
1 **ARTICLE 2. ADMINISTRATION**

2 **CHAPTER 20 AUTHORITY OF REVIEWING/DECISION MAKING BODIES AND**
3 **OFFICIALS**

4 Sections:

- 5 20.1 Board of County Commissioners
- 6 20.2 Planning Commission.
- 7 20.3 Board of Appeals.
- 8 20.4 Director of Department of Land Use and Growth Management.
- 9 20.5 Technical Evaluation Committee (TEC).
- 10 20.6 Historic Preservation Commission.

11 **20.1. Board of County Commissioners**

12 1. ***Powers and Duties.*** In addition to any authority granted by general or special law, the Board of
13 County Commissioners shall have the following powers and duties under the provisions of this
14 Ordinance:

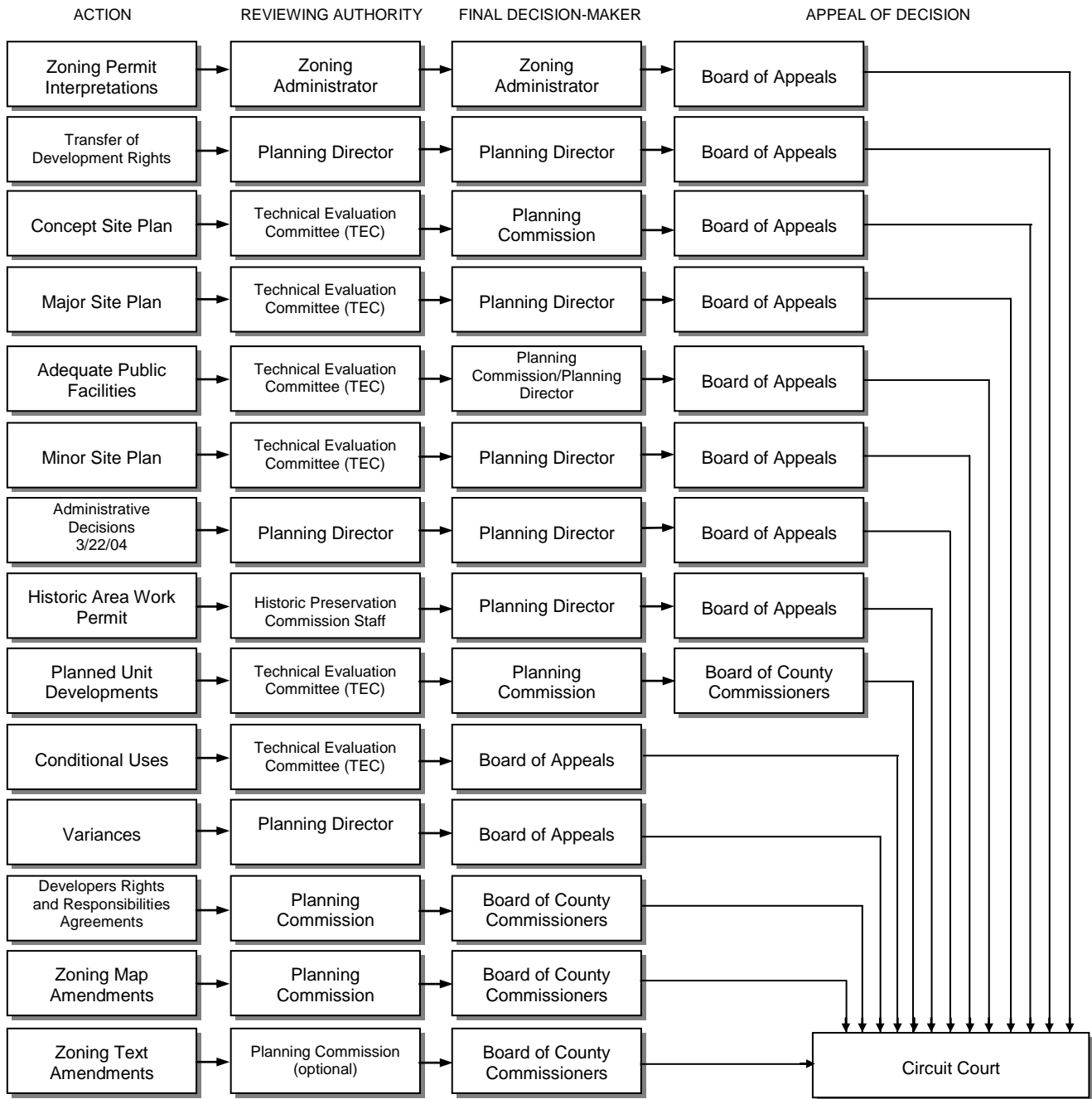
- 15 a. To initiate, review, hear, consider and approve or disapprove the adoption of an ordinance
16 to amend the text of this Ordinance or the Official Zoning Maps pursuant to Chapter 28
17 of this Ordinance.
- 18 b. To review, hear, consider, and approve or disapprove the adoption of an ordinance to
19 amend the Zoning Maps to designate a floating zone pursuant to Chapter 44, Planned
20 Unit Development (PUD).
- 21 c. To review, hear, consider, and approve or disapprove the adoption of an ordinance to
22 amend the zoning Map to designate a special district (overlay or floating zone) pursuant
23 to Article 4 of this Ordinance.
- 24 d. To create a planning commission with the powers and duties set forth in Section 3.01 of
25 Article 66B of the Annotated Code of Maryland.
- 26 e. To review, hear, consider, and then approve or disapprove comprehensive revisions to the
27 Critical Area Program, applications for growth allocation, and applications for changes in
28 Critical Area overlay designations based on allegations of mistake to request approval
29 from the Chesapeake Bay Critical Area Commission for amendments or refinements to
30 the Critical Area provisions of this Ordinance.

31 2. ***Decision-Making Responsibilities.*** See Figure 20.1 for a summary of the Board's decision-
32 making responsibilities as they relate to Planning Commission, the Board of Appeals and the
33 Planning Director.

34

1 **Figure 20.1:**
 2
 3
 4
 5
 6
 7

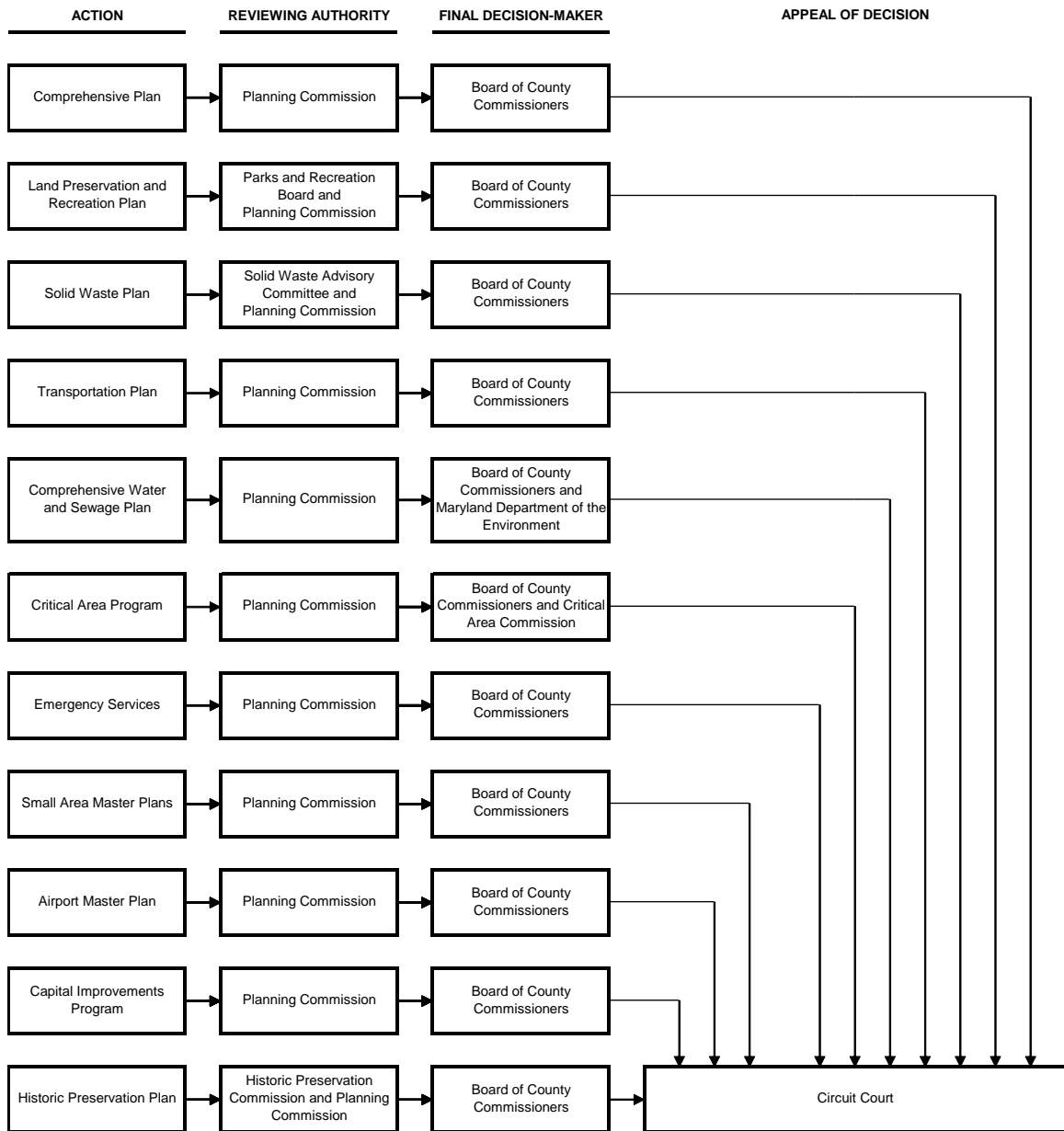
Decision Making Responsibilities Under this Ordinance



This diagram is intended as a guide only. It is necessary to consult the text of this Ordinance for specific procedures and regulations pertaining to the decision-making process and responsibilities, and for the method of filing and perfecting appeals of decisions made pursuant to this Ordinance.

1 **Figure 20.1.a:**

Responsibilities for Functional Plans



As part of the review for a development proposal, the reviewing authority must verify that the proposal is consistent with the Comprehensive Plan and applicable functional or area subplans that are incorporated into the Comprehensive Plan by reference. If a development proposal is determined to be inconsistent with County adopted plans, a request for amendment of a functional plan may be processed concurrently with the request for approval of the development proposal. However, no decision for approval of the proposal shall be made unless the functional or area plan is amended in a manner that provides consistency between the proposal and the applicable plan. This diagram is intended as a guide to identify the entities responsible for adopting and amending these Plans.

2
3

1 **20.2. Planning Commission.**

- 2 1. **Establishment.** The St. Mary's County Planning Commission is hereby established pursuant to
3 Section 3.01 of Article 66B of the Annotated Code of Maryland.
- 4 2. **Commission Membership.** The Commission shall consist of seven members appointed by the
5 County Commissioners.
- 6 3. **Terms of Office, Successors, Removal.** Each member of the Commission shall serve for no more
7 than two consecutive five-year terms, exclusive of any portion of an unexpired term served to fill a
8 vacancy. These five-year terms shall be on a staggered basis. Vacancies in unexpired terms shall
9 be filled by the County Commissioners. Members may be removed upon written charges and after
10 public hearing by the County Commissioners for inefficiency, neglect of duty, or malfeasance in
11 office.
- 12 4. **Powers and Duties.** The Commission shall have the following powers and duties:
- 13 a. To make, and recommend to the County Commissioners for adoption, a comprehensive
14 plan for the County.
- 15 b. To initiate, review, hear, consider, and make recommendations to the County
16 Commissioners for approval or disapproval of the adoption of an ordinance to amend the
17 Zoning Maps pursuant to Chapter 28 or Chapter 29, Development Rights and
18 Responsibilities Agreement.
- 19 c. To review, hear, consider, and make recommendations to the County Commissioners to
20 approve or disapprove the adoption of an ordinance to amend the text of this Ordinance at
21 the request of the Board of County Commissioners.
- 22 d. To initiate, review, hear, consider, and make recommendations to the County
23 Commissioners to approve or disapprove the adoption of an ordinance to amend the
24 Zoning Maps to designate a Special District (Overlay or Floating Zone) pursuant to
25 Article 4 of this Ordinance.
- 26 e. To review, hear, consider, and recommend to the Board of County Commissioners
27 comprehensive revisions to the Critical Area Program on the grounds of mistake, and to
28 make recommendations regarding applications for growth allocation and changes in
29 Critical Area overlay designation.
- 30 f. To report annually to the Board of County Commissioners on development and planning
31 activities and Comprehensive Plan implementation.
- 32 g. Within six (6) months after appointment to the Planning Commission and once a year
33 thereafter, a member shall complete an education course as prescribed in article 66B, §
34 3.02.
- 35 5. **Meeting and Rules.** The Commission shall meet at least once a month. One such meeting shall
36 be a regular meeting that shall be selected and published annually prior to the first regular meeting
37 schedules in January. Additional meetings may be scheduled at the call of the Chairman at such
38 times as the Commission may determine. All meetings shall be open to the public. Any person
39 may appear and testify at a public hearing either in person or be represented by duly authorized
40 agent or attorney. The Commission may request testimony at its hearings for purposes of securing
41 technical and/or factual evidence from experts or any county agency or office. The Commission
42 shall keep minutes of its proceedings, showing the vote of each member upon each question, or if
43 absent or failing to vote, shall indicate such fact.

44 **20.3. Board of Appeals.**

- 45 1. **Establishment.** The Board of Appeals for St. Mary's County is hereby established and designated
46 the "Board of Appeals" pursuant to Section 4.07 of Article 66B of the Annotated Code of
47 Maryland.

-
- 1 2. **Board Membership.** The Board shall consist of five members appointed by the County
2 Commissioners.
- 3 3. **Term of Office, Successors, Removal.** Members of the Board of Appeals shall serve no more than
4 two consecutive three-year staggered terms. Vacancies in unexpired terms shall be filled by the
5 County Commissioners for unexpired terms. Members may be removed by the County
6 Commissioners upon written charges and after public hearing by the County Commissioners for
7 inefficiency, neglect of duty, or malfeasance in office. The County Commissioners shall designate
8 one alternate member who may be empowered to sit in the absence of any member.
- 9 4. **Powers and Duties.** The Board shall have the following powers and duties:
- 10 a. To hear and decide appeals when it is alleged there is an error in any order, requirement,
11 decision, or determination made in regard to the enforcement of this Ordinance or of any
12 amendments adopted pursuant thereto.
- 13 b. To authorize, upon appeal in specific cases, a variance from the terms of this Ordinance
14 as will not be contrary to the public interest, and when, owing to special conditions, the
15 enforcement of the provisions of this Ordinance will result in practical difficulties or
16 unwarranted hardship. Only those variances shall be allowed that accomplish the
17 purpose and intent of the regulations of this Ordinance and are consistent with the
18 Comprehensive Plan.
- 19 c. To adopt and promulgate such rules and regulations as it shall deem necessary in the
20 conduct of its hearings.
- 21 d. To hear and act upon conditional use applications as provided for in Chapter 25.
- 22 5. **Meeting and Rules.** All meetings of the Board of Appeals shall be held at the call of the
23 Chairperson, and at such other times as the Board may determine. All hearings conducted by the
24 Board shall be open to the public. Any person may appear and testify at a hearing either in person
25 or be represented by a duly authorized agent or attorney. The Chairperson, or in his absence the
26 Vice-Chairperson, may administer oaths and compel attendance of witnesses. If the Chairperson
27 and Vice-Chairperson are absent from a scheduled meeting, members constituting a quorum shall
28 designate a member as Acting Chairperson. The Board may request testimony at its hearings for
29 purposes of securing technical and/or factual evidence from experts or any county agency or
30 office. The Board may require a report and recommendation from the Planning Commission on
31 variances and conditional uses, and the Planning Commission shall file said report within 30 days
32 of the request by the Board. The Board shall keep minutes of its proceedings, showing the vote of
33 each member upon each question and indicating if a member is, absent or fails to vote. All final
34 decisions shall be rendered by written order.
- 35 6. **Decision of Board of Appeals.** In exercising its powers, the Board of Appeals may, in conformity
36 with the provisions of this Ordinance:
- 37 a. Wholly or partly reverse the order, requirement, decision, or determination from which
38 the appeal is taken;
- 39 b. Wholly or partly affirm the order, requirement, decision, or determination from which the
40 appeal is taken;
- 41 c. Modify the order, requirement, decision, or determination from which the appeal is taken;
42 or
- 43 d. Issue a new order, requirement, decision, or determination. The Board of Appeals shall
44 have all the powers of the administrative officer from whom the appeal is taken.
- 45 7. **Finality of Decisions of the Board of Appeals.**
- 46 a. All decisions and findings of the Board of Appeals on appeals or on applications for a
47 standard variance or conditional use shall be final administrative decisions and shall be
48 subject to judicial review as prescribed in Section 4.08 of Article 66B of the Annotated

Code of Maryland. All final decisions shall be rendered in writing within 60 days of the close of the public hearing.

- b. All decisions and findings of the Board of Appeals within the jurisdiction of the Critical Area Commission shall be final administrative decisions and shall be subject to judicial review as prescribed in Section 4.08 of Article 66B of the Annotated Code of Maryland. All final decisions shall be rendered in writing within 30 days of the close of the public hearing. The Board of Appeals may extend the 30 days up to a maximum of 45 days upon findings that the complexity of the case requires an extended decision period or that changes in the Board's schedule preclude a decision within 30 days.

20.4. Director of Department of Land Use and Growth Management.

This Ordinance shall be administered and enforced by the Director of the St. Mary's County Department of Land Use and Growth Management (the "Planning Director"), who shall be appointed by the County Commissioners.

1. Powers and Duties. The Planning Director shall have the following powers and duties:

- a. To administer and enforce the provisions of this Ordinance, including right of entry onto private property.
- b. To approve or disapprove applications for a variance from dimensional requirements pursuant to Section 22.5, Administrative Variances.
- c. To approve, approve with conditions or disapprove applications for major or minor site plan approval pursuant to Chapter 60.
- d. To determine, with input from other agencies, the adequacy of public facilities (APF) affected by applications for major and minor site plan approval and minor subdivision approval.
- e. To provide expertise and technical assistance to the Board of County Commissioners, Planning Commission, Board of Appeals, or Historic Preservation Commission upon request.
- f. To establish application requirements and schedules for review of applications and appeals, to formulate and promulgate rules and procedures, and to take any other actions necessary to implement and enforce the provisions of this Ordinance.
- g. To make zoning authorizations upon demonstration of an application's compliance with this Ordinance.
- h. To approve or disapprove Transferable Development Rights (TDRs) certificate(s) and agreements.
- i. To ensure that the Department of Land Use and Growth Management will conduct and manage various planning studies, accept and process applications, collect and file applicant data, and maintain files. Coordinate input from other agencies, assure that cooperating agencies have conducted their normal reviews and provide recommendations to the Planning Commission and the Board of County Commissioners on various planning issues and development applications.
- j. To confirm that any application for a building permit includes all required approvals from all appropriate agencies before the permit is issued.
- k. To issue building permits and certificates of use and occupancy and maintain files and a filing system for both.
- l. To ensure that all applicable requirements have been met before a certificate of use and occupancy is issued.
- m. To ensure that all construction complies with the currently adopted building, electrical, plumbing, livability, energy, zoning, stormwater management, and other applicable codes.

- 1 2. ***Specific Enforcement Responsibilities.*** The Planning Director shall have all necessary authority
2 on behalf of the Board of County Commissioners to enforce the provisions of this Ordinance,
3 including remedying any condition found to be in violation of this Ordinance by bringing
4 appropriate legal action or proceedings to gain compliance with the Ordinance. The Planning
5 Director shall be guided in all actions pursuant to this Ordinance by the purposes, intent, and
6 standards set forth in the respective articles of the Ordinance.
- 7 a. ***Enforcement of Planning Commission and Board of Appeals Decisions.*** It shall be the
8 duty of the Planning Director to assure compliance with the decisions of the Planning
9 Commission and the Board of Appeals.
- 10 b. ***Enforcement of Planned Unit Developments (PUD) and Development Rights and***
11 ***Responsibilities Agreements (DRARA).*** In instances where planned unit developments or
12 development rights and responsibilities agreements, as allowed by the provisions of this
13 Ordinance, are authorized by the County Commissioners, it shall be the duty of the
14 Planning Director to ensure compliance with the terms, standards and other conditions
15 upon which the PUD or DRARA is authorized.
- 16 c. ***Enforcement of Minimum Requirements.*** In enforcing the minimum requirements and
17 standards of this Ordinance and assuring compliance with decisions of the Board of
18 Appeals, Planning Commission or Board of County Commissioners and conditions
19 imposed by these bodies on planned developments, the Planning Director shall have the
20 authority to:
- 21 (1) Investigate inquiries and complaints relating to building and land use activities
22 and to take action when appropriate; and
- 23 (2) Issue civil citations and penalties, as may be prescribed by resolution of the
24 Board of County Commissioners, against any person, firm, or corporation that
25 shall violate this Ordinance; and
- 26 (3) Post stop work orders on any lot, parcel, site, structure, or property that is in
27 violation of any section of this Ordinance. The Planning Director may require
28 that all work and activity shall immediately cease on the designated premises,
29 and may remove and suspend the zoning permit issued for the project until the
30 violation is rectified. A fine may be levied against any person, firm, or
31 corporation that shall violate the stop work order.
- 32 3. ***Records of the Planning Director.*** The Planning Director shall keep records of all zoning maps,
33 amendments, conditional uses, variances, appeals, planned unit developments, site plans,
34 transferable development rights (TDRs), development rights and responsibilities agreements and
35 decisions of the Planning Commission, Board of Appeals and Historic Preservation Commission.

36 **20.5. Technical Evaluation Committee (TEC).**

37 The Technical Evaluation Committee (TEC) is hereby established and shall consist of a designated
38 representative from the St. Mary's County Department of Land Use and Growth Management, the State
39 Highway Administration, the St. Mary's Soil Conservation Service, St. Mary's Health Department, the St.
40 Mary's Metropolitan Commission and the St. Mary's County Department of Public Works and
41 Transportation, and from other state and county departments and agencies as designated by the Board of
42 County Commissioners. A citizen appointed by the Board of County Commissioners shall serve on the
43 TEC as well. For purposes of reviewing development in the Critical Area, the TEC shall also include the
44 County's environmental planner. The Planning Director shall serve as the chair of the TEC. The TEC shall
45 be responsible for advising the Planning Director in the administrative review of site plans, conditional
46 uses, planned developments, zoning amendments and subdivision applications, and any other application
47 for a proposed activity requiring approval pursuant to this Ordinance.

48 **20.6. Historic Preservation Commission.**

- 49 1. ***Established.*** The Historic Preservation Commission (HPC) is established by the Board of County
50 Commissioners as set forth in the Maryland Local Public Laws, Article 19 (St. Mary's County).

1 **CHAPTER 21 GENERAL APPLICATION AND PUBLIC HEARING PROCEDURES**

2 Sections:

- 3 21.1 General Application Procedures.
- 4 21.2 Actions Requiring Public Hearings.
- 5 21.3 Public Hearing Notice Requirements.
- 6 21.4 Public Hearing Procedures.

7 **21.1. General Application Procedures.**

8 All applications that the provisions of this Ordinance require to be reviewed by the Technical Evaluation
9 Committee shall be processed in accordance with the following procedures:

- 10 1. **Determination of Completeness of Application.** Applications for development approvals shall be
11 submitted on the appropriate form designated by the Planning Director. After receipt of an
12 application, the Planning Director shall determine whether the application is complete. The time
13 period allowed for review of an application shall not begin until the application is determined to be
14 complete. If the application is not complete, the Planning Director shall notify the applicant in
15 writing within three days, specifying the deficiencies of the application and the additional
16 information that must be supplied and advising the applicant that the County will take no further
17 action on the application until the deficiencies have been corrected.
- 18 2. **Remedy of Deficiencies.** If the applicant fails to correct the specified deficiencies by the end of the
19 business day following the notification of deficiency, the application for development approval
20 shall be deemed withdrawn and will be returned to the applicant with any fees that have been paid.
- 21 3. **Extensions of Time.**
 - 22 a. Upon written request, the Planning Director may, for good cause shown and without any
23 notice or hearing, grant extensions of any time limit imposed on an applicant by this
24 Ordinance. An extension of time may also be granted by any body acting pursuant to this
25 Ordinance unless the Ordinance expressly provides otherwise.
 - 26 b. No permit, variance or approval in effect as of January 1, 2013 shall expire prior to
27 May 4, 2017, unless required by a statute, rule or regulation of the State of Maryland.
- 28 4. **Fees.** The application shall be accompanied by all required fees. The applicant shall also be
29 responsible for payment of all expenses incurred to provide any public notice required by Section
30 21.3. Application fees and refund policy shall be as established by resolution of the Board of
31 County Commissioners.
- 32 5. **General Development Review Process.** Figures 21.1.a and 21.1.b summarizes the general
33 development review process under this Ordinance, which is described in detail in the following
34 parts of this chapter.

35 **21.2. Actions Requiring Public Hearings.**

- 36 1. **Conditional Uses, Variances and Appeals of Administrative Decisions.** The Board of Appeals
37 shall hold at least one public hearing to review, consider, and approve, approve with conditions, or
38 deny each application for a conditional use, or a variance, or to consider an appeal from any
39 administrative decision made pursuant to this Ordinance. Such hearing shall be held after public
40 notification pursuant to Section 21.3.
- 41 2. **Amendments to the Zoning Maps or the Text of this Ordinance.**
 - 42 a. **Zoning Maps.** The Planning Commission and the Board of County Commissioners shall
43 each hold at least one public hearing on an application for an amendment to the Official
44 Zoning Maps. Such hearing may be held jointly at the discretion of the Planning
45 Commission and the Board of County Commissioners.
 - 46 b. **Text.** The Board of County Commissioners shall hold at least one public hearing on an
47 application for an amendment to the text of this Ordinance. The Board of County

12/31/13

Commissioners may request a recommendation from the Planning Commission regarding any text amendment to this Ordinance. If requested to form a recommendation, the Planning Commission shall conduct at least one public hearing.

3. **Amendment to Comprehensive Area or Functional Plans.** For any application pursuant to this Ordinance that requires a comprehensive or functional plan amendment, the Planning Commission and the Board of County Commissioners shall each hold at least one public hearing. Such hearing may be held jointly at the discretion of the Planning Commission and the Board of County Commissioners.

21.3. Public Hearing Notice Requirements.

Providing all the information necessary for notice of all public hearings required under this Ordinance shall be the responsibility of the applicant. The applicant shall supply the information in the form established by the Planning Director, and the information is subject to the approval of the Planning Director pursuant to the standards and requirements of this section.

1. **Publication.** At least 15 calendar days in advance of the public hearing on an application for any development approval, Ordinance amendments or appeal listed in Section 21.2, the Department of Land Use and Growth Management shall give notice of such public hearing. Notice shall be published in a newspaper of general circulation in St. Mary's County once each week for two successive weeks.

2. **Mailing.** At least 15 calendar days before the public hearing on an application for any development approval, Ordinance amendment, or appeal listed in Section 21.2, the applicant shall send notice by registered or certified mail in a format provided by the County to all owners of contiguous property (as shown on the latest published property tax records of the Maryland Department of Assessment and Taxation), including lands across any public or private rights-of-way adjacent to the land subject to the application. Notice shall be given to each individual property owner if an affected property is held in common ownership. Required notice shall also be given to a municipality if the application concerns land adjacent to its municipal boundaries. The applicant shall provide the Planning Director, in an approved form, with names and addresses of all property owners required to receive notice of a public hearing pursuant to this Ordinance.

- a. **Contents of Notice for Mailing.** The notice for any public hearing or meeting to be mailed required by this section shall state the substance of the application and the date, time, and place of the public hearing or meeting, and the place where such application may be inspected by the public. The notice shall also advise that interested parties may appear at the public hearing or meeting and be heard with respect to the application.

3. **Requirements for Posting Notice.** At least 15 calendar days in advance of the public hearing, the property(ies) subject to an application for development approval or for an amendment to a zoning map listed in Section 21.2 shall be posted by the applicant with a notice on a block printed sign at least 24inches x 36inches. The applicant shall notify the Department of Land Use and Growth Management the same day notice is posted.

- a. Content. Posted notice shall contain the following information:

- (1) Application number and property owner name.
- (2) Request (as defined by the Department of Land Use and Growth Management).
- (3) Date, time, and location of the hearing.
- (4) A statement that the file is available during normal business hours at the Department of Land Use and Growth Management for public review and comment.

- b. Location. One notice shall be posted for each 500 feet of frontage along a public street. The sign(s) shall be located on the property no more than 25 feet from the front property line and shall be clearly visible from the nearest public road or street. Where the land does not have frontage on a public street, signs shall be posted within the nearest street

- 1 right-of-way with an attached notation indicating generally the direction and distance to
2 the land that is the subject of the application.
- 3 c. Removal. The applicant shall remove the sign after the hearing on the application has
4 concluded. If the sign is removed before the hearing such removal may be considered a
5 defect in notice and prevent the Board of Appeals from hearing the case. The entity
6 responsible for posting the sign shall be responsible, within 24 hours of notification that
7 the sign has been removed, for ensuring that it stays posted until the hearing date. In the
8 case of an appeal, the county department that is the subject of the appeal shall be required
9 to maintain the public notice sign and replace it should one be removed.
- 10 d. Exemption. This posting requirement shall not apply during comprehensive rezoning of
11 the County.

12 **21.4. Public Hearing Procedures.**

13 A public hearing held pursuant to the provisions of this Ordinance shall comply with the following
14 procedures:

- 15 1. ***Scheduling the Public Hearing.*** When an application requires a public hearing, the hearing shall
16 be scheduled to occur within a reasonable time, allowing for the complexity of the case, available
17 staff resources, and public notice requirements.
- 18 2. ***Conduct of Public Hearing.***
- 19 a. ***Rights of All Persons.*** Any person may appear at a public hearing and submit evidence
20 orally or in writing, either individually or upon written authorization as a representative
21 of a person or an organization. Each person who gives testimony at a public hearing may
22 be duly sworn, shall be identified as to name and address, and, if appearing on behalf of a
23 person or an organization, shall state the name and mailing address of the person or
24 organization being represented.
- 25 b. ***Exclusion of Testimony.*** The body conducting the public hearing may exclude testimony
26 or evidence that it finds to be irrelevant, immaterial, unduly repetitious, or otherwise
27 inadmissible.
- 28 c. ***Ruling on Objections.*** The body or official conducting the hearing shall rule on all
29 objections made during the hearing.
- 30 d. ***Continuance of Public Hearing.*** The body or official conducting the public hearing may,
31 upon the body's or official's own motion, continue the public hearing or meeting to a
32 fixed date, time, and place without additional notification. Two-thirds of the voting
33 members present at the hearing or meeting at which a quorum is present shall be required
34 for a continuance. An applicant may request and be granted a continuance at the
35 discretion of the body or official conducting the public hearing only upon good cause
36 shown.
- 37 3. ***Record of Public Hearing or Meeting.***
- 38 a. **Recording of Public Hearing or Meeting.** Except where required otherwise by statute, the
39 body or official conducting the public hearing or meeting shall record the public hearing
40 or meeting by any appropriate means. A copy of the public hearing or meeting record
41 may be acquired upon request to the Planning Director and payment of a fee to cover the
42 cost of duplication of the record.
- 43 b. **The Record.** The minutes; tape recordings; all applications, exhibits, papers and reports
44 submitted in any proceeding before the decision-making body or official; and the
45 decision of the decision-making body or official shall constitute the record.
- 46 c. **Location of Record and Inspection.** All records of decision-making bodies or officials
47 shall be public records, open for inspection at the offices of the decision-making body or
48 official during normal business hours and upon request.

1 d. Examination and Copying of Application and Other Documents. Upon request, and
2 during normal business hours, any person may examine an application and materials
3 submitted in support of or in opposition to an application in the appropriate county office.
4 Copies of such materials shall be made available at reasonable cost, subject to copyright
5 laws.

6 4. **General Procedures for Findings and Decisions.**

7 a. General. Action shall be taken in compliance with any time limits established in this
8 Ordinance and as promptly as possible in consideration of the interests of the citizens of
9 St. Mary's County and the applicant, and shall include a clear statement of approval,
10 approval with conditions, or disapproval.

11 b. Findings. Except for those of the Board of County Commissioners, whose decisions shall
12 be made by motion, ordinance, or resolution, as appropriate, all decisions made following
13 a public hearing shall be in writing and shall include at least the following elements:

- 14 (1) A summary of the information presented before the decision-making body or
15 official;
- 16 (2) A summary of all documentary evidence submitted to the decision-making body
17 or official and which the decision making body or official considered in making
18 the decision;
- 19 (3) A statement of the policies of the Comprehensive Plan and the general purposes
20 of this Ordinance that are relevant to the findings, the specific purpose of the
21 zoning district where the use or structure is or would be located, and the
22 standards as required by this Ordinance;
- 23 (4) A statement of specific findings of fact or other factors considered, as
24 appropriate, with specific reference to the relevant standards set forth in this
25 Ordinance; and
- 26 (5) A statement of approval, approval with conditions, or disapproval.

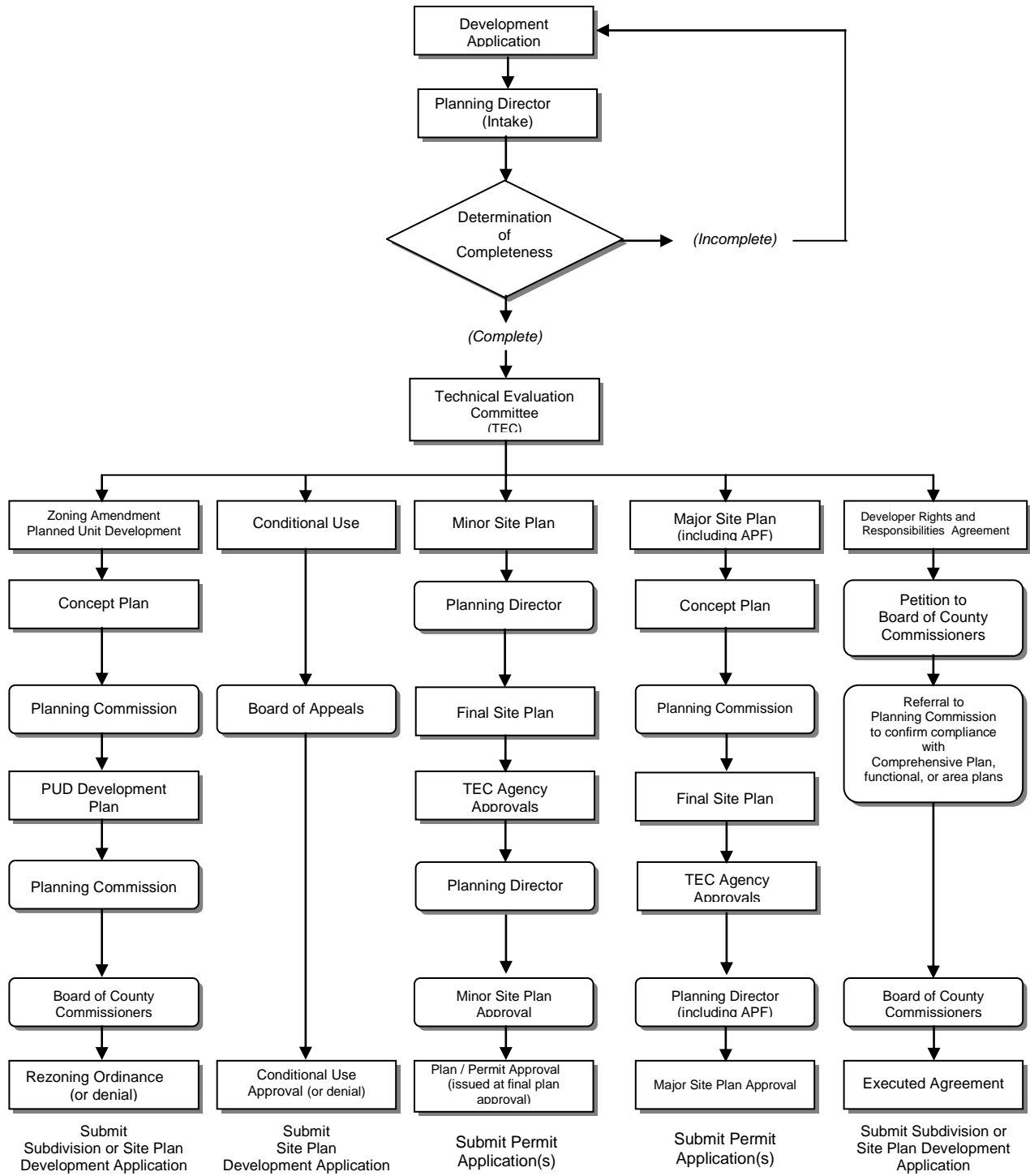
27 c. *County Attorney Signature.* Before any decision shall become final, the County Attorney
28 shall approve the decision as to form and legal sufficiency.

29 5. *Notification.* A letter notifying the applicant of the decision of the decision-making body or
30 official shall be sent by first-class mail, postage prepaid, within 10 days of the decision. A copy of
31 the decision shall also be made available to the applicant at the offices of the decision-making
32 body or official during normal business hours, within a reasonable period of time after the
33 decision has been rendered.
34

1 **Figure 21.1.a**

2 Development Review Process for Multifamily or Non-Residential Development

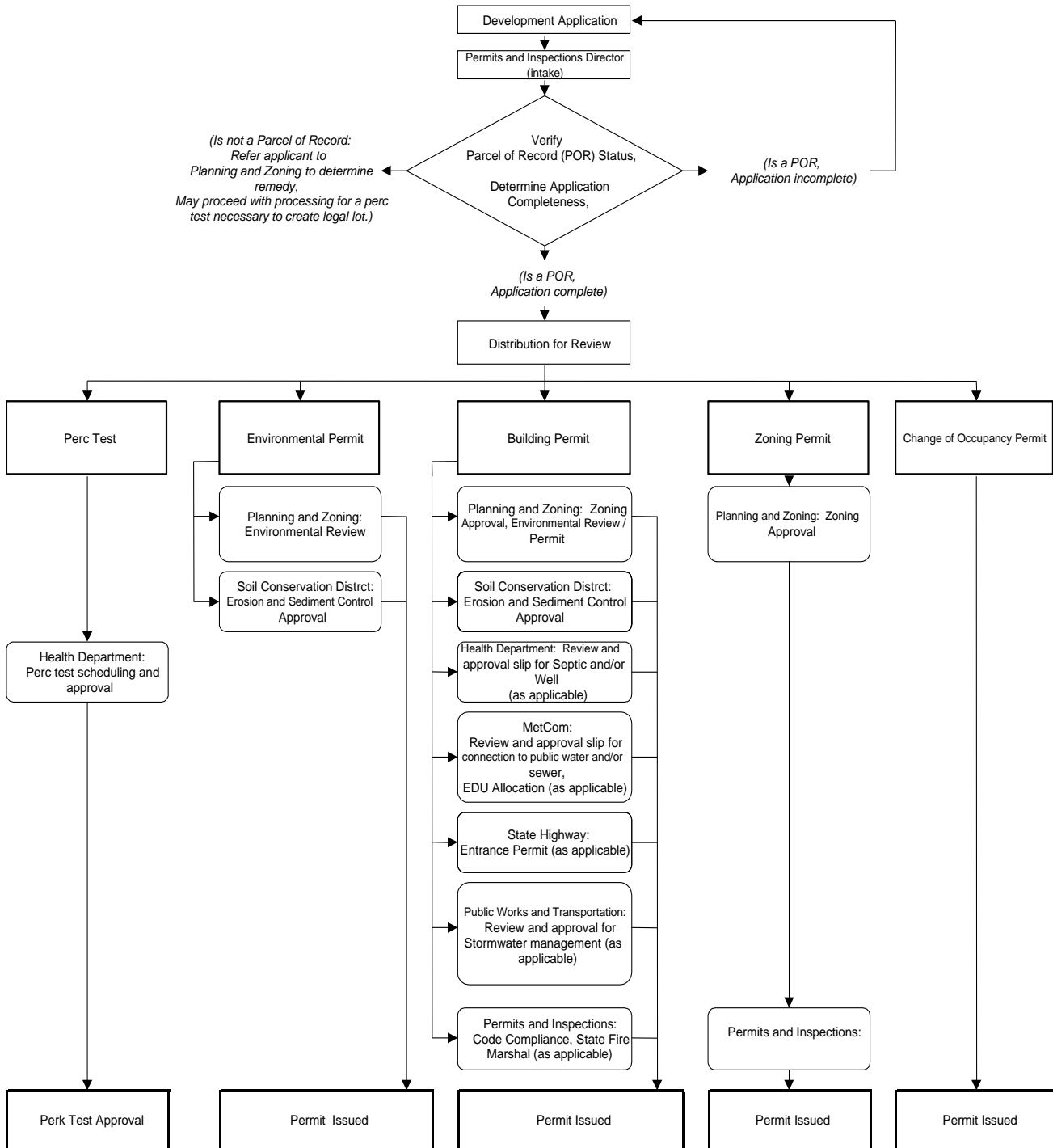
3



1 **Figure 21.1.b**

2
 3

Development Review Process for development and activities on existing parcels or lots.



1 **CHAPTER 22 ADMINISTRATIVE DECISIONS**

2 Sections:

- 3 22.1 Zoning and Environmental Permits.
4 22.2 Conflict with Other Permits.
5 22.3 Forms, Information, and Specifications Required.
6 22.4 Time Limits for Zoning Permits.
7 22.5 Administrative Variances.
8 22.6 Building Permits.
9 22.7 Certificate of Occupancy.
10 22.8 Schedule of Fees, Fines, and Penalties.

11 **22.1. Zoning and Environmental Permits.**

- 12 1. **Zoning Permit Required.** No building, structure, or land, or any part thereof, shall hereafter be
13 used, created, or enlarged until a zoning permit has been issued by the Planning Director. The
14 issuance of a zoning permit does not waive provisions of other laws, ordinances, or requirements.
- 15 2. **Certificate for Other Permits.** If the proposed building, structure, or land use conforms with the
16 provisions of this Ordinance or with the decisions of the Board of Appeals, the Planning
17 Commission and the County Commissioners, a zoning permit shall be issued by the Planning
18 Director. The issuance of a zoning permit shall serve as authorization to secure other required or
19 requested permits from various agencies.
- 20 3. **Environmental Permits.** No building, structure, or land or any part thereof shall be used, created,
21 enlarged or subdivided until an environmental permit is issued if required pursuant to Chapter 71,
22 Resource Protection Standards of this Ordinance.

23 **22.2. Conflict with Other Permits.**

24 Except as provided herein, no permit pertaining to the use of land or buildings shall be issued by any
25 cooperating agency, department, or employee unless a zoning permit has been issued by the Planning
26 Director. The provisions of the zoning permit shall supersede any other permits issued in conjunction with
27 or subsequent to it, except when the provisions of another permit(s) is (are) more stringent, where upon the
28 more stringent regulation shall apply. Any permit issued in conflict with the provisions of this Ordinance
29 shall be null and void.

30 **22.3. Forms, Information, and Specifications Required.**

31 An application for a building or zoning permit shall be made to the Planning Director on forms provided
32 for that purpose. The Planning Director shall require and be furnished with all plans and documents as may
33 be required to determine compliance with the provisions of this Ordinance and decisions of the Board of
34 Appeals, the Planning Commission and the Board of County Commissioners. Applications for building or
35 zoning permits shall be accompanied by the following items, or as many thereof as the Planning Director
36 deems pertinent, and such additional information as the Planning Director may require to determine
37 compliance with the provisions of this Ordinance and decisions of the Board of Appeals, the Planning
38 Commission, and the Board of County Commissioners.

- 39 1. Certificate from the Health Department that the proposed location meets the requirements for
40 water supply and sewage disposal; or, if a public water and/or sewerage system is involved, a
41 certificate from the Metropolitan Commission that applicable regulations and requirements have
42 been met.
- 43 2. Confirmation by the Health Department that all percolation test holes have been refilled
44 completely upon completion of tests.
- 45 3. If the permit involves improvement of subdivided land or land not included on a site plan, an
46 approved recorded subdivision plat or approved site plan.

-
- 1 4. If the land is not required to be shown on an approved subdivision plat or site plan, a plot plan
2 drawn to scale and signed by the applicant or authorized agent, showing:
- 3 a. The intended use, including height and size of structures to be built thereon, off-street
4 parking, and other facilities and signs;
- 5 b. Size and dimensions of the lot;
- 6 c. Location of the intended use in relation to property lines, public highways, and other
7 buildings or structures; and
- 8 d. Tax map-grid-parcel-lot numbers.

9 **22.4. Time Limits for Zoning Permits.**

10 Any zoning permit issued shall become invalid if the authorized use or construction for which the permit
11 was issued is not commenced within 12 months of the date of issuance, or is suspended or abandoned for a
12 period of 12 months. Prior to the expiration of a zoning permit, the Planning Director may, upon good
13 cause shown, extend a permit without additional charge for an additional period not exceeding 12 months.

14 **22.5. Administrative Variances.**

- 15 1. An applicant seeking a variance may request the same directly of the Board of Appeals, pursuant
16 to Chapter 24, without first applying to the Planning Director. The criteria governing the lapse of
17 an administrative variance shall be the same as those governing the Board of Appeals pursuant to
18 Section 24.8 of this Ordinance.
- 19 2. **Purpose.** The purpose of Administrative Variances is to delegate to the Planning Director
20 approval authority to apply the standards for variance for proposed construction activities
21 requesting relaxation of:
- 22 a. The minimum lot dimensions or minimum setback standards of Schedule 32.1 of this
23 Ordinance or the elevation requirement for substantially renovated historic structures
24 located in the 100-year floodplain.
- 25 b. Critical Area standards for impervious surface cover, buffer encroachment, or disturbance
26 of steep slopes.
- 27 c. The provision of Chapter 75, Forest Conservation.
- 28 3. **Variance from Dimensional Requirements.**
- 29 a. **Application.** A person may apply to the Planning Director for a variance from the
30 dimensional requirements specified in this Ordinance. An administrative variance may
31 not reduce specified dimensional requirements by more than 50 percent. The application
32 shall be made on a form and in a manner prescribed by the Planning Director.
- 33 b. **Procedure.** The Planning Director shall conduct a public hearing on the application for
34 the variance. The hearing shall be open to the public, and anyone in attendance shall
35 have an opportunity to be heard concerning the application. Prior to the hearing, the
36 applicant shall provide notice in the manner provided in this Section 21.3 of the
37 Ordinance. If an agreement is executed with the owners of all properties that abut a side
38 or rear property line of the property that is the subject of an application, and such
39 agreement(s) is/are submitted to the Planning Director, then no public hearing is required.
- 40 c. **Decision.** Within 15 days of the close of the hearing, the Planning Director shall decide
41 the issue raised by the application. The decision shall be in writing and provide a brief
42 explanation of the law, the standards for variance, and facts that support the decision. In
43 making the decision, the Planning Director may grant the variance only in cases where
44 strict compliance with the terms of the Ordinance would result in practical difficulties
45 that have not been caused by act of the applicant or the applicant's predecessors in title.
46 The Planning Director shall not grant a variance if to do so would violate the spirit and
47 intent of this Ordinance, the Comprehensive Plan, or functional or area plans, or cause or
48 be likely to cause substantial injury to the public health, safety, and welfare. The

1 Planning Director shall be guided in making this decision by the considerations set forth
2 in Section 24.3, General Standards for Granting Variances.

3 4. **Critical Area Administrative Variance.**

4 a. *Scope.* The granting of an administrative variance in a Critical Area is limited to
5 applications to construct, alter, or enlarge attached decks (open or covered), porches,
6 sheds, garages (detached or attached), patios, breezeways, septic fields, wells, utility
7 installations, principal structures for residential use, or structures for incidental storage
8 uses.

9 b. *Applicability.* A Critical Area administrative variance may be sought for construction that
10 would exceed impervious surface cover limits, encroach on the Critical Area Buffer, or
11 disturb steep slopes provided the construction:

- 12 (1) Is on a lot or parcel recorded prior to December 1, 1985; and
- 13 (2) Shall have little or no impact on the Critical Area Buffer or water quality; and
- 14 (3) Is located at the greatest possible distance from and, in all cases no closer than
15 50 feet from mean high water (MHW), tidal wetlands and tributary streams ; and
- 16 (4) Is located no closer than 25 feet from any nontidal wetland; and
- 17 (5) Does not require the removal of existing vegetation except for the area of
18 proposed construction itself; and
- 19 (6) Does not result in cumulative impervious surfaces of the existing grandfathered
20 and proposed construction on the site exceeding 150 percent of the allowed
21 impervious surface on the site; and
- 22 (7) Is mitigated according to a planting agreement agreed upon by the applicant and
23 the Planning Director and executed by the applicant.

24 c. *Procedural Requirements.*

- 25 (1) Notice. The applicant shall give notice of its proposal pursuant to the notice
26 requirements set forth in Section 21.3 of the Ordinance.
- 27 (2) Notice to the Chesapeake Bay Critical Area Commission. All requests for
28 administrative variances from Critical Area standards shall be reviewed by the
29 Maryland Critical Area Commission prior to any action by the Planning
30 Director. The Critical Area Commission shall be notified of any administrative
31 action by the Planning Director within 10 days of the action. The Chairman of
32 the Critical Area Commission may appeal an administrative variance granted by
33 the Planning Director pursuant to the provisions of Chapter 22 of the Ordinance.
- 34 (3) Any person, firm or corporation aggrieved by a decision to grant an
35 administrative variance, may appeal to the Board of Appeals within 30 calendar
36 days of the decision.

37 d. *Decision.* The decision shall be in writing and provide a brief explanation of the law, the
38 standards for variance, and facts that support the decision. In making the decision, the
39 Planning Director may grant the variance only in cases where strict compliance with the
40 terms of this Ordinance would result in unwarranted hardship that has not been caused by
41 act of the applicant or the applicant's predecessor(s) in title. The Planning Director shall
42 not grant a variance if to do so would violate the intent of, or cause or be likely to cause
43 substantial injury to the public health, safety and general welfare.

44 5. **Forest Conservation Administrative Variance.**

45 a. *Standards.* The Planning Director shall not grant a variance to forest conservation
46 standards of this Ordinance except upon findings that the general standards for variances

1 set forth in Section 24.10 have been met and that the granting of a variance will not
2 adversely affect water quality.

- 3 b. *Notice to Department of Natural Resources.* Notice of a request for a forest conservation
4 variance shall be given to the Department of Natural Resources within 15 days of receipt
5 of such a request. The Department of Natural Resources shall have the right and
6 authority to initiate or intervene in an administrative, judicial, or other original
7 proceeding or to appeal the approval of an administrative variance under Sections 5-
8 1601-5-1612 of the Natural Resources Article, Annotated Code of Maryland, or this
9 Ordinance.

10 6. ***Denial of Application.***

- 11 a. If the application is denied, the Planning Director shall take no further action on another
12 application for substantially the same proposal on the same premises until after 2 years
13 from the date of such denial.

14 7. ***Appeal of Administrative Decisions.***

- 15 a. Appeals of decisions made pursuant to this section may be filed to the Board of Appeals
16 by an aggrieved person within 30 days of the date of the Planning Director's decision.

17 **22.6. Building Permits.**

18 A building permit shall be required in accordance with the building code adopted by the Board of County
19 Commissioners.

20 **22.7. Certificate of Occupancy.**

21 No certificate of use and occupancy shall be issued until construction is complete and the premises have
22 been inspected and certified to be in conformity with the plans and specifications upon which the zoning
23 permit, building permit, driveway entrance permit and all other permits were granted.

24 **22.8. Schedule of Fees, Fines, and Penalties.**

25 The County Commissioners may establish by resolution a schedule of fees, charges, expenses, and fines
26 and a collection and refund procedure for zoning certificates, appeals, violations, and other matters
27 pertaining to this Ordinance. The schedule of fees shall be available from the Department of Land Use and
28 Growth Management and may be altered or amended only by the County Commissioners.

1 **CHAPTER 23 APPEALS**

2 Sections:

- 3 23.1 Scope of Appeals.
4 23.2 Stay of Proceedings on Appeal.
5 23.3 Postponement.
6 23.4 Continuance.
7 23.5 Appeals.

8 **23.1. Scope of Appeals.**

- 9 1. An appeal may be filed with the Board of Appeals by:
- 10 a. Any person aggrieved by an order, requirement, decision, or determination made in
11 regard to the administration or the enforcement of this Ordinance, as may be amended
12 from time to time; or
- 13 b. Any officer, department, board, or bureau of the County.
- 14 2. Such appeal shall be taken within 30 days of the date of the action being appealed by filing an
15 application for Board of Appeals review with the Department of Land Use and Growth Management.
16 An application for appeal shall identify with specificity all grounds for the appeal.
- 17 3. The Planning Director shall process the application and forward it, along with all papers constituting
18 the record of the action appealed to the Board of Appeals.

19 **23.2. Stay of Proceedings on Appeal.**

20 An appeal shall stay all proceedings in furtherance of the action appealed unless, after notice of the appeal
21 has been filed with him or her, the Planning Director certifies to the Board of Appeals that by reason of fact
22 stated in the Certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such
23 case, proceedings shall only be stayed if the Board or court of record grants a restraining order.

24 **23.3. Postponement.**

25 Requests for postponement of a scheduled hearing shall be filed in writing with the secretary of the Board
26 of Appeals prior to the date of the hearing, and shall be accompanied by a sum of money sufficient to pay
27 the cost of advertising the postponement and the rescheduled hearing. The granting of such requests shall
28 be at the discretion of the chairman of the Board of Appeals. The Board may, upon its own initiative,
29 postpone a scheduled hearing at any time. Hearings may not be postponed for more than 30 days unless the
30 Board of Appeals and all interested parties agree. Failure of an appellant to reschedule a hearing within the
31 agreed period in accordance with Chapter 21 shall constitute withdrawal of the appeal.

32 **23.4. Continuance.**

33 The Board of Appeals may, at the Board's sole discretion, continue a hearing to another time once the
34 hearing has started. However, the Board shall announce the date and hour of continuance of such hearing
35 while in session, unless new notice is provided as required by Section 21.3.

36 **23.5. Appeals.**

37 The Board of Appeals shall render a decision within a reasonable time, but in no instance more than 60
38 days following the close of the hearing. Any taxpayer or any officer, department, board or bureau may
39 appeal that decision or a zoning action of the Board of County Commissioners to the Circuit Court for St.
40 Mary's County.

1 **CHAPTER 24 VARIANCES**

2 Sections:

- 3 24.1 Purpose.
- 4 24.2 Application for Variance and Notice of Hearing.
- 5 24.3 General Standards for Granting Variances.
- 6 24.4 Specific Standards for Granting Variances in the Critical Area.
- 7 24.5 Specific Standards and Procedures for Granting Variances in the Floodplain.
- 8 24.6 Conditions and Restrictions.
- 9 24.7 Denial of Application.
- 10 24.8 Lapse of Variance.
- 11 24.9 Appeals.
- 12 24.10 Variances from Forest Conservation Priority Retention Areas.

13 **24.1. Purpose.**

14 The purpose of this chapter is to establish standards and procedures for considering applications for
15 variances. The Board of Appeals may, in accordance with the provisions of this chapter, vary the height,
16 bulk, area, density, setback, lighting, parking, or landscaping regulations of this Ordinance. The Board
17 may do so in accordance with the standards hereinafter set forth when strict enforcement of this Ordinance
18 creates practical difficulties or unnecessary hardship.

19 **24.2. Application for Variance and Notice of Hearing.**

20 An application for a variance shall be filed in writing with the Planning Director. The application shall
21 contain such information as required to address the standards for variance for the particular application
22 made. Notice of the time and place of public hearing shall be in accordance with the procedures set forth in
23 Section 21.3.

24 **24.3. General Standards for Granting Variances.**

25 Except as provided in Sections 24.3, 24.4 and 24.5, the Board of Appeals shall not vary the regulations of
26 this Ordinance unless it makes findings based upon evidence presented to it that:

- 27 1. Because of particular physical surroundings such as exceptional narrowness, shallowness, size,
28 shape, or topographical conditions of the property involved, strict enforcement of this Ordinance
29 will result in practical difficulty; and
- 30 2. The conditions creating the difficulty are not applicable, generally, to other properties within the
31 same zoning classification; and
- 32 3. The purpose of the variance is not based exclusively upon reasons of convenience, profit, or
33 caprice. It is understood that any development necessarily increases property value, and that alone
34 shall not constitute an exclusive finding; and
- 35 4. The alleged difficulty has not been created by the property owner or the owner's predecessors in
36 title; and
- 37 5. The granting of the variance will not be detrimental to the public welfare or injurious to other
38 property or improvements in the neighborhood and the character of the district will not be changed
39 by the variance; and
- 40 6. The proposed variance will not substantially increase the congestion of the public streets, or
41 increase the danger of fire, or endanger the public safety, or substantially diminish or impair
42 property values within the neighborhood; and
- 43 7. The variance complies, as nearly as possible, with the spirit, intent, and purpose of the
44 Comprehensive Plan.

1 **24.4. Specific Standards for Granting Variances in the Critical Area.**

2 The provisions of the Critical Area Program as implemented in Chapter 41, Critical Area Overlay Districts,
3 and Chapter 71, Resource Protection Standards, may be varied when, owing to special features of the site
4 or circumstances, the literal enforcement of those provisions would result in unwarranted hardship on the
5 landowner.

6 1. **Standards.** The General Standards for Granting Variances set forth in Section 24.3 do not apply to
7 Critical Area variances. Before a Critical Area variance may be granted, the Board of Appeals
8 must find the following:

- 9 a. That special conditions or circumstances exist that are peculiar to the land or structure
10 involved and that strict enforcement of the Critical Area provisions of this Ordinance
11 would result in unwarranted hardship; and
- 12 b. That strict interpretation of the Critical Area provisions of this Ordinance will deprive the
13 applicant of rights commonly enjoyed by other properties in similar areas within the
14 Critical Area of St. Mary's County; and
- 15 c. The granting of a variance will not confer upon an applicant any special privilege that
16 would be denied by the Critical Area provisions of this Ordinance to other lands or
17 structures within the Critical Area of St. Mary's County; and
- 18 d. The variance request is not based upon conditions or circumstances that are the result of
19 actions by the applicant; and
- 20 e. The granting of a variance will not adversely affect water quality or adversely impact
21 fish, wildlife, or plant habitat within the Critical Area, and that the granting of the
22 variance will be in harmony with the general spirit and intent of the Critical Area
23 program; and
- 24 f. The variance is the minimum necessary to achieve a reasonable use of land or structures.

25 2. **Conditions on Variances.** The Board of Appeals shall impose on the use or development of
26 property that is granted a variance conditions it finds reasonable or necessary to assure that the
27 spirit and intent of the Critical Area Program is maintained, including but not limited to:

- 28 a. Location of new or expanded structures or other impervious surfaces the greatest
29 practicable distance from mean high water, tidal wetlands, tributary streams, nontidal
30 wetlands, or steep slopes.
- 31 b. Mitigation of adverse impacts resulting from the granting of a variance, including:
- 32 (1) Vegetative plantings to offset proposed disturbance on the site at no less than a
33 three-to-one basis or as recommended by the Department of Land Use and
34 Growth Management.
- 35 (2) Reforestation on the site to offset proposed disturbance of forest or developed
36 woodland.
- 37 (3) Implementation of mitigation measures for Habitat Protection Areas that are
38 recommended by the Department of Land Use and Growth Management.

39 3. **Notice to Critical Area Commission.** A copy of an application for a variance under this section
40 shall be provided to the Critical Area Commission prior to scheduling the application with the
41 Board of Appeals.

42 **24.5. Specific Standards and Procedures for Granting Variances in the Floodplain.**

43 1. **Board to Hear Variance Requests.** The Board of Appeals shall hear and decide requests for
44 variances from the floodplain regulations of Chapter 76. In considering a variance action,
45 comments from the State Coordination Office of the Water Resources Administration shall be
46 considered and maintained with the permit file.

-
- 1 2. **Variations Prohibited.** Variations may not be granted for the following:
- 2 a. Placement of fill or any development in the floodway if any increase in flood levels
- 3 would result.
- 4 b. Placement of fill in the coastal high hazard area for structural support.
- 5 c. New buildings in the floodway.
- 6 3. **Standards.** The general standards for granting a variance set forth in Section 24.3 do not apply to
- 7 floodplain variations. Floodplain variations shall only be issued upon:
- 8 a. A determination that failure to grant a variance would result in unnecessary hardship to
- 9 the applicant. The purpose of the variance is not based exclusively upon reasons of
- 10 convenience, profit, or caprice. It is understood that any development necessarily
- 11 increases property value, and that alone shall not constitute an exclusive finding; and
- 12 b. A determination that the granting of a variance will not result in increased flood heights,
- 13 additional threats to public safety, extra public expenses, nuisances; or cause fraud or
- 14 victimization of the public; or conflict with existing local and state laws or ordinances;
- 15 and
- 16 c. A showing that granting the variance will not confer special benefits to the applicant not
- 17 enjoyed by other floodplain residents; and
- 18 d. A demonstration that the variance is the minimum relaxation of standards necessary,
- 19 considering the flood hazard, to afford relief; and
- 20 e. A determination that potential detrimental effects will be mitigated so that other property
- 21 owners shall not be adversely affected.
- 22 4. **Conditions.** Variations consistent with sound floodplain management may be granted by the Board
- 23 of Appeals for new construction and for substantial improvements to allow the applicant to
- 24 conduct a functionally dependent use subject to the following standards and procedures:
- 25 a. A functionally dependent use cannot perform its intended purpose unless it is located or
- 26 carried out in close proximity to water. Such uses include only docking facilities, port
- 27 facilities necessary for the loading and unloading of cargo or passengers, and ship
- 28 building and ship repair facilities. Functionally dependent uses, do not include long-term
- 29 storage or related manufacturing facilities.
- 30 b. The variance may be issued only upon sufficient proof of the functional dependence of
- 31 the use and only for those structures that are proved to be functionally dependent.
- 32 c. The provisions of Section 76.6 must be met and the structure must be protected by
- 33 methods that minimize flood damage up to the Flood Protection Elevation and that create
- 34 no additional threats to public safety. This may require methods of “wet floodproofing”
- 35 which allow the structure to flood without significant damage. Methods of floodproofing
- 36 must not require human intervention to function properly.
- 37 5. **Notification of Terms and Conditions of Variance.** The Board’s decision shall be sent to the
- 38 applicant indicating the terms and conditions of the variance if granted. The applicant shall also
- 39 be advised by the Department of Land Use and Growth Management that the variance may
- 40 increase risk to life and property and premium rates for National Flood Insurance coverage. The
- 41 applicant shall be notified in writing of the requirement to record these conditions on the deed or
- 42 Memorandum of Land Restriction prior to obtaining a permit, and of the need to secure all
- 43 necessary permits as conditions for granting a variance. A Memorandum of Land Restriction is
- 44 described in Section 3-102 and 3-103 of the Real Property Article, Annotated Code of Maryland.
- 45 6. **Record keeping.** The Planning Director shall maintain a record of all floodplain variance
- 46 decisions and submit the record as part of the biennial report to the Federal Emergency
- 47 Management Agency.

1 **24.6. Conditions and Restrictions.**

2 In granting any variance, the Board of Appeals may impose such conditions and restrictions upon the
3 premises benefited by a variance as may be necessary to comply with the standards established in this
4 Chapter and the objectives of this Ordinance. This provision shall not be construed so as to permit the
5 Board, under guise of a variance, to change the permitted use of the land.

6 **24.7. Denial of Application.**

7 If the application is denied, the Board of Appeals shall take no further action on another application for
8 substantially the same proposal on the same premises until after two years from the date of such denial.

9 **24.8. Lapse of Variance.**

10 Variances shall lapse one year from the date of the grant of the variance by the Board of Appeals unless:

- 11 1. A zoning or building permit is in effect, the land is being used as contemplated in the variance, or
12 regular progress toward completion of the use or structure contemplated in the variance has taken
13 place in accordance with plans for which the variance was granted; or
- 14 2. A longer period for validity is established by the Board of Appeals; or
- 15 3. The variance is for future installation or replacement of utilities at the time such installation
16 becomes necessary.

17 **24.9. Appeals.**

18 Any person aggrieved by any decision of the Board of Appeals may appeal the decision to the Circuit Court
19 for St. Mary's County pursuant to the provisions of Section 23.5 of the Ordinance.

20 **24.10. Variances from Forest Conservation Priority Retention Areas.**

- 21 1. *General.* The general standards for granting a variance set forth in Section 24.3 do not apply to
22 Forest Conservation Priority Retention Area variances. Variances to Forest Conservation Priority
23 Retention Areas are limited to trees described in Chapter 75.8.2.b.(4), (5), and (6).
- 24 2. *Application.* As part of the application for a variance from Forest Conservation Priority Retention
25 Area requirements, the applicant must demonstrate, to the satisfaction of the County, that
26 reasonable efforts have been made to protect trees described in Chapter 75.8.2.b. (4), (5) and (6)
27 and the plan cannot reasonably be altered.
- 28 3. *Standards.* A variance from Forest Conservation Priority Retention Area requirements shall only
29 be granted by the Planning Director upon findings that:
 - 30 a. Owing to special features of a site or other circumstances, implementation of the
31 provisions of Chapter 75 would result in unwarranted hardship to the applicant, and
 - 32 b. The granting of a variance will not adversely affect water quality.

1 **CHAPTER 25 CONDITIONAL USES**

2 Sections:

- 3 25.1 Purpose.
- 4 25.2 Initiation of Conditional Uses.
- 5 25.3 Application for Conditional Use.
- 6 25.4 Hearing on Application.
- 7 25.5 Authorization.
- 8 25.6 Standards.
- 9 25.7 Conditions and Guarantees.
- 10 25.8 Effect of Denial of a Conditional Use.
- 11 25.9 Limitation on Conditional Use Approval.

12 **25.1. Purpose.**

13 Development in the County and execution of this Ordinance are based upon the division of the County into
14 districts within which the use of land and buildings and the bulk and location of buildings and structures in
15 relation to the land are substantially uniform. However, certain uses because of their particular
16 characteristics, cannot be permitted without consideration, in each case, of their impact upon neighboring
17 land and of the public need for the particular use at the particular location. The purpose of this chapter is to
18 establish procedures and minimum standards to be used for the consideration and authorization of
19 conditional uses, including expansion or intensification of such uses.

20 **25.2. Initiation of Conditional Uses.**

21 Any property owner or other person with an enforceable legal interest in property may file an application to
22 use such land for one or more of the conditional uses provided in the zoning district in which the land or a
23 portion thereof is located. The Board of Appeals shall hear and decide upon all applications for conditional
24 use approval.

25 **25.3. Application for Conditional Use.**

26 Application for conditional use shall be filed with the Planning Director on a form prescribed by the
27 Planning Director. If the conditional use involves major site plan approval, the applicant must schedule a
28 pre-application conference in accordance with Section 60.4.1.a and proceed through the specified process.
29 If conditional use approval requires minor site plan approval, the applicant must follow the requirements of
30 Section 60.6.1. In the event that no site plan approval is required as part of the conditional use, the
31 applicant may request an informal pre-application conference with Land Use and Growth Management
32 staff. Upon determination of the completeness of the application, the Planning Director shall forward the
33 application to the Technical Evaluation Committee (TEC) and then to the Board of Appeals for review and
34 decision.

35 **25.4. Hearing on Application.**

36 The Board of Appeals shall hold a public hearing on each application for a conditional use as provided in
37 Section 21.2. The hearing shall be conducted and a record of such proceedings shall be preserved in such
38 manner as the Board shall prescribe from time to time. Notice is required as provided in Section 21.3.

39 **25.5. Authorization.**

40 For each application for a conditional use, the Board of Appeals should, within 60days of receipt of the
41 application after TEC review, conduct its public hearing and report its findings and decisions, including the
42 stipulations or conditions and guarantees deemed necessary for the protection of the public interest.

43 **25.6. Standards.**

44 No conditional use shall be approved by the Board of Appeals unless the Board finds that:

- 45 1. The conditional use complies with the standards of the district in which it is to be located and
46 standards applicable to that use; and

- 1 2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or
2 endanger the public health, safety, convenience, morals, order, or general welfare; and
- 3 3. The conditional use will not be injurious to the use and enjoyment of other property in the
4 immediate vicinity for the purposes already permitted, and will not substantially diminish or
5 impair property values within the neighborhood; and
- 6 4. The proposed use at the proposed location will not have adverse effects above and beyond those
7 inherently associated with the proposed use irrespective of its location within the zoning district;
8 and
- 9 5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being
10 provided; and
- 11 6. Adequate measures have been or will be taken to provide ingress and egress following a design
12 that minimizes traffic congestion in the public streets; and
- 13 7. The proposed conditional use is not contrary to the goals, objectives, and policies of the
14 Comprehensive Plan; and
- 15 8. The conditional use shall, in all other respects, conform to the applicable regulations of the district
16 in which it is located or to the special requirements established for the specific conditional use in
17 Chapter 51.

18 **25.7. Conditions and Guarantees.**

19 Before granting any conditional use, the Board of Appeals shall stipulate such conditions and restrictions
20 upon the establishment, location, construction, maintenance, and operation or expansion of the conditional
21 use as are deemed necessary for the protection of the public interest and to secure compliance with the
22 standards and requirements specified in Section 25.6 above. In all cases in which conditional uses are
23 granted, the board may require guarantees it deems necessary.

24 **25.8. Effect of Denial of a Conditional Use.**

25 No application for a conditional use that has been denied wholly or in part by the Board of Appeals shall be
26 resubmitted for a period of two years from the date of said order of denial, except on the grounds of new
27 evidence or proof of change of conditions found to be valid by the Board of Appeals.

28 **25.9. Limitation on Conditional Use Approval.**

29 Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall
30 be valid for a period longer than one year unless a site plan is approved, a building permit is issued,
31 construction is actually begun within that period and is thereafter diligently pursued to completion, or a
32 certificate of occupancy is issued and use commenced within that period.

1 **CHAPTER 26 TRANSFERABLE DEVELOPMENT RIGHTS (TDRS)**

2 Sections:

- 3 26.1 Purpose.
- 4 26.2 Right to Transfer Development Rights.
- 5 26.3 TDR Sending Zones; Assignment of Transferable Development Rights.
- 6 26.4 Maximum Residential or Non-Residential Density/Intensity Allowed in Receiving Zones.
- 7 26.5 Effect of Transfer.
- 8 26.6 Rights of Transferees.
- 9 26.7 Certification by Director of Land Use and Growth Management and County Attorney.
- 10 26.8 Instruments of Transfer.
- 11 26.9 Approval of the Development Using Transferable Development Rights.
- 12 26.10 Fee in Lieu.
- 13 26.11 Exempted lots from TDR requirements.
- 14 26.12 Uses allowed after TDRs have been severed from the sending area.
- 15 26.13 Grandfathering.

16 **26.1. Purpose.**

- 17 1. The Transferable Development Rights (TDR) program in this chapter is voluntary for property
18 owners and is provided as a means to further the objectives of the Comprehensive Plan. The chapter
19 provides flexibility to encourage the protection of farmland and resource protection areas by
20 allowing the transfer of development potential from a site that has resources deserving protection to
21 a site in a designated receiving zone.
- 22 2. In order to protect agricultural areas and give the owners of such property an alternative to
23 development, or a means to recover some of the value from an undevelopable residential lot, TDRs
24 are established.

25 **26.2. Right to Transfer Development Rights.**

- 26 1. **Removing Development Rights from the Land.** Each landowner of a parcel in a sending area
27 (“transferor”) has the right to remove all or a portion of the right to develop from the parcel (the
28 “sending parcel”), and to hold, sell, trade or barter these rights to another person or legal entity
29 (“transferee”).
- 30 2. **Using Development Rights.** The transferee may retire the development rights, resell them, or apply
31 them to land in a receiving area (the “receiving parcel”) in order to obtain approval for development
32 at a density or intensity of use greater than would otherwise be allowed on the land, up to the
33 maximum density or intensity indicated in Schedules 32.1 and 32.2, subject to the following:
 - 34 a. No development right may be used to increase density within the Critical Area if such right
35 is derived from a portion of a sending parcel that is outside the Critical Area, nor may a
36 development right be transferred from land within an Intensely Developed Area (IDA) or
37 Limited Development Area (LDA) to a Resource Conservation Area (RCA), or from an
38 IDA to an LDA, nor may any development right be transferred to land in the RCA from any
39 RCA lot of record that is less than 20 acres in size.
 - 40 b. Land zoned RPD which is designated as a Rural Legacy Area by the Maryland Rural
41 Legacy Board shall not be developed to a density greater than one (1) dwelling unit per five
42 (5) acres of gross area.
 - 43 c. No use of a development right shall result in a reduction of resource protection land
44 required by this Ordinance on a receiving parcel.

- 1 d. No development right may be derived from land in a sending zone that is already expressly
2 prohibited from transferring development rights by virtue of a recorded restrictive covenant
3 or agricultural or environmental easement. Development rights may be derived from
4 property subject to the St. Mary's County Agriculture Land Tax Credit Program between
5 the owner and the Board of County Commissioners.
- 6 e. Except for transfer of rights from lots of record that cannot be developed for residential
7 purposes, no development right may be derived from land in a sending area that is part of a
8 subdivision that has no available density remaining in the parent tract. Where density is
9 available, the rights shall be assigned based on the unused density available in the
10 subdivision.

11 **26.3. TDR Sending Zones; Assignment of Transferable Development Rights.**

- 12 1. **Designation.** Rural Preservation Districts ("RPD") shall be TDR sending areas and may be
13 receiving areas subject to Schedule 32.1.
- 14 2. **Determination.** Each qualifying lot or parcel in the RPD (including but not limited to parcel of
15 record prior to March 1978, lot in a subdivision, or outparcel created by a subdivision) shall have
16 one (1) transferable development right for each five (5) acres of land based on the gross acreage
17 within the parcel, as determined by the transferor's recorded deed. In the event the gross acreage
18 cannot be ascertained from the recorded deed, the gross acreage of the parcel shall be determined by
19 the most recent records of the Maryland Department of Assessments and Taxation. In any event, at
20 the transferor's option, the gross acreage may be determined by a metes and bounds survey of the
21 parcel prepared, signed and sealed by a duly licensed professional land surveyor or property line
22 surveyor, which determination shall take precedence over the gross acreage determined by the
23 recorded deed or the assessment records. One (1) TDR shall be deducted for each existing dwelling
24 and one (1) TDR shall be deducted for each proposed dwelling for which a building permit has been
25 duly issued by the Department of Land Use and Growth Management for the parcel prior to July 24,
26 2007.
- 27 3. **Fractional Rights.** Fractional parts of a development right shall be disregarded. No transfer shall
28 include other than a whole number of development rights.

29 **26.4. Maximum Residential or Non-Residential Density/Intensity Allowed in Receiving Zones.**

- 30 1. Zoning Districts RNC (in growth areas only), RPD, RL, RH, RMX, VMX, TMX, and CMX are
31 receiving zones for TDRs for increased residential density. The RPD, RSC, RCL, RL, RMX, VMX,
32 TMX, DMX, CMX CC, OBP and I are receiving zones for TDRs for increased non-residential
33 intensity of approved uses in the respective zones.
- 34 2. Land located in a receiving zone may be developed at additional density or intensity of use through
35 the acquisition of TDRs, up to the maximum density or intensity indicated in Schedules 32.1 and
36 32.2.
- 37 3. With the exception of the RPD, the residential density for land within a receiving zone may be
38 increased at a rate of one (1) additional dwelling unit for each TDR, up to the maximum number
39 permitted in Schedules 32.1 and 32.2.
- 40 4. Parcels of record as defined in chapter 90, Definitions existing within the RPD on the date of this
41 Ordinance shall be considered a single residential lot, with no requirement for the use of TDRs for
42 any existing residential dwellings that exist on the parcel or for which a valid building permit has
43 been issued as of the date of this Ordinance.
- 44 a. Such existing dwellings or dwellings for which a valid building permit has been issued may
45 be subdivided from the receiving parcel as separate lots without the use of TDRs.
- 46 b. If no residential dwelling exists on the parcel or for which a valid building permit has not
47 been issued as of the date of this Ordinance, one (1) single-family residential dwelling may
48 be constructed on the parcel without the use of TDRs.
- 49 5. For an eligible receiving parcel in the RPD, the first dwelling or lot will use five (5) acres of base
50 density, but will not require additional TDRs. For each dwelling or residential lot thereafter, in

1 addition to the base density, TDRs will be required as follows: For a receiving parcel in the RPD, in
 2 addition to the five (5) acre base density deducting one (1) TDR shall be required for each additional
 3 residential lot or dwelling, provided the parcel density does not exceed one (1) residential lot or
 4 dwelling for each five (5) acres of gross area, two (2) TDRs shall be required for each additional
 5 residential lot or dwelling in excess of 1 dwelling unit per 5 acre density, provided the parcel density
 6 does not exceed one (1) residential lot or dwelling for each four (4) acres of gross area, and three (3)
 7 TDRs shall be required for each additional residential lot or dwelling in excess of 1 dwelling unit
 8 per 4 acre density, provided the parcel density does not exceed one (1) residential lot or dwelling for
 9 each three (3) acres of gross area.

10 The number of TDRs required per residence is based on the density of the property as developed
 11 July 24, 2007 in accordance with the following schedule.

Density (number of units per acre)	Number of TDRs
1 dwelling unit per 5 acres	1 TDR per lot after the 1 st lot or dwelling
1 dwelling unit per 4 acres	2 TDRs per lot or dwelling
1 dwelling unit per 3.0 acres	3 TDRs per lot or dwelling

12 **26.5. Effect of Transfer.**

- 13 1. After development rights have been transferred by an instrument of original transfer, the sending
 14 parcel shall not be further subdivided or developed to a greater density or intensity of use than
 15 permitted on the remaining acreage. Once development rights have been transferred from a lot or
 16 parcel of record, that lot or parcel of record shall not later become a receiving parcel.
- 17 2. The portion of the sending parcel from which development rights have been transferred may be used
 18 only for the uses listed in 26.12.
- 19 3. All development rights that are the subject of an “instrument of original transfer,” described in
 20 Section 26.8, shall be deemed removed from the sending parcel when such rights have been severed
 21 from the property by recording of the “instrument or original transfer” in form and content approved
 22 by the County Attorney.

23 **26.6. Rights of Transferees.**

24 Between the time of the transfer of a development right by an original transferor and the time when its use on
 25 a specific receiving parcel is final in accordance with the provisions of this chapter, a transferee has only the
 26 right to use the development right to the extent authorized by all applicable provisions of the Ordinance in
 27 effect at the time when use of the development right for a specific receiving parcel is finally approved. No
 28 transfer shall be construed to limit or affect the power of the County Commissioners to amend, supplement or
 29 repeal any or all of the provisions of this chapter or any other section of this Ordinance or to entitle any
 30 transferor or transferee to damages or compensation of any kind as the result of any such amendment,
 31 supplementation or repeal.

32 **26.7. Certification by Director of Land Use and Growth Management and County Attorney.**

- 33 1. **Requirement.** The Planning Director shall certify that the development rights proposed for transfer
 34 are available for transfer from the sending parcel. No transfer shall be recognized under this chapter
 35 unless the instrument of original transfer contains the Planning Director’s certification.
- 36 2. **Application for Certificate.** An application for a certificate shall contain a certificate of title by an
 37 attorney duly licensed to practice law in the State of Maryland and a description of the proposed
 38 sending parcel from which development rights are being removed. Applicable fees and any
 39 additional information the Planning Director deems necessary to determine the number of
 40 development rights involved in the proposed transfer shall also be required.
- 41 3. **Responsibility.** The transferor and the transferee named in an instrument of original transfer shall
 42 have sole responsibility for supplying all information required by this chapter, providing a proper
 43 instrument of original transfer, and paying, in addition to any other fees required by this chapter, any
 44 applicable recording costs.

1 4. **Issuance of Certificate.** On the basis of the information submitted to him or her, the Planning
2 Director shall affix a certificate of his or her findings to the instrument of original transfer and shall
3 assign to each development right a distinct serial number based on a registration system developed
4 and approved by the Planning Director, which number shall be used to track each development right.
5 The certificate shall contain the serial numbers and a specific statement of the quantity of
6 development rights that are derived from any portions of the sending parcel within the Critical Area.
7 The Planning Director's certification, the title certificate and the instrument of original transfer shall
8 be reviewed and approved by the County Attorney for legal sufficiency.

9 5. **Effect of Determination.** The determination of the Planning Director and the County Attorney shall
10 not be construed to enlarge or otherwise affect in any manner the nature, character, and effect of a
11 transfer as set forth in Section 26.5.

12 **26.8. Instruments of Transfer.**

13 1. **An Instrument of Transfer.** An instrument of transfer shall conform to the requirements of this
14 section. There shall be three types of instruments of transfer, all of which shall be on forms
15 approved and developed by the County Attorney; (i) an instrument of original transfer which shall
16 be used to sever the development right from the property and which shall be executed by the owner
17 of the property from which the development right is being severed as both grantor and grantee; (ii)
18 an instrument of intermediate transfer which shall be used to transfer the development right between
19 intermediate owners of the development right; and (iii) the instrument of final transfer which shall
20 be used to convey the development right to the Board of County Commissioners of St. Mary's
21 County by which the development right is extinguished and used for the purposes of development
22 on the receiving parcel.

23 2. **Requirements of All Instruments.** All instruments of transfer shall contain:

- 24 a. The names of the transferor and the transferee;
- 25 b. A certificate of title for the rights to be transferred certified to by an attorney licensed to
26 practice law in Maryland in a form approved by the County Attorney;
- 27 c. A covenant that the transferor grants and assigns to the transferee and the transferee's heirs,
28 personal representatives, successors and assigns a specified number of development rights
29 from the sending parcel;
- 30 d. If any rights involved in the transfer are derived from portions of the sending parcel within
31 the Critical Area, a specific statement of the number of such rights included within the
32 transfer;
- 33 e. A covenant by which the transferor acknowledges that he or she has no further use or right
34 of use with respect to the development rights being transferred;
- 35 f. A statement of the rights of the transferee prior to final approval of the use of those
36 development rights on a specific parcel, as set forth in Section 26.2, except when the
37 development rights are being transferred to the Board of County Commissioners in
38 accordance with this chapter; and
- 39 g. A covenant that at the time when any development rights involved in the transfer are finally
40 approved for use on a specific receiving parcel, such rights shall be transferred to the Board
41 of County Commissioners for no consideration.
- 42 h. The serial number of each development right being transferred pursuant to the instrument
43 of transfer, to be shown on Land Use and Growth Management form Exhibit B signed by
44 the Director, Certificate of Transferable Development Right in the Original Instrument of
45 Transfer.

46 3. **Requirements of Instruments of Original Transfer.** An "instrument of original transfer" is required
47 for each sending parcel when a development right is initially removed from the sending parcel and
48 shall contain:

- 1 a. A description of the property from which the development right is being removed, either
2 from the recorded deed or at the transferor's option, from the boundary survey of the
3 sending parcel, prepared, signed and sealed by a duly licensed surveyor, or professional
4 property line surveyor, provided that if a boundary survey is used the instrument shall also
5 reference the deed recording reference.
- 6 b. A covenant that the sending parcel may not be subdivided to a greater extent than permitted
7 by the remaining development rights and that such subdivision shall be in accordance with
8 the zoning and subdivision regulations in place at the time of the request for subdivision.
- 9 c. A covenant that the sending parcel is restricted to and may be used only for agricultural
10 uses and those uses allowed in Section 26.12 of this chapter and such residential uses as are
11 permitted by the remaining development rights.
- 12 d. A covenant that all provisions of the instrument of transfer shall run with and bind the
13 sending parcel and may be enforced by the County Commissioners, the Planning Director
14 and their respective designees.
- 15 e. The certificate of the Planning Director required by Section 26.7.
- 16 4. **Requirements for Instruments of Intermediate Transfer.** An instrument of intermediate transfer
17 shall include:
 - 18 a. A statement that the transfer is an intermediate transfer of rights derived from a sending
19 parcel described in an instrument of original transfer (which original instrument shall be
20 identified by its date, the names of the original transferor and transferee and the book and
21 page where it is recorded among the land records of St. Mary's County).
 - 22 b. A list of all previous "intermediate instruments of transfer" identified by their date, and the
23 book(s) and page(s) where the documents are recorded among the land records of St.
24 Mary's County affecting the development rights being transferred.
 - 25 c. A statement of the actual consideration paid or to be paid by the transferee for the
26 development rights.
- 27 5. **Requirements for Instruments of Final Transfer.** An instrument of final transfer shall include:
 - 28 a. A statement that the transfer is a final transfer of rights derived from a sending parcel
29 described in an instrument of original transfer (which original instrument shall be identified
30 by its date, the names of the original transferor and transferee and the book and page where
31 it is recorded among the land records of St. Mary's County).
 - 32 b. The instrument of original transfer and all previous intermediate instruments of transfer
33 identified by their date, and the book(s) and page(s) where the documents are recorded
34 among the land records of St. Mary's County affecting the development rights being
35 transferred.
 - 36 c. A statement of the actual consideration paid or to be paid by the transferee for the
37 development rights.
 - 38 d. A current certificate of title.
- 39 6. **Recordation of All Instruments of Transfer/Delivery to DECD and Planning Director.** After it has
40 been properly executed, an original instrument of transfer or intermediate instrument of transfer
41 shall be recorded by the transferor or the transferee among the land record of St. Mary's County, and
42 a copy thereof shall be promptly delivered to the Planning Director and the Department of
43 Economic and Community Development ("DECD"). After it has been reviewed and approved for
44 legal sufficiency by the County Attorney, and executed by the transferor and the Planning Director,
45 on behalf of the County, a final instrument of transfer shall be recorded by the Planning Director in
46 the land records of St. Mary's County, and a copy of the recorded instrument shall be promptly
47 delivered by the Planning Director to the transferor.

1 **26.9. Approval of the Development Using Transferable Development Rights.**

- 2 1. **Initial Request for Use of TDR in a Development Project.** The request to use development rights
3 on a property in the receiving area shall be in the form of a concept or preliminary subdivision plat,
4 a site plan, or other application for development submitted in accordance with the requirements of
5 this Ordinance. In addition to any other information required by this Ordinance, the application
6 shall be accompanied by a statement of intent to transfer development rights to the property and a
7 statement of the number of development rights intended to be transferred.
- 8 2. **Preliminary approvals.** The County may grant preliminary subdivision or concept site plan
9 approval for the proposed development conditioned upon proof of ownership of the necessary TDRs
10 or a contract to purchase said TDRs being presented to the County as a prerequisite to final
11 subdivision or site plan approval.
- 12 3. **Final Subdivision or Site Plan Approval of a Development Using TDRs.**
- 13 a. **Proof of ownership of TDR's and proof of deed restriction.** No final plat shall be approved
14 and no zoning permits shall be issued for development involving the use of TDRs until and
15 unless the applicant has demonstrated to the County that:
- 16 (1) The applicant is the bona fide owner of all TDRs that will be used or redeemed for
17 the construction of additional dwellings or the creation of additional lots;
- 18 (2) An instrument of transfer for the TDRs proposed for the development has been
19 recorded in the chain of title of the parcel of land from which the development
20 rights has been transferred and that such instrument restricts the use of that parcel
21 in accordance with this chapter; and
- 22 (3) The TDRs proposed for the development have not been previously used. Proof
23 must be in the form of a current title certificate issued by a licensed attorney.
- 24 b. **Required Instruments.** The following instruments, which may be required to effect transfer
25 of development rights to the receiving parcel, shall be approved as to form and legal
26 sufficiency by the County Attorney. Said instruments shall be recorded among the land
27 records of St. Mary's County when the subdivision record plat is recorded or subsequent to
28 final site plan approval but before building permits are released.
- 29 (1) An instrument of original transfer.
- 30 (2) All intermediate instruments of transfer between any intervening transferees,
31 including the owner of the receiving parcel.
- 32 (3) A final instrument of transfer to the Board of County Commissioners.
- 33 4. **When Completed.** Transfer to a receiving parcel is final when the approved final subdivision plat or
34 approved final site plan for the receiving parcel, listing quantity and serial numbers of all
35 Transferable Development Rights, has been recorded or approved, as applicable, in accordance with
36 this Ordinance and when the development right has been transferred by a final instrument of transfer
37 to the Board of County Commissioners at no cost to the County.

38 **26.10. Fee in Lieu.**

- 39 1. **Open Lands Option.** In lieu of purchasing development rights from a sending parcel for use in
40 development of a receiving parcel, a person may pay a fee to the County, which the County shall
41 hold in a separate Open Lands Trust Fund for use in purchasing development rights from owners of
42 sending parcels and other related purposes as defined in the subsections below.
- 43 2. **Fee Schedule.** A schedule of the "in lieu of" fees for the Open Lands Trust Fund shall be
44 established annually. The fee in lieu for each TDR shall be one hundred twenty percent (120%) of
45 the average fair market value paid for TDRs in "arms-length" intermediate transactions in the
46 previous fiscal year, as calculated by the DECD Director. The DECD Director shall make public the
47 fee in lieu calculations no later than thirty (30) days following the end of the fiscal year. The Board
48 of County Commissioners shall reserve the right to increase or decrease the fee in lieu within the

1 thirty (30) day period following the DECD Director's annual determination, after which such
2 determination shall remain in effect until the following fiscal year.

3 3. **Administration of Fee in Lieu Program.** The DECD Director shall administer the fee in lieu
4 program and coordinate the necessary forms and documentation consistent with the requirements of
5 this chapter. Those applicants who pay the fee in lieu may apply credits received for said payments
6 to develop land in a receiving parcel at an additional density or intensity of use through the same
7 provision as for TDRs contained herein.

8 4. **Use of Funds from Payment of Fees in Lieu.** Payments received by the County as fees in lieu of
9 purchasing development rights from sending zones shall be used by the St. Mary's County
10 Agricultural Preservation Commission to acquire property having a resource deserving of protection
11 or replenish the Critical Farms Programs. Such purchase of development rights may be resold by
12 the County.

13 **26.11. Exempted lots from TDR requirements.**

14 A maximum of 2 lots may be created for conveyance to children (natural or legally adopted) without the use
15 of a TDR subject to the following:

- 16 1. The conveying property owner owned the land in the RPD zone as of May 13, 2002;
- 17 2. The lots created pursuant to this exemption comply with the 1 to 5 acre base density of the RPD;
- 18 3. A maximum of 2 exempt lots for children may be subdivided from the parcel of land;
- 19 4. A child shall not receive more than one exempt lot in the RPD zone;
- 20 5. The property owner must submit a subdivision plan prior to May 13, 2009 and record the
21 subdivision plat prior to May 13, 2012;
- 22 6. The property owner creating the lot must enter into an agreement with the County that:
 - 23 a. Contains the grantor's obligations under this section;
 - 24 b. Is recorded in the land records of St. Mary's County;
 - 25 c. Is noted on the subdivision plat; and
 - 26 d. Prohibits the grantee from transferring the conveyed lot to a third party for at least seven
27 years from the date of final approval of the family conveyance, except in a case of severe
28 hardship, as determined by the Director of Land Use and Growth Management.
 - 29 e. Compliance with all remaining applicable regulations of the Zoning Ordinance and
30 Subdivision Ordinance.

31 **26.12. Uses allowed after TDRs have been severed from the sending area.**

32 The following uses may be allowed on land in the RPD zone after TDRs have been severed from the sending
33 area. All uses must comply with other applicable regulations in the Zoning Ordinance.

- 34 1. Agricultural Industry, minor (on-the-farm processing, e.g. small grain mills, dairy processing)
- 35 2. Animal Husbandry
- 36 3. Aquaculture (raising finfish, shellfish, aquatic plants)
- 37 4. Crop production and horticulture e.g. (typical row & field crops, orchards, nursery)
- 38 5. Farmers' market (locally produced goods, sales by 2 or more sellers)
- 39 6. Auction House (wholesaling of locally produced goods)
- 40 7. Roadside stand
- 41 8. Silviculture
- 42 9. Burial grounds (family plots only)
- 43 10. Day Care, family, home

- 1 11. Rural medical practice
- 2 12. Bed and breakfast (in existing dwellings)
- 3 13. Personal improvement service (accessory to principle residence)
- 4 14. Extractive industry (mining, gravel pits)
- 5 15. Production industry, custom (small scale, hand manufactured e.g. blacksmith, welding, carpentry)
- 6 16. Communication towers, commercial and public
- 7 17. Regional flood and stormwater management facility
- 8 18. Utilities, minor
- 9 19. Various accessory uses
- 10 20. Various temporary events

11 **26.13. Grandfathering.**

12 For Major Subdivisions, Minor Subdivisions, Major Site Plans, Minor (Simplified) Site Plans and a request
13 for TDR certification per Chapter 26, for which a complete application has been submitted to the Technical
14 Evaluation Committee ("TEC") prior to July 24, 2007, and Phasing Plans which have been approved prior to
15 July 24, 2007, the Applicant shall have the option of proceeding with development pursuant to the provisions
16 of Chapter 26, Schedule 32.1 and 32.2 of this Ordinance as they existed on the date for which the complete
17 application was submitted to the TEC or the Phasing Plan was approved, or as the same was previously
18 grandfathered by this Ordinance, or pursuant to the provisions of Chapter 26, Schedule 32.1 and Schedule
19 32.2 as revised on July 24, 2007.

1 **CHAPTER 27 VESTED RIGHTS AND AUTHORITY TO CONTINUE NONCONFORMING**
2 **PROJECTS**

3 Sections:

- 4 27.1 Purpose.
5 27.2 Vested Rights.
6 27.3 Grandfathering Provisions.
7 27.4 Grandfathering of Phasing Plans and Schedules.
8 27.5 Effect of Previous Regulations.
9 27.6 Annual Update.

10 **27.1. Purpose.**

11 The purpose of this chapter is to permit the continuation of projects for which plan approval has been given
12 prior to the effective date of applicable ordinance changes or revisions.

13 **27.2. Vested Rights.**

14 St. Mary's County recognizes and accepts the standard of vested rights as established by Maryland
15 common law.

16 **27.3. Grandfathering Provisions.**

17 Transitional provisions to be known as grandfathering provisions are hereby adopted to provide for the
18 continuance of certain development activities. No extensions of the stated time periods below shall be
19 granted, except as noted in Section 27.4.2, below.

- 20 1. **Subdivisions:** Subdivisions shall be vested pursuant to the provisions listed below.
- 21 a. **Major Subdivisions:** Major subdivision projects that have been granted preliminary
22 subdivision plan approval prior to (effective date of this Ordinance) will have a maximum
23 of two years from the date of such approval to be granted final subdivision approval.
24 From the date of final subdivision approval a project will have one year in which to
25 record the record plat. Those projects that must be phased in accordance with the Annual
26 Growth Policy may continue toward recordation in accordance with the yearly allocations
27 allowed.
- 28 b. **Minor Subdivisions:** *Minor subdivision* projects that have been processed through the
29 Technical Evaluation Committee (TEC) prior to (effective date of this Ordinance) shall
30 have twelve months (from adoption of this amendment) to achieve final subdivision
31 approval.
- 32 2. **Site Plans:** Projects requiring major site plans that have been processed through the Technical
33 Evaluation Committee (TEC) shall have 30 months from receipt of TEC comments to receive final
34 site plan approval, receive building permits, and commence construction.
- 35 3. **Minor Site Plans:** Projects requiring minor site plans that have been processed through the
36 Technical Evaluation Committee (TEC) shall have six months from receipt of TEC comments to
37 achieve final site plan approval.
- 38 4. **Planned Unit Developments:** Grandfathering of a Planned Unit Development as approved by the
39 Board of County Commissioners shall be governed by Chapter 44, Section 44.4.3.b.
- 40 5. **Conditional Uses:** Those projects having conditional use approval by written order of the Board
41 of Appeals shall have 30 months from the date of the written order to receive all required
42 approvals to implement the approved conditional use and commence construction.
- 43 6. **Growth Allocation:** Those calendar year 2010-2011 growth allocation projects having begun the
44 public hearing process with the Planning Commission, may proceed to decision by the Board of
45 County Commissioners and the Chesapeake Bay Critical Area Commission under Ordinance 02-
46 01 as amended.

1 7. **Building Permits:** Applications for building permits filed with the Department of Land Use and
2 Growth Management before (effective date of this Ordinance) may have twelve months to receive
3 all final approvals without meeting the requirements of this Ordinance.

4 **27.4. Grandfathering of Phasing Plans and Schedules.**

5 1. All commercial or residential phasing plans and schedules approved prior to the enactment of this
6 Ordinance shall remain in effect. Construction and development relating to such plans may be
7 completed in accordance with the terms of the previously approved phasing plan. Any revisions
8 proposed under this chapter shall conform with all Maryland state rules, regulations, and statutory
9 provisions, and any construction standards as set forth in the rules, regulations, and ordinances of
10 St. Mary's County, in effect when the applicant applied for a revision to the phasing plan and
11 schedule, unless said plans, schedules, and/or revisions are exempted under said rules, regulations
12 statutory provisions, and/or ordinances.

13 2. Any applicant shall be allowed to apply for a revision to any phasing plan and schedule
14 grandfathered under the provisions of this chapter, and such revisions may be approved by the
15 Planning Commission provided the applicant can show that there are compelling circumstances to
16 warrant a revision. In no case shall the duration of any phasing plan and schedule be extended
17 more than five years beyond the effective date of this Ordinance. The Planning Commission shall
18 consider the following factors in determining whether to approve applications for revisions:

- 19 a. The extent to which any delay was caused by the action or inaction of the applicant as
20 opposed to other factors beyond the control of the applicant;
- 21 b. The amount of investment not including architectural and engineering costs made in the
22 project as of the date of the application for revision;
- 23 c. Any impact to the health and welfare of the County caused by the revision or any delay
24 associated therewith; and
- 25 d. Market conditions.

26 3. **Continuation of Project:** Project development may proceed in accordance with the plan approved
27 unless the approval expires by failure to act within the defined time periods as stated above. In the
28 case of expiration, re-approval shall be in conformity with all provisions of this Ordinance.

29 **27.5. Effect of Previous Regulations.**

30 To the extent that projects are grandfathered under this section, the provisions of Ordinance 02-01, as
31 amended and regulations in effect at the time of plan approval shall remain in full force and effect.

32 **27.6. Annual Update.**

33 An annual update of development commenced during the past year and plans for development in the
34 upcoming year shall be presented to the Planning Commission by the developer of the project.

1 **CHAPTER 28 AMENDMENTS**

2 Sections:

3 28.1 Purpose and Authority.

4 28.2 Submission Requirements for Applications for Amendments.

5 28.3 Review Procedures.

6 28.4 Action by Board of County Commissioners on Application.

7 28.5 Record.

8 28.6 Reconsideration of Defeated District Changes or Amendments.

9 **28.1. Purpose and Authority.**

10 1. **Purpose.** The purpose of this chapter is to provide a means for changing the text of this
11 Ordinance, changing the boundary of zoning districts on the Official Zoning Maps or approving a
12 floating zone.

13 2. **Authority.** The Board of County Commissioners may on its own motion, on application of the
14 owner(s) or contract owner(s) of a property proposed for change, or at the recommendation of the
15 Planning Commission supplement, modify, or repeal provisions of the text of this Ordinance or the
16 Official Zoning Maps. In cases of a petition for change of zoning to historic status, only the
17 landowner(s) may request such a change.

18 **28.2. Submission Requirements for Applications for Amendments.**

19 1. **Applications.** Any application for a zoning amendment shall contain specific information setting
20 forth the basis for granting the request. Any application must disclose the names and addresses of
21 all persons having legal or equitable interests in the property that is the subject of the application
22 for amendment, including shareholders owning more than 5 percent of the stock in a corporation
23 that has any interest in land involved in the application, excepting those corporations listed and
24 regularly traded on a recognized stock exchange.

25 2. **Ordinance Amendments Generally.** Any application to amend, supplement, modify, or repeal any
26 portion of this Ordinance shall be filed with the Planning Director in such form and accompanied
27 by such information and fees as may be required by the Planning Director. Amendments to the
28 Critical Area provisions of this Ordinance are subject to approval by the Chesapeake Bay Critical
29 Area Commission. Amendments to the Forest Conservation or Floodplain provisions of this
30 Ordinance are subject to approval by the Maryland Department of Natural Resources.

31 3. **Amendments to the Zoning Maps.** Every application for a zoning map amendment shall be
32 accompanied by a scale drawing showing the existing and proposed zoning district boundaries and
33 such other information as may be needed to properly locate and plat an amendment of the Official
34 Zoning Maps. Amendments to revise Critical Area maps are subject to approval by the
35 Chesapeake Bay Critical Area Commission.

36 **28.3. Review Procedures.**

37 1. **Review by Departments and Agencies.** Upon determination by the Planning Director that an
38 application is complete the application shall be promptly submitted for comment and review to
39 TEC agencies. Following notification that this administrative review is complete, the applicant
40 must request in writing that the Planning Director submit an application for amendment of the
41 Official Zoning Maps to the Planning Commission. For an amendment of the text of this
42 Ordinance, the administrative review shall be forwarded to the Board of County Commissioners,
43 who shall determine whether to seek a recommendation of the Planning Commission. For all
44 applications to amend the Official Zoning Maps and applications to amend the text of this
45 Ordinance for which recommendation is sought, the Planning Commission shall conduct a public
46 hearing according to the provisions of Chapter 21 and forward a recommendation to the Board of
47 County Commissioners.

1 2. **Review by Planning Commission.** The Planning Commission shall promptly consider
2 applications for amendment. The Commission shall conduct a public hearing for map
3 amendments and may conduct public hearings for all other amendments. Generally, within 60
4 days from its final hearing, the Planning Commission shall transmit its recommendations for
5 approval or disapproval to the County Commissioners.

6 **28.4. Action by Board of County Commissioners on Application.**

7 1. **Applicant Request for Public Hearing.** After the Planning Commission makes its formal
8 recommendation on applications to amend the Official Zoning Maps or on text amendments for
9 which such a recommendation is sought, or after the Board of County Commissioners determine a
10 recommendation of the Planning Commission is not necessary for an amendment of the text of this
11 Ordinance, the applicant must request in writing a public hearing on the application to be held by
12 the Board of County Commissioners. If the applicant does not make this request within 60 days
13 after the Planning Commission makes its recommendation or the Board of County Commissioners
14 make a determination that a recommendation of the Planning Commission is not necessary for a
15 text amendment, the applicant shall reapply and be treated as a new applicant.

16 2. **Public Hearing.** Before approving or disapproving any application for amendment, the Board of
17 County Commissioners shall hold at least one public hearing in accordance with the procedures
18 for notice and public hearings set forth in Chapter 21 of this Ordinance. At the sole discretion of
19 the Planning Commission and the Board of County Commissioners, such public hearing may be
20 held concurrent with the public hearing of the Planning Commission on the application.

21 **28.5. Record.**

22 The record of all amendments shall include the application, all documents or communications submitted
23 regarding the application, the recorded testimony from all public hearings held on the application, any
24 reports or communications to or from any public officials or agencies concerning the application, and the
25 final decision of the County Commissioners. The record shall be open to public inspection and shall be
26 maintained in the office of the Planning Director. The burden of proof for any proposed Ordinance change
27 shall be upon the applicant.

28 **28.6. Reconsideration of Defeated District Changes or Amendments.**

29 An application for amendment shall not be accepted for filing by the Planning Director if the application is
30 for the reclassification of all or any part of land that was the subject of any application for amendment that
31 was denied by the County Commissioners until 12 months from the date of denial.

CHAPTER 29 DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (DRARA)

Sections:

- 29.1 Purpose.
- 29.2 Authority.
- 29.3 Applicability.
- 29.4 Contents of Development Rights and Responsibilities Agreement.
- 29.5 Referral to Planning Commission.
- 29.6 Public Hearing by Board of County Commissioners.
- 29.7 Amendment of Agreements.
- 29.8 Termination of Agreements; Suspension.
- 29.9 Applicable Laws, Regulations and Policies.

29.1. Purpose.

The purpose of this chapter is to provide an additional technique for land development consistent with the Comprehensive Plan as authorized by the Annotated Code of Maryland, which agreed upon obligations of the Board of County Commissioners shall be enforceable notwithstanding any provision of the St. Mary's County Procurement Manual, as amended from time to time. It is the further purpose of this chapter to enhance development flexibility, innovation and quality while ensuring protection of the public interest, health, safety and welfare.

29.2. Authority.

The Board of County Commissioners desires to exercise the authority granted by Section 13.01 of Article 66B, Annotated Code of Maryland, to authorize Development Rights and Responsibilities Agreements (DRARAs) generally.

29.3. Applicability.

Any person having a legal or equitable interest in real property in St. Mary's County may petition the Board of County Commissioners to enter into an agreement.

29.4. Contents of Development Rights and Responsibilities Agreement.

1. At a minimum a development rights and responsibilities agreements shall contain the following:
 - a. A lawyer's certification that the petitioner has either a legal or equitable interest in the property.
 - b. The names of all parties having an equitable or legal interest in the property, including lien holders.
 - c. A legal description of the property subject to the agreement.
 - d. The duration of the agreement; including any proposed phasing plans for the development.
 - e. The permissible uses of the real property.
 - f. The density or intensity of use.
 - g. The maximum height and size of structures.
 - h. Architectural elevation sketches.
 - i. Description of the plan approvals and permits required or already approved for the development of the property,
 - j. A statement that the proposed development is consistent with applicable development regulations, the Comprehensive Plan, and, if applicable, the Growth Area Plan.
 - k. A description of the conditions, terms, restrictions or other requirements determined by the County Commissioners or their designees to be necessary to ensure the public health, safety, or welfare.
- l. To the extent applicable, provisions for:

- 1 (1) Dedication or reservation of a portion of the real property for public or private
2 uses, and/or remote or off-site real property in which the petitioner has either
3 legal or equitable interest for public use including but not limited to wetlands or
4 forest mitigation banks, school sites, and recreation facilities or sites.
- 5 (2) Protection of sensitive areas.
- 6 (3) Preservation and restoration of historic structures, and
- 7 (4) Construction or financing of public facilities.
- 8 m. Provisions to the effect that the petitioner shall be responsible for attorney's fees, costs,
9 and expenses incurred by the County Commissioners in the event an agreement is
10 abandoned or breached by the petitioner.
- 11 n. A concept plan meeting the minimum requirements of Section 60.4 for site plans or a
12 sketch plan meeting the requirements of Section 30.5.3 of the subdivision regulations.
- 13 2. An agreement may fix the period in and terms by which development and construction may
14 commence and be completed, as well as provide for other matters consistent with this title,
15 including, but not limited to, phasing schedules and grandfather provisions.

16 **29.5. Referral to Planning Commission.**

17 Upon receipt of a petition, the Board of County Commissioners shall refer the petition to the Planning
18 Commission, which may conduct a public hearing, for a determination on whether the proposed agreement
19 is consistent with the Comprehensive Plan and, where applicable, any applicable growth area plans. The
20 Board of County Commissioners may not enter into an agreement until the Planning Commission
21 determines whether the proposed agreement is consistent with the Comprehensive Plan. The Board may,
22 however, choose not to accept the Planning Commission recommendation.

23 **29.6. Public Hearing by Board of County Commissioners.**

24 Before an agreement may be executed by the Board of County Commissioners, the Board shall hold a
25 public hearing on the agreement. Notice of the hearing shall be as provided in Chapter 21 of this
26 Ordinance. The notice shall contain the name of the petitioner, a brief description sufficient to identify the
27 property involved; a fair summary of the contents of the petition and the date, time and place of the public
28 hearing.

29 **29.7. Amendment of Agreements.**

- 30 1. Subject to paragraph (2) of this subsection and after a public hearing, the parties to an agreement
31 may amend the agreement by mutual consent.
- 32 2. The parties may not amend an agreement unless the Planning Commission determines the
33 proposed amendment is consistent with the Comprehensive Plan and, where applicable, any
34 growth area plan.

35 **29.8. Termination of Agreements; Suspension.**

- 36 1. The parties to an agreement may terminate the agreement by mutual consent.
- 37 2. After a public hearing, the Board of County Commissioners may suspend or terminate an
38 agreement if the Board determines that suspension or termination is essential to ensure the public
39 health, safety, or welfare.

40 **29.9. Applicable Laws, Regulations and Policies.**

- 41 1. Except as provided in paragraph (2) of this subsection, the laws, rules, regulations, and policies
42 governing the use, density, or intensity of the real property subject to the agreement shall be the
43 laws, rules, regulations, and policies in force at the time the parties execute the agreement.
- 44 2. If the County Commissioners for St. Mary's County determines that compliance with laws, rules,
45 regulations, and policies enacted or adopted after the effective date of the agreement is essential to
46 ensure the health, safety, or welfare of residents of all or part of the County, an agreement shall not
47 prevent the County Commissioners for St. Mary's County from requiring a person to comply with
48 those laws, rules, regulations, and policies, after 30 days notice to the land owner and a public
49 hearing.