECTION.** Has the following meanings:

(1) A drain or conveyance, either on the surface or subsurface, and whether located on public or private property, which allows a discharge that is prohibited under § 1-15.2-12.1 of this article, to enter or to be capable of imminent discharge to a municipal separate storm sewer system, regardless of whether the drain or conveyance had been previously allowed by the county; or

(2) A drain or conveyance, whether located on public or private property, which is connected to a municipal separate storm sewer system and which has not been documented in a plan, map, or equivalent record and approved by the county.

**ILLICIT DISCHARGE.** Any discharge to an MS4 that is not composed entirely of stormwater, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer system) and discharges resulting from firefighting activities. Discharges identified in § 1-15.2-12.1(B)(1) are generally not illicit discharges unless the Manager (defined below) determines that these discharges are not properly managed.

**IMPERVIOUS AREA.** Any surface that does not allow stormwater to infiltrate into the ground at a rate at least the same as "woods in good condition" (as defined in the Design Manual).

**IMPROVEMENT PLANS.** A plan which contains all of the information, computations and specifications necessary to construct roads, storm drain, water lines, sanitary sewer and all other appurtenances.

**INFILL DEVELOPMENT.** Development of a parcel of land, less than 1 acre in size, which is completely surrounded by property which was developed more than 5 years ago.

**INFILTRATION.** The passage or movement of water into the soil surface.

**LAND RECORDS.** The land records of Frederick County, Maryland.

**LAND SURVEYOR.** A professional land surveyor duly registered by the State of Maryland to practice land surveying in accordance with the provisions of Md. Code Ann., Business Occupations and Professions, Title 15.

**LANDSCAPE ARCHITECT.** A person, partnership, or corporation that is licensed in accordance with the provisions of Md. Code Ann., Business Occupations and Professions, Title 9.

**MANAGER.** The Manager of Frederick County Office of Sustainability and Environmental Resources or their authorized designee.

**MAXIMUM EXTENT PRACTICABLE (MEP).** Designing stormwater management systems so that all reasonable opportunities for using ESD planning techniques and treatment practices are exhausted and only where absolutely necessary, a structural BMP is implemented.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4).** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by, among other public entities, a county that has jurisdiction over sewage, industrial wastes, stormwater, or other wastes, that discharge to surface waters and that are designed or used for collecting or conveying stormwater. See 40 CFR 122.26(b)(8). Combined sewers and systems associated with a Publicly Owned Treatment Works (POTW), as defined at 40 CFR 122.2, are not included as a part of the municipal separate storm sewer system.

**MXD PHASE II PLAN.** A plan submitted in accordance with § 1-19-10.500(H)(2) of the Frederick County Zoning Ordinance (prior to November 20, 2010).

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT.** A permit issued by the Environmental Protection Agency or by a state acting under authority delegated pursuant to 33 U.S.C. § 1342(b) that authorizes the discharge of pollutants to waters of the United States from a point source, whether the permit is applicable to an individual or group.

**OFF-SITE STORMWATER MANAGEMENT.** The design and construction of a facility necessary to control stormwater from more than one development.

**ON-SITE STORMWATER MANAGEMENT.** The design and construction of systems necessary to control stormwater within an immediate development.

**OVERBANK FLOOD PROTECTION VOLUME ( $Q_p$ ).** The volume controlled by structural BMPs to prevent an increase in the frequency of out-of-bank flooding generated by development. Methods for calculating the overbank flood protection volume are specified in the Design Manual.

**PERSON.** The federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, an individual, or any other entity.

**PLANNING TECHNIQUES.** A combination of strategies employed early in development design to reduce the impact from development and to incorporate natural features into a final SWM plan.

**POLLUTANT.** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

**PRELIMINARY SUBDIVISION PLAT.** A preliminary plat submitted in accordance with Chapter 1-16 of the Frederick County Code.

**PREMISES OR PROPERTY.** A lot, plot or parcel of land, including the structures on it.

**PROHIBITED MATERIAL.** Material or objects which are imminently capable of creating interference with an MS4 or becoming an illicit discharge, such as, but not limited to, trash, litter, floatables, stockpiles used for construction, pet waste, containers of pesticides, herbicides or fertilizers, cut grass clippings from landscaping activities, or hazardous substances as defined in 40 CFR 122.

**PUD PHASE II PLAN.** A plan submitted in accordance with § 1-19-10.700(H)(2) of the Frederick County Zoning Ordinance (prior to November 20, 2010).

**RECHARGE VOLUME ( $RE_v$ ).** That portion of the water quality volume used to maintain groundwater recharge rates at

development sites. Methods for calculating the recharge volume are specified in the Design Manual.

**REDEVELOPMENT.** Any construction, alteration, or improvement performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential and existing site impervious area exceeds 40 percent.

**REGISTERED PROFESSIONAL.** An engineer, surveyor or landscape architect who is licensed by the State of Maryland to practice his or her profession and holds the appropriate license to submit the information and plans required under this chapter.

**SECURITY.** An escrow account or an irrevocable letter of credit or similar agreement from a lending institution or any recognized lender satisfactory to the Office of the County Attorney that guarantees payment for the installation of the required storm drain, stormwater management facility and appurtenances.

**SEDIMENT.** Soils or other surficial materials transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.

**SITE.** All or any portion of any tract, lot, or parcel of land, or combination of tracts, lots, parcels of land that are in one ownership, or are contiguous and in diverse ownership, where development is to be performed as part of a unit, subdivision, or development.

**SOIL CONSERVATION DISTRICT (SCD).** A political subdivision of the State of Maryland, defined under Md. Code Ann., Agriculture, Title 8, and by specific geographic boundaries.

**STABILIZATION.** The prevention of soil movement by any of various vegetative and/or structural means.

**STORMWATER.** Water that originates from a precipitation event, including but not limited to stormwater runoff, snow melt runoff, and surface runoff and drainage. See 40 CFR 122.26(b)(13).

**STORMWATER MANAGEMENT SYSTEM.** Natural areas, ESD practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates, or discharges from a site.

**SWM CONCEPT PLAN** or **CONCEPT PLAN.** A plan that is typically the first of three required stormwater-related plan approvals and includes the information necessary to allow an initial evaluation of a proposed development.

**SWM DEVELOPMENT PLAN.** Has the same meaning as the term "site development plan" in the Design Manual and is typically the second of three required plan approvals that includes the information necessary to allow a detailed evaluation of a proposed development.

**VARIANCE.** The modification of the minimum stormwater management requirements for specific circumstances where strict adherence to the requirements would result in unnecessary hardship and would not fulfill the intent of this chapter.

**WAIVER.** A determination to reduce the stormwater management requirements for a specific development based on a case-by-case review.

**WATER QUALITY VOLUME (WQ<sub>v</sub>).** The volume needed to capture and treat 90 percent of the average annual rainfall events at a development site. Methods for calculating the water quality volume are specified in the Design Manual.

**WATERSHED.** The total drainage area contributing runoff to a single point.

**WATERSHED MANAGEMENT PLAN.** An MDE-approved plan for a county or local municipality.

#### **WETLANDS.**

(1) An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(2) An area considered a nontidal wetland in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1987 and as may be amended and interpreted by the U.S. Environmental Protection Agency.

**ZONING SITE PLAN.** A site development plan submitted under § 1-19-3.300.3 of the Zoning Ordinance (Chapter 19 of the Frederick County Code).

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014; Bill No. 19-14, 11-5-2019)

Section

- 1-15.2-3.1 Scope
- 1-15.2-3.2 Exemptions
- 1-15.2-3.3 Waivers/watershed management plans
- 1-15.2-3.4 Redevelopment
- 1-15.2-3.5 Variance
- 1-15.2-3.6 Fees

**§ 1-15.2-3.1. SCOPE.**

Unless exempt under § 1-15.2-3.2 of this chapter, no person shall develop any land without providing stormwater management (SWM) measures that control or manage runoff from such developments. All stormwater management measures must be in compliance with the Design Manual and constructed in accordance with the approved final SWM plan for the development or the policies stated in § 1-15.2-3.4 of this chapter for redevelopment.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

**§ 1-15.2-3.2. EXEMPTIONS.**

The following development activities are exempt from the provisions of this chapter and the requirements of providing stormwater management:

- (A) Agricultural land management practices (upon written verification from the SCD);
- (B) Any developments that do not disturb more than a total of 5,000 square feet of land area; and
- (C) Land development activities that the administration determines will be regulated by the administration.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

**§ 1-15.2-3.3. WAIVERS/WATERSHED MANAGEMENT PLANS.**

- (A) *General requirements.* Except as provided in §§ 1-15.2-3.3(B) and 1-15.2-3.3(D), waivers may be granted only if:
  - (1) The applicant has demonstrated that ESD has been implemented to the MEP;
  - (2) The cumulative effects of waivers previously granted have been considered; and
  - (3) The development will not adversely impact stream quality.

- (B) *Quantitative waivers.* Except as provided in § 1-15.2-3.3(D), quantitative waivers may be granted for projects:

(1) For developments within areas where watershed management plans have been developed and implemented under § 1-15.2-3.3(F) and (G) of this chapter; or

(2) That are in-fill development located in a priority funding area where the economic feasibility of the project is tied to the planned density, and where implementation of the 2009 regulatory requirements would result in a loss of the planned development density provided that:

- (a) Stormwater conveyance systems and public water and sewer exist;
- (b) The quantitative waiver is applied to the project for the impervious cover that previously existed on the site only;
- (c) ESD to the MEP is used to meet the full water quality treatment requirements for the entire development; and

(d) ESD to the MEP is used to provide full quantity control for all new impervious surfaces; or

(3) When the approving agency determines that circumstances exist that prevent the reasonable implementation of quantity control practices.

(C) *Qualitative waivers.* Except as provided in § 1-15.2-3.3(D), stormwater management qualitative control waivers may be granted only when ESD has been implemented to the MEP, and in the following circumstances:

(1) Infill developments where it has been demonstrated that other BMPs are not feasible; or

(2) Redevelopment if the requirements of § 1-15.2-3.4 of this chapter are satisfied; or

(3) Underground utilities projects where ESD has been implemented to the MEP and the development will return the work area to predeveloped hydrologic conditions (existing drainage patterns will not be changed and there is no redevelopment and no increase in impervious area), or

(4) In areas of karst terrain, management of recharge volume (RE<sub>v</sub>) shall not be required. The presence of karst terrain shall be confirmed by a geotechnical report prepared by a geotechnical engineer, and shall be provided as part of the written request for waiver.

(D) Stormwater management quantitative and qualitative control waivers may be granted for phased development projects if a system designed to meet the applicable 2000 regulatory requirements and the Frederick County requirements for phased projects has been constructed by May 4, 2010. If the current regulatory requirements under this chapter cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in future phases must be demonstrated.

(E) *Waiver requests.* Written waiver applications shall be submitted along with sufficient descriptions, drawings, and other information necessary to demonstrate that ESD has been implemented to the MEP. A separate written waiver request shall be submitted in accordance with the provisions of this section for each eligible drainage area where runoff leaves the development site, and for subsequent additions, extensions, or modifications to a development that has received a waiver.

(F) *Waivers granted.* The applicant shall be provided with a written decision on the waiver request.

(G) If the county has established an overall watershed management plan for a specific watershed and this watershed management plan has been approved by the administration, then the Division may develop quantitative waiver and redevelopment provisions that differ from §§ 1-15.2-3.3(B) and 1-15.2-3.4 of this chapter.

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

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

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

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

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

(5) Be conducted at a reasonable scale;

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

(7) Be consistent with the general performance standards for stormwater management in Maryland found in the Design Manual;

(8) Include any other conditions, not specifically addressed herein but considered necessary by the Director or assignees, to fully evaluate the study area; and

(9) Be approved by the administration.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

#### **§ 1-15.2-3.4. REDEVELOPMENT.**

Stormwater management plans are required for all redevelopment. Stormwater management measures must be consistent with the Design Manual.

(A) All redevelopment shall:

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

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

(3) Use a combination of subsections (A)(1) and (A)(2) above for at least 50 percent of the existing impervious area within the LOD; and

(4) Provide stormwater management for 100% of any net increase in impervious area.

(B) The following structural BMPs may be used to meet the requirements in subsection (a) above provided that the applicant demonstrates that impervious area reduction has been maximized and ESD has been implemented to the MEP:

(1) On-site structural BMP; or

(2) Off-site structural BMP to provide water quality treatment for an area equal to or greater than 50 percent of the existing untreated impervious area.

(C) The Division may develop separate policies for providing water quality treatment for redevelopment in the event the requirements of this section cannot be met. Any separate redevelopment policy shall be reviewed and approved by the administration and may include, but not be limited to:

(1) A combination of ESD and an on-site or off-site structural BMP;

(2) Retrofitting including existing BMP upgrades, filtering practices, and off-site ESD implementation;

(3) Participation in a stream restoration project;

(4) Pollution trading with another entity;

(5) Payment of a fee-in-lieu; or

(6) A partial waiver of the treatment requirements if ESD is not practicable.

(D) The determination of what alternatives will be available may be made by the Division at the appropriate point in the development review process. The Division shall consider the prioritization of alternatives in § 1-15.2-3.4(C) of this chapter after it has been determined that it is not practicable to meet the current requirements using ESD. In deciding what alternatives may be required, the Division may consider factors including, but not limited to:

(1) Whether the project is in an area targeted for development incentives such as a priority funding area, a designated transit oriented development area, or a designated base realignment and closure revitalization and incentive zone;

(2) Whether the project is necessary to accommodate growth consistent with comprehensive plans; or

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

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-3.5. VARIANCE.**

The Division may grant a written variance from any requirement of Article IV, Stormwater Management Criteria, if there are exceptional circumstances applicable to the site such that strict adherence will result in unnecessary hardship and will not fulfill the intent of this chapter. A written request for variance shall be provided to the Division and shall state the specific variances sought and reasons for their granting. The Division shall not grant a variance unless and until sufficient justification is provided by the developer that the implementation of ESD to the MEP has been met.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-3.6. FEES.**



Fees charged for review and approval of stormwater management plans, waiver and variance requests, permits, inspections and extensions shall be established, revised or amended by resolution of the county governing body.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **ARTICLE IV: STORMWATER MANAGEMENT CRITERIA**

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### Section

1-15.2-4.1 General requirements

1-15.2-4.2 Stormwater management techniques and practices

### **§ 1-15.2-4.1. GENERAL REQUIREMENTS.**

The general requirements established in this section and the Design Manual are as follows:

(A) The planning techniques, nonstructural practices, and design methods contained in the Design Manual shall be used to implement ESD to the MEP. Stormwater management plans shall be developed using ESD sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria from the Design Manual.

(B) The use of ESD planning techniques and treatment practices must be exhausted before any structural BMP is implemented. The MEP standard is met when channel stability is maintained, predeveloped groundwater recharge is replicated, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary.

(C) Development shall comply with flood management plans as approved by the administration in accordance with the Flood Hazard Management Act of 1976 (Md. Code Ann., Environment Article, Title 5, Subtitle 8). Carroll Creek and its tributaries are designated as an interjurisdictional flood hazard watershed.

(D) The 10-year frequency storm event ( $Q_p$ ) and the 100-year frequency storm event ( $Q_f$ ) must be analyzed by the applicant.

(E) Stormwater management and development plans where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the Maryland Department of the Environment (MDE) in accordance with the Flood Hazard Management Act of 1976.

(F) Alternate minimum control requirements may be adopted subject to administration approval. The administration shall require a demonstration that alternative requirements will implement ESD to the MEP and control flood damages, accelerated stream erosion, water quality, and sedimentation. Comprehensive watershed studies may also be required.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-4.2. STORMWATER MANAGEMENT TECHNIQUES AND PRACTICES.**

The ESD planning techniques and practices and structural BMPs as established herein shall be used to develop stormwater management plans. A developer shall demonstrate that ESD has been implemented to the MEP before the use of a structural BMP is considered in developing the stormwater management plan.

(A) *ESD planning techniques and practices.*

(1) The following ESD planning techniques shall be applied according to the Design Manual (or as otherwise approved by the administration) to satisfy the applicable general requirements established in this chapter, and shall not conflict with existing state law or local ordinances, regulations, or policies:

(a) Preserving and protecting natural resources;

(b) Conserving natural drainage patterns;

(c) Minimizing impervious area;

(d) Reducing runoff volume;

- (e) Using ESD practices to maintain 100 percent of the annual predevelopment groundwater recharge volume;
- (f) Using green roofs, permeable pavement, reinforced turf, and other alternative surfaces;
- (g) Limiting soil disturbance, mass grading, and compaction;
- (h) Clustering development; and
- (i) Any practices approved by the administration.

(2) The following ESD treatment practices shall be designed according to the Design Manual (or as otherwise approved by the administration) to satisfy the applicable general requirements established in this chapter, and shall not conflict with existing state law or local ordinances, regulations, or policies:

- (a) Disconnection of rooftop runoff;
- (b) Disconnection of non-rooftop runoff;
- (c) Sheetflow to conservation areas;
- (d) Rainwater harvesting;
- (e) Submerged gravel wetlands;
- (f) Landscape infiltration;
- (g) Infiltration berms;
- (h) Dry wells;
- (i) Micro-bioretenion;
- (j) Rain gardens;
- (k) Swales;
- (l) Enhanced filters; and
- (m) Any practices approved by the administration.

**(B) Structural BMPs.**

(1) Structural BMPs shall be designed in accordance with the Design Manual (or as otherwise approved by the administration) to satisfy the applicable general requirements established in this chapter:

- (a) Stormwater management ponds;
- (b) Stormwater management wetlands;
- (c) Stormwater management infiltration;
- (d) Stormwater management filtering systems; and
- (e) Stormwater management open channel systems.

(2) The performance criteria specified in the Design Manual related to general feasibility, conveyance, pretreatment, treatment and geometry, environment and landscaping, and maintenance shall be considered when selecting structural stormwater management practices. Structural stormwater management practices shall be selected to accommodate the unique hydrologic or geologic features of Frederick County.

**(C) Alternative ESD planning techniques and practices and structural BMPs.** Alternative ESD planning techniques and practices and structural BMPs may be used if they meet the performance criteria established in the Design Manual and are approved by the administration. Practices used for redevelopment projects shall be approved by the Division.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## Section

1-15.2-5.1 Stormwater management plans

1-15.2-5.2 Contents and submission of stormwater management plans

### **§ 1-15.2-5.1. STORMWATER MANAGEMENT PLANS.**

(A) Prior to any subdivision or development activity, the developer shall submit SWM plans for review and approval. Plan review shall be a three-step process, including:

- (1) A SWM concept plan;
- (2) A SWM development plan; and
- (3) A final SWM plan, including a final erosion and sediment control plan.

(B) Combined plan applications.

(1) The Director may allow certain project types with minor impacts, including but not limited to those listed below in subsection (B)(2), to submit combined plan applications, provided that:

- (a) Compliance with ESD to the MEP standard is demonstrated;
- (b) All of the information required for each plan review phase is included.

(2) Project types that may be considered for combined plan applications include, but are not limited to, the following:

(a) Plat applications proposing no more than 5 lots, a common driveway, road layback, frontage improvements, utility work, or entrance/road widening improvements;

- (b) Bridge repair and rehabilitation projects;
- (c) Road widening and repair projects;
- (d) Minor building additions disturbing less than 1 acre of total area;
- (e) Utility projects which do not propose any additional impervious area;

(f) Certain redevelopment projects where the SWM concept plan requirement to identify natural resources could be combined with the SWM development plan requirements;

- (g) Residential projects consisting of 1 lot and disturbing less than 1 acre of total area; and
- (h) Projects designated as fast track projects, based on criteria approved by the county.

(C) Approval of a SWM concept plan, a SWM development plan, or a final SWM plan under this chapter shall not relieve the developer from the obligation to comply with all other applicable requirements for development.

(D) Plans and designs for stormwater management shall be prepared, signed and sealed by a registered professional.

(E) If a stormwater BMP requires either a dam safety permit from MDE or small pond approval from the local SCD, the Division shall require that the design be prepared by a professional engineer licensed in the state.

(Ord. 10-09-544, 5-20-2010; Ord. 11-04-570, 3-1-2011; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-5.2. CONTENTS AND SUBMISSION OF STORMWATER MANAGEMENT PLANS.**

(A) *SWM concept plan.* The SWM concept plan shall be prepared prior to the submittal of a subdivision plan, zoning site plan, MXD Phase II plan, or PUD Phase II plan. The SWM concept plan may be submitted prior to or concurrently with a subdivision, zoning site plan, MXD Phase II plan, or PUD Phase II plan. The SWM concept plan shall contain sufficient information for an initial assessment of the proposed development and whether stormwater management can be provided in accordance with this chapter and the Design Manual. Plans submitted for SWM concept plan approval shall include:

- (1) A map at a scale not smaller than 1" = 100 feet showing site location, existing natural features, water and other

sensitive resources, topography, and natural drainage patterns;

(2) The anticipated location of all proposed impervious areas, buildings, roadways, parking, sidewalks, utilities, and other site improvements;

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

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

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

(6) Any other information requested by the Division.

(B) *SWM development plan.* After the SWM concept plan has been approved, the developer shall submit a SWM development plan consistent with the approved SWM concept plan and all conditions of approval, and any written waiver or variance request. The SWM development plan may be submitted concurrently with or after the submission of a zoning site plan or preliminary subdivision plan application, or MXD Phase II plan or PUD Phase II plan. SWM development plans shall include:

(1) All details developed during the SWM concept plan review phase;

(2) Final site layout, impervious area locations and acreages, proposed topography, delineated drainage areas at all points of discharge from the site, proposed hydrologic analysis for runoff rates, storage volumes, and discharge velocities, individual ESD locations and sizing computations for ESD practices, locations and sizing computations for structural BMPs, and discharge calculations demonstrating safe conveyance off-site;

(3) Adequate information to determine the level of control required for the 10-year and 100-year frequency storm events;

(4) For waiver or variance requests under this chapter, the developer shall submit an analysis of the cumulative impacts of stormwater flows downstream in the watershed. The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, or natural point of restricted streamflow. The point of investigation is to be established with the concurrence of the Division, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the development or stormwater management facility.

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

(6) A narrative that supports the SWM development design, describes how ESD will be used to meet the minimum control requirements, and justifies any proposed structural BMP; and

(7) Any other information required by the Division.

(C) *Final SWM plans.* After the SWM development plan has been approved, the developer shall submit final erosion and sediment control plans (in accordance with COMAR 26.17.01.05.) and final SWM plans that are consistent with the approved SWM development plan and all conditions of approval. Final SWM plans shall be submitted as a part of the improvement plans for the subdivision or development.

(1) Final SWM plans shall include:

(a) A vicinity map, at a scale not to exceed 1" = 2000';

(b) Existing and proposed topography (including source and date) and proposed drainage areas, including areas necessary to determine downstream analysis for safe conveyance and proposed stormwater management facilities;

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

(d) The location of existing and proposed structures and utilities;

(e) All existing and proposed easements and rights-of-way, including recording references where applicable;

(f) The delineation, if applicable, of the 100-year floodplain and any on-site wetlands;

- (g) Structural and construction details including representative cross sections for all components of the proposed drainage system or systems, and stormwater management facilities;
- (h) All necessary construction specifications;
- (i) A sequence of construction;
- (j) Data for total site area, disturbed area, new impervious area, and total impervious area;
- (k) A table showing the ESD and unified sizing criteria volumes required in the Design Manual;
- (l) A table of materials to be used for stormwater management facility construction;
- (m) All soil boring logs and locations;
- (n) An inspection and maintenance schedule;
- (o) Certification by the developer that all stormwater management construction will be done according to this plan;
- (p) An as-built certification signature block to be executed after development completion; and
- (q) Any other information requested by the Division.

(2) The final SWM plan shall also include a report that includes:

- (a) Geotechnical investigations including soil maps, borings, site specific recommendations, and any additional information necessary for the final stormwater management design;
- (b) Drainage area maps depicting predevelopment and post development runoff flow path segmentation and land use;
- (c) Hydrologic computations of the applicable ESD and unified sizing criteria according to the Design Manual for all points of discharge from the site;
- (d) Hydraulic and structural computations for all ESD practices and structural BMP measures to be used;
- (e) A narrative that supports the final stormwater management design; and
- (f) Any other information requested by the Division.

(D) If a stormwater management plan involves direction of some or all runoff off of the site, it is the responsibility of the developer, in accordance with state law, to obtain from adjacent property owners any easements or other necessary property interests concerning flowage of water. Approval of a stormwater management plan does not create or affect any right to direct runoff onto adjacent property without that property owner's permission.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **ARTICLE VI: PERMITS**

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### Section

- 1-15.2-6.1 Permit requirement
- 1-15.2-6.2 Permit suspension and revocation
- 1-15.2-6.3 Permit conditions

### **§ 1-15.2-6.1. PERMIT REQUIREMENT.**

(A) No grading or building permit may be issued for any site unless:

- (1) The development is exempt from this chapter under § 1-15.2-3.2; or
- (2) Final erosion and sediment control plans and final SWM plans have been approved; and
- (3) Easements for the stormwater management facility and easements to provide adequate access for inspection

and maintenance from a public right-of-way have been approved and recorded in the land records; and

(4) A stormwater management maintenance agreement as described in § 1-15.2-9.1 of this chapter has been approved and recorded in the land records; and

(5) Security as described in § 1-15.2-7.2 of this chapter has been provided.

(B) In limited circumstances established by the Division, a grading permit may be issued prior to recordation of the documents described in subsections (3) and (4) above.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-6.2. PERMIT SUSPENSION AND REVOCATION.**

(A) The Division or its agents have the right to enter and inspect any site in order to verify that the site complies with the provisions of this chapter.

(B) The Division or its agent has the power to take any lawful action to prevent or to abate a violation of this chapter.

(C) Written notice, stating the nature of the violation and ordering such lawful action as will prevent or abate the violation shall be provided to the appropriate person identified at the preconstruction meeting. If the violation is of such a nature that continuing work will worsen the situation or cause a more severe violation, the Division is authorized to immediately suspend or revoke the grading or building permit and issue a stop-work order on the development.

(D) The Division shall allow a reasonable period of time for compliance with the written order.

(E) Any grading or building permit may be suspended or revoked after written notice is given for any of the following reasons:

(1) Violation(s) of any of the conditions of the final SWM plan approval;

(2) Changes in site runoff characteristics upon which an approval or waiver was granted;

(3) Construction not in accordance with the approved plans;

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

(5) Creation of an immediate danger in a downstream area.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-6.3. PERMIT CONDITIONS.**

In granting an approval for any phase of development, the Division may impose conditions as deemed necessary to ensure compliance with the provisions of this chapter and the preservation and protection of the public health and safety.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **ARTICLE VII: PERFORMANCE AGREEMENT AND SECURITY**

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Section

1-15.2-7.1 Performance agreement

1-15.2-7.2 Security

### **§ 1-15.2-7.1. PERFORMANCE AGREEMENT.**

The owner must enter into a stormwater management performance agreement with the county. The agreement will be reviewed by the Office of the County Attorney and executed by the Director. Performance agreements shall have a

maximum term of 2 years, and may be extended in one-year increments. Prior to approval of an extension, the owner shall provide a new cost estimate for all remaining work, and if the new cost estimate exceeds the remaining security, an increase in the amount of the security will be required.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **§ 1-15.2-7.2. SECURITY.**

(A) Prior to the issuance of any building and/or grading permit or recordation of a subdivision plat for an activity requiring stormwater management, security shall be provided in the form of an escrow account, irrevocable letter of credit, or other means of security acceptable to the Office of the County Attorney, in an amount not less than 115% of the total estimated construction cost of all stormwater management facilities. The security required in this section shall be subject to forfeiture for failure to:

(1) Complete work specified in the approved final SWM plan; or

(2) Comply with all of the provisions of this chapter, the performance agreement and other applicable laws and regulations, and any time limitations.

(B) The security shall not be fully released until after:

(1) Final inspection by the Division; and

(2) "As-built" plans and a certification of completion have been submitted by the owner or developer and approved by the Division, confirming that all stormwater management facilities comply with the approved plan and the provisions of this chapter.

(C) Partial release of the security may occur as stages of construction have been completed and inspected.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **ARTICLE VIII: INSPECTION**

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### Section

1-15.2-8.1 Inspection schedule and reports

1-15.2-8.2 Inspection requirements during construction

## **§ 1-15.2-8.1. INSPECTION SCHEDULE AND REPORTS.**

(A) No grading or other site work may start until after a preconstruction meeting between the Division and the developer has occurred. The developer shall contact the Division to request this meeting, which will be scheduled to occur within 72 hours of the developer's request.

(B) During the preconstruction meeting, the parties will determine responsibility for, and the frequency of inspections, certifications and documentation for each ESD treatment practice. At a minimum, all ESD and other nonstructural practices shall be inspected upon completion of final grading, the establishment of permanent stabilization, and before issuance of use and occupancy approval.

(C) The Division's written inspection reports shall include:

(1) The date and location of the inspection;

(2) Whether construction was in compliance with the approved final SWM plan;

(3) Any variations from the approved construction specifications; and

(4) Any violations that exist.

(D) No work shall proceed on the next phase of development until the Division inspects and approves the work previously completed. The Division will provide copies of the inspection reports to the developer.

## **§ 1-15.2-8.2. INSPECTION REQUIREMENTS DURING CONSTRUCTION.**

- (A) Regular inspections shall be made and documented at each of the following stages of construction:
- (1) Environmental site design (in accordance with the Design Manual and the approved final SWM plans);
  - (2) For ponds:
    - (a) Upon completion of excavation to sub-foundation, and during installation of structural supports or reinforcement for structures, including but not limited to:
      - (i) Core trenches for structural embankments;
      - (ii) Inlet and outlet structures, anti-seep collars or diaphragms, and watertight connectors on pipes; and
      - (iii) trenches for enclosed storm drainage facilities;
    - (b) During placement of structural fill, concrete, and installation of piping and catch basins;
    - (c) During backfill of foundations and trenches;
    - (d) During embankment construction; and
    - (e) Upon completion of final grading and establishment of permanent stabilization.
  - (3) Wetlands - At the stages specified for pond construction in § 1-15.2-8.2(A)(2) of this chapter, during and after wetland reservoir area planting, and during the second growing season to verify a vegetation survival rate of at least 50 percent.
    - (4) For infiltration trenches:
      - (a) During excavation to subgrade;
      - (b) During placement and backfill of under drain systems and observation wells;
      - (c) During placement of geotextiles and all filter media;
      - (d) During construction of appurtenant conveyance systems such as diversion structures, pre-filters and filters, inlets, outlets, and flow distribution structures; and
      - (e) Upon completion of final grading and establishment of permanent stabilization.
    - (5) For infiltration basins - At the stages specified for pond construction in § 1-15.2-8.2(A)(2) of this chapter and during placement and backfill of under drain systems.
  - (6) For filtering systems:
    - (a) During excavation to subgrade;
    - (b) During placement and backfill of under drain systems;
    - (c) During placement of geotextiles and all filter media;
    - (d) During construction of appurtenant conveyance systems such as flow diversion structures, pre-filters and filters, inlets, outlets, orifices, and flow distribution structures; and
    - (e) Upon completion of final grading and establishment of permanent stabilization.
  - (7) For open channel systems:
    - (a) During excavation to subgrade;
    - (b) During placement and backfill of under drain systems for dry swales;
    - (c) During installation of diaphragms, check dams, or weirs; and



(d) Upon completion of final grading and establishment of permanent stabilization.

(B) After construction is complete, "as-built" plan certification shall be prepared by a registered professional, certifying that ESD planning techniques and practices, and structural BMPs and conveyance systems comply with the specifications contained in the approved plans. "As-built" certification shall include a set of drawings comparing the approved final SWM plan with what was constructed. The Division may require additional information and certifications.

(C) Within 45 days of construction completion, the Division shall submit notice of construction completion to the administration on a form supplied by the administration for each structural stormwater management practice. The type, number, total drainage area, and total impervious area treated by all ESD planning techniques and practices shall be reported to the administration on a site by site basis. If BMPs requiring SCD approval are constructed, notice of construction completion shall also be submitted to the local SCD.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **ARTICLE IX: MAINTENANCE**

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### Section

1-15.2-9.1 Easement/maintenance agreement

1-15.2-9.2 Maintenance inspection

1-15.2-9.3 Maintenance responsibility

### **§ 1-15.2-9.1. EASEMENT/MAINTENANCE AGREEMENT.**

(A) Prior to the recordation of a final subdivision plat, or the issuance of a building permit where no subdivision is taking place, and for any development of property which will require stormwater management, an easement/maintenance agreement(s) necessary for perpetual maintenance of ESD treatment systems and structural BMPs shall be executed by all those having an interest in the property to be affected and shall be recorded among the land records.

(B) The easement/maintenance agreement shall be binding on all subsequent property owners. The easement/maintenance agreement shall:

(1) Provide for the creation of an easement for all ESD treatment systems and structural BMPs;

(2) Provide for the Division to have access for inspection and/or maintenance of the ESD treatment systems and structural BMPs;

(3) Specifically identify all lots or parcels that are benefitted by the ESD treatment systems and structural BMPs;

(4) Specify the party or entity (e.g. a property owners association) that is responsible for maintenance of ESD treatment systems and structural BMPs; and

(5) Provide that upon receipt of notice of any problems or deficiencies in the ESD treatment systems or structural BMPs the responsible party will correct problems as ordered by the Division. If the requested corrections are not made within 30 days, the Division may, at its option, perform all the necessary work to bring the ESD planning techniques and practices and structural BMPs into compliance with statutory requirements, and the owner of the land(s) upon which the facility is located and any benefitted property may be assessed for the cost of the work. If not paid within 30 days, the assessment shall create a lien on the property upon which the facility is located or any benefitted property and may be included in the tax bill and collected as taxes by the county.

(C) Satisfactory proof of the identities of all those having an interest in the encumbered and benefitted property shall be provided to the Division in a form acceptable to the office of the County Attorney.

(D) To the extent the county agrees to accept maintenance responsibility or ownership of ESD planning techniques and practices and structural BMPs, these facilities shall be maintained by an agency appointed by the county. The county reserves the right to set up storm drainage districts to pay for this service.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **§ 1-15.2-9.2. MAINTENANCE INSPECTION.**

(A) The Division shall ensure that preventative maintenance is performed by inspecting all ESD treatment systems and structural BMPs. Inspection shall occur during the first year of operation and at least once every 3 years thereafter.

(B) Inspection reports shall be maintained by the Division for all ESD treatment systems and structural BMPs.

(C) Inspection reports for ESD treatment systems and structural BMPs shall include the following:

(1) The date of inspection;

(2) Name of inspector;

(3) An assessment of the quality of the stormwater management system related to ESD treatment system efficiency and the control of runoff to the MEP;

(4) The condition of:

(a) Vegetation or filter media;

(b) Fences or other safety devices;

(c) Spillways, valves, or other control structures;

(d) Embankments, slopes, and safety benches;

(e) Reservoir or treatment areas;

(f) Inlet and outlet channels or structures;

(g) Underground drainage;

(h) Sediment and debris accumulation in storage and forebay areas;

(i) Any nonstructural practices to the extent practicable; and

(j) Any other item that could affect the proper function of the stormwater management system.

(5) Description of needed maintenance.

(D) After notifying an owner or other responsible person of the inspection results, the owner or other responsible person shall have 30 days, or other time frame mutually agreed to between the Division and the owner or other responsible person, to correct the deficiencies discovered. The Division shall conduct a subsequent inspection to ensure completion of the repairs.

(E) If repairs are not properly undertaken and completed, the enforcement procedures described in Article X of this chapter shall be followed.

(F) If, after an inspection by the Division, the condition of ESD treatment systems or structural BMPs is determined to present an immediate danger to public health or safety, the Division shall take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the Division shall be assessed against the owner(s) or other responsible person(s), as provided in § 1-15.2-9.1(B)(4) of this chapter.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **§ 1-15.2-9.3. MAINTENANCE RESPONSIBILITY.**

(A) The person responsible for maintenance of ESD treatment systems and structural BMPs, shall maintain in good condition and promptly repair and restore all ESD practices, grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices in perpetuity. Such repairs or restoration and maintenance shall be in accordance with previously approved or newly submitted plans.

(B) A maintenance schedule shall be developed and shown on the approved final SWM plan, and shall indicate the necessary maintenance and frequency thereof.

(C) ESD treatment systems and structural BMPs shall be owned and maintained by a property owners association, a

private property owner, or another private person. Only those ESD planning techniques and practices and structural BMPs that provide a recreational benefit and access to the general public may be considered for acceptance and maintenance by the county; provided that: (1) the request for public maintenance is made prior to approval of the SWM concept plan; and (2) the Division and any affected county agency provides an affirmative recommendation to the county. ESD planning techniques and practices and structural BMPs to be dedicated to the county shall be maintained by the developer until such time as they are accepted by the county. To the extent the county agrees to accept ESD treatment systems and structural BMPs, the facilities shall be maintained by an agency appointed by the county. The county reserves the right to set up storm drainage districts to pay for this service.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

## **ARTICLE X: PENALTIES AND ENFORCEMENT**

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### Section

1-15.2-10.1 Enforcement actions

1-15.2-10.2 Civil infractions

1-15.2-10.3 Penalties for continuing a violation

### **§ 1-15.2-10.1. ENFORCEMENT ACTIONS.**

(A) The Division may utilize any 1 or a combination of the following actions for enforcement of this chapter:

(1) A notice of violation, specifying the need for corrective action if noncompliance with any plan or agreement is identified;

(2) A stop work order, if a violation persists;

(3) Collection of the security if reasonable efforts to correct the violation have not been undertaken within a reasonable time period; or

(4) Civil citation, civil action or criminal prosecution may be brought against any person in violation of this chapter.

(B) Any step in the enforcement process may be taken at any time, depending on the severity of the violation.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-10.2. CIVIL INFRACTIONS.**

(A) Pursuant to the authority provided in § 2-2-29 of the Frederick County Code, any violation of any of the provisions of this chapter is a civil offense and shall be called a civil infraction. If after investigation a civil infraction is believed to exist, the Director shall deliver a citation or a warning to the property owner and any other person or persons responsible for the infraction. If the person responsible for the infraction cannot be located, the Director may post the citation or warning in a conspicuous place on the property and shall mail a copy of same by registered mail to the person who obtained the permit, if any, and to the property owner, which shall constitute notice sufficient for delivery under this section.

(B) The citation or warning, as provided for in this section, shall be in writing and shall contain the following:

(1) The name and address of the person charged (or warned);

(2) The nature of the violation;

(3) The location of the violation;

(4) The date(s) of the violation;

(5) The amount of the fine assessed (or possible assessment);

(6) The manner, location and time in which the fine may be paid (or violation corrected, if applicable);

(7) The person's right to stand trial for the violation (if applicable); and

(8) A certification by the Director or his or her agent attesting to the truth of the matters set forth.

(C) Whenever an alleged or possible civil infraction comes to the attention of the Director, the procedure will be as follows:

(1) The Director will investigate whether an infraction has occurred;

(2) If the Director determines that an infraction has occurred, a warning notice will be issued to the person or persons responsible in the form and manner as outlined in this section, with a time period of no more than 10 days within which to correct that infraction and to prevent further infractions;

(3) If the infraction continues or is allowed to occur after the time stated in the warning notice, the Director will issue a citation to the person or persons responsible and/or the property owner in the form and manner as outlined in this section.

(4) Notwithstanding the provisions of subparagraph (C)(2) above, the Director may issue a citation without the prior issuance of a warning notice.

(D) A fine of \$1,000 shall be imposed upon any person responsible for a civil infraction for each violation. Each day such violation is permitted to exist shall be considered a separate infraction. All fines shall be payable within 20 days to the county and delivered to the Division, which shall remit same to the County Treasurer.

(E) A person who receives a citation may elect to stand trial for the offense by filing with the Director a notice of intention to stand trial. The notice shall be given at least 5 days before the date of payment as set forth in the citation. Upon receipt of the notice of intention to stand trial, the Director shall forward to the District Court of Maryland for Frederick County a copy of the citation and the notice of intention to stand trial. Upon receipt of the citation, the District Court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties, or forfeitures collected by the District Court for civil infractions shall be remitted to the county, through the County Treasurer.

(F) If a person who receives a citation for an infraction fails to pay the fine by the date of payment set forth on the citation and fails to file a notice of intention to stand trial, the fine shall be doubled and the person is liable for the assessed fine. The Director may request adjudication of the case by the District Court, including the filing of a demand for judgment on affidavit. The District Court shall schedule the case for trial and summon the defendant to appear. The defendant's failure to appear to such summons shall result in the entry of judgment against the defendant in favor of the county in the amount then due if a proper demand for judgment on affidavit has been made.

(G) Adjudication of an infraction under this section is not a criminal conviction, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(H) In a proceeding before the District Court, the violation shall be prosecuted in the same manner and to the same extent as set forth for municipal infractions in Md. Ann. Code, Local Government Article, Title 6.

(I) If a person is found by the District Court to have committed a civil infraction, the person shall be liable for the costs of the proceedings in the District Court; and the Court may permit the county to abate any such condition at the person's expense, the same as provided in Md. Ann. Code, Local Government Article, Title 6.

(J) Depending on the circumstances of each case and after consultation with the Office of the County Attorney, the Director has the discretionary authority to reduce or suspend all or a portion of the fine assessed under this article.

(K) Nothing contained in this section shall prohibit or prevent the Director or Frederick County from seeking other legal remedies, such as injunctions or criminal prosecution.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-10.3. PENALTIES FOR CONTINUING A VIOLATION.**

Any person convicted of violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than \$5,000 or imprisonment not exceeding 1 year or both for each violation with costs imposed in the discretion of the court and not to exceed \$50,000. Each day that a violation continues shall be a separate offense. In addition, the Division may institute injunctive, mandamus or other appropriate action or proceedings of law to correct violations of this chapter. Any court of competent jurisdiction shall have the right to issue temporary or permanent restraining orders, injunctions or mandamus, or other appropriate forms of relief.

(Ord. 10-09-544, 5-20-2010; Ord. 14-23-678, 11-13-2014)

Section

- 1-15.2-11.0 Definitions
- 1-15.2-11.1 Watershed Protection and Restoration Program
- 1-15.2-11.2 Watershed Protection and Restoration Special Revenue Fund
- 1-15.2-11.3 Stormwater remediation fee
- 1-15.2-11.4 Appeals
- 1-15.2-11.5 Exemptions; substantial financial hardship
- 1-15.2-11.6 Reduction of fee

**§ 1-15.2-11.0. DEFINITIONS.**

In this article, a part of Chapter 1-15.2 of the Frederick County Code, the following words have the meanings indicated.

**DIRECTOR.** Director of Frederick County Community Development Division, sometimes acting through his or her designee.

**DIVISION.** The Community Development Division of Frederick County.

**IMPERVIOUS SURFACE.** Has the meaning stated in Md. Code Ann., Environment Article, § 4-201.1(d).

**STORMWATER REMEDIATION FEE.** The fee charged in accordance with this title to fund or support, in full or in part, the purposes set forth in §§ 1-15.2-11.1 and 1-15.2-11.2 of this Code.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

**§ 1-15.2-11.1. WATERSHED PROTECTION AND RESTORATION PROGRAM.**

(A) There is hereby established a Watershed Protection and Restoration Program.

(B) The purposes of the Watershed Protection and Restoration Program are to support and fulfill those stormwater management goals set forth in Md. Code Ann., Environment Article, § 4-202.1.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

**§ 1-15.2-11.2. WATERSHED PROTECTION AND RESTORATION SPECIAL REVENUE FUND.**

(A) There is hereby established a Watershed Protection and Restoration Special Revenue Fund into which shall be paid the revenue required by Md. Code Ann., Environment Article, § 4-202.1(h)(3).

(B) The Watershed Protection and Restoration Special Revenue Fund is a special, nonlapsing fund.

(C) Revenue paid into this Watershed Protection and Restoration Special Revenue Fund shall be dedicated to and appropriated only for those purposes set forth in Md. Code Ann., Environment Article, § 4-202.1(h)(4).

(D) General Fund and other revenues may be used to supplement appropriations from the Watershed Protection and Restoration Special Revenue Fund for the purposes set forth in subsection (C) above.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

**§ 1-15.2-11.3. STORMWATER REMEDIATION FEE.**

(A) A stormwater remediation fee is imposed on the use of all real property located within Frederick County that is

subject to the county's system benefit charge set forth in Frederick County Code, § 1-11-44. However, this stormwater remediation fee shall not be imposed on real property that is located within a Frederick County incorporated municipality or otherwise exempt under Md. Code Ann., Environment Article, § 4-202.1(e)(2).

(B) The stormwater remediation fee for each tax parcel of real property within the covered area of Frederick County shall be one cent (\$00.01) per year.

(C) The stormwater remediation fee shall be a lien on the real property on which it is imposed and shall be billed annually to the owner of the real property on which it is imposed. The stormwater remediation fee shall remain as a lien on the real property until paid. Delinquent stormwater remediation fees may be collected in any manner as provided under Md. Code Ann., Tax-Property Article (including through tax sale), by civil action, or as otherwise permitted by law or equity.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

#### **§ 1-15.2-11.4. APPEALS.**

(A) A property owner may appeal a stormwater remediation fee assessment to the Division. An appeal shall be submitted on or before September 30 in order to receive a correction of the stormwater remediation fee.

(B) Grounds for appeal of the stormwater remediation fee include:

- (1) Mathematical errors in calculating the stormwater remediation fee;
- (2) The real property is not subject to the stormwater remediation fee under § 1-15.2-11.5;
- (3) The property owner is exempt from the stormwater remediation fee under § 1-15.2-11.6; or
- (4) Errors in the identification of the property owner of real property subject to the stormwater remediation fee.

(C) An appeal must be submitted in writing to the Frederick County Director of Treasury on an application form provided by the Division. A property owner shall include a detailed statement of the grounds of the appeal and all information or supporting documentation as required by the Division. Failure to provide all information required on the application form is a basis for a denial of an appeal.

(D) The Director shall issue a written decision indicating whether the appeal is granted or denied and a copy shall be provided to the property owner, the Director of Treasury, and any counsel of record. The written decision of the Director shall set forth all reasons for the decision and shall set forth any change in the amount of the stormwater remediation fee.

(E) If the decision of the Director changes the amount of the stormwater remediation fee, the Director of Treasury shall issue a new bill to the property owner.

(F) A property owner who is aggrieved by a decision of the Director on an appeal or by the imposition of a stormwater remediation fee shall pay the stormwater remediation fee and may request a refund in accordance with Md. Code Ann., Local Government Article § 20-113, and may appeal to the Maryland Tax Court in accordance with Md. Code Ann., Local Government Article § 20-117.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

#### **§ 1-15.2-11.5. EXEMPTIONS; SUBSTANTIAL FINANCIAL HARDSHIP.**

(A) There is a substantial financial hardship exemption program whose purpose is to exempt from the payment of the stormwater remediation fee a property owner who is able to demonstrate substantial financial hardship as a result of the fee.

(B) To qualify for a substantial financial hardship exemption, the real property for which the exemption is requested must qualify for and receive a financial hardship exemption from the county's Bay Restoration Fund fee, which hardship exemption program is adopted as the Stormwater Remediation Fee Substantial Financial Hardship Exemption Program.

(C) The Director of Treasury shall administer the Substantial Financial Hardship Exemption Program and, to the extent not inconsistent with the county's Bay Restoration Fund hardship exemption, may adopt rules and regulations governing the program to include, but not be limited to, the following:

- (1) The application deadline;

(2) The form of the application;

(3) Documentation required of applicants; and

(4) Any other matters deemed necessary by the Director of Treasury to administer the Substantial Financial Hardship Exemption Program.

(D) Any hardship exemption granted is only valid for the year that payment of the stormwater remediation fee is due.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

### **§ 1-15.2-11.6. REDUCTION OF FEE.**

The Director shall adopt rules and regulations in accordance with Md. Code Ann., Environment Article, § 4-202.1(f)(1) to reduce a portion of the stormwater remediation fee for a real property to account for on site systems, facilities, services, or activities that reduce the quantity or improve the quality of stormwater discharged from a property.

(Ord. 13-06-634, 5-30-2013; Ord. 14-23-678, 11-13-2014)

## **ARTICLE XII: DISCHARGE TO STORM SEWERS**

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### Section

1-15.2-12.1 Prohibited activities

1-15.2-12.2 Right of entry, investigation, and inspection

1-15.2-12.3 Prevention and control of illicit discharges, prohibited materials, and illicit connections

1-15.2-12.4 Enforcement and penalties

### **§ 1-15.2-12.1. PROHIBITED ACTIVITIES.**

(A) *Illicit discharges.* Except as provided in subsection (B) of this section, a person shall not discharge an illicit discharge into an MS4, nor cause or allow an illicit discharge to be introduced or discharged into an MS4.

(B) *Exceptions.* The following discharges are exempt from the prohibitions set forth in subsection (A) of this section:

(1) Waterline flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration to separate storm sewers; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensation; irrigation waters; springs; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; de-chlorinated swimming pool discharges (not including filter backwash); street wash water; and firefighting activities; or

(2) Discharges permitted under an NPDES stormwater discharge permit or a non-stormwater discharge permitted under an NPDES discharge permit.

In the event of any questions or complaints concerning the exceptions listed in subsection (B)(1) above, the Manager may take steps to determine if they are properly managed, and if not, may require mitigation measures necessary for proper management of these discharges.

(C) *Illicit connections.* A person shall not construct, use, maintain, or allow the continued existence of an illicit connection.

(D) *Interference.* A person shall not take or permit any action that interferes with, or is likely to interfere with, the proper operation of an MS4, including having or maintaining a prohibited material.

(E) *Reporting to Maryland Department of the Environment (MDE).* The county may report illicit connections and illicit discharges to MDE for enforcement and/or permitting in accordance with applicable law.

## **§ 1-15.2-12.2. RIGHT OF ENTRY, INVESTIGATION, AND INSPECTION.**

(A) *Generally.* Except as provided in subsection (B) of this section, if the county becomes aware of a discharge that enters, or is capable of imminent discharge to, or to be discharged from, an MS4 or a waterbody within the county, that may be or include prohibited material, or is the result of an illicit discharge or an illicit connection, the Manager may seek access to any premises at any reasonable time for the purpose of inspecting for a violation of this article.

(B) *Consent.* The Manager may enter private property to inspect for a violation of this article with the consent of the occupant or owner. If entry is refused, the Manager may request that the County Attorney seek a court order to permit entry to the property.

(C) *Investigations.* The Manager may inspect, sample, examine, and investigate the source, location, and extent of any spill, discharge, the existence of any illicit connection, the existence of any prohibited material, or the condition of any BMPs. In support of any investigation under this article, the Manager may review and copy any records that will assist in determining whether there is a violation of this article, including but not limited to, records maintained pursuant to the conditions of any discharge permit or approvals given under this chapter.

(D) *Follow up inspections.* To determine compliance with required abatement and mitigation measures, the Manager may conduct follow-up inspections of any premises from which the discharge or other violation may have occurred, as needed to assess the existence and extent of a violation of this article.

(E) *Threat to public health and safety.* The Manager shall have the right to enter any premises where there is evidence that a violation of this article exists which poses an immediate threat to the public health and safety for the purpose of performing duties pursuant to the provisions of this article. The Manager shall produce proof of identity prior to entry, and must also provide evidence of the imminent threat to public health and safety.

(F) *Emergency repairs.* If the Manager has evidence that an illicit discharge, illicit connection, or prohibited material presents an immediate threat to public health or safety, the Manager may enter the premises and make repairs in order to abate the public health or public safety hazard without prior written notice to the owner or occupant of the premises. The Manager may request that the County Attorney seek a court order assessing the costs of the abatement against the owner, tenant, licensee, or any other person causing or permitting an illicit discharge or illicit connection, or that has or is maintaining a prohibited material.

(Bill No. 19-14, 11-5-2019)

## **§ 1-15.2-12.3. PREVENTION AND CONTROL OF ILLICIT DISCHARGES, PROHIBITED MATERIALS, AND ILLICIT CONNECTIONS.**

(A) *Prevention.* The owner, tenant, licensee, or any other person who occupies any premises shall prevent entry into an MS4 of any spills, materials from an illicit connection, any prohibited material, or illicit discharges through the use of BMPs or other appropriate measures as directed by the Manager. In the case of an illicit connection, the owner of the premises shall disconnect the illicit connection in a manner as directed by the Manager.

(B) *Control measures.* If the Manager determines, after an initial inspection, that the spill, prohibited material, material from an illicit connection, or illicit discharge has entered an MS4, the Manager may require the owner or other responsible person to take steps to abate and mitigate the material or discharge, including but not limited to: (1) disconnection and redirection, if necessary, to an approved onsite wastewater management system or to the public sanitary sewer upon approval of the Frederick County Division of Utilities and Solid Waste Management or, if applicable, the municipality that owns and operates the public sewer system; (2) delineation and containment of the discharge; (3) recovery and proper disposal of the pollutant or prohibited materials and any impacted media; and (4) restoration of the area of the discharge to pre-discharge conditions to the county's satisfaction. The owner or responsible person shall take the steps listed above in order to mitigate the full extent of the prohibited materials, illicit discharge, or illicit connection.

(C) *BMPs.* Any owner or other person responsible for a spill, illicit discharge, illicit connection, or prohibited material shall be required to implement, at the owner's or responsible person's expense, additional BMPs to prevent the further discharge or introduction of any prohibited material, illicit discharge, or spilled material from entering into an MS4. Compliance with the terms and conditions of a valid NPDES permit authorizing the discharge constitutes compliance with this subsection.

(D) *Monitoring.* The Manager may require a person responsible for a spill, illicit connection, or illicit discharge to install monitoring equipment if the nature of the discharge warrants such installation. The sampling and monitoring equipment shall be calibrated to ensure accuracy and maintained in safe and proper operating condition at the responsible person's



expense.

(E) *Abatement*. If the owner or any person responsible for the spill, illicit connection, or illicit discharge refuses to follow the required cleanup and mitigation measures, the county may enter the property and make the required repairs. The Manager may request that the County Attorney seek a court order assessing the costs of the abatement against the owner or any other person that causes or permits a spill, an illicit discharge, illicit connection, or that has or maintains a prohibited material.

(F) *Costs*. All mitigation and remediation measures under this article shall be completed at the owner's or responsible person's sole cost and expense.

(Bill No. 19-14, 11-5-2019)

#### **§ 1-15.2-12.4. ENFORCEMENT AND PENALTIES.**

(A) A violation of this article shall be subject to enforcement by the Manager or the Manager's designee ("Enforcement Official"), pursuant to § 1-1-9 of the Code.

(B) The Enforcement Official is not required to issue a warning notice.

(C) A first offense shall be deemed a Class C civil offense. Each subsequent offense by the same individual or property owner(s) shall be cited at the next highest Class of offense.

(D) The Enforcement Official may, in consultation with the County Attorney, seek additional legal remedies as appropriate under the circumstances.

(Bill No. 19-14, 11-5-2019)