

ARTICLE 7. SITE DEVELOPMENT AND RESOURCE PROTECTION STANDARDS

CHAPTER 70 ADEQUATE PUBLIC FACILITIES

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70.1. Purpose.

The purpose of adequate public facilities review is to:

1. Implement adequate public facilities policies of the Comprehensive Plan and other functional plans adopted pursuant to the policies of the Comprehensive Plan, including:
 - a. The Lexington Park Transportation Plan,
 - b. The Comprehensive Water and Sewerage Plan,
 - c. The Educational Facilities Master Plan,
 - d. The Fire and Rescue Services Master Plan,
 - e. The Land Preservation and Recreation Plan, and
 - f. The Capital Improvements Program (CIP).
2. Require developers to provide or make arrangements for new or additional public facilities, or upgrades of existing public facilities that are necessary to address the impacts of their projects.
3. Control phasing and timing of development approval by conditioning such approval upon a finding that public facilities sufficient to serve proposed development are present or will be provided concurrent with that development.
4. Encourage new development to occur in areas of the County where public facilities are being provided and which are designated for new growth in the Comprehensive Plan; and
5. Assure that proposed development will not adversely affect the public health, safety, and welfare; and
6. Implement uniform procedures, standards, and requirements for the review of development applications.

70.2. Applicability.

Compliance with the adequate public facilities provisions of this chapter is required at preliminary subdivision plan approval and/or final site plan approval. No plan for a subdivision, or major site plan shall be approved unless the Planning Director or the Planning Commission, as the case may be, first determines that the proposed subdivision or development will not adversely affect the adequacy of public facilities

1 serving the area, project, or development or, in the alternative, adequate public facilities will be provided
2 concurrent with the development of the project.

3 1. **Subdivisions.**

4 a. Approval of a preliminary plan submission for a major subdivision by the Planning
5 Commission or final plan approval of a minor subdivision by the Planning Director shall
6 be based on, among other requirements of this Ordinance, a determination that adequate
7 public facilities, as defined in Sections 70.7 through 70.12, will be available to serve the
8 new development except for storm drainage. Prior to subdivision recordation a
9 determination shall be made that storm drainage is adequate, that necessary sewer
10 allocations have been made and all necessary legal arrangements and financial guarantees
11 required under this chapter shall be executed.

12 b. Approval of a minor subdivision final plan, including allocation of APF capacity, may be
13 made by the Planning Director under delegated authority from the Planning Commission.

14 2. **Site Plans.** For site plans, adequacy determinations shall be made at final site plan review.
15 Approval of a final site plan by the Planning Director shall be based on a determination that
16 adequate public facilities, as defined in Sections 70.7 through 70.12, will be available to serve the
17 new development. Prior to signature approval of any site plan approved by the Planning Director,
18 all necessary legal arrangements and financial guarantees required under this chapter shall be
19 executed.

20 3. **Water Dependent Facilities.** For water-dependent facilities, including marinas, where approval of
21 a concept development site plan is required by this Ordinance, adequacy determinations may be
22 made by the Planning Commission at the time of approval of the concept development site plan
23 approval.

24 4. **Planned Developments; Rezonings.** All properties involved in zoning amendments shall be
25 subject to the provisions of this chapter during the subdivision and/or site plan approval processes.

26 5. **Effect of Determination.** A determination that public facilities are adequate shall apply to the
27 proposed development and shall not be modified through final subdivision plat approval.

28 6. **Expiration of Adequate Public Facilities.** All findings of adequacy for roads, sewerage, water,
29 fire suppression water supply, storm drainage, and schools shall expire with the expiration of the
30 final approval of the major site plan, pursuant to Section 60.8.1 of the St. Mary's County
31 Comprehensive Zoning Ordinance, and with the expiration of the approval of the preliminary plan
32 for major subdivisions, pursuant to Section 30.5.4 of the St. Mary's County Subdivision
33 Ordinance.

34 **70.3. Exemptions.**

35 Except for a determination of the adequacy of sewer and water service, this Chapter does not apply to a
36 residential subdivision that creates no more than two (2) family lots from a parcel or from a lot of record as
37 of September 4, 2008, or a site plan for non-residential developments containing less than 5,000 square feet
38 of floor area.

39 **70.4. Essential Public Facilities.**

40 For purposes of this chapter and the requirement that public facilities sufficient to serve the proposed
41 development are present or will be provided concurrently with the proposed development. The following
42 public facilities shall be deemed essential public facilities that the absence of which may serve as the basis
43 for delay of approval until APF findings can be made.

44 1. Roads.

45 2. Sewerage.

46 3. Water.

47 4. Fire Suppression Water Supply.

48 5. Storm Drainage.

1 6. Schools.

2 **70.5. Submission Requirements.**

3 1. **Submission to the Planning Director.** An applicant shall submit an adequate public facilities
4 study (APFS) in conformance with the requirements of this chapter as part of the preliminary
5 subdivision or major site plan application. The Planning Director shall determine whether the
6 application is complete pursuant to Section 21.1.1, and whether it complies with the APFS
7 submission requirements set forth below. If the submission is complete, the Planning Director
8 shall evaluate the APFS for the proposed development for compliance and shall submit a report
9 pursuant to Section 70.6.1 below.

10 2. An APFS shall contain the following information:

- 11 a. A description of the proposed development, its location, and the conditions of all public
12 facilities that are regulated by this chapter; and
- 13 b. An assessment of the vehicle trips generated by the development, (see Schedule
14 70.7.4);and
- 15 c. The number of potential public school students generated by the development; and
- 16 d. Market absorption of the project; and
- 17 e. Analyses and identification of project impacts on public facilities covered by this chapter;
18 and
- 19 f. Proposed mitigation program for impacts to public facilities; and
- 20 g. A completed form summarizing development impacts as set forth at Schedule 70.5 for
21 each phase of construction; and

22 **Schedule 70.5: Summary information on Development Impacts**

Subdivision Name/Site Plan Name Phase Planned start of construction date Planned end of construction date	Before development	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	At Buildout
Dwelling units												
Non-residential development square footage												
Total Trip generation from residences												
Total Trip generation from non-residential development												
School population												
Elementary												
Middle												
High												
Average daily water usage												
Average daily sewage flow												
Fire suppression water supply and Stormwater Management.												

23 h. A traffic impact study if required by Section 70.7.4 of this Ordinance, that complies with
24 the requirements of this section and any supplemental guidelines approved by the
25 Director of Department of Public Works and Transportation. At a minimum the study
26 area shall include the point of first ingress to and egress from the proposed development
27 to and including the intersection with the first county collector or arterial road or state
28 highway in all directions from the proposed development. The study shall include:

- 29 (1) Include traffic flow studies of the roads and intersections that will be
30 affected by vehicular traffic to and from the development.
- 31 (2) Consider, at a minimum, existing traffic and pavement conditions, traffic
32 projected to be generated from other proposed developments for which site
33 plan or preliminary plan approval have been granted, projected increases in

- 1 through traffic at the time of completion of the proposed development, and
2 traffic projected to be generated from the proposed development.
- 3 (3) Propose any road improvements necessary to achieve the required level of
4 service.
- 5 i. A school impact study using the latest official September 30 enrollments published by the
6 St. Mary's County Board of Education including:
- 7 (1) Schools to be attended by the projected student population of the project
8 and existing enrollments at those schools; and
- 9 (2) The student yield per dwelling unit as published in the latest Board of
10 County Commissioners adopted economic impact fee study.
- 11 j. An assessment of the adequacy of sewerage, domestic water supply, fire suppression
12 water supply, and storm drainage, based upon the adequacy criteria set forth in Section
13 70.8, 70.9, 70.12 and 70.10 respectively.

14 **70.6. Procedure for Determination of Adequacy of Public Facilities.**

- 15 1. Planning Director Determination on Major Site Plans.
- 16 a. If the Planning Director concludes that each public facility will be adequate to serve the
17 proposed development at the standards set forth in this chapter, the Planning Director
18 shall make a positive recommendation in his staff report.
- 19 b. If the Planning Director determines that any public facility will not be adequate to serve
20 the proposed development at the standards set forth in this chapter, the Planning
21 Director's report shall indicate appropriate mitigation consistent with the criteria set forth
22 in Section 70.6.3 below, as conditions for approval. Mitigation for an inadequacy in
23 schools shall not be permitted.
- 24 c. If the Planning Director determines that the application should be conditionally approved,
25 the Planning Director's report shall identify conditions or stipulations that may be
26 included regarding the density of the proposed development, the timing and phasing of
27 the proposed residential development, the provision of public facilities by the applicant or
28 any other reasonable conditions to ensure that all public facilities will be adequate to
29 serve the proposed development when it will begin to utilize such public facilities. The
30 report shall, at a minimum, include the following:
- 31 (1) For residential developments, the number and type of dwelling units
32 proposed by the applicant and the impact of those dwelling units on each
33 category of public facilities set forth in this chapter;
- 34 (2) For non-residential developments, the amount of square footage by type
35 proposed by the applicant and the impact of that square footage on each
36 category of public facilities set forth in this chapter.
- 37 (3) The timing and phasing of the proposed development, if applicable.
- 38 (4) The capacity of existing public facilities in the area that will be affected by
39 the proposed development.
- 40 (5) The availability of existing capacity to accommodate the proposed
41 development.
- 42 (6) If existing capacity is not available, planned capacity and the year in which
43 such planned capacity is projected to be available.
- 44 2. **Planning Commission Determination on Major Subdivisions.** In the case of major subdivisions,
45 the Planning Commission shall make the adequate public facilities determination. In making that
46 determination, the Commission shall receive and review the Planning Director's report prepared
47 for the major subdivision pursuant to the same standards in Section 70.6.1, the adequate public

- 1 facilities study (APFS), and other information submitted by the applicant. Upon review of this
2 information, the Commission shall determine if the required level of infrastructure exists or will
3 exist to meet the standards of this chapter, and whether the approval of the proposed development
4 will be in the public interest.
- 5 3. **Mitigation Required.** Upon determination by the Planning Director or the Planning Commission,
6 as the case may be, that public facilities are not adequate, the Planning Director (for major site
7 plans) and the Planning Commission (for major subdivisions) may disapprove the project or
8 require mitigation from an applicant to ensure that adequate levels of public facilities consistent
9 with this chapter will be put in place concurrent with development.
- 10 a. Except for school facilities, mitigation may include one or more of the following:
- 11 (1) Dedication of property to the County.
12 (2) Additional or special impact fees.
13 (3) Fees in lieu of an improvement.
14 (4) Participation in necessary private/public partnerships to provide required
15 public facilities.
16 (5) Developer agreements.
17 (6) Off-site improvements.
18 (7) Other mechanisms as may be determined to provide adequate public
19 facilities by the Planning Director or Planning Commission, as the
20 approving authority.
- 21 b. For school facilities, mitigation may include dedication of property to the County,
22 including but not limited to suitable school sites, where “suitable” shall mean that the site
23 is acceptable to the Board of Education and that:
- 24 (1) The site is located within a service area that is in need of additional
25 capacity;
26 (2) The site is useable;
27 (3) The site is sized to satisfy state criteria; and
28 (4) The school to be located within the site is funded for construction within the
29 first three years of the CIP.
- 30 c. The Planning Director (for major site plan) and the Planning Commission (for major
31 subdivision) shall review and have final approval of the proposed mitigation program of a
32 proposed major subdivision or development. A mitigation program shall include the
33 type(s) and methods of mitigation and schedules for the implementation of the mitigation
34 program.
- 35 d. A mitigation program shall be contained in a legal, binding, adequate public facilities
36 agreement between the applicant and the County. Such agreement must have been
37 approved for form and content by the County Attorney.
- 38 e. A mitigation program shall be binding on the heirs, successors, and assigns of a project
39 and shall run with the land. The deed or title for a property shall contain references to the
40 mitigation program.
- 41 4. **Disapproval of Project.** If an applicant fails to agree to a mitigation program to assure adequate
42 levels of essential public facilities, the Planning Director (for major site plan) or Planning
43 Commission (for major subdivision) shall disapprove the project for want of adequate public
44 facilities as required by this chapter.
- 45 5. **Bonding or Surety.** The Planning Commission shall require bonding or surety as appropriate to
46 cover the costs of the facilities and lands not under the applicant’s ownership that are part of a

1 mitigation program. Upon default, the County shall have the authority to redeem the bonds or
2 surety in addition to any other remedy provided by law.

3 **70.7. Roads.**

4 1. **Access.** Service drives; acceleration, deceleration, passing, or turning lanes; traffic control signal
5 or other traffic control measures and shared access with adjacent sites may be required by the
6 appropriate approving authority, either the Planning Commission or the Planning Director, at the
7 request of the Director of Public Works and Transportation, at principal vehicular access points,
8 with length and width as appropriate to the anticipated flow of traffic. Roads to serve the
9 proposed development shall be designed and constructed in accordance with the County Road
10 Ordinance and shall be adequate to accommodate the vehicular traffic projected to be generated by
11 the development. Pedestrian and bicycle access shall be coordinated with the vehicular access and
12 separated to the maximum degree possible from vehicular access points to reduce congestion,
13 friction, and hazard.

14 2. **Determining Adequacy.** Roads shall be considered adequate to accommodate traffic projected to
15 be generated by the proposed development if:

- 16 a. Roads serving the project are a minimum of 18 feet wide and are or will be capable of
17 accommodating existing traffic, traffic projected to be generated from developments for
18 which plats and plans have been approved, and traffic projected from the proposed
19 development at an adequate level of service, as set forth below. Service levels shall be
20 met from the first points of egress from and ingress to the proposed development to and
21 including the intersection with the first county or state collector or arterial road or state
22 road in all directions from the development; or
- 23 b. The County or State has programmed for construction in a capital improvements program
24 or similar plan, at least 75 percent funded in the then current fiscal year, additional roads
25 or road improvements necessary in combination with existing roads and intersections to
26 comply with the standards specified in Section 70.7.3.b; or
- 27 c. The applicant agrees to undertake the construction of the roads or road improvements
28 necessary to comply with the standards specified in Section 70.7.3.b.
- 29 d. The development is located within designated Town Centers and Development Districts
30 where the County wants to encourage new development, or redevelopment. These
31 developments would be allowed to proceed in certain areas experiencing unacceptable
32 levels of service, provided that transportation improvements are made which would result
33 in an improvement in traffic operations beyond what would have been expected if the
34 development had not occurred. In addition, mitigation measures may be required by the
35 Planning Commission to comply with the standards specified in Section 36 70.7.3.b.
- 36 e. The project must comply with the provisions of the St. Mary's County Subdivision
37 Ordinance for private roads, as amended from time to time, for lots served by a private
38 drive or road.

39 3. **Standards for Level of Service.**

- 40 a. Service levels shall be as defined by the current edition of the Highway Capacity Manual
41 (Special Report #209) published by the Transportation Research Board or other
42 acceptable methodology, as amended from time to time; or
- 43 b. The established minimum level of service (LOS, as computed per the critical lane
44 analysis method) for intersection capacity for developments in base zoning districts
45 within planning districts designated in the Comprehensive Plan as follows:

12/3/13
#36

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Schedule 70.7.3: Allowable Levels of Service

Base Zoning District	Comprehensive Plan District		Peak Hour
Residential Districts	Development Districts		LOS D
	Town Centers and Village Centers		LOS C
Commercial and Mixed Use Districts	Development Districts		LOS D
	Town Centers and Village Centers		LOS C
Industrial and Office Districts	Development Districts		LOS D
	Town Centers and Village Centers		LOC C
Rural Districts and Commercial Marine Districts	Rural Preservation District		LOS C

- 2 4. **Traffic Impact Study.** The applicant shall submit a traffic impact study including traffic flow
3 studies of the roads, highways, and intersections identified in the preliminary analysis, if deemed
4 necessary by the Director of the Department of Public Works and Transportation given the vehicle
5 trip generation data submitted as part of the adequate public facilities study. A traffic impact study
6 shall meet the following requirements:
- 7 a. A link capacity analysis shall be performed on the major public roadways within the
8 study area where the traffic signal spacing exceeds two miles.
- 9 b. An unsignalized analysis shall be utilized at intersections not programmed to be
10 signalized at the time of the study. The result of the analysis shall be to determine proper
11 lane usage at the intersection, and the need for traffic signal warrant analysis.
- 12 c. A traffic signal warrant analysis shall be performed when appropriate using standard
13 methodologies and criteria.
- 14 d. Any pass-by trip percentage, and any trip generation rates not listed below, will be in
15 accordance with the latest edition of the Institute of Transportation Engineer's Trip
16 Generation Manual. If a trip generation rate has been calculated for a specific
17 development, usage of that rate may be approved by the Director of Department of Public
18 Works and Transportation.
- 19 e. Estimated queue lengths will be calculated to check the adequacy of the length of all turn
20 lanes at each intersection. Maryland State Highway Administration (SHA) criteria shall
21 be used to estimate the queue lengths.
- 22 f. Special circumstances (such as wide medians or closely spaced intersections) may exist
23 that prevent an accurate measure of level-of-service by conventional analysis. Under
24 these circumstances, adjustments to the analysis assumptions or analysis using
25 specialized traffic models may be required.
- 26 g. Applicants may elect to render fee payment to the County Department of Public Works
27 and Transportation to have the traffic impact study performed by an independent
28 consultant.
- 29 h. Traffic impact studies submitted to the Department of Public Works and Transportation
30 may be reviewed by an independent, qualified professional at the expense of the
31 applicant. The review fee shall not be revenue-producing, but shall be for cost recovery
32 purposes only.

Schedule 70.7.4: Trip Generation Tables

Use	Average Daily Trips (ADT)	AM Peak Hours			P.M. Peak Hours		
		IN	OUT	TOTAL	IN	OUT	TOTAL
Single-family Residence	9.55 /DU	.20	.56	.76	.66	.36	1.02
Apartment	6.47 /DU	.09	.42	.51	.43	.20	.63
Condo/Townhouse	5.86 /DU	.07	.37	.44	.36	.19	.55
Industrial	6.97 per 1000 s.f.	.72	.16	.88	.09	.72	.91

General Office Trip Generation Vehicle Trips per 1000 square feet Gross Floor Area								
1000 s.f. Gross Floor Area	Average Daily Trips (ADT)		A.M. Peak Hours			P.M. Peak Hours		
	Rate	Volume	Rate	IN	OUT	Rate	IN	OUT
<10	24.6	246	3.20	2.85	.35	3.40	.58	2.82
10-<25	19.72	493	2.60	2.31	.29	2.68	.46	2.22
25-<50	16.58	829	2.22	1.98	.24	2.24	.38	1.86
50-<100	14.03	1403	1.90	1.67	.21	1.87	.32	1.55
100-<200	11.85	2369	1.64	1.46	.18	1.56	.27	1.29
200-<400	10.77	3230	1.50	1.34	.17	1.40	.24	1.16
>=400	9.96	3984	1.40	1.25	.15	1.30	.22	1.08

Shopping Center Vehicle Trip Generation Vehicle Trips per 1000 square feet Gross Leasable area								
1000 s.f. Gross Floor Area	Average Daily Trips (ADT)		A.M. Peak Hours			P.M. Peak Hours		
	Rate	Volume	Rate	IN	OUT	Rate	IN	OUT
<10	167.59	1676	4.19	2.64	1.55	15.14	7.57	7.57
25-<50	91.65	4683	2.16	1.36	.8	8.44	4.22	4.22
50-<100	70.67	7067	1.62	1.02	.6	6.56	3.28	3.28
100-<200	54.5	10899	1.22	.77	.45	5.10	2.55	2.55
200-<400	46.81	14043	1.03	.65	.38	4.40	2.2	2.2
>=400	42.02	16809	.92	.58	.34	3.97	1.99	1.99

70.8. Sewerage.

1. **Types of Service.** An adequate public community sewerage system, multi-use sewerage system, or individual sewerage system shall serve the proposed development. New development requiring subdivision or site plan approval within an area designated for service under the Comprehensive Water and Sewerage Plan (i.e., within an S-1, S-3D or S-6D service area) shall be required to connect to the public community sewerage system. The Director may waive or defer this requirement with concurrence from the Metropolitan Commission and from the Office of Environmental Health upon demonstration by the applicant (namely the owner or contract purchaser of or agent for the owner or contract purchaser of subject property) that a connection would not be feasible considering the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements. The applicant has the burden of proving that the waiver or deferral is justified based on the facts. Following a waiver or deferral, the resulting private sewer service shall be:

- a. Approved by the Office of Environmental Health;
- b. Designed for future connection to a public system when the Metropolitan Commission determines that a connection is feasible and the private sewer service shall be discontinued and the property shall be connected to the public system; and
- c. In compliance with Section 70.8.3 below.

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- 1 2. **Determining Adequacy.**
- 2 a. **Community Sewerage System.** The system shall be considered adequate to accommodate
- 3 the proposed development if:
- 4 (1) The system meets the requirements of the applicable Maryland Department
- 5 of the Environment regulations and those of the St. Mary's County
- 6 Metropolitan Commission; and
- 7 (2) The public sewerage collection system serving the project will be complete
- 8 and ready for connection and either an existing treatment facility is
- 9 available to accommodate the volume of sewage to be generated by the
- 10 project and other developments for which plats have been approved, or a
- 11 new or expanded facility will be available to accommodate the existing
- 12 sewage flow and the anticipated sewage flow from the project and other
- 13 developments for which plats and plans have been approved before the
- 14 sewage is generated providing the Department of Land Use and Growth
- 15 Management and the County Attorney have no problem with the change;
- 16 and
- 17 (3) The Metropolitan Commission has programmed for construction, in a
- 18 capital improvements program or similar plan, additional treatment and
- 19 collection capacity necessary in combination with existing treatment and
- 20 collection facilities to meet projected needs; or
- 21 (4) The applicant agrees to undertake the construction of the sewer system
- 22 improvements required to meet projected needs; or
- 23 (5) The applicant agrees to contribute an amount acceptable to the Metropolitan
- 24 Commission to the financing of specific improvements, in accordance with
- 25 the Comprehensive Water and Sewerage Plan that will meet the need.
- 26 b. **Multi-user Sewerage System or Individual Sewerage System.** These systems shall be
- 27 considered adequate if:
- 28 (1) Connection to a public community sewerage system is not permitted by the
- 29 Comprehensive Water and Sewerage Plan.
- 30 (2) The multi-user and individual systems meet applicable Maryland
- 31 Department of the Environment requirements and the County Health
- 32 Department regulations.
- 33 3. **Standards.** All future developments shall comply with the provisions and intent of the
- 34 Comprehensive Water and Sewerage Plan, the St. Mary's County Standard Specifications for
- 35 Water and Sewerage Construction, and the regulations of the St. Mary's County Health
- 36 Department and St. Mary's County Metropolitan Commission. The owner, developer, or other
- 37 applicants for subdivision or site plan approval shall present evidence that the proposed method of
- 38 sewage disposal is consistent with said plans and directives.
- 39 **70.9. Water.**
- 40 1. **Types of Service.** Proposed development shall be served by an adequate community water supply
- 41 system, multi-user water supply system, or individual water supply system.
- 42 a. **Public Water Systems Required.** All residential subdivisions of 25 lots or more in any
- 43 zoning district must connect to a public water system. All development in the
- 44 Development Districts, Town Centers and Village Centers that is designated for service
- 45 under the Comprehensive Water and Sewerage Plan (i.e., within a W-1, W-3D or W-6D
- 46 service area) must be served by a public water system of sufficient capacity.
- 47 b. **Waiver or Deferral.** For development in a Development District, Town Center or Village
- 48 Center and designated for service under the Comprehensive Water and Sewerage Plan

(i.e., within a W-1, W-3D or W-6D service area), the Director may waive or defer the above requirement with concurrence from the Metropolitan Commission and from the Department of Environmental Health if the applicant (namely the owner, contract purchaser or their agent) demonstrates that connecting to or constructing a new water system would not be feasible in consideration of the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements. The applicant has the burden of proof that waiver or deferral is justified based on the facts. Following a waiver or deferral, the resulting private water service shall be:

- (1) Approved by the Office of Environmental Health;
- (2) Designed for future connection to a public system when the Metropolitan Commission determines that a connection is feasible and the private water service shall be discontinued and the property shall be connected to the public system; and; and
- (3) In compliance with Section 70.9.3 below.

c. Authorization for Use of Wells. Any development not required to connect to a public water system may be served by an individual well.

2. ***Determining Adequacy.***

a. The water supply shall be considered adequate if it meets the applicable requirements of the Maryland Department of the Environment, the St. Mary's County Health Department, and the St. Mary's County Metropolitan Commission regulations.

3. ***Standards.***

- a. No final plat for a residential subdivision or site plan for commercial or industrial development requiring a ground water appropriations permit shall be approved until the State issues the permit.
- b. All future developments shall comply with the provisions and intent of the Comprehensive Water and Sewerage Plan, the St. Mary's County Standard Specifications for Water and Sewerage Construction, and the regulations of the Health Department and St. Mary's County Metropolitan Commission. The owner, developer, or other applicants for subdivision or site plan approval shall present evidence that the proposed method of water supply is consistent with these plans and directives.

70.10. Storm Drainage.

1. ***Determining Adequacy.*** The proposed development shall be served by an adequate storm drainage system. A storm drainage system shall be considered adequate if:

- a. The on-site drainage system installed by the developer will be capable of conveying through and from the property the design flow of storm water runoff originating in the development during a 2-, 10-, and 100-year flood as determined in accordance with criteria specified in the Stormwater Management Ordinance, in addition to flows from undeveloped land upstream in the natural watershed of the proposed development, flows from existing upstream developments, and designs flows from developments for which plats and plans have been approved, without resulting in erosion, sedimentation or flooding of the receiving channel and downstream properties; and
- b. The off-site downstream drainage systems are capable of conveying to an acceptable outfall the design flow of storm water runoff originating in the development, as determined in accordance with criteria specified in the Stormwater Management Ordinance, in addition to flows from undeveloped land up-stream in the natural watershed of the proposed development, flows from existing upstream developments, and design flows from developments for which plats have been recorded, without resulting in erosion, sedimentation, or flooding of the receiving channel and down-stream properties.

- 1 c. Or any proposed development that drains to or across highly erodible soils, the
2 downstream extent of this review shall be to the point at which a channel is found that is
3 adequate to receive the design flow or the level of the tidal floodplain.
- 4 d. For development that does not drain to or across highly erodible soils, the downstream
5 extent of this review shall be:
- 6 (1) To the point at which a channel is found that is adequate to receive the
7 design flow , or
- 8 (2) To the point at which the total drainage area is at least 100 times greater
9 than the area of the proposed development, or
- 10 (3) To the limit of the nearest FEMA mapped 100-year floodplain.
- 11 2. **Off-site Downstream Drainage System Improvements.** A storm drainage system shall be
12 considered adequate if there is compliance with subsection 70.10.1.a and the County has awarded
13 a contract for the construction or improvement of off-site downstream drainage systems necessary,
14 in combination with existing systems, to comply with the standard specified in subsection
15 70.10.1.b and if the construction or improvement of the off-site downstream drainage system is
16 expected to be completed before the issuance of the first building permit for the development or
17 the developer agrees to under-take the construction or improvement of the off-site downstream
18 drainage systems.
- 19 3. **Calculating Runoff.** In determining the adequacy of a storm drainage system, storm water runoff
20 flows from land for which a plat has not been recorded shall be calculated as if the land was
21 developed according to its existing zoning classification and as if storm water management
22 techniques, as may be required by the Stormwater Management Ordinance, have been utilized.
23 Storm water runoff flows from other lands shall be calculated on the basis of whether or not storm
24 water management techniques have been utilized.
- 25 4. **Channel Adequacy.** Adequate channel shall be defined as a natural or man-made channel or pipe
26 that is capable of conveying the runoff from a 10-year storm without overtopping its banks or
27 eroding after development of the site in question, or without causing the flooding of structures
28 from a 100-year storm event.
- 29 **70.11. Schools.**
- 30 1. **Applicability.** The provisions of this Section 70.11 apply to all development except:
- 31 a. Proposed development to be developed exclusively for non-residential uses; or
- 32 b. Proposed development to be developed according to federal regulations restricting
33 occupancy in the dwelling units to persons 55 years or older; or
- 34 c. A proposed residential subdivision that creates not more than two (2) family lots from a
35 parcel or from a lot of record as of September 4, 2008.
- 36 2. **Determining Adequacy.**
- 37 a. Elementary and secondary schools shall be adequate, as determined by Section 70.11.3,
38 to accommodate the school population to be generated from the proposed development.
- 39 b. The calculation of the school population to be generated by all development subject to
40 such a determination shall use the guidelines for student yield as approved by the Board
41 of County Commissioners.
- 42 3. **Standards.** Schools shall be considered adequate if:
- 43 a. The school population projected to be generated from the proposed development may be
44 enrolled without the enrollment exceeding:
- 45 (1) One-hundred and seven percent (107%) percent of the cumulative state-
46 rated capacity of elementary schools within the north or south attendance

1 zones established by resolution by the Board of County Commissioners
2 within which the proposed development is to be located, or

3 (2) One-hundred and nine percent (109%) of the cumulative state-rated
4 capacity of all middle schools in the County, or

5 (3) One-hundred and sixteen percent (116%) of the cumulative state-rated
6 capacity of all high schools in the County;

7 The calculation of available state rated capacity shall include such capacity of existing
8 schools, plus the proposed capacity of additional schools and school improvements that
9 are programmed within the first three years of the Capital Improvements Program, and
10 sites for such additional schools are owned or controlled by the County or by the Board
11 of Education; and

12 b. Where the development proposal is for phased construction, adequate capacity is
13 projected to be available, pursuant to school enrollment projections for the schools
14 serving the proposed development before each phase has begun.

15 **70.12. Fire Prevention and Suppression.**

16 1. These provisions shall be administered in conjunction with the St. Mary's County Metropolitan
17 Commission and County Fire Board.

18 2. **Determining Adequacy.** The proposed development shall be adequately served by fire
19 suppression facilities. The specific requirements depend on whether the proposed development
20 will be served by a public water system or private wells. A proposed development shall be
21 considered to be adequately served by fire suppression facilities if according to the following
22 requirements:

23 a. **Public Water.** The proposed development shall be considered to be adequately served by
24 fire suppression facilities if:

25 (1) It is served at the time of issuance of the first occupancy permit by an
26 approved public (central) water supply system or multi-user water supply
27 system capable of providing fire flow in accordance with the St. Mary's
28 County Metropolitan Commission Standards and Specifications for Water
29 and Sewage Construction and the St. Mary's County Building Code and
30 consistent with the County Comprehensive Water and Sewerage Plan for
31 that type of development; or

32 b. **Private Wells.** The proposed development shall be considered to be adequately served by
33 fire suppression facilities if:

34 (1) Fire flow and storage capabilities are installed in accordance with NFPA
35 1142 Standard on Water Supplies for Suburban and Rural Fire-fighting,
36 when buildings are "grouped" as defined by NFPA 1142.

37 (2) Water for fire suppression shall be provided in accordance with NFPA 1142
38 Standard on Water Supplies for Suburban and Rural Fire Fighting. The
39 water source shall be provided, unless specific exemption is given for the
40 installation of a sprinkler system by the fire department in whose area the
41 premises lie or the amount of water carried on fire apparatus responding on
42 the first alarm is greater than required by the standard. When a static water
43 source is approved a dry hydrant with all weather access shall be provided
44 to facilitate the fire department taking draft from the source. Water for fire
45 suppression shall be available:

46 (a) Within 1,000 feet of all single buildings under 12,000 sq. ft. area and

47 (b) On site for all single buildings over 12,000 sq. ft. area.

- 1 3. Fire protection measures shall be required to progress with construction in planned groups of
2 buildings in accordance with NFPA 1141, Standard for Fire Protection in Planned Building
3 Groups.
- 4 4. Private fire service mains and their appurtenances shall be installed in accordance with NFPA 24
5 Standard for Installation of Private Fire Service Mains and Their Appurtenances.
- 6 **70.13. Update of Standards, Criteria, and Procedures for Adequate Public Facilities Analyses.**
7 The County Commissioners shall consider revisions to adopted standards, criteria, and procedures for
8 adequate public facilities analyses on at least a biannual basis. As part of this process, the County
9 Commissioners shall hold a public hearing prior to the adoption of additional specific standards, criteria,
10 and procedures for determining the adequacy of public facilities. Such a hearing shall comply with the
11 requirements and procedures for text amendments to this Ordinance.
- 12 **70.14. Grandfathering.**
13 All complete applications for minor residential subdivisions submitted to the TEC prior to September 4,
14 2008 are exempt from the school adequacy requirements of this chapter, as are all approved Planned Unit
15 Developments (PUDs) that have satisfied APF requirements.

1 **CHAPTER 71 RESOURCE PROTECTION STANDARDS**

2 Sections:

- 3 71.1 Purpose.
- 4 71.2 Environmental Review and Environmental Permits.
- 5 71.3 General Site Development Standards.
- 6 71.4 Stream Resource Protection Standards.
- 7 71.5 Wetlands and Hydric Soils Resource Protection Standards.
- 8 71.6 Floodplain Resource Protection Standards.
- 9 71.7 Steep Slopes and Erodible Soils Resource Protection Standards.
- 10 71.8 Habitat Protection Standards.
- 11 71.9 Standards for Shoreline Resources.

12 **71.1. Purpose.**

- 13 1. The purposes of this chapter are to:
- 14 a. Protect the public health, safety, and welfare by maintaining the water and land resources
- 15 that provide natural functions to prevent loss of land and topsoil to erosion, filter
- 16 pollution, nutrient and sediment runoff and mitigating effects of flooding.
- 17 b. Minimize the impacts of surface land use on water resources and conserve fish, wildlife,
- 18 and plant habitats while accommodating continued growth.
- 19 c. Protect the County's most sensitive and diverse ecosystems.
- 20 d. Respect natural constraints and limitations as a primary component of development
- 21 design.
- 22 e. Enhance and protect the quality of the County's water resources by controlling soil
- 23 erosion and runoff to the maximum extent practicable.
- 24 f. Reduce sources of pollution to meet Chesapeake Bay water quality standards.
- 25 g. Protect the County's ground-water recharge areas and potential surface water
- 26 impoundment sites.

27 **71.2. Environmental Review and Environmental Permits.**

- 28 1. An environmental review process is hereby established for the following regulated activities:
- 29 a. Land disturbance that requires a building or grading permit.
- 30 b. Building or sediment and erosion control or grading permit.
- 31 c. Application for site plan or subdivision approval. or;
- 32 d. Application for any Critical Area permit.

33 2. **Exemptions.**

- 34 a. Forestry operations conducted outside the Critical Area are exempt from the
- 35 environmental reviews of this chapter.
- 36 b. Agricultural operations shall submit evidence of a currently approved and implemented
- 37 State Water Quality and Soil Conservation Plan (Farm Plan) and/or current Nutrient
- 38 Management Plan in order to be entitled to an exemption from the 15 percent
- 39 afforestation requirement in the Critical Area and to obtain exemptions from certain
- 40 performance standards of this Ordinance.

- 1 3. **Required Referral Comments.**
- 2 a. Comments from all relevant federal and state agencies are required as part of the local
- 3 environmental review process. These agencies may include:
- 4 (1) Maryland Department of the Environment (MDE).
- 5 (2) Maryland Department of Natural Resources (DNR).
- 6 (3) Maryland Department of Agriculture (MDA).
- 7 (4) The local Soil Conservation District office (SCD).
- 8 (5) The U. S. Fish and Wildlife Service (USFWS).
- 9 (6) The U. S. Army Corps of Engineers (ACOE).
- 10 b. The County shall send copies of applications for all developments, subdivisions, and site
- 11 plans wholly or partially within the Critical Area to the Critical Area Commission in
- 12 accordance with the provisions of COMAR 27.01.01.03.
- 13 4. **Application Requirements.** A sensitive areas plan shall show a vicinity map, property boundaries,
- 14 existing and proposed topography using minimum five-foot contours, existing development,
- 15 proposed development and sensitive areas including:
- 16 a. Tributary streams and their buffers delineated from the top of the normal bank at each
- 17 side of the stream, including:
- 18 (1) Outside the Critical Area measured 50 feet from each bank for intermittent
- 19 streams, or
- 20 (2) For all perennial streams and for intermittent streams inside the Critical
- 21 Area measured 100 feet from each bank and expanded, if necessary, in
- 22 accordance with the Buffer expansion provisions of 71.8.3.a.(1).
- 23 b. Jurisdictional non-tidal wetlands delineated based on 1987 ACOE manual plus a 25-foot
- 24 buffer delineated from edge of the non-tidal wetlands; and
- 25 c. Wetlands of special state concern plus their 100-foot buffers delineated from the edge of
- 26 such a wetland.
- 27 d. A 100-year floodplain, floodway, and coastal high hazard area boundary using the
- 28 identified 1929 NGVD contour elevation provided on the official floodplain maps.
- 29 e. Hydric soils, soils with hydric inclusions, highly erodible soils (k value of .35 or more).
- 30 (1) Slopes of 15 percent to 25 percent gradient; and
- 31 (2) Slopes of 25 percent gradient or greater.
- 32 f. Chesapeake Bay Critical Area boundary.
- 33 (1) The 100-foot Critical Area Buffer expanded, if necessary, for contiguous
- 34 steep slopes, hydric and highly erodible soils, and non-tidal wetlands in
- 35 accordance with the provisions of 71.8.3.a.(1).
- 36 g. Habitat Protection areas including:
- 37 (1) Forest interior dwelling species habitat; and
- 38 (2) Habitats of rare, threatened, and endangered species; and
- 39 (3) Colonial water bird nesting sites; and
- 40 (4) Water fowl staging and concentration areas; and
- 41 (5) Anadromous fish propagation waters.
- 42 h. Natural Heritage areas.

- 1 i. Forest and woodland cover including areas of mature and successional forest,
2 shrub/scrub vegetation, and developed woodland by indicating:
 - 3 (1) Forest types (deciduous, conifer, or mixed deciduous/conifer) with
4 predominant canopy and understory species identified; and
 - 5 (2) Specimen trees; and
 - 6 (3) Individual trees and shrubs in open areas.

7 **71.3. General Site Development Standards.**

- 8 1. ***Exempt Activities.*** Development activities are prohibited within a Sensitive Area except that the
9 following uses may be allowed if minimized and mitigated according to the following provisions:
 - 10 a. Local distribution lines for utilities to individual lots recorded after the effective date of
11 this Ordinance.
 - 12 b. Access roads or driveways to individual lots recorded under this Ordinance.
 - 13 c. Staging, storage, and temporary parking areas.
 - 14 d. Stormwater management devices.
- 15 2. Only the activities listed above may be permitted within Sensitive Areas that are located outside
16 the Critical Area, and only if the following standards are met:
 - 17 a. A single-use crossing or access easement for new or improved structures for access,
18 public transportation facilities, or utilities shall be approved when:
 - 19 (1) The location is essential for access and continuity; and
 - 20 (2) There are no feasible alternatives; and
 - 21 (3) Disturbance is the minimum necessary to install and maintain utilities or
22 access and the site is otherwise returned to and maintained in its natural
23 state; and
 - 24 (4) Disturbance is minimized through 90-degree crossings and best available
25 technology; and
 - 26 (5) In forested areas;
 - 27 (a) Shared road and utility easements are utilized to reduce forest
28 fragmentation; and
 - 29 (b) Utilities to serve individual houses are routed within the clearing for the
30 driveway or in existing cleared areas.
 - 31 b. Stormwater management facilities, sediment control measures, and other measures
32 required for a local, state, or federal permit may be approved if a feasibility analysis
33 clearly demonstrates that no other feasible alternative exists.
 - 34 c. Environmental restoration and stabilization activities (including structural and non-
35 structural best management practices (BMP's)) may be undertaken to prevent degradation
36 or to restore natural functions of sensitive areas resources under the direction of the
37 Department of Natural Resources, Army Corps of Engineers, the Maryland Department
38 of the Environment, or the Soil Conservation District: and
 - 39 d. Public works projects may be undertaken to eliminate threats to life or property from
40 flooding or to provide agricultural or drinking water supply under the direction of the
41 Department of Natural Resources, Army Corps of Engineers, Maryland Department of
42 the Environment or the Soil Conservation District.
 - 43 e. Silvicultural and horticultural activities may be undertaken if they are part of an approved
44 forest management plan and if they are undertaken to:

- 1 a. Tidal wetlands as officially mapped by the Department of Natural Resources (DNR), or
2 as field delineated onsite and confirmed by the Tidal Wetlands Division of Maryland
3 Department of the Environment (MDE) or the U.S. Army Corps of Engineers; and
- 4 b. Non-tidal wetlands as delineated using methods established in the Federal Manual for
5 Identifying and Delineating Jurisdictional Wetlands, 1987.
- 6 (1) A 25-foot buffer shall be preserved from the edge of non tidal wetlands and
7 shall be expanded up to 100 feet to include areas of adjoining hydric soils.
- 8 c. Wetlands of Special State Concern as determined by DNR.
- 9 **2. *Site Development Standards for Wetlands Resources.***
- 10 a. A 100-foot buffer shall be preserved from the landward edge of tidal wetlands and shall
11 be expanded, if necessary, in accordance with the provisions of 71.8.3.a. (1).
- 12 b. A 25-foot buffer shall be preserved from the edge of non-tidal wetlands and shall be
13 expanded up to 100 feet to include areas of adjoining hydric soils.
- 14 c. A 100-foot buffer shall be preserved from the edge of wetlands of special state concern.
- 15 d. For projects in the Critical Area, new development activities may not be permitted in the
16 100-Buffer and expanded Buffer unless the project is a water-dependent facility or a
17 variance is granted in accordance with the provisions of Chapter 24 and the mitigation
18 requirements below.
- 19 **3. *Mitigation.***
- 20 a. Mitigation shall be required to offset unavoidable and necessary impacts to the wetlands
21 set forth above.
- 22 (1) The plan must specify mitigation measures that will provide water quality
23 benefits and plant and wildlife habitat equivalent to the wetlands altered and
24 shall be accomplished, to the extent possible, on-site or near the affected
25 wetland. This may include payment in lieu of on-site mitigation.
- 26 **71.6. Floodplain Resource Protection Standards.**
- 27 1. ***Applicability.*** The standards of this section shall be applied to protect the 100-year floodplain
28 including, but not limited to, non-tidal floodplains, tidal floodplains and Coastal High Hazard
29 Areas.
- 30 2. ***Site Development Standards for Floodplain Resources.***
- 31 a. No building or grading permit for work within a floodplain shall be issued before the
32 applicant has obtained a waterway construction permit from the appropriate state or
33 federal authorities.
- 34 b. Development in floodways is prohibited except that additions to existing structures may
35 be approved according to the provisions of Section 76.6.5.
- 36 c. A 50-foot buffer shall be preserved around all floodplains. This buffer may be reduced to
37 25 feet when a water quality protection plan, using approved BMPs, is proposed and,
38 later, implemented.
- 39 d. Building sites on all new lots shall be outside the 100-year floodplain except for water
40 dependent facilities.
- 41 e. All floodplains, or portions of floodplains, on a project site shall have a floodplain
42 easement established around the floodplain limits, as established by the FEMA map, or
43 floodplain calculations. This easement shall be shown on the plats and plans and shall be
44 designated as a “floodplain and storm drainage easement.” The following note also must
45 be clearly shown: “No improvement shall be made in the floodplain easement shown
46 hereon without specific authorization from St. Mary’s County.”

- f. This easement shall be tied to the site boundaries in a manner that permits field verification.

71.7. Steep Slopes and Erodible Soils Resource Protection Standards.

1. **Applicability.** The standards of this section shall be applied to protect:
- a. Slopes on all soil types with 25 percent or more gradient, slopes on highly erodible soils (as defined in Table 71.7.1) with 15 percent to 25 percent gradient; and
 - b. Slopes on stable soils with 15 percent to 25 percent gradient contiguous to the required expansion of the 100-foot Critical Area Buffer pursuant to Section 71.8.3.
 - c. All soils on 15 percent or greater slopes in the Chesapeake Bay Critical Area.
 - d. All soils with an erodibility (K) factor of 0.35 or more.

Table 71.7.1: Highly Erodible Soils in St. Mary's County

	Symbols	Natural Erosiveness (k factor)
Caroline silt loam	CaC3, CaD2, CaD3	0.43
Croom gravelly sand loam	CrD2, CrD3	0.43
Evesboro-westphalia complex	EwC2, EwD2, EwE2	0.49
Westphalia fine sandy loam	WeB2, WeC2, WeC3	0.49

- e. All lands with hydric soils and soils with hydric inclusions.

Table 71.7.1.e: Hydric Soils and Soils with Hydric Inclusions in St. Mary's County

	SYMBOLS	DRAINAGE CHARACTERISTIC	
HYDRIC SOIL MAP UNITS			
Alluvial land, wet	Ad	Generally indicates non-tidal wetlands	
Beaches	Be	tidal wetland	
Bibb silt loam	Bm	poorly drained	
Elkton silt loam	Ek	poorly drained	
Fallsington sandy loam	Fs	poorly drained	
Leonardtown silt loam	Le	poorly drained	
Othello fine sandy loam	On	poorly drained	
Othello silt loam	Ot	poorly drained	
Tidal Marsh	Tm	tidal wetland	
MAP UNITS WITH HYDRIC SOIL INCLUSIONS		HYDRIC COMPONENTS	LOCATION OF HYDRIC SOILS
Beltsville silt loam (0 to 2% slopes)	B1A	Unnamed poorly drained soils	small depression areas
Klej loamy sand (0 to 5% slopes)	Kz	Poorly drained inclusions	depressions, flat low areas

- f. Significantly eroding areas and shorelines.

2. **Exemptions.**

- a. Isolated areas of steep slopes having a gradient of between 15 percent and 25 percent may be exempted from the standards of this Section, provided they are outside the Critical Area, or are less than 10,000 square feet in area, irrespective of property boundaries, and are not located in or within 50 feet of a stream buffer.
- b. Installation of best management practices (BMPs) for protection of slopes, and grade stabilization structures or shore erosion control measures may occur in areas with steep slopes provided the measures are recommended, reviewed and approved by the Soil Conservation District.
- c. Installation of shore erosion control measures may occur in areas with steep slopes provided the measures are recommended, reviewed, and approved by the Soils Conservation District and the Maryland Department of the Environment or the U.S. Army Corps of Engineers.

-
- 1 d. Areas of hydric soils or inclusions of hydric soils that are not associated with tidal, non-
2 tidal wetlands, or vernal pools.
- 3 **3. *Site Development Standards for Protection of Lands with Steep Slopes.***
- 4 a. Disturbance to slopes in excess of 25 percent is prohibited in a Rural Preservation
5 District.
- 6 b. The clearing of natural vegetation shall be minimized and shall use the best available
7 technology to control erosion and sedimentation to reduce and/or mitigate the potential
8 associated water quality impacts.
- 9 c. In areas of slopes with greater than 15 percent grade, the project shall:
- 10 (1) Maintain or improve the stability of the slope as determined by an
11 engineered site design approved by the SCD prior to grading or construction
12 anywhere on the site; and
- 13 (2) Maintain or, if possible, improve the quality of runoff entering the
14 Chesapeake Bay and its tributaries.
- 15 d. Disturbance to slopes greater than 15 percent in the Critical Area may be approved only if
16 the applicant can demonstrate that the disturbance is a best management practice and is
17 the only effective way to maintain or improve the stability of the slope. Otherwise,
18 disturbance to slopes of 15 percent or greater in the Critical Area are required to obtain a
19 variance.
- 20 e. For slopes greater than 6 percent, the 25-foot vegetated filter strip required for
21 agricultural uses in the 100-foot Critical Area buffer must be expanded four feet for every
22 1 percent slope.
- 23 f. Areas along shorelines and streams where slope is within 20 degrees of vertical with a
24 height in excess of 20 feet are at risk for erosion/collapse and shall be subject to a
25 minimum 100-foot buffer that shall be:
- 26 (1) Expanded by three feet for each one foot of height in excess of 20 feet., or
27 (2) Protected by an approved shore erosion protection measure at the toe of the
28 cliff designed for the 45-year storm event and installed prior to construction
29 of principal structures on the site.
- 30 g. Grading of a site to cut or fill areas of steep slopes within 50 feet of streams is prohibited
31 within stream buffers and within the Critical Area.
- 32 **4. *Site Development Standards for Protection of Highly Erodible Soils.***
- 33 a. The following best management practices shall be used on sites with the proposed
34 disturbance of highly erodible soils as determined by the SCD through environmental
35 review:
- 36 (1) Infiltration of run-off on-site (basins, trenches, dry ponds); or
37 (2) Flow attenuation by use of open vegetated swales and natural depressions;
38 or
39 (3) Stormwater retention structures; or
40 (4) Stormwater detention structures.
- 41 b. Development proposals located on lands in the Patuxent River watershed shall be
42 required to design and implement the following additional measures to prevent severe
43 erosion of highly erodible soils located on and off-site from the effects of altered of
44 drainage patterns and discharge of concentrated runoff:

- 1 (1) Any concentration of runoff that will flow across highly erodible soils
2 located between the point of concentration of the runoff to the point of entry
3 of the runoff into a perennial stream or other waters of the state shall be
4 managed using both structural and nonstructural best management practices
5 (BMPs) on-site and off-site.
- 6 (2) Provisions for access, installation, and maintenance of the BMPs shall be
7 required for both on site and off-site measures.
- 8 c. Wetland or stream buffer areas shall be expanded to include adjacent areas of highly
9 erodible soils.

71.8. Habitat Protection Standards.

- 11 1. The following areas shall be designated as habitat protection areas:
 - 12 a. The Chesapeake Bay Critical Area 100 foot buffer.
 - 13 b. Forest interior dwelling species (FIDS) habitat.
 - 14 c. Habitats of rare, threatened, and endangered species or species in need of conservation.
 - 15 d. Colonial water bird nesting sites.
 - 16 e. Historic waterfowl concentration areas.
 - 17 f. Designated Natural Heritage Areas, areas identified by state and federal agencies as
18 important plant or wildlife habitat areas, and areas of plant and wildlife habitat of local
19 significance.
 - 20 g. Anadromous fish propagation waters.
- 21 2. ***Forest Interior Dwelling Species (FIDS) habitat***, colonial water bird nesting sites, historic
22 waterfowl staging and concentration areas, riparian forests, important habitats designated by State
23 or federal agencies, and plant and wildlife habitats of local significance shall be conserved and
24 protected in accordance with the provisions of COMAR 27.01.09.04.
- 25 3. ***The 100-Foot Critical Area Buffer***. A 100-foot Critical Area buffer shall be established a
26 minimum of 100-feet landward from the mean high water line of tidal waters, tidal wetlands and
27 tributary streams in the Critical Area. The Buffer shall be established or managed to perform the
28 functions set forth in COMAR 27.01.09.01.B.
 - 29 a. *Modifications to the 100 foot Buffer:*
 - 30 (1) The 100-foot buffer shall be expanded to include contiguous steep slopes,
31 hydric soils whose development or disturbance may impact streams,
32 wetlands or other aquatic environments, and highly erodible soils pursuant
33 to Section 71.7.1. In the case of contiguous slopes of 15 percent or greater,
34 the Critical Area Buffer width shall be increased four (4) feet for every 1
35 percent of slope or to the top of the slope, whichever is greater in extent.
36 Buffer expansion for steep slopes is not required when the slopes are wholly
37 within the Critical Area Buffer.
 - 38 (2) The 100-foot buffer will not be required for agricultural drainage ditches
39 when the adjacent agricultural land has in place best management practices
40 as required by Chapter 73, Agricultural Resources in the Critical Area.
 - 41 b. *Regulation of Activities in the Buffer.*
 - 42 (1) No new impervious surfaces, sewage reserve easements, septic system,
43 development activities, mining or related facilities shall be permitted in
44 the 100-foot buffer, unless:
 - 45 (a) The activity is a water dependent facility pursuant to Section 41.8; or

- 1 (b) The site is within a designated Buffer Management Overlay (see
2 Section 41.7); or
- 3 (c) The applicant obtains a variance pursuant to Article 2.
- 4 (2) See Chapter 73 for regulations for agricultural activities in the Critical Area
5 Buffer.
- 6 (3) The commercial harvesting of trees within the Critical Area buffer shall be
7 allowed in accordance with Chapter 72, Forest and Woodland Resources in
8 the Critical Area.
- 9 (4) Installation of shore erosion control measures and other permitted shoreline
10 protections within the Critical Area buffer shall be allowed only in
11 accordance with Section 71.9.
- 12 c. *Guidelines for Maintaining Vegetation in the Buffer.* Natural vegetation shall be
13 maintained or enhanced in the Critical Area buffer subject to the following:
- 14 (1) Planting diverse non-invasive vegetation in the buffer is encouraged and
15 does not require a permit.
- 16 (2) An existing grandfathered lot without natural vegetation in the Buffer may
17 be retained in its current state.
- 18 (3) Areas, including fallow agricultural fields, that have been maintained for
19 five or more years such that woody vegetation (tree seedlings, saplings,
20 shrubs and native vines) is growing on the site, shall be considered to be
21 forest and shall be subject to the Forest and Woodland Protection Standards
22 set forth in Chapter 72.
- 23 (4) lands are proposed to be converted to other uses, the Buffer shall be
24 established. Where agricultural use of land within the Critical Area Buffer
25 ceases or and the In establishing the Buffer, management measures shall be
26 undertaken to provide forest vegetation that assures the Buffer functions as
27 set forth in the policies embodied in the regulations of this Chapter.
- 28 (5) For any development or disturbance in the buffer, a planting agreement shall
29 be executed in accordance with the provisions of Chapter 72, Forest and
30 Woodland Resources in the Critical Area. Planting shall be required to be
31 placed in the buffer as a condition of approval for a Buffer variance or other
32 approved disturbance in the buffer.
- 33 (6) An environmental permit is not required to:
- 34 (a) Remove dead or dying trees that are in danger of falling and causing
35 damage to structures, or resulting in accelerated shore erosion. Trees
36 not meeting this standard shall be left standing for their habitat value;
37 or
- 38 (b) Prune trees as necessary to protect or stabilize the shoreline and to
39 provide daylight to marsh grasses.
- 40 (7) Individual trees may be harvested for personal use provided the cutting does
41 not impair the water quality or existing habitat value or other buffer
42 functions as set forth in COMAR 27.01.09.01.B, and a planting agreement
43 is implemented to replace each tree harvested.
- 44 (8) Horticultural practices may be used to maintain the health of individual
45 trees.
- 46 (9) Cutting of trees or removal of natural vegetation may be permitted where
47 necessary to provide access to private piers, or to install or construct a shore

- 1 erosion protection device or measure, or a water-dependent facility,
2 providing the device, measure, or facility has received all necessary state
3 and federal permits.
- 4 (10) Other cutting techniques may be undertaken under the advice and guidance
5 of the Maryland Departments of Agriculture and Natural Resources when
6 recommended by the TEC to preserve the forest from extensive pest or
7 disease infestation or threat from fire.
- 8 d. *Buffer Management Plans.* A Buffer Management Plan shall be required to establish the
9 procedures and proposed planting for all alterations and cutting in the Buffer,
10 development activities in the Buffer, and establishment of a vegetated buffer in areas of
11 new development that are presently without a Buffer. A Buffer Management Plan shall
12 be approved by the Department of Land Use and Growth Management and may include,
13 but is not limited to, Planting Agreements, landscape plans, bonding instruments, and or
14 fees-in-lieu agreements.
- 15 4. ***Forest Interior Dwelling Species (FIDS) Habitat.***
- 16 a. These habitats include:
- 17 (1) Forests at least 50 acres in size with 10 or more acres of forest interior
18 habitat (i.e. forest width greater than 300 feet from the nearest forest edge),
19 where the majority of the forest tract should be dominated by pole-sized or
20 larger trees (5 inches or more in diameter at breast height), or have a closed
21 canopy; and
- 22 (2) Riparian forests dominated by trees five inches or more at breast height,
23 with a closed canopy, that are of at least 50 acres in size with an average
24 total width of at least 300 feet.
- 25 (3) Other forests, regardless of size, that are utilized by forest interior dwelling
26 species of birds and other wildlife may qualify.
- 27 b. For the purposes of determining forest size above, the size of the tract is based on entire
28 forest area regardless of Critical Area boundary or property boundaries. Two forest tracts
29 are unconnected when they are separated by existing nonforested habitat that creates a
30 permanent 30-foot break in forest canopy.
- 31 c. The standards of this section shall be applied to areas meeting the above criteria unless
32 the applicant demonstrates, using methods approved by the Department of Natural
33 Resources, that FIDS are not present on the site.
- 34 d. *Regulation of Activities in FIDS Habitat.* The following habitat protection and
35 management measures are required for development activities regulated by this chapter if
36 FIDS are found or are assumed to be present on a site because the area meets the criteria
37 set forth above:
- 38 (1) Applicants for projects in the Critical Area are required to use and follow
39 the guidance publication on forest interior dwelling birds adopted by the
40 Chesapeake Bay Critical Area Commission in June 2000 as amended.
- 41 (2) Activities having an adverse impact upon habitats regulated under this
42 chapter (e.g., use of off-road vehicles, intensive public use, timber
43 harvesting, or development activities) shall be minimized during the April-
44 August breeding season. This time restriction may be expanded from
45 February to August if certain early-nesting FIDS are present.
- 46 (3) Unavoidable development activities or other disturbances during the May-
47 August breeding season shall be focused on the periphery of the area (i.e.
48 roads, utility lines, corridors and structures).

-
- 1 (4) Continuous cover of branches and foliage formed by the crowns of adjacent
2 trees (forest canopy) and trees and shrubs underneath the canopy
3 (understory vegetation) should be retained, insofar as practicable.
- 4 (5) Standing dead trees (snag trees) should be retained for their value as bird
5 nesting and feeding habitat insofar as possible.
- 6 (6) The creation of small clearings that result in additional forest edge habitat
7 should be minimized.
- 8 (7) Where forest must be cleared, the cleared forest should be allowed or
9 encouraged to return to native vegetation.
- 10 (8) Disturbances adjacent to or near the Maryland Green Infrastructure network
11 as prepared by the Department of Natural Resources in the County should
12 be minimized insofar as possible.
- 13 e. *Regulation of Timber Management for FIDS Habitat.* The following techniques, or
14 approved modification of the following techniques, shall be observed for timber harvests
15 and shall be incorporated into forest management plans to maintain or improve habitat for
16 FIDS:
- 17 (1) Manage stands for regeneration of both hardwoods and pines.
- 18 (2) Maintain four to eight snags per acre (especially snags of eight inches in
19 diameter at breast height (DBH) or greater) in areas where seed tree, and
20 shelter wood harvesting occurs and, where possible, retain snags in clumps
21 of three to four.
- 22 (3) Maintain at least 30 percent canopy cover in areas to be thinned.
- 23 (4) Do not create any permanent forest openings. and
- 24 (5) Wherever possible, design the shape of harvest areas to maximize the
25 acreage of uncut forest interior habitat.
- 26 (6) Retain native broad-leafed evergreen shrubs and trees whenever these are
27 present
- 28 5. *Site Development Standards for Protection of Rare, Threatened and Endangered Species*
29 *Habitat.*
- 30 a. *Regulation of Activities Affecting Rare, Threatened And Endangered Species Habitats.*
31 The following measures are required for development activities regulated by this chapter
32 for areas identified under Section 10-2A-01et seq. of the Natural Resources Article of the
33 Maryland Annotated Code as habitat for rare threatened or endangered species:
- 34 (1) Verification of the presence or absence of such habitats, the extent of the
35 habitat present, and the measures to be taken to protect the habitat shall be
36 set forth in a development application, with the concurrence of Maryland
37 Department of Natural Resources and the U.S. Fish and Wildlife Service.
- 38 6. *Site Development Standards for Protection of Colonial Water Bird Nesting Sites and Waterfowl*
39 *Staging and Concentration Areas.*
- 40 a. The following measures are required for all development activities regulated by this
41 section on lands utilized by colonial water birds and waterfowl for nesting and staging
42 areas, as mapped by the Maryland Department of Natural Resources:
- 43 (1) The applicant will be required to establish buffer areas for colonial water
44 bird (including, but not limited to, heron, egret, tern, and glossy ibis)
45 nesting sites so that these sites are protected from the adverse impacts of
46 development activities and from disturbance during breeding season.

- 1 subdivisions for which community piers or community boat ramps are currently, or planned to be,
2 provided.
- 3 2. Any pier and/or boat ramp, in existence legally on the effective date of this Ordinance may
4 continue in use. Expansion, substantial improvement or alteration of these existing structures shall
5 be in compliance with the regulations of this Ordinance.
- 6 3. Outside of the IDA overlay zone, construction of new or expansion of existing roofed structures
7 and enclosures of any type on piers or bulkheads is prohibited channelward of mean high water or
8 beyond the landward edge of tidal wetlands.
- 9 4. Use of concrete well rings for construction of revetments, breakwaters, groins, or bulkheads is
10 prohibited.
- 11 5. A permit from the Department of Land Use and Growth Management is required for construction,
12 structural repair, and expansion of all shoreline structures.
- 13 6. Property lines shall be extended to open tidal waters as follows:
- 14 a. Determine if the applicant's property is part of a cove, peninsula, or straight shoreline
15 configuration using the St. Mary's county Critical Area Maps. (This information will be
16 used in "f" below).
- 17 b. Prepare a scale drawing showing the applicant's property and all adjacent waterfront
18 properties within a 200 foot radius of the shoreline owned by the applicant.
- 19 c. On the scaled drawing, add the shoreline as shown on the St. Mary's County Critical Area
20 Maps.
- 21 d. Intersect all property lines with the shoreline (if they do not intersect already) to create
22 cornerpoints.
- 23 e. Connect all cornerpoints created in "d" above with a chord (i.e. a straight line) for the
24 applicant's property and repeat the process for the adjoining lot on each side of the
25 applicant's property.
- 26 f. Bisect the chords, i.e. find the midpoint. Draw a line perpendicular to the chord at the
27 point of bisection for each chord created in "e" above, until they intersect, as follows,
28 depending on the applicable waterway condition:
- 29 (1) With a Cove: Extend the perpendicular line into the waterway until the lines
30 form a point of intersection.
- 31 (2) With a Peninsula: Extend the perpendicular lines landward until the lines
32 form a point of intersection.
- 33 (3) With a Straight Shoreline: The extended perpendicular lines will not
34 intersect. In this case, lines perpendicular to the chord shall be drawn and
35 extended into the waterway from the cornerpoints created in "e" above for
36 the applicant's lot and the adjoining lots.
- 37 g. Determine the useable waterway defined by the extended property lines for the
38 appropriate waterway condition.
- 39 (1) With a Cove: To determine the limits of the useable waterway for the
40 applicant's lot, connect the cornerpoints of the chord with the point of
41 intersection created in "f(1)" above. These lines are the extended property
42 lines with a cove for the purposes of this Ordinance.
- 43 (2) With a Peninsula: To determine the limits of the useable waterway for the
44 applicant's lot, connect the cornerpoints of the chord with the pint of
45 intersection created in "f(2)" above. These lines extended into the
46 waterway are the extended property lines with a peninsula for the purposes
47 of this Ordinance.

- 1 (3) With Straight Shoreline: To determine the limits of the useable waterway for
2 the applicant's lot, use the lines drawn perpendicular to the chord and
3 extended into the waterway from the cornerpoints created in "f (3)" above.
4 Since these lines intersect, the more restrictive of the two extended
5 perpendicular lines to the applicant's property shall be the extended
6 property lines for the purposes of this regulation.
- 7 (4) For properties from which extended property lines intersect in such a way
8 that the property's useable waterway is eliminated, the angles defining the
9 unbuildable area shall be bisected to provide a useable waterway to the
10 greatest extent possible.
- 11 h. Setbacks: The setback for construction within the useable waterway as determined by the
12 extended property line is as follows:
- 13 (1) No piers, "T" heads, "L" heads, mooring piles, slips or boathouses shall be
14 constructed within 25 feet of the extended property line as defined in this
15 Section.
- 16 (2) The extended property line setback may be reduced if a signed affidavit is
17 obtained by the applicant from the adjacent property owner.
- 18 i. Properties which have no useable waterway under the provisions of this Section may be
19 eligible for review by the Board of Appeals as a hardship in accordance with Chapter 25.
- 20 7. An applicant must obtain an agreement in recordable form from adjacent property owner(s) to
21 install any pier or piling closer than 25 feet to an extended property line, or to install any pier or
22 piling that crosses that line. For properties that do not have useable riparian rights, an applicant
23 may obtain written notarized permission from the adjacent property owner to construct a pier or
24 install pilings. An expansion of an existing structure already crossing an extended property line or
25 encroaching into the extended property line setback may be authorized by the adjacent property
26 owner's written notarized permission to increase the encroachment. When written notarized
27 permission cannot be obtained, the applicant may apply to the Board of Appeals for a variance to
28 encroach into the extended property line setback or to cross an extended property line.
- 29 8. The following performance standards for shoreline structures shall be observed:
- 30 a. Limits of disturbance, including stockpile areas, shall be minimized.
- 31 b. Stockpile areas shall be located outside the buffer.
- 32 c. The total area within the approved limits of disturbance shall be mitigated at 1:1. In
33 addition, any cut trees with a DBH over four inches in the buffer shall be mitigated at 2:1.
34 All mitigation shall be planted in the buffer.
- 35 d. Mitigation shall be at 3:1 for areas disturbed outside the approved limits of disturbance
36 and for the entire disturbed area when disturbance occurs prior to obtaining a permit.
- 37 e. Maximum width of structures crossing nontidal wetlands shall be three feet.
- 38 f. The use of structural shore erosion protection works measures will be permitted only in
39 significantly eroding areas where non-structural works are not practical and effective and
40 both the following conditions exist:
- 41 (1) Structural measures would provide effective and practical erosion control;
42 and
- 43 (2) Non-structural control measures would be impractical or ineffective.
- 44 g. Where structural erosion protection works are required, the measure that best provides for
45 conservation of fish and plant habitat, and which is practical and effective shall be used.

- 1 h. Clearing to allow sunlight to shoreline grasses shall be restricted to the area necessary for
2 maintenance of the grasses. Mitigation for such clearing shall occur in the 100-foot
3 buffer.
- 4 i. Limits of disturbance, and required mitigation for shore erosion protective devices and
5 measures and for water-dependent facilities shall be defined in the environmental permit
6 in accordance with the following:
- 7 (1) "Approved disturbance" shall be defined as the smaller of 1) the area
8 identified by the applicant necessary to provide access to the site, to
9 stockpile, park and/or handle equipment and materials during construction,
10 and the footprint of the proposed work; or 2) the area necessary to provide a
11 15-foot wide access through the buffer and 15-foot wide work area along
12 the length of the device plus any additional area necessary to be graded to
13 stabilize the shoreline slope (at minimum 2:1 slope unless a less steep slope
14 is otherwise required in writing by the local Soil Conservation District).
- 15 (2) Access and work areas, and areas of backfill for revetment and bulkheads
16 shall be stabilized with silt fencing during construction activities to prevent
17 erosion and runoff, and the areas shall be restored in natural ground cover.
- 18 (3) Preference for location of stockpiles, storage, and vehicular access shall be :
- 19 (a) First, access and construction by barge with no on-site stockpiling; and
20 then on
- 21 (b) Existing impervious surface anywhere on the lot; or
- 22 (c) Existing open areas located outside the Critical Area buffer (restoration
23 of disturbance with natural groundcover required); or
- 24 (d) Existing open areas inside the Critical Area 100-foot buffer (restoration
25 of disturbance with natural groundcover required).
- 26 (4) If the above areas can not be utilized, then these may be:
- 27 (a) Areas cleared outside the 100-foot buffer, and then
- 28 (b) Area cleared in the 100-foot buffer.
- 29 (5) The area within the "approved disturbance" shall not be subject to
30 mitigation except that all grading and clearing shall be mitigated according
31 to the provisions of Chapter 72: Forest and Woodland Resources in the
32 Critical Area. All trees and shrubs shall be planted in the Critical Area 100-
33 foot buffer.
- 34 j. Only a single path (includes path, walk, steps, or stairs) with a maximum width of three
35 feet (plus handrail widths when handrails are required) for safe or controlled access
36 through the buffer or to cross wetlands, may be approved provided:
- 37 (1) The limits of disturbance for construction of a means of access to a pier
38 shall be limited to an area five feet wide centered on the pat.;
- 39 (2) The resulting total impervious surface coverage for the property does not
40 exceed the allowed coverage.
- 41 (3) The path is constructed of stepping stones, mulch, loose gravel, landscape
42 timbers or wood decking that does not qualify as impervious cover under
43 Chesapeake Bay Critical Area Commission Guidance Paper #1, February
44 1996.
- 45 (4) No roof of any type is built over the path in the buffer.

- 1 (5) For stairs or ramps, landings shall not be wider than three feet except that
2 one five foot square landing may be permitted within the run for each 24
3 feet of vertical rise; and

 - 4 (6) The path shall lie along the most direct route, as determined by the
5 Department of Land Use and Growth Management, through the buffer, and
6 shall be located to minimize removal of existing vegetation and trees with
7 DBH over two inches so that canopy closure is maintained.

 - 8 (7) The total area of within the limits of disturbance shall be mitigated at one to
9 one. All mitigation shall be planted in the Buffer.
- 10 k. Boat ramp access shall be limited to:
- 11 (1) A direct access cleared and graded to 10 feet wide (plus necessary side
12 slope grading at 2:1 maximum) through the buffer.

 - 13 (2) Wheel tracks (each 1½ feet wide) installed through the buffer and an
14 impervious pad at the water's edge landward of mean high water not to
15 exceed 200 square feet (with waterward extent as approved by the state); or

 - 16 (3) Parking associated with a boat ramp shall be located outside the buffer.

 - 17 (4) The total area designated within the "approved disturbance" shall be
18 mitigated at 1:1. All mitigation shall be planted in the buffer.

1 **CHAPTER 72 FOREST AND WOODLAND RESOURCES IN THE CRITICAL AREA**

2 Sections:

- 3 72.1 Intent.
- 4 72.2 Timber Harvests in the Critical Area.
- 5 72.3 Site Development Standards for Forest and Woodland Protection.
- 6 72.4 Fees-in-Lieu of In-Kind Replacement.
- 7 72.5 Mitigation Banking.

8 **72.1. Intent.**

- 9 1. To protect forested land while also meeting the needs of the growing population.
- 10 2. To maintain and increase the forested vegetation in the Chesapeake Bay Critical Area, (the
- 11 "Critical Area") and, where possible, throughout the County.
- 12 3. To conserve forests and developed woodlands.
- 13 4. To maintain, to the extent possible, the protective values of wildlife, water quality, timber,
- 14 recreation and other resources.

15 **72.2. Timber Harvests in the Critical Area.**

- 16 1. The following standards shall be followed for the harvest of timber in the Critical Area:
- 17 a. Forest management plans are required for all timber harvesting occurring on one or more
- 18 acres in the Critical Area. In addition, a sediment control plan is required for all harvests
- 19 of 5,000 square feet or more of disturbed area in the Critical Area.
- 20 b. All new harvesting operations are subject to the environmental review process.
- 21 c. Cutting or clearing of trees within the buffer is prohibited except in accordance with the
- 22 provisions of an approved buffer management plan.
- 23 d. Lands subject to a timber harvest are required to remain in forest use, with regeneration
- 24 by the method(s) approved in the timber harvest plan, for a minimum of five years from
- 25 the date of the environmental permit issued approving the harvest. After five years from
- 26 the date the harvest was completed, conversion to a new land use will require mitigation
- 27 as provided in this Ordinance only for the area in which any cutting and clearing of the
- 28 successional forest and regenerating growth has occurred.

29 **72.3. Site Development Standards for Forest and Woodland Protection.**

- 30 1. Development activities within the Critical Area shall comply with the following standards:
- 31 a. All Overlay Zones.
- 32 (1) Mitigation planting to offset adverse impacts associated with the clearing
- 33 and cutting of trees is required in accordance with subsection 72.3.5 herein.
- 34 (2) An environmental permit is not required to remove dead or dying trees or to
- 35 prune trees; however, standing dead and dying trees (snags) have significant
- 36 habitat value for many species for food and shelter and should be left
- 37 standing when they are not a hazard to persons or property.
- 38 (3) For the cutting or clearing of trees in forests or developed woodlands
- 39 associated with the creation of new agricultural lands for bona fide
- 40 agricultural uses, including the creation of farm ponds for irrigation and
- 41 sediment collection, one to one mitigation shall be required that occurs
- 42 within:
- 43 (a) 25 feet of the edge of non-tidal wetlands; or

- 1 (b) 25 feet of the top of slopes of greater than 15 percent or those soils with
2 a "K" value greater than 0.35 and a slope greater than 5 percent.
- 3 (4) A planting agreement and bond shall be provided prior to the recording of
4 any new lots for any proposed clearing of land for installation of required
5 infrastructure or for amenities or facilities to be constructed on community
6 property. The planting agreement and subdivision plat, at a minimum, shall
7 provide for a reforestation or afforestation site on the parcel, permanently
8 protected as open space. Deferral of planting until time of development on
9 the lots shall be prohibited.
- 10 (a) Clearing on individual lots may be permitted and shall be reviewed at
11 the time of development on the lot
- 12 b. *Intensely Developed Areas.*
- 13 (1) New development shall be clustered, to the extent practicable, to minimize
14 the disturbance of areas of natural vegetation.
- 15 (2) When the cutting or clearing of trees and vegetation in forests and
16 developed woodlands areas is associated with development activities,
17 mitigation planting on-site, or payment of a fee-in-lieu if no area is
18 available to plant, shall be required on a 1:1 basis for the replacement of
19 natural vegetation cleared.
- 20 (a) Enhancement of forest and developed woodland resources using urban
21 forestry, street tree planting, gardens, landscaping or open land buffers
22 is encouraged.
- 23 c. *Limited Development Areas and Resource Conservation Areas.*
- 24 (1) In developed woodlands, natural vegetation, individual trees and landscape
25 plantings shall be conserved to the greatest extent practicable.
- 26 (2) If a project involves the alteration of forest, all forest cover removed must
27 be mitigated pursuant to Section 72.3.5. Clearing in excess of 30 percent of
28 any forest or developed woodland is prohibited.
- 29 (3) Bonding shall be provided by owners or developers in an amount acceptable
30 to the County and suitable to assure satisfactory replacement of required
31 vegetation.
- 32 (4) An approved grading permit shall be required prior to the clearing of forest
33 and developed woodland in accordance with the provisions of this
34 Ordinance.
- 35 (5) If the size of the site prevents required afforestation or reforestation, the use
36 of alternative provisions or reforestation guidelines will be permitted,
37 including the payment of fees-in-lieu for Critical Area afforestation projects.
- 38 (6) Afforestation is required to meet minimum required forest cover. All
39 properties for which an application is made for an environmental permit and
40 subdivision or site plan approval shall have or mitigate to provide 15
41 percent of their acreage in forest or developed woodland cover except that:
- 42 (a) Individual lots in a subdivision may be exempted from the afforestation
43 requirement provided the overall subdivision plan approval provides 15
44 percent coverage for the original subdivided parcel; and
- 45 (b) The acreage of a bona fide agricultural parcel that is managed under a
46 soil conservation and water quality plan (farm plan) and/or nutrient
47 management plan may be exempted from the afforestation requirement.
48 Any area excluded from management under the farm plan or nutrient

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- 1 management plan, including home sites, roads, barren lands, and other
2 areas with non-farm use, shall be subject to the minimum forest
3 coverage and afforestation requirements for the parcel.
- 4 2. ***In-Kind Forest and Developed Woodland Mitigation.*** The replacement or establishment of
5 forests or developed woodlands shall assure a diversified plant community, but may include other
6 types of woody plantings where necessary to correct an existing soil stabilization problem.
7 Diverse forest plantings shall include a canopy layer, an understory layer, and a shrub layer. On
8 wooded lots where a diverse forest does not exist, or diversity could be enhanced with understory
9 trees and shrubs, addition of these shall be a preferred option over the use of fees-in- lieu.
- 10 3. ***Calculation of Mitigation Areas.*** Afforestation and reforestation areas shall be calculated as
11 follows:
- 12 a. ***Forest Clearing.***
- 13 (1) Mitigation in the IDA shall be based on a 1:1 basis for square feet cleared.
14 (2) Mitigation in the LDA or RCA shall be based on the following required
15 quantities:
- 16 (a) Equal area basis per square foot of clearing for clearing up to 20
17 percent of existing vegetative coverage; or
- 18 (b) One-and-one-half times the area of clearing for clearing between 20
19 and 30 percent of existing vegetative coverage; or
- 20 (c) Three times the area basis per square foot for unauthorized clearing in
21 the 100-foot buffer or for clearing in excess of 30 percent of existing
22 vegetative coverage.
- 23 (3) Clearing before required permits have been obtained or clearing in excess of
24 the amount approved by the permit shall be subject to a fine as specified in
25 the schedule of fees, fines and penalties adopted by the County
26 Commissioners, three times area mitigation and other civil penalties as
27 allowed by this Ordinance.
- 28 b. ***Removal of Individual Trees and Shrubs.*** Mitigation for removal of individual trees shall
29 be on an equal area basis per square foot of disturbance outside the 100-foot buffer and
30 three times the area basis per square foot of disturbance inside the 100-foot buffer.
- 31 c. ***Shore Erosion Control Projects.***
- 32 (1) Mitigation shall be on an equal area basis for all forest, trees and shrubs
33 removed to accomplish the project.
- 34 (2) Mitigation shall be on an equal area basis for additional area of grading
35 within the approved limits of disturbance.
- 36 (3) Mitigation shall be increased to three times area basis for areas disturbed
37 outside the approved disturbance and for the entire disturbed area when
38 disturbance occurs prior to obtaining all necessary approvals.
- 39 4. ***Special Provisions.***
- 40 a. Implementation of mitigation measures for habitat protection areas that are recommended
41 by the Department of Land Use and Growth Management or the TEC may, at the
42 discretion of the approving authority, be required in addition to, or as an alternative to,
43 the mitigation quantities calculated in this subsection.
- 44 b. Removal of invasive and noxious species by hand may be permitted without mitigation if
45 the understory is allowed to naturally regenerate. Within the Buffer, the removal of
46 invasive and noxious species requires approval of a Buffer Management Plan in
47 accordance with the provisions of Section 71.8.3.d. These species are identified in the

Noxious and Invasive Species List prepared by the Department of Natural Resources and included in the appendix of the Forest Conservation Manual, latest edition.

5. ***Planting Specifications.*** Where reforestation or afforestation is required, the following minimum standards shall apply.

a. *Calculation of Required Planting:* Mitigation for disturbance to existing vegetative cover or afforestation areas shall be determined and calculated at 400 square feet per six foot tall, two inch diameter tree and 200 square feet per three gallon shrub planted.

b. *Species Type.*

(1) Unless otherwise approved by the Department of Land Use and Growth Management, tree species shall be selected from the species list recommended by the Department of Natural Resources and included in the appendix of the Forest Conservation Manual latest edition.

(2) Plant materials shall meet or exceed the requirements of standard nurserymen specifications. All plants shall be typical of the species and variety, shall have a normal habit of growth, and shall be first quality, sound, vigorous, well-branched, and with healthy, well-furnished root systems. They shall be free of disease, insect pests, and mechanical injuries. Plants shall be nursery grown. Heeled-in plants, plants from cold storage and non-nursery stock transplanted from within the Critical Area are prohibited.

c. *Site Stocking.* Stocking for the areas required for reforestation or afforestation shall meet the following density requirements summarized in Schedule 72.3.5. Plant installation shall conform to the methods for seedlings and whips, container-grown stock, and balled and burlapped trees, as recommended in the planting specifications of the Forest Conservation Manual, latest edition.

(1) Trees. A minimum of 60 percent of the total required acreage of planted mitigation shall be trees. For afforestation, at least 50 percent of the required tree acreage should be canopy trees.

(a) Minimum size of stock to be:

1. Six feet tall by two-inch caliper or greater for canopy trees.
2. Six feet tall or greater for evergreen trees.
3. One inch caliper or greater for understory trees.
4. Bare root seedlings and whip tree stock shall be allowed pursuant to an approved planting plan only.

(2) Shrubs. A maximum of 40 percent of the total required acreage of planted mitigation may be native, three gallon, shrubs.

(3) Herbaceous Plants, Hydrophytic Plants, and Vines. The Department of Land Use and Growth Management may authorize use of alternative planting materials, consistent with habitat protection area needs, special site conditions or recommendations of the Maryland Department of Natural Resources. Stocking levels for alternative plant materials shall be determined on a case by case basis as part of the environmental review.

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SCHEDULE 72.3.5: CRITICAL AREA PLANTING SPECIFICATIONS

Trees/Acre	Tree Size Average Spacing At Recommended Stocking Level*	Area Credited (Per Tree for Planted Mitigation)
400	2" caliper trees (20'x20' spacing*)	400 square feet
200	1" caliper trees (15'x15' spacing*)	200 square feet
350	Hardwood whips (11'x 11' spacing*)	120 square feet
700	seedlings/acre (8'x8' spacing*)	70 square feet
shrubs/200	3 gallon shrubs/15'x15' spacing*	200 square feet

*Not to imply trees must be planted in a grid pattern

- d. *Supplemental Materials.* The Department of Land Use and Growth Management may require the use of supplemental planting materials when approving a Critical Area planting agreement or buffer planting agreement if soils or other site conditions warrant. These supplemental materials may include but shall not be limited to soil amendments, tree staking, or tree shelters.
- 6. **Critical Area Planting Agreement.** A Critical Area planting agreement consists of a signed agreement with a planting plan and, when required, a bond.
 - a. The planting agreement shall be signed by the property owner and a bond submitted in a form acceptable to the County, if required below, prior to final subdivision or site plan approval, or issuance of an environmental permit for development activity in the Critical Area.
 - b. Implementation of the planting agreement shall be required within two planting seasons. An extension of the planting agreement for one planting season may be obtained upon written request with accompanying justification demonstrating hardship or special conditions that prevented completion of the original planting agreement. Certificates of occupancy will not be issued without satisfactory implementation of the planting agreement or payment of a bond in the amount of the estimated cost of the required planting.
 - c. Applicants are required to notify the Department of Land Use and Growth Management when the planting required by the planting agreement is complete and to request an inspection to verify implementation of the planting agreement.
 - d. The Planting agreement shall include the proposed selection of plant types, which should be chosen from the recommended plant list available from the Department of Land Use and Growth Management and the planting schedule.
 - e. For the first two years after initial planting, competing vegetation shall be effectively controlled pursuant to the planting agreement approved by the Planning Director.
 - f. *Survivability.* All mitigation plantings shall be required to achieve a 60 percent survival rate after one year. Unsuccessful plantings below 60 percent after one year shall be replanted and the bond amount for those plantings held for another year.
 - g. *Bonds.*
 - (1) Execution of a planting bond for planting is required for all non-residential applications and for all other applications when total cumulative quantities of required mitigation on a parcel or lot exceed 4,000 square feet.

- 1 (2) If implementation of the planting agreement on projects with less than
2 4,000 square feet of mitigation is not satisfactorily completed, a bond shall
3 be required prior to issuance of a certificate of occupancy.
- 4 (3) Calculating Bonds. Bond amounts are based upon the estimated base cost
5 for planting, which shall be calculated using the schedule of fees, fines and
6 penalties adopted by the County Commissioners.
- 7 (a) The bond required for any reforestation or afforestation shall be the
8 dollar figure resulting from the formula.
- 9 (4) Bonds posted to secure a Temporary certificate of occupancy shall be 100
10 percent of the estimated base cost for planting trees.
- 11 (5) In the event the applicant breaches the Critical Area planting agreement, the
12 applicant shall forfeit any bonds. The bonds shall be used by the County to
13 restore the property. If no bond was required or if the bonds are insufficient
14 to pay the costs of restoration, the County shall place a lien against the
15 property for all monies due and owing to the County for performing
16 necessary planting, maintenance, replacement of dead or dying plantings,
17 and other costs and expenses.

18 **72.4. Fees-in-Lieu of In-Kind Replacement.**

- 19 1. When forest or developed woodland cannot be replaced in kind at an on-site or off-site location,
20 the applicant shall pay a fee in lieu of planting to the County in accordance with the schedule of
21 fees, fines and penalties adopted by the County Commissioners.
- 22 2. Fees-in-lieu are not permitted for unauthorized clearing performed prior to obtaining required
23 permits (including clearing in excess of the amount approved by the permit).
- 24 3. Fees in lieu shall be maintained in a separate account to be used to fund plantings on the following
25 lands:
- 26 a. State or County lands in need of reforestation, buffers, or habitat corridors; or
27 b. Severely eroding land (non-farm) in need of reforestation, buffers, or habitat corridors; or
28 c. Severely eroding farm land; or
29 d. Unreclaimed surface mines abandoned prior to current reclamation regulations; or
30 e. Fallow fields or abandoned pastures; or
31 f. Community open space; or
32 g. Special projects designated by the County.

33 **72.5. Mitigation Banking.**

34 Mitigation banking is established to provide a process for a landowner to receive credit for native species of
35 trees planted or allowed to naturally regenerate on a property. Credit may be applied toward either
36 reforestation or afforestation requirements for development and land-disturbing activities that require
37 mitigation. Verification and acceptance of mitigation banking does not constitute any form of approval for
38 future land-disturbing activities.

39 1. **Requirements and Limitations.**

- 40 a. In anticipation of future clearing or land-disturbing activities, a landowner may obtain a
41 Critical Area permit to verify planting on a parcel in the Critical Area that will qualify as
42 a mitigation area for the anticipated clearing or land disturbance. Such a permit may be
43 issued only under the following conditions:
- 44 (1) Only native species of trees may be banked.

- 1 (2) A Critical Area site plan prepared by a registered surveyor showing the area
2 of vegetation to be planted or allowed to naturally regenerate shall be
3 submitted as part of the request for a Critical Area permit for mitigation
4 banking.
- 5 (3) Prior to issuing the permit, a planting agreement and plan shall be executed,
6 documenting the number, location, type and size of the trees to be planted or
7 allowed to regenerate.
- 8 (4) Regeneration shall occur on cleared land or abandoned agricultural lands in
9 the RCA.
- 10 (5) A planting inspection and sign-off by the inspector or the environmental
11 planner on the planting agreement shall be carried out at completion of the
12 work.
- 13 b. A new Critical Area permit must be obtained before proposed development and land-
14 disturbing activities are initiated on the parcel. It is the responsibility the applicant to
15 request use of banking as part of the application. A site inspection by the Planning
16 Director shall be performed as part of environmental review to verify the quantity and
17 location of surviving banked trees or the development of successional forest. The
18 surviving trees shall be credited, on a per tree basis and regeneration areas on a square
19 foot basis toward the Critical Area permit planting requirements. Only trees planted in
20 the 100-foot buffer may be credited toward required buffer planting. Trees and square
21 footage in excess of the amount required shall be documented as remaining in the
22 mitigation bank for the site and may be used at a later date.
- 23 c. Trees and regeneration areas that have been credited toward a planting agreement for a
24 project shall be indicated on the Critical Area site plan and shall be permanently protected
25 from being cut or cleared in the future.
- 26 d. Trees and regeneration areas that have not been credited toward a planting agreement are
27 protected as forest and woodland and, subject to all the provisions of this Forest and
28 Woodland Preservation section and clearing of these trees may be allowed subject to all
29 mitigation requirements of this Ordinance.

1 **CHAPTER 73 AGRICULTURAL RESOURCES IN THE CRITICAL AREA.**

2 Sections:

3 73.1 Purpose.

4 73.2 Performance Standards for Agriculture.

5 **73.1. Purpose.**

6 The Chesapeake Bay Critical Area Program and Ordinance is intended to preserve existing agricultural
7 uses and provide for the management of these lands so that non-point source pollution resulting from
8 agricultural activities is minimized and natural habitats are conserved. Further purposes include:

- 9 1. Managing agricultural activities to minimize pollutant loading to the Bay and its tributaries; and
- 10 2. Minimizing contamination of surface and groundwater from agricultural activities through the use
11 of best management practices; and
- 12 3. Encouraging the performance of agricultural activities in accordance with soil conservation and
13 water quality plans approved by the local Soil Conservation District; and
- 14 4. Assuring that the creation of new agricultural lands is accomplished in accordance with standards
15 that protect wetlands, steep slopes, water quality, and plant and wildlife habitats.

16 **73.2. Performance Standards for Agriculture.**

- 17 1. Creation of new agricultural areas where none has existed for the previous five years, shall require
18 an environmental permit.
- 19 2. New agricultural areas may not be created by any of the following means:
 - 20 a. Diking, draining, or filling of any class or subclass of palustrine wetlands that have a
21 seasonally flooded or wetter water regime, unless mitigation is accomplished; or
 - 22 b. Clearing forests or woodlands on soils with a slope greater than 15 percent or on soils
23 with a "K" value greater than 0.35 and a slope greater than 5 percent; or
 - 24 c. Clearing that would adversely affect water quality or destroy designated plant and
25 wildlife habitat protected by this Ordinance.
 - 26 d. Clearing of existing natural vegetation in the Buffer.
- 27 3. Agricultural activities may be permitted in the Chesapeake Bay Critical Area buffer a minimum
28 best management practice, a 25-foot vegetated filter strip measured landward from the mean high
29 water line of tidal water or tributary streams (excluding drainage ditches), or from the edge of tidal
30 wetlands, whichever is further inland, is established, and further provided that:
 - 31 a. The filter strip shall be composed of either trees with a dense cover or a thick sod of
32 grass; and
 - 33 b. The filter strip shall be expanded by a distance of four feet for every 1 percent of slope
34 for slopes greater than 5 percent; and
 - 35 c. The 25-foot vegetated filter strip shall be maintained until such time as the landowner is
36 implementing, under an approved soil conservation and water quality plan, a program of
37 best management practices for the specific purposes of improving water quality and
38 protecting plant and wildlife habitat that achieves the objectives of the 25-foot filter strip;
39 and
 - 40 d. The best management practices used in the buffer include a requirement for the
41 implementation of a grassland and manure management program, where appropriate; and
 - 42 e. Farming activities, including the grazing of livestock, are not permitted to disturb stream
43 banks, tidal shorelines or other habitat protection areas occurring in the 100-foot buffer;
44 and

- 1 f. The feed cease, the buffer shall be established. In establishing the Buffer, management
2 measures, including but not limited to, natural regeneration, shall be undertaken to
3 provide natural forest vegetation that assures the Buffer functions set forth in COMAR
4 27.01.09.
- 5 4. Existing habitat protection areas in the Critical Area may not be disturbed, except as otherwise
6 provided herein.
- 7 5. All farms upon which agricultural activities occur in the Critical Area shall implement a soil
8 conservation and water quality plan that have been approved by the St. Mary's County Soil
9 Conservation District. The plans will be formulated to ensure the use of best management
10 practices for the control of nutrients, animal wastes, pesticides, and sediment runoff to protect the
11 productivity of the land and to enhance water quality. Landowners who have signed up as
12 conservation district cooperators, but who do not have a soil conservation plan prepared for them
13 by the district, may continue farming, provided the goals and all other requirements of this
14 Ordinance are being met.

1 **CHAPTER 74 SUPPLEMENTAL CRITICAL AREA RESOURCE STANDARDS.**

2 Sections:

3 74.1 Purposes.

4 74.2 Performance Standards for Surface Mining in the Critical Area.

5 74.3 Performance Standards for Protecting the Seasonal High Water Table in the Critical
6 Area.

7 **74.1. Purposes.**

8 1. This chapter is enacted to recognize that the extraction of mineral resources is an important natural
9 resource activity permitted within the Chesapeake Bay Critical Area by COMAR 27.01.07, subject
10 to reasonable regulation. This chapter shall:

11 a. Assure that available measures are taken to protect the Critical Area from all sources of
12 pollution from surface mining operations including, but not limited to, sedimentation and
13 siltation chemical and petrochemical use and spillage; and storage of wastes, dusts, and
14 spoils.

15 b. Assure that mining is conducted in a way that permits reclamation of the site as soon as
16 possible and to the extent possible.

17 2. This chapter is further intended to prevent leaching of septic fields into the water table, which may
18 threaten the continued use of this ground water resource and which could result in additional
19 adverse impacts throughout the County's Critical Area.

20 **74.2. Performance Standards for Surface Mining in the Critical Area.**

21 1. **Mineral Resource Extraction.** Generally, the extraction of mineral resources within the Critical
22 Area may be permitted. However, all areas of proposed or active mining operations that exceed
23 one acre in size in the Critical Area may not be permitted where:

24 a. Threatened and endangered species, areas of scientific value, or rare assemblages of
25 species per Maryland Annotated Code 10-2A occur.

26 b. Highly erodible soils occur within the limits of all disturbance, or between the mining
27 operations and jurisdictional waters of the state.

28 c. The use of renewable resource lands would result in the substantial loss of long-range
29 (i.e., 25 years or more) productivity of forest and agriculture, or would result in a
30 degradation of water quality or a loss of vital habitat; or

31 d. The lands are within 100 feet of the mean high water line of tidal waters or the edge of
32 tributary streams.

33 2. **Wash Plants.** New wash plants, including ponds, spoil piles and equipment, may not be located in
34 the buffer.

35 3. **Wash Ponds.** Wash ponds shall be reclaimed as soon as practicable after the cessation of on-site
36 mining operations.

37 **74.3. Performance Standards for Protecting the Seasonal High Water Table in the Critical Area.**

38 1. In order to minimize the impacts of surface land use on the seasonal high water table, development
39 that requires on-site septic systems in the Chesapeake Bay Critical Area shall be located away
40 from areas susceptible to leaching because of topography and soils and areas where the depth of
41 the seasonal high water table is between zero and three feet.

1 **CHAPTER 75 FOREST CONSERVATION**

2 Sections:

- 3 75.1 Purpose and Authority.
4 75.2 Applicability.
5 75.3 Application Requirements.
6 75.4 Forest Stand Delineations (FSD).
7 75.5 Forest Conservation Plan (FCP).
8 75.6 Preliminary Forest Conservation Plan.
9 75.7 Final Forest Conservation Plan.
10 75.8 Afforestation, Retention, and Reforestation.
11 75.9 Afforestation and Reforestation Standards.
12 75.10 Payment Instead of Afforestation and Reforestation.
13 75.11 Financial Security for Afforestation and Reforestation.
14 75.12 Forest Conservation Cost Share Program.

15 **75.1. Purpose and Authority.**

16 The purpose of this chapter is to regulate the cutting and clearing of certain forests and to require forest
17 stand delineations and forest conservation plans for many development activities. The provisions of this
18 chapter have been developed pursuant to *Natural Resources Article*, §§5-1601–5-1612, Maryland,
19 Annotated Code, which requires units of local government with planning and zoning authority to establish
20 and implement local forest conservation programs.

21 **75.2. Applicability.**

- 22 1. Except as provided below, this chapter applies to:
- 23 a. A person making application for: a subdivision creating new building lots, site plan,
24 grading, or sediment control approval on units of land of 20,000 square feet or greater
25 after the effective date of this Ordinance.
- 26 b. A unit of county or municipal government, including a public utility or public works
27 agency, making application for a subdivision, site plan, grading, or sediment control
28 approval on areas 20,000 square feet or greater.
- 29 2. **Exemptions.** This chapter does not apply to the following activities:
- 30 a. Highway construction activities under *Natural Resources Article*, §5-103, Maryland
31 Annotated Code.
- 32 b. Areas governed by Chapter 41; or
- 33 c. Commercial logging and timber-harvesting operations, including harvesting conducted
34 subject to the forest conservation and management program under *Tax-Property Article*,
35 §8-211, Annotated Code of Maryland, that are completed before July 1, 1991, or, if
36 completed after July 1, 1991, on property that:
- 37 (1) Has not been the subject of application for a grading permit for
38 development within five years after the logging or harvesting operation.
- 39 (2) Is the subject of a declaration of intent as provided for in this chapter; or
- 40 (3) Has an approved erosion and sediment control plan.
- 41 d. Agricultural activities not resulting in a change in land use category, including
42 agricultural support buildings and other related structures built using accepted best
43 management practices.

- 1 e. The cutting or clearing of public utility rights-of-way or land for electric generating
2 stations licensed under Article 78, §§54A and 54B or §54-I, Maryland Annotated Code,
3 if:
 - 4 (1) Required certificates of public convenience and necessity have been issued
5 in accordance with *Natural Resources Article*, §5-1603(f), Maryland
6 Annotated Code; or
 - 7 (2) Cutting or clearing of the forest is conducted to minimize the loss of forest.
- 8 f. Routine maintenance of public utility rights-of-way.
- 9 g. Routine maintenance or emergency repairs of a public utility right-of-way if:
 - 10 (1) The right-of-way existed before the effective date of this Ordinance, or
 - 11 (2) Initial construction of the right-of-way was approved under this Ordinance.
- 12 h. A residential construction activity conducted on an existing single lot of any size or a
13 linear project if the activity:
 - 14 (1) Does not result in the cumulative cutting, clearing, or grading of more than
15 20,000 square feet of forest, as required by State law; and
 - 16 (2) Does not result in the cutting, clearing, or grading of a forest that is subject
17 to the requirements of a previously approved Forest Conservation Plan; and
 - 18 (3) Is the subject of a declaration of intent filed with the Department of Land
19 Use and Growth Management, as provided for in this chapter, stating that
20 the lot will not be the subject of a regulated activity within five years of the
21 cutting, clearing, or grading of forest.
- 22 i. Non-coal surface mining regulated under the Environment Article, Title 15, Subtitle 8,
23 Maryland Annotated Code.
- 24 j. An activity required for the purpose of constructing a dwelling house intended for the use
25 of the owner, or a child of the owner, if the activity:
 - 26 (1) Does not result in the cutting, clearing, or grading of more than 20,000
27 square feet of forest, as required by State law; and
 - 28 (2) Is the subject of a declaration of intent filed with the Department of Land
29 Use and Growth Management.
- 30 k. Construction of a planned unit development that, by December 31, 1991, has:
 - 31 (1) Met all requirements for planned unit development approval; and
 - 32 (2) Obtained initial development plan approval by the St. Mary's County
33 Planning Commission.
- 34 l. The cutting or clearing of trees to comply with the requirements of 14 CFR §77.25
35 relating to objects affecting navigable airspace, provided that the Federal Aviation
36 Administration had determined that the trees are a hazard to aviation.
- 37 3. **Declaration of Intent.** The purpose of the declaration of intent is to verify that the proposed
38 activity is exempt under *Natural Resources Article*, §§ 5-1601–5-1612, Maryland Annotated Code
39 and this chapter.
 - 40 a. A person seeking an exemption must file and receive approval of a declaration of intent
41 with the Department of Land Use and Growth Management before commencing the
42 exempted activity.
 - 43 b. A declaration of intent shall include the signed agreement, a sketch plan indicating the
44 location of existing forest area and the area to be cleared, and any other information that

- 1 may be required by the Department of Land Use and Growth Management depending on
2 the nature of the exemption requested.
- 3 c. An existing declaration of intent does not preclude an exempted activity on the property
4 that would be subject to a declaration of intent, if the activity:
- 5 (1) Does not conflict with the purpose of any existing declaration of intent, and
6 (2) Complies with the applicable requirements for an exempted activity.
- 7 d. If a regulated activity occurs within the area covered by the declaration of intent within
8 five years of the effective date of the declaration of intent, then:
- 9 (1) There shall be an immediate loss of exemption; or
10 (2) There may be a noncompliance action taken by the Department of Land Use
11 and Growth Management, as appropriate, under this Ordinance.
- 12 e. An applicant may apply to conduct a regulated activity on an area of the property not
13 covered under the declaration of intent if the requirements of this Chapter are satisfied.
- 14 f. The Department of Land Use and Growth Management may require a person failing to
15 file a declaration of intent or found in noncompliance with a declaration of intent to
16 perform one, more, or all of the following:
- 17 (1) Meet the retention, afforestation and reforestation requirements established
18 in this chapter.
- 19 (2) Pay a noncompliance fee as established in the schedule of fees, fines, and
20 penalties adopted by the County Commissioners for forest cut or cleared
21 under a declaration of intent.
- 22 (3) Be subject to other enforcement actions appropriate under *Natural*
23 *Resources Article*, §§5-1601–5-1612, Maryland Annotated Code and this
24 Ordinance.
- 25 (4) File a declaration of intent with the Department of Land Use and Growth
26 Management.
- 27 g. The declaration of intent is for five years.

28 **75.3. Application Requirements.**

- 29 1. The Maryland Department of Natural Resources Forest Conservation Manual, as amended from
30 time to time, is hereby incorporated by reference as St. Mary's County's Forest Conservation
31 Technical Manual.
- 32 2. A person making application after the effective date of this Ordinance for subdivision or project
33 plan approval, a grading permit, or a sediment control permit pursuant to the provisions of this
34 Ordinance for an area of land of 20,000 square feet or greater shall:
- 35 a. Submit to the Department of Land Use and Growth Management a forest stand
36 delineation and a forest conservation plan for the lot or parcel on which the development
37 is proposed; and
- 38 b. Use methods set forth in the Forest Conservation Technical Manual, as amended, to
39 protect retained forests and trees during construction.
- 40 3. Effective October 1, 2009, a building permit may not be issued to an applicant for any clearing,
41 construction, or development that will result in the trimming, cutting, removal or injury of a
42 roadside tree until the applicant first obtains a permit from the Department of Natural resources,
43 per National Resources Articles §5-401 - §5-406.

1 **75.4. Forest Stand Delineations (FSD).**

2 1. ***In General.*** A FSD for regulated activities shall be submitted in accordance with Figure 2:1 Forest
3 Stand Delineation Decision Matrix, of the Forest Conservation Technical Manual.

4 2. ***Preparation.*** The forest stand delineation shall be prepared by a licensed forester, licensed
5 landscape architect, or qualified professional who meets the requirements of COMAR
6 08.19.06.01B.

7 3. ***Submittal Requirements.***

8 a. ***Standard Forest Stand Delineation (FSD).*** A standard FSD shall contain the information
9 required by the Forest Conservation Technical Manual and any other information the
10 Department of Land Use and Growth Management determines is necessary to implement
11 this chapter, including but not limited to:

- 12 (1) An environmental features map including a site vicinity map; and
- 13 (2) Stand summary sheets; and
- 14 (3) A narrative report of forest stand conditions; and
- 15 (4) The final forest stand delineation.

16 b. A simplified FSD shall contain a site plan per Section 71.2.4 that delineates the priority
17 forest areas on the site, as identified below:

- 18 (1) Habitats of rare, threatened and endangered species.
- 19 (2) Trees, shrubs and herbaceous plants associated with;
 - 20 (a) Intermittent and perennial streams and their buffers; and
 - 21 (b) Slopes over 25 percent; and
 - 22 (c) Slopes over 25 percent with highly erodible soils; and
 - 23 (d) 100-year floodplain and drainageway buffers.
- 24 (3) Forest stands with high forest diversity.
- 25 (4) Forest areas that are part of forests that are 100 acres in size.
- 26 (5) Forest areas that are at least 300 feet wide and have, primarily native
27 vegetation connecting larger forested tracts.
- 28 (6) Trees that are part of a historic site or associated with a historic structure.
- 29 (7) Trees designate as a national, state or local champion; and
- 30 (8) Trees that measure 75 percent of the diameter of the designated state
31 champion.
- 32 (9) Trees with a DBH of 30 inches or greater.

33 c. Stand summary sheets and narrative of forest conditions shall be submitted for the areas
34 within the proposed development envelope(s).

35 4. ***Period of Effectiveness.*** An approved FSD shall remain valid for a period not longer than five
36 years.

37 a. If forest stand delineation approval lapses and there has been no development or
38 harvesting activity on the site, the lapsed FSD plan and report may be updated, certified
39 as current by a qualified professional and resubmitted along with any review/inspection
40 fees.

- 1 b. If forest stand delineation approval lapses and there has been any development activity or
2 harvesting on the site, a new FSD shall be prepared, submitted, and reviewed as a new
3 submission.
- 4 5. Within 30 calendar days after receipt of an FSD, the Department of Land Use and Growth
5 Management shall notify the applicant whether the FSD is complete and correct. If the
6 Department of Land Use and Growth Management fails to notify the applicant within 30 days, the
7 delineation shall be treated as complete and correct. The Department of Land Use and Growth
8 Management may require additional information or provide for an additional 15 calendar days of
9 review under extenuating circumstances.
- 10 **75.5. Forest Conservation Plan (FCP).**
- 11 1. **General Provisions.**
- 12 a. In developing a forest conservation plan (FCP), the applicant shall give priority to
13 techniques for retaining existing forest on the site.
- 14 b. If existing forest on the site subject to an FCP cannot be retained, the applicant shall
15 demonstrate the following in writing to the Department of Land Use and Growth
16 Management:
- 17 (1) How techniques for forest retention have been exhausted.
- 18 (2) Why the priority forests and priority areas specified in *Natural Resources*
19 *Article*, §5-1607(c), Annotated Code of Maryland, cannot be left in an
20 undisturbed condition.
- 21 (3) If priority forests and priority areas cannot be left undisturbed, the applicant
22 must demonstrate that reasonable efforts have been made to protect them
23 and the sequence for afforestation or reforestation that will be followed in
24 compliance with *Natural Resources Article* §5-1607, (C) (1) Maryland
25 Annotated Code; and
- 26 (4) How the disturbance to specific priority forests and priority areas specified
27 in the *Natural Resources Article* §5-1607, (C) (2) Annotated Code of
28 Maryland, qualifies for a variance, per Chapter 22; and
- 29 (5) Where on the site in priority areas afforestation or reforestation will occur in
30 compliance with *Natural Resources Article* §5-1607, Maryland Annotated
31 Code.
- 32 c. If an applicant proposes to make a payment into the local forest conservation fund or to
33 purchase credits from a forest mitigation bank, he shall demonstrate to the satisfaction of
34 the Department of Land Use and Growth Management that the requirements for
35 afforestation or reforestation cannot be reasonably accomplished either on-site or off-site.
- 36 2. **Simplified Forest Conservation Plan.** A simplified submittal may be accepted for:
- 37 a. A simplified submittal may be accepted for:
- 38 (1) Minor subdivisions and/or farmstead subdivisions in an RPD that:
- 39 (a) Meet the requirements of Chapter 71; and
- 40 (b) Locate limits of disturbance outside the priority forest areas; and
- 41 (c) Locate boundaries of minor lots outside the priority areas; and
- 42 (d) Permanently protect at least 50 percent of the parcel area in forest
43 conservation easements; and
- 44 (e) Prepare and submit a simplified forest delineation plan for the
45 development envelope.

- 1 c. A graphic indication of the forest conservation provided on the site drawn to scale,
2 showing areas where retention of existing forest or afforestation or reforestation is
3 proposed.
- 4 d. An explanation of how the provisions of this chapter have been met.
- 5 e. A proposed afforestation or reforestation plan, if applicable.
- 6 f. A proposed construction timetable showing the sequence of forest conservation
7 procedures.
- 8 g. A plan showing the proposed limits of disturbance and stockpile areas.
- 9 h. A proposed two-year maintenance agreement that shows how areas designated for
10 afforestation or reforestation will be maintained to ensure protection and satisfactory
11 establishment.
- 12 i. Additional information required by the Forest Conservation Technical Manual or which
13 the Department of Land Use and Growth Management determines is necessary to
14 implement this chapter.
- 15 3. The review of the preliminary FCP shall be conducted concurrently with the review of the initial
16 plan submission.
- 17 4. During the different stages of the review process, the preliminary FCP may be modified to address
18 the comments of review agencies or the local approving authority.
- 19 **75.7. Final Forest Conservation Plan.**
- 20 1. A final FCP shall be prepared by a licensed forester, a licensed landscape architect, or a qualified
21 professional who meets the requirements stated in COMAR 08.19.06.01B.
- 22 2. A final FCP shall be submitted with the following:
 - 23 a. A final subdivision plan; or
 - 24 b. A final site plan; or
 - 25 c. An application for a grading permit, or
 - 26 d. An application for a sediment control permit.
- 27 3. The final FCP shall include:
 - 28 a. A forest and tree protection plan showing limits of disturbance for clearing and grading,
29 existing and proposed topography on the site, and proposed locations and types of
30 protective devices to be used during construction activities to protect trees and forests
31 designated for conservation and construction details for the protection devices.
 - 32 b. An afforestation or reforestation plan, if required, with a timetable and description of
33 needed site and soil preparation, species, size, and spacing to be used.
 - 34 c. A binding two year maintenance agreement, as specified in COMAR 08.19.05.01, that
35 details how the areas designated for afforestation or reforestation will be maintained to
36 ensure satisfactory establishment and protection, including:
 - 37 (1) Watering; and
 - 38 (2) A reinforcement planting provision to assure that the survival rate for
39 afforestation and reforestation shall be a minimum of 100 trees per acre or
40 at least 75 percent of the total number of trees planted per acre under the
41 approved plan, whichever is greater.
 - 42 d. A long-term, binding, protective agreement as specified in COMAR 08.19.05.02 that:
 - 43 (1) Provides protection for areas of forest conservation, including areas of
44 afforestation, reforestation, and retention, by recordation of a final

- 1 development plat that graphically shows the location of the areas held under
2 the protective measures; and
- 3 (2) Identifies, in a declaration of covenants or describes in a conservation
4 easement approved by the Department of Land Use and Growth
5 Management for consistency with the intent of the forest conservation
6 regulations that runs with the land. The covenant or easement shall identify
7 uses and activities that shall be permitted in areas of forest conservation,
8 including practices or activities that are used to manage the health of the
9 forest and provide for forest product extraction, assure safety of surrounding
10 lands and allow recreational activities. The applicant shall furnish the
11 Department with a copy of the recorded documents after recording.
- 12 e. All elements required in the Forest Conservation Technical Manual and any additional
13 information the Department of Land Use and Growth Management determines is
14 necessary.
- 15 4. All portions of the FCP shall be approved by the Department of Land Use and Growth
16 Management prior to signature approval of a site plan, grading or sediment control permit, or
17 recordation of the final subdivision plat.
- 18 5. ***Time for Submittal.***
- 19 a. Within 45 calendar days after receipt of the final FCP, the Department of Land Use and
20 Growth Management shall notify the applicant whether the FCP is complete and
21 approved, otherwise the forest conservation plan shall be treated as complete and
22 approved. At the request of the applicant, or if further information is required the
23 deadline may be extended for an additional 15 calendar days under extenuating
24 circumstances.
- 25 b. The Department of Land Use and Growth Management's review of a final FCP shall be
26 concurrent with the review of the final subdivision or site plan, grading permit
27 application, or sediment control application associated with the project.
- 28 6. An approved FCP or portions of an approved FCP may be amended through the review and
29 approval of a revised FCP and the recordation of a confirmatory plat or approval of an amended
30 site plan that revises the graphic location of the protected forest areas.
- 31 7. The Department of Land Use and Growth Management may revoke an approved FCP if it finds
32 that:
- 33 a. A provision of the plan has been violated; or
34 b. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading
35 statement, or omission of a relevant or material fact; or
36 c. Changes in the development or in the condition of the site necessitate preparation of a
37 new or amended plan.
- 38 8. The Department of Land Use and Growth Management may issue a stop work order against a
39 person who violates a provision of this chapter, an approved FCP, or maintenance agreement.
- 40 9. Before revoking approval of an FCP, the Department of Land Use and Growth Management shall
41 notify the violator in writing.
- 42 **75.8. Afforestation, Retention, and Reforestation.**
- 43 Calculations shall be made for afforestation, forest retention, and reforestation as required by the forest
44 conservation worksheet found in Appendix C of the Forest Conservation Manual.
- 45 1. ***Afforestation Requirement.*** A person making application after the effective date of this
46 Ordinance for subdivision or project plan approval, a grading permit, or a sediment control permit

1 pursuant to the provisions of this Ordinance, for an area of land of 20,000 square feet or greater,
2 shall:

- 3 a. Conduct afforestation on the lot or parcel to achieve the minimum ratios established in
4 Schedule 75.8.1; and

SCHEDULE 75.8.1: AFFORESTATION REQUIREMENTS

Land Use Categories	Zoning Districts	Minimum Afforestation Ratio
Areas zoned for fewer than one dwelling unit per acre or less	RPD, RSC, RCL	20% ¹
Areas zoned for one dwelling unit per acre or more	RL, RH, RNC and RMX	15% ²
Mixed Use areas, Public/Semipublic uses, and Planned Unit Developments	VMX, TMX, PUD	15% ²
Commercial and Industrial areas	CC, DMX, CMX, OBP, I	15% ²

¹ For tract having less than 20 percent of net tract area in forest cover prior to cutting or clearing.

² For tract having less than 15 percent of net tract area in forest cover prior to cutting or clearing.

b. Comply with the following when clearing forest cover that is currently below the requisite afforestation percentages:

- (1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
- (2) Forest cut or cleared below the required afforestation level shall be reforested at a 2:1 ratio plus any additional planting necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

2. **Forest Retention.** A person making application after the effective date of this Ordinance for subdivision or site plan approval, a grading permit, or a sediment control permit pursuant to the provisions of this Ordinance, for an area of land of 20,000 square feet or greater, shall:

a. Conserve forest on the lot or parcel in accordance with the minimum ratios established in Schedule 75.8.2.

SCHEDULE 75.8.2: FOREST CONSERVATION THRESHOLDS:

Land Use Categories	Zoning Districts	Minimum Forest Conservation Threshold(Percent of Net Tract Area)
Areas zoned for fewer than one dwelling unit per acre	RPD, RSC, RCL	50%
Areas zoned for one dwelling unit per acre or more	RL, RH, RMX, RNC	20%
Mixed Use areas, Public/Semipublic uses, and Planned Unit Developments	VMX, TMX, PUD	15%
Commercial and Industrial areas	CC, DMX, CMX, OBP, I	15%

b. The procedures from the Forest Conservation Manual for “determining priority forests and priority areas” shall be used to designate priority forests and priority retention areas located on development sites using the forest stand delineation. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant demonstrates that these areas cannot practicably be left in an undisturbed condition:

- (1) Nontidal Wetlands.
 - (a) Forested nontidal wetland identification and delineation, if present on the site, shall be included in the initial submission to assist the applicant in avoiding and reducing of impacts to the nontidal wetlands and to avoid delay in the approval process.
 - (b) For the purpose of calculating reforestation mitigation under this chapter, a forested nontidal wetland permitted to be cut or cleared and mitigated under COMAR 26.10.01 shall be shown on the FCP and subtracted on an acre-for-acre basis from the total amount of forested wetlands to be cut or cleared as part of a regulated activity.
- (2) Trees, shrubs, and plants located in sensitive areas, including:

- 1 (a) The 100-year floodplain; and
2 (b) Intermittent and perennial streams and their buffers; and
3 (c) Steep slopes; and
4 (d) Critical habitats.
- 5 (3) Contiguous forest that connects the largest undeveloped or most vegetated
6 tracts of land within and adjacent to the site.
- 7 (4) Trees, shrubs, or plants determined to be rare, threatened, or endangered
8 under:
- 9 (a) The federal Endangered Species Act of 1973 in 16 U.S.C. §§1531–
10 1544 and in 50 CFR Article 17; or
- 11 (b) The Maryland Non-game and Endangered Species Conservation Act,
12 *Natural Resources Article*, §§10-2A-01–10-2A-09, Annotated Code of
13 Maryland; or
- 14 (c) COMAR 08.03.08.05.
- 15 (5) Trees that:
- 16 (a) Are part of a historic site; or
17 (b) Are associated with a historic structure; or
18 (c) Have been designated by the state or the County as a national, state, or
19 county champion tree; and
- 20 (6) Any tree having a diameter measured at 4.5 feet above the ground of:
- 21 (a) 30 inches or more; or
22 (b) 75 percent or more of the diameter, measured at 4.5 feet above the
23 ground, of the current state champion tree of that species, as designated
24 by the Department of Natural Resources.
- 25 (7) Any disturbance as described in this Section 75.8.2.b.(4), (5) and (6) above,
26 shall require an administrative variance, pursuant to Chapter 22 and Chapter
27 24.
- 28 c. The applicant shall provide a map at the same scale as the development plan or grading
29 plan submitted for review with graphic illustrations of the forest retention areas with
30 priority rating.
- 31 d. Forest retention areas shall contain a minimum area of 10,000 square feet, calculated as
32 follows:
- 33 (1) 100 percent of the area of critical root zones of trees that are protected; and
34 (2) 25 percent of the area of the critical root zones of isolated specimen trees
35 that are not already counted above, if the entire root zone is protected.
- 36 3. **Reforestation.** A person making application after the effective date of this Ordinance for
37 subdivision or site plan approval, a grading permit, or a sediment control permit pursuant to the
38 provisions of this Ordinance for an area of land of 20,000 square feet or greater, shall plant forest
39 on the lot or parcel in accordance with the following:
- 40 a. All existing forest cover measured to the nearest 1/10 acre that is cleared shall be
41 reforested at a ratio of 1/4 acre planted for each acre removed that does not exceed the
42 threshold set forth at Schedule 75.8.2.
- 43 b. Each acre of forest retained on the net tract area in excess of the applicable forest
44 conservation threshold set forth at Schedule 75.8.2 shall be credited against the total

1 number of acres required to be reforested under paragraph a above. The calculation of
2 the credit shall be according to the criteria provided in the Forest Conservation Technical
3 Manual.

- 4 c. For clearing in excess of that allowed in Schedule 75.8.2, all existing forest cover
5 measured to the nearest 1/10 acre cleared on the net tract area shall be reforested at a ratio
6 of two acres planted for each acre removed in excess of the threshold and at a ratio of 1/4
7 acre planted for each acre removed that does not exceed the threshold.

8 **75.9. Afforestation and Reforestation Standards.**

- 9 1. **Site Selection Sequencing.** After techniques for retaining existing forest on the site have been
10 exhausted, selecting sites for afforestation and reforestation shall adhere to the following
11 sequence:

- 12 a. Use techniques to enhance existing, on-site forest and involve selective clearing and
13 supplemental planting on-site in accordance with a forest conservation plan using one or
14 more of the following:

- 15 (1) Transplanted or nursery stock that is greater than 1.5 inches diameter
16 measured at 4.5 feet above the ground; or
17 (2) Whip or seedling stock; or
18 (3) Natural regeneration where it can be shown to adequately meet the
19 objective of the Forest Conservation Technical Manual.

- 20 b. If an applicant demonstrates that no reasonable on-site afforestation or reforestation
21 alternatives exist or where all on-site priority areas for afforestation or reforestation have
22 been planted, off-site afforestation or reforestation may be utilized for land in the same
23 watershed in accordance with a forest conservation plan using one or more of the
24 following techniques:

- 25 (1) Transplanted or nursery stock that is greater than 1.5 inches diameter
26 measured at 4.5 feet above the ground; or
27 (2) Whip or seedling stock; or
28 (3) Natural regeneration where it can be shown to adequately meet the
29 objective of the Forest Conservation Technical Manual.

- 30 c. Within Development Districts, Town Centers, and Village Centers, the following are
31 allowed:

- 32 (1) Use of street trees may be granted full credit as a mitigation technique, and
33 (2) Acquisition of an off-site protection easement on existing forest not
34 currently protected, in perpetuity, provided the afforestation and
35 reforestation credit granted may not exceed 50 percent of the area of forest
36 cover protected, is allowed.

- 37 d. When all other options, both on-site and off-site, have been exhausted, landscaping may
38 be used as a mitigation technique conducted under an approved landscaping plan that
39 establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of
40 area.

- 41 2. **Exception.** A sequence other than that described in Section 75.9.1 above may be used for a
42 specific project, if necessary, to achieve the objectives of the County land use plan or County land
43 use policies or to take advantage of opportunities to consolidate forest conservation efforts.

- 44 3. **Methods.** Afforestation or reforestation requirements shall be met using one or more of the
45 following methods:

- 1 a. Establishment or enhancement of forest buffers adjacent to intermittent and perennial
2 streams to widths of at least 50 feet from the top of each normal bank.
- 3 b. Establishment or an increase in existing forested corridors to connect existing forests
4 within or adjacent to the site. Where practicable, forested corridors should be a minimum
5 of 300 feet in width to facilitate wildlife movement.
- 6 c. Establishment or enhancement forest buffers adjacent to critical habitats designated by
7 the Department of Natural Resources or by the County.
- 8 d. Establishment or enhancement of forested areas on 100-year floodplains.
- 9 e. Establishment of plantings to stabilize slopes of 25 percent or greater and slopes of 15
10 percent or greater with a soil K value greater than 0.35, including the slopes of ravines or
11 other natural depressions.
- 12 f. Establishment of buffers adjacent to areas of differing land use, or adjacent to highways
13 or utility rights-of-way.
- 14 g. Establishment of forest areas adjacent to existing forests to increase the overall area of
15 contiguous forest cover.
- 16 4. **Forest and Tree Protection Standards.** Planning for protection of retained, afforested, and
17 reforested trees and forest, the devices and methods used to prevent damage from construction
18 activity and instruments for long-term protection shall at a minimum comply with the procedures
19 and standards provided in the Forest Conservation Technical Manual (Chapters 3.2 and 3.3 and the
20 Appendix) and the following provisions:
- 21 a. Protection from Construction Activities.
- 22 (1) The applicant shall prepare a forest and tree protection plan.
- 23 (2) Before cutting, clearing, grading, or construction begins on a site for which
24 an FCP is required by this article, the applicant shall demonstrate to the
25 Department of Land Use and Growth Management that protective devices
26 have been established in the field and inspected prior to the commencement
27 of construction.
- 28 b. Long- term Protection Instruments.
- 29 (1) Submittal requirements. The applicant shall provide long term agreements,
30 approved by the County, that, at a minimum:
- 31 (a) Define and limit the uses and management techniques in the retention
32 and planting areas; and
- 33 (b) Preserve the priority forests and priority areas specified in the FCP; and
- 34 (c) Are binding on all parties; and
- 35 (d) Are in place at all times after the completion of the development.
- 36 (2) Acceptable instruments may include:
- 37 (a) Perpetual conservation easements held by a third party responsible for
38 monitoring and enforcing the terms of the easement; or
- 39 (b) Deed restrictions recorded in the County land records and enforced by
40 the County; or
- 41 (c) Covenants recorded with the deeds and running with the land and
42 enforced by landowners as parties to the covenant; or
- 43 (d) A legally binding Forest Management or Stewardship Plan prepared by
44 a professional forester licensed by the State of Maryland and approved

1 by the MDNR Forest Service, including a binding agreement to ensure
2 that the Plan will be followed; or

3 (e) A forest conservation and management agreement between the
4 landowner and the Maryland Department of Natural Resources.

5 5. **Submittals.** A planting plan for afforestation or reforestation shall be developed that complies
6 with the procedures and standards provided in the Forest Conservation Technical Manual.

7 6. **Time Periods.** A person required to conduct afforestation or reforestation under this article shall
8 accomplish it within one year or two growing seasons, whichever is a greater time period,
9 following completion of the development project.

10 **75.10. Payment Instead of Afforestation and Reforestation**

11 1. **Forest Conservation Fund.**

12 a. A countywide Forest Conservation Fund is hereby established.

13 b. Money deposited in this fund shall be used to accomplish reforestation or afforestation
14 within two years or three planting seasons of the time it is deposited, whichever is a
15 greater time period:

16 (1) The money may be spent on the costs directly related to reforestation and
17 afforestation, including site identification, acquisition, preparation,
18 maintenance of existing forests and achieving urban canopy goals.

19 (2) The money shall not revert to the general fund.

20 (3) Any part that has not been used to meet the afforestation or reforestation
21 requirements within the period shall be transferred to the County's Forest
22 Conservation Cost Share Program.

23 c. If a person demonstrates to the satisfaction of the Department of Land Use and Growth
24 Management that requirements for reforestation or afforestation on-site or off-site cannot
25 be reasonably accomplished, the person shall contribute money, at a rate per square foot
26 of the area of required planting, into the countywide Forest Conservation Fund as
27 specified in the schedule of fees, fines, and penalties adopted by the County
28 Commissioners.

29 d. Money contributed instead of afforestation or reforestation shall be paid as follows:

30 (1) For subdivisions, payment shall be made prior to recording of the
31 subdivision plat.

32 (2) For site plans, payment shall be made at the time of signature approval of
33 the plan.

34 e. Adjustments to the amount may be made based on the site inspection prior to issuance of
35 occupancy permits for the development.

36 f. Fees may be refunded only upon an applicant's request made within one year or two
37 growing seasons, whichever is a greater time period, and demonstration that afforestation
38 or reforestation requirements per this Ordinance have been accomplished on-site or off-
39 site by the applicant.

40 g. Sites for Afforestation or Reforestation Using Fund Money.

41 (1) Except as provided in this chapter, the reforestation or afforestation shall
42 occur in the County within the watershed in which the project is located.

43 (2) If the reforestation or afforestation cannot be reasonably accomplished in
44 the County and watershed in which the project is located, then the
45 reforestation or afforestation may occur in an adjacent County or watershed
46 in Maryland.

- 1 **2. Forest mitigation bank.**
- 2 a. Use of Forest Mitigation Bank.
- 3 (1) If a person subject to this Ordinance demonstrates to the satisfaction of the
- 4 Department of Land Use and Growth Management that requirements for
- 5 reforestation or afforestation on-site or off-site cannot be reasonably
- 6 accomplished, the person may use credits from a forest mitigation bank. A
- 7 credit is required for each tenth of an acre of required planting.
- 8 (2) The credits shall be debited from an approved forest mitigation bank within
- 9 90 calendar days after development project approval.
- 10 b. Establishing Forest Mitigation Banks.
- 11 (1) A person may create a forest mitigation bank from which applicants may
- 12 purchase or otherwise acquire credits to meet the afforestation and
- 13 reforestation requirements of this Ordinance.
- 14 (2) A forest mitigation bank shall:
- 15 (a) Afforest or reforest an area of land in accordance with a forest
- 16 mitigation bank agreement.
- 17 (b) Be comprised of:
- 18 1. Enhanced forested buffers adjacent to intermittent and
- 19 perennial streams and coastal bays to widths of at least 50 feet;
- 20 or
- 21 2. Forested corridors 300 feet or as neatly as practicable in width
- 22 to facilitate wildlife movement and to connect existing forests
- 23 within or adjacent to the site; or
- 24 3. Forest buffers adjacent to critical habitats where appropriate;
- 25 or
- 26 4. Forested areas in 100-year floodplains; or
- 27 5. Forested slopes of 25 percent or greater; or
- 28 6. Slopes of 15 percent or greater with a soil K value greater than
- 29 0.35 including the slopes of ravines or other natural
- 30 depressions; or
- 31 7. Buffers adjacent to areas of differing land use adjacent to
- 32 highways or utility rights-of-way; or
- 33 8. Areas adjacent to existing forests that increase the overall area
- 34 of contiguous forest cover.
- 35 (c) Be protected by an easement, deed restrictions, or covenants that
- 36 require the land in the bank to remain forested in perpetuity and are
- 37 enforceable by the Department of Land Use and Growth Management
- 38 and the Department of Natural Resources.
- 39 (d) Limit the use of the land in the bank to activities that are not
- 40 inconsistent with forest conservation such as recreational activities,
- 41 forest management under a forest conservation and management
- 42 program under Tax-Property Article, §8-211, Annotated Code of
- 43 Maryland, or activities specified in a forest management plan prepared
- 44 by a licensed forester and approved by the Department of Land Use and
- 45 Growth Management.

- 1 (2) Pasture field;
- 2 (3) Other open area of bare ground; or
- 3 (4) Early successional vegetation.
- 4 b. In addition to meeting the qualifications of Section 75.12.4 below, eligible lands must
- 5 meet one of the following criteria:
 - 6 (1) Location within 300 feet of a stream, river, pond, tidal or non-tidal wetland,
 - 7 or other open water. (Such stream, river, pond or other open water must
 - 8 appear on a U.S.G.S. 7.5 Minute Quad map or have flowing water for any
 - 9 one-month period during the year. A wetland must appear on a U.S. Fish
 - 10 and Wildlife Service or Department of Natural Resources wetlands map or
 - 11 be otherwise classifiable as a wetland based on current state criteria).
 - 12 (2) Location within 300 feet plus four feet for every 1 percent slope for slopes
 - 13 averaging greater than 6 percent; or
 - 14 (3) Location within the 100-year floodplain as shown on a F.I.R.M. flood
 - 15 insurance map.
- 16 c. If two-thirds of an agricultural field qualifies under the above criteria, the entire field will
- 17 be eligible.
- 18 d. Determination of eligibility and extent of a planting site, approval of the applicant's
- 19 proposed measures, and approval of completion shall rest with the Department of Land
- 20 Use and Growth Management.
- 21 3. This program may NOT apply to:
 - 22 a. Reforestation of harvested or recently cleared forestland; or
 - 23 b. To any planting required by law or regulation; or
 - 24 c. To the establishment of orchards or Christmas tree farms; or
 - 25 d. Lands that have recently been treated with herbicides or pesticides that are inconsistent
 - 26 with the tree species specified in the planting plan.
- 27 4. ***Additional Eligibility Requirements.***
 - 28 a. Planting sites that receive funding through this program may also receive cost-share or
 - 29 other financial assistance through Maryland state programs such as the Forestry Incentive
 - 30 Program (FIP) or Conservation Reserve Program (CRP), but not both for the same
 - 31 planting.
 - 32 b. The minimum proposed buffer width is to be 50 feet. Existing forest can be incorporated
 - 33 into the buffer. For example, if a 20-foot buffer already exists, an additional 30 feet may
 - 34 be planted to create the minimum 50-foot buffer. There is no minimum length however,
 - 35 there is a one-acre minimum planting size.
 - 36 c. At the end of the spring planting season, the local inspector will inspect the planting site
 - 37 to determine if site-preparation and planting have been successfully carried out.
 - 38 d. In the fall or winter following planting, the local inspector will inspect the planting site to
 - 39 determine if survival is adequate and measures for maintenance and protection of the
 - 40 trees are being taken as needed. Minimum acceptable survival is 75 percent, which
 - 41 means that 75 percent of the trees planted are healthy and free to grow. No payment will
 - 42 be made until the minimum acceptable survival rate has been attained.
 - 43 e. A landowner may perform a reinforcement planting on a field recently planted to trees
 - 44 but of deficient stocking, to bring the stocking level up to the previously prescribed level
 - 45 and qualify to obtain final reimbursement. To receive payment, the planting must meet
 - 46 the 75 percent minimum acceptable survival rate after one growing season.

- 1 f. Critical Area lands may be eligible for the Forest Conservation Cost Share Program
2 provided the planting is approved by the Department of Land Use and Growth
3 Management.
- 4 5. ***Application Process.***
- 5 a. An eligible landowner seeking cost-share assistance shall submit:
- 6 (1) A written request to the Department of Land Use and Growth Management
7 with the following information:
- 8 (a) Name, address, and telephone number of the landowner.
- 9 (b) Location (Tax ID and Map reference) of the tract upon which the
10 forestry practice will be implemented.
- 11 (c) Description of the planting, and the estimated unit cost and total cost
12 for which application is made (with supporting cost estimates for
13 materials and labor).
- 14 (d) Proposed schedule for accomplishing planting (not to exceed three
15 years).
- 16 (e) A map of the proposed site, prepared with the assistance of the local
17 Forestry Service office.
- 18 (f) A statement of requirements/recommendations for site preparation,
19 method of planting, spacing, species, weed control, or other measures
20 needed to successfully establish trees and/or shrubs on the site.
- 21 b. The Department of Land Use and Growth Management will require implementation and
22 recording of a planting and maintenance agreement as a condition of approval for cost
23 share awards. The landowner must agree at the time of application to carry out the
24 planting according to the plan, to maintain the planting in perpetuity and to allow the
25 Department to inspect for compliance.
- 26 c. The agreement shall specify at a minimum that the landowner agrees to:
- 27 (1) Complete the approved planting within the time period specified by the
28 Department; and
- 29 (2) Accept the cost-share payment not to exceed 80 percent of actual expenses
30 as determined by the designated representative of the Department; and
- 31 (3) Hold the County and Department harmless from liability for occurrences
32 arising during inspections by representatives of the Department on official
33 business.
- 34 d. The Department shall notify each landowner whether the application has been approved
35 or disapproved within 60 calendar days of receipt of the application.
- 36 6. ***Payments to Landowners from the Forest Conservation Fund.***
- 37 a. The Department of Land Use and Growth Management shall disburse payments to
38 eligible landowners within a reasonable time after:
- 39 (1) The Department has received proof of expenses from the landowner that the
40 Department is able to determine are correct and justified; and
- 41 (2) A representative of the Department has inspected the woodland tract and
42 approved the implementation of the forestry practices.
- 43 b. *Limitation on Assistance.*

- 1 (1) An eligible landowner may not receive more than \$5,000 in a calendar year
2 for all approved forestry practices implemented by the landowner, unless
3 the Department has approved a three-year plan.
- 4 (2) If the Department has approved a three-year plan, an eligible landowner
5 may not receive more than \$15,000 during the three-year period for all
6 approved forestry practices implemented by the landowner.

1 **CHAPTER 76 FLOODPLAIN REGULATIONS**

2 Sections:

- 3 76.1 Purpose and General Provisions.
4 76.2 Applicability.
5 76.3 Permit Procedures.
6 76.4 Issuance of Permit.
7 76.5 Site Development Regulations in Floodplain Zones.
8 76.6 Regulation of Structures and Development in Nontidal and Tidal Floodplains.

9 **76.1. Purpose and General Provisions.**

- 10 1. **Purpose.** The purpose of this chapter is to establish standards and regulations for development in
11 floodplain areas to:
- 12 a. Manage and in some cases prevent development in areas subject to flooding; and
13 b. Require appropriate construction practices to minimize future damage; and
14 c. Provide for the review of all activities proposed within identified floodplains and, by the
15 issuance of permits for those activities that comply with the objectives of this Ordinance,
16 assure compliance with relevant federal and state programs, including:
- 17 (1) National Flood Insurance Program (44 CFR Parts 59-79).
18 (2) Maryland Waterway Construction Permit Program for n
19 (3) U.S Army Corps of Engineers Section 10 and 404 Permit Programs on tidal
20 floodplains.
21 (4) Maryland Tidal and Nontidal Wetlands Permit Programs.; and
22 (5) Maryland Coastal Zone Management Program.
- 23 2. **Abrogation and Greater Restrictions.** This Ordinance supersedes any ordinance in effect in flood
24 prone areas. However, any other ordinance shall remain in full force to the extent that its
25 provisions are more restrictive.
- 26 3. **Disclaimer of Liability.** The degree of flood protection provided by this Ordinance is considered
27 reasonable for regulatory purposes and is based on engineering experience and scientific methods
28 of study. Floods of greater magnitude may occur or flood heights may be increased by man-made
29 or natural causes. This Ordinance does not imply that flooding will not occur outside of the
30 delineated flood zones, nor that permitted development and land uses within the floodplain will be
31 free of flooding and associated flood damage. This Ordinance does not create liability on the part
32 of St. Mary's County, any officer, or employee thereof for any damage that may result from
33 reliance on this Ordinance.

34 **76.2. Applicability.**

- 35 1. The floodplain regulations herein shall apply to all lands within the unincorporated area of St.
36 Mary's County being subject to inundation by floodwaters of the 100-year, regulatory flood or
37 base flood and as delineated on the most recent revision of the County floodway maps and FEMA
38 Flood Insurance Rate Maps (FIRMs) and described in the flood insurance study (FIS) prepared by
39 the Federal Emergency Management Agency (FEMA). Emphasis is on flood height elevation
40 rather than the actual detail of the maps, so that if map boundaries and elevations disagree,
41 elevations prevail, with no approval from FEMA required.
- 42 2. The regulated floodplain includes:
- 43 a. **Mapped Areas.** The Planning Director or his designee shall determine the floodplain
44 zone in which the development activity is proposed using the County floodway maps and
45 FIS if available or, if not, by using the FIRM. The 100-year floodplain may be expanded
46 beyond the designations on the FIRM due to elevation.

- 1 (1) Non-tidal floodplains. Consisting of the floodway and the floodway fringe,
2 non-tidal floodplains may have detailed engineering study data, profiles,
3 and water surface elevations, or may have approximate delineation only.
- 4 (2) Tidal floodplains. Consisting of areas subject to coastal or tidal flooding by
5 the 100-year flood due to high tides, hurricanes, tropical storms, and steady
6 on-shore winds, these areas are landward of 0.0 National Geodetic Vertical
7 Datum (NGVD) designated on the FIRM.
- 8 (3) Coastal High Hazard Areas. Consisting of areas subject to coastal or tidal
9 flooding with the addition of high-velocity water and wind action. These
10 areas are designated as V-Zones on the FIRM.
- 11 b. *Approximate Floodplain Areas.* The following areas along non-tidal streams that do not
12 have FEMA delineation as described above are subject to regulation by this Ordinance
13 and the state.
- 14 c. *Areas along Streams.* In cases in which development is proposed in the vicinity of
15 "U.S.G.S. blue line" streams, which have no delineated 100-year flood-plain, a 50-foot
16 drainage way protection buffer from the centerline of the stream shall be subject to the
17 provisions of this chapter.
- 18 3. If a portion of a lot, parcel, or tract lies within the regulated floodplain, the restrictions upon uses
19 and structures shall apply only to that portion of the lot, parcel, or tract located within the flood
20 zone.
- 21 4. If a structure is located within more than one flood zone, the more restrictive applicable
22 regulations shall apply for the entire structure.
- 23 5. Where interpretation is needed as to the exact location of flood zone boundaries, the Planning
24 Director shall make the necessary interpretation. Any person contesting the interpretation of the
25 location of boundaries or those boundaries shown on the official floodplain map may appeal the
26 decision to the Board of Appeals and shall submit his own technical evidence. Pursuant to federal
27 flood insurance Program requirements, where map information shows a structure in the floodplain
28 and actual site conditions show the structure to be out of the floodplain, the applicant shall be
29 required to meet all floodplain regulations unless a letter of map amendment (LOMA) is issued by
30 FEMA. It shall be the applicant's responsibility to seek and obtain the LOMA.

31 **76.3. Permit Procedures.**

32 1. ***General.***

33 A permit is required for all development in any regulated floodplain zone. Receipt of federal or state
34 permits does not exempt development from the provisions of this Ordinance.

35 2. ***Information Required for a Permit.***

- 36 a. Applicants for development in or adjacent to a regulated floodplain shall be required to
37 provide information necessary to evaluate the proposed development for compliance with
38 regulations of this chapter, including:
- 39 (1) A site plan meeting the requirements of Chapter 60 for the use proposed;
40 (2) Type, dimensions, and estimated cost of development proposed;
41 (3) Dimensions of site;
42 (4) Size and location of existing and proposed structures or alterations;
43 (5) Elevation contours in mean sea level (NGVD);
44 (6) Delineation of the 100-year flood elevation and boundary; and
45 (7) Proposed elevation of the lowest floor and method of elevation, if
46 applicable.

1 **76.4. Issuance of Permit.**

2 1. **Considerations.**

- 3 a. Prior to issuance of a permit, the Planning Director shall determine the location of the
4 project relative to floodways, floodplains, or V zones and shall note on the permit the
5 proper elevation to which the lowest floor of proposed structures must be elevated. In
6 approximate floodplains where a floodplain elevation is not available, the applicant shall
7 be required to obtain such elevation. The applicant must agree to secure all other
8 required permits, an elevation certificate, floodproofing certificate, engineering analysis,
9 or other required verifications deemed appropriate by the Planning Director.
- 10 b. Permits shall be granted by the Planning Director only after determining that the
11 proposed development will conform to the requirements of this Ordinance and all other
12 applicable local codes and ordinances. All other necessary permits or approvals must be
13 applied for or granted. Permits are valid only after all other necessary permits have been
14 granted.
- 15 c. Caution shall be exercised when approving development downstream of existing or
16 proposed dams. The condition of the dam, as well as the design criteria, hazard class, and
17 danger reach, shall be investigated by the applicant to avoid increasing potential hazards.
18 Downstream development within the dam break flood wave shall be denied unless the
19 dam meets the design standards for a high-hazard dam.

20 2. **After Issuance and During Construction**

- 21 a. After issuance of a permit, no changes of any kind shall be made to the approved permit
22 or any of the plans, specifications, or other documents submitted with the application
23 without the written approval of the Planning Director. A copy of the permit or other
24 verification must be displayed at the construction site during construction activity.
- 25 b. Work shall be completed within one year of the date of the permit unless a greater time is
26 specified in the permit or a written extension is granted.
- 27 c. During construction, the Planning Director or an authorized representative shall inspect
28 the site to determine that the work is in compliance with the permit. Any work found to
29 be non-compliant must be corrected before any additional work is undertaken.

30 3. **Record of Permits.** A record of all floodplain permits shall be maintained and be available upon
31 request by the Federal Emergency Management Agency or its authorized agent during periodic
32 assessments of St. Mary's County's participation in the National Flood Insurance Program. All
33 documents needed to support any permit action, such as elevation certificates, map amendments or
34 revisions, variance actions, shall be available for review during these assessments.

35 4. **Conditioned Permits for Accessory Structures and Garages.**

- 36 a. A conditioned permit, for up to a total size of 600 square feet may be issued at the
37 discretion of the Planning Director when the 300 square foot exemption is exceeded for
38 accessory structures. In order to qualify, the structure's use must be incidental to the
39 primary structure, and it can be used only for limited storage or parking of vehicles. The
40 provisions of Section 76.6.7.b must also be met.
- 41 b. A conditioned permit is subject to the applicant's completion of a non-conversion
42 agreement stating that the use of the accessory structure may not change from that
43 permitted and that it must be equipped with the proper water equalizing vents. A
44 statement of the greater flood risk and possibly higher flood insurance premiums must be
45 included on the permit. In addition, a declaration of land restriction must be recorded on
46 a form approved by the Planning Director that states that the permitted structure may not
47 be used for human habitation without first complying with the requirements of this
48 Ordinance.

49 5. **Fees.** A fee may be charged at the time of application as established by the St. Mary's County
50 Commissioners.

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- 1 **76.5. Site Development Regulations in Floodplain Zones.**
- 2 1. ***Split Properties or Structures.***
- 3 a. If a proposed structure is in more than one flood zone, the more stringent applicable flood
- 4 zone provisions shall apply to the entire structure.
- 5 2. ***Flood Protection Elevation.***
- 6 a. The flood protection elevation shall be one foot above the floodplain elevation.
- 7 b. The Planning Director may grant a waiver of the elevation requirement when a structure
- 8 is substantially improved, upon findings that:
- 9 (1) The structure is individually listed on the federal National Register of
- 10 Historic Places or National Historic Landmark program, the Maryland
- 11 Inventory of Historic Properties or the County's historic sites survey
- 12 inventory; and
- 13 (2) The listing agency verifies that the modifications proposed do not preclude
- 14 its continued designation as an historic structure.
- 15 **76.6. Regulation of Structures and Development in Nontidal and Tidal Floodplains.**
- 16 1. ***General.*** Due to the inherent hazards and risks involved, development may not occur in the
- 17 regulated floodplain where alternative locations exist on site outside the floodplain. Before a
- 18 permit is issued, the applicant shall demonstrate that new structures cannot be located out of the
- 19 regulated floodplain and that necessary encroachments onto the floodplain are minimized.
- 20 2. ***New and Substantially Improved Structures.***
- 21 a. The following provisions shall apply to residential structures within the regulated
- 22 floodplain:
- 23 (1) All new residential structures, including manufactured homes, shall have
- 24 the lowest floor elevated at or above the flood protection elevation.
- 25 (2) All substantially improved residential structures, including manufactured
- 26 homes, shall have the lowest floor elevated to or above the flood protection
- 27 elevation.
- 28 (3) In nontidal floodplains, horizontal expansions that increase the footprint but
- 29 result in less than substantial improvement shall also have the lowest floor
- 30 elevated to or above the flood protection elevation.
- 31 (4) The elevation of the lowest floor shall be field verified and certified by a
- 32 registered surveyor or professional engineer on the elevation certificate,
- 33 after the lowest floor has been constructed.
- 34 (5) Enclosures below the flood protection elevation must be constructed with
- 35 water equalizing vents to meet the specifications of Section 76.6.7.
- 36 (6) Improvements in tidal floodplains that are determined to be less than
- 37 substantial shall be constructed to minimize damage during flooding or
- 38 shall be elevated to the greatest extent possible.
- 39 b. The following provision shall apply to non-residential structures within the regulated
- 40 floodplain:
- 41 (1) All new or substantially improved non-residential structures shall either be
- 42 elevated as set forth above for residential structures or shall be flood-
- 43 proofed.
- 44 (2) Horizontal expansions in the nontidal floodplain that increase the footprint
- 45 but result in less than substantial improvement shall also have the lowest
- 46 floor elevated to or above the flood protection elevation.

- 1 (a) Before a permit may be issued for new development in the floodway,
2 an applicant shall submit an alternatives analysis which demonstrates
3 that:
- 4 1. No reasonable alternatives exist outside the floodway;
5 2. Encroachment in the floodway is the minimum necessary;
6 3. The development will withstand the 100-year flood without
7 significant damage; and
8 4. The development will not increase downstream or upstream
9 flooding or erosion.
- 10 (b) Where alternatives are demonstrated to be unavailable, development
11 activities in the floodway that may result in any increase in water
12 surface elevations or change to the floodway must be submitted to
13 FEMA for a conditional letter of map revision. Hydrologic and
14 hydraulic analyses based on existing floodway models and performed
15 in accordance with standard engineering practices and certified by a
16 registered professional engineer must be submitted. Failure to receive
17 this letter shall be grounds for denial of the permit.
- 18 b. *Existing Structures.*
- 19 (1) Existing structures in the floodway may be substantially improved only by
20 variance and only if the structure can be brought into conformance with this
21 Ordinance without increasing its footprint.
- 22 (2) Minor additions constituting less than a substantial improvement must be
23 elevated to the flood protection elevation on pilings or columns.
- 24 (3) In the event of substantial damage or replacement, the applicant shall
25 submit an alternative analysis to determine if the structure can be relocated
26 to a less hazardous site.
- 27 (4) Where replacement structures cannot be relocated, they shall be limited to
28 the footprint of the previous structure and must comply with the elevation
29 requirements of Section 76.6.2 of this Ordinance.
- 30 (5) Permits for incremental improvements and additions shall be tracked by the
31 Department of Land Use and Growth Management and, if cumulative
32 improvements constitute substantial improvement, no further permits may
33 be issued unless the structure conforms to the provisions of this Ordinance.
- 34 c. *Obstructions.*
- 35 (1) Structures, grading, or fill that may impede, retard, or change the direction
36 of the flow of flood waters, or any materials that may be carried
37 downstream to cause damage, shall not be placed in the floodway.
- 38 (2) Fences, except two-wire fences, shall not be placed in the floodway.
- 39 d. *Maintenance of Natural Channel.* The natural watercourse shall be maintained for
40 protection of aquatic resources. A variance is required for alteration of watercourses.
41 Any variance issued must ensure that the conditions for encroachment in the floodway
42 are met, adverse impacts to aquatic resources are minimized, and the public good
43 outweighs the adverse impacts. Altering a watercourse must be approved by the
44 Maryland Water Resources Administration.
- 45 6. ***Coastal High Hazard Area (V Zone).***
- 46 a. New development shall not be permitted in the coastal high hazard area unless the
47 applicant demonstrates that:

- 1 (1) No reasonable alternative exists outside the coastal high hazard area; and
2 (2) The encroachment into the coastal high hazard area is the minimum
3 necessary; and
4 (3) The development will withstand the 100-year wind and water loads without
5 damage; and
6 (4) The development will not create an additional hazard to existing structures;
7 and
8 (5) Any natural dune system will not be disturbed.
- 9 b. New and Substantially Improved Structures. The following shall apply to new or
10 substantially improved structures in the Coastal High hazard Area:
- 11 (1) All new or substantially improved structures shall be elevated on adequately
12 anchored pilings or columns to resist flotation, collapse, and lateral
13 movement due to the effects of the 100-year water loads and wind loads
14 acting simultaneously on all building components. The following additional
15 standards shall also apply:
- 16 (a) The use of slabs or other at-grade foundation systems is prohibited.
17 (b) The bottom of the lowest horizontal structural member supporting the
18 lowest floor shall be elevated to or above the Flood Protection
19 Elevation.
20 (c) A registered professional engineer or architect knowledgeable in such
21 designs must certify that building designs and elevations have been
22 designed to withstand the water and wind loads set forth herein and to
23 be anchored properly.
- 24 (2) The space below the flood protection elevation shall be free of obstruction
25 or may be enclosed with open wood lattice, insect screening, or breakaway
26 walls meeting the following criteria:
- 27 (a) Breakaway walls shall be designed to collapse under a wind or water
28 load less than would occur during the 100-year flood, and have a
29 designed safe loading resistance of not less than 10 pounds and no
30 more than 20 pounds per square foot.
31 (b) Glass walls are not to be considered breakaway walls.
32 (c) Areas below the flood protection elevation shall be used solely for
33 parking vehicles, limited storage, and building access. If such areas are
34 enclosed as permitted herein, a non-conversion agreement, described in
35 Section 76.4.4.b must be signed by the applicant.
- 36 c. *Fill and Excavation.*
- 37 (1) The use of fill for the structural support of buildings is prohibited.
38 (2) Earth or sand removed for the proper placement of pilings or columns shall
39 be replaced.
40 (3) Excavation under existing structures or excavation within any enclosed
41 space is prohibited.
42 (4) Excavation to create a basement is prohibited.
- 43 d. *Location of Structures.*
- 44 (1) New construction within the boundary of mean high tide is prohibited.

- 1 (2) New construction within the 50-foot drainageway protection buffer is
2 prohibited.
- 3 (3) Alteration of a dune system is prohibited.
- 4 (4) Manufactured homes are not permitted in the coastal high hazard area.
- 5 e. *Existing Structures.* Existing structures located in the V-zone shall not be substantially
6 improved or expanded vertically or horizontally unless the entire foundation system is
7 certified by a professional engineer or architect as capable of supporting the existing
8 building and the proposed improvement during the 100-year storm as specified in Section
9 76.6.6.b. Permits for incremental improvements shall be tracked and, when cumulative
10 improvements constitute substantial improvement, the entire building must comply with
11 Section 76.6.6.b.
- 12 7. ***Additional Specific Requirements.*** In addition to the requirements outlined in Section 76.6.6 the
13 following specific requirements must be applied.
- 14 a. *Placement of Buildings and Materials.* In addition to all other zoning, environmental,
15 water quality, and sanitary regulations, as well as applicable state and federal
16 requirements, the following standards shall apply to construction and fill in the
17 floodplain:
- 18 (1) All structures permitted in the floodplain shall be oriented so as to offer the
19 least resistance to the flow of floodwaters.
- 20 (2) Materials that are buoyant, flammable, explosive, hazardous to health, or
21 which at times of flooding may be injurious to human, animal, or plant life
22 shall not be placed or stored below the flood protection elevation.
- 23 (3) All structures shall be firmly anchored in accordance with acceptable
24 engineering practices to prevent flotation, collapse, and lateral movement
25 during flooding. All air ducts, large pipes, and storage tanks located below
26 the flood protection elevation shall be firmly anchored to resist flotation.
- 27 (4) Enclosures Below Lowest Floor.
- 28 (a) Buildings that have been elevated and have fully enclosed areas below
29 the flood protection elevation, as well as garages and accessory
30 structures which are not elevated shall be constructed with water-
31 equalizing vents that meet or exceed the following standards:
- 32 1. A minimum of two openings shall be located on different
33 walls having a total net area of not less than one square inch
34 for every square foot of enclosed area subject to flooding.
- 35 2. The bottom of all openings shall be no higher than one foot
36 above grade; and
- 37 3. Openings may be equipped with screens, louvers, valves, or
38 other coverings or devices provided they permit the automatic
39 entry and exit of floodwaters to equalize hydrostatic forces on
40 the walls.
- 41 (b) Fully enclosed areas below the flood protection elevation shall be used
42 solely for parking vehicles, access to the building, or storage. If such
43 areas are enclosed, a non-conversion agreement as described in Section
44 76.4.4.b must be signed by the applicant.
- 45 (c) In coastal high hazard areas, enclosures below the flood protection
46 elevation shall comply with the provisions of Sections 76.6.6 of this
47 Ordinance.
- 48 (5) Mobile Homes and Manufactured Home Parks.

- 1 (a) New mobile homes and mobile home parks are not permitted in the
2 coastal high hazard area or the floodway.
- 3 (b) Where mobile homes and mobile home parks already exist in the
4 coastal high hazard area or the floodway, no new, replacement, or
5 substantially improved mobile homes shall be permitted, whether in a
6 mobile home park or not. Existing mobile homes if not shall comply
7 with the following:
- 8 1. Methods of anchoring shall include use of over-the-top and
9 frame ties to ground anchors. Pilings or column foundations
10 shall be used. Concrete block support pilings must be
11 reinforced by placing reinforcing bars inside and extending
12 them into the footing, filling the hollows with cement, and
13 using mortar to cement the blocks together. FEMA
14 Publication 85, "Manufactured Home Installation in Flood
15 Hazard Areas", should be consulted for specific
16 recommendation.
- 17 2. Mobile homes repaired or replace because of substantial
18 damage due to flooding or other causes must fully comply
19 with Section 76.6.6.b.
- 20 3. Owners of mobile home parks or subdivisions that are
21 partially or fully within the floodplain must file an evacuation
22 plan with the local emergency management agency. In
23 nontidal floodplains, a flood-free access road shall be provided
24 in all new manufactured home parks and subdivisions.
- 25 (6) Anchoring. All structures shall be firmly anchored in accordance with
26 acceptable engineering practices to prevent flotation, collapse, and lateral
27 movement during flooding. All air ducts, large pipes, and storage tanks
28 located below the flood protection elevation shall be firmly anchored to
29 resist flotation.
- 30 (7) Utilities.
- 31 (a) Electric. All electric utilities to the building side of the meter, both
32 inside and outside the building, are regulated by this Ordinance.
33 Distribution panel boxes must be at least two feet above the flood
34 protection elevation. All outlets and electrical installations, such as
35 heat pumps, air conditioners, water heater, furnaces, generators, and
36 distribution systems, must be installed at or above the flood protection
37 elevation.
- 38 (b) Plumbing. Toilets, sinks, showers, water-heaters, pressure tanks,
39 furnaces, and other permanent plumbing installations must be installed
40 at or above the flood protection elevation.
- 41 (c) Gas. Gas meters, distribution lines, and gas appliances must be
42 installed at or above the flood protection elevation.
- 43 (d) Water Supply and Sanitary Facilities. Water supply distribution and
44 sanitary disposal collection systems must be designed to minimize or
45 eliminate the infiltration of flood waters into the systems or discharges
46 from the systems into flood waters and shall be located and constructed
47 so as to minimize or eliminate flood damage. On-site sewage disposal
48 systems shall meet these same standards.
- 49

- 1 b. *Accessory Structures and Garages.*
- 2 (1) Where feasible, accessory structures and garages shall be located out of the
- 3 regulated floodplain or elevated to or above the flood protection elevation.
- 4 When these measures are not feasible the following standards apply:
- 5 (a) The floor of the structure must be at or above grade; and
- 6 (b) The structure must be located, oriented, and constructed so as to
- 7 minimize flood damage; and
- 8 (c) The structure must be firmly anchored to prevent flotation.
- 9 (2) Attached Garages.
- 10 (a) A garage attached to the main structure shall be elevated to the greatest
- 11 extent possible, but may be permitted as an exemption to the strict
- 12 elevation requirement if:
- 13 1. It is used solely for parking of vehicles, storage, or building
- 14 access and
- 15 2. Is no more than 600 square feet in area.
- 16 (b) Attached garages must meet the venting requirements of Section 76.6.7
- 17 have all interior walls, ceilings, and floors below the flood protection
- 18 elevation unfinished, and have no machinery or electric devices or
- 19 appliances located below the flood protection elevation.
- 20 (c) A non-conversion agreement, as described in Section 76.4.4 must be
- 21 signed by the property owner stating that the garage may never be used
- 22 for human habitation without first becoming fully compliant with this
- 23 Ordinance.
- 24 (3) Detached Garages and Accessory Structures.
- 25 (a) An accessory structure or detached garage may be permitted below the
- 26 flood protection elevation if:
- 27 1. It is less than 300 square feet; and
- 28 2. It is used solely for parking of vehicles and limited storage;
- 29 and
- 30 3. It meets the venting requirements of Section 76.6.7; and
- 31 4. All interior wall, ceiling, and floor elements below the flood
- 32 protection elevation unfinished; and
- 33 5. The structure or garage has no machinery, electric devices, or
- 34 appliances located below the flood protection elevation; and
- 35 6. A non-conversion agreement is executed by the property
- 36 owner.
- 37 (b) An accessory structure or a detached garage between 300 square feet
- 38 and 600 square feet may be permitted below the flood protection
- 39 elevation only by a conditioned permit described in Section 76.4.4.
- 40 (c) An accessory structure or garage larger than 600 square feet in area
- 41 must be elevated properly or be able to meet all applicable
- 42 requirements under the variance procedure in Section 24.5 of this
- 43 Ordinance.

