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Code of Maryland Regulations (Last Updated: April 6, 2021)

■ Title 26. Department of Environment

■ Part 3.

■ Subtitle 17. WATER MANAGEMENT

■ Chapter 26.17.02. Stormwater Management

Exhibit 25 (c)
OZAH Case No: CU 26-02

Sec. 26.17.02.05. When Stormwater Management is Required

Latest version.

A. Unless the particular activity is exempted by this regulation, a person may not develop any land without an approved final stormwater management plan from the approving agency. A grading or building permit may not be issued for a property unless a final stormwater management plan has been approved that is consistent with:

- (1) The Stormwater Management Subtitle;
- (2) This chapter;
- (3) The county or municipal ordinance.
- (4) The Design Manual for new development; and
- (5) Policies established by the local approving agency for redevelopment.

B. The following activities are exempt from the provisions of this chapter:

- (1) Additions or modifications to existing single family detached residential structures if they comply with §B(2) of this regulation;
- (2) Any developments that do not disturb over 5,000 square feet of land area; and
- (3) Land development activities which the Administration determines will be regulated under specific State laws which provide for managing stormwater runoff.

C. Waivers.

- (1) County and municipal ordinances may contain waiver policies for individual developments if the ordinances are approved by the Administration. The Administration will approve county and municipal ordinances and waiver policies if:
 - (a) They reasonably ensure that a development will not adversely impact stream quality;

(b) Waiver decisions are made on a case-by-case basis; and

(c) The cumulative effects of the waiver policy are evaluated.

(2) Except as provided in §C(3) and (5) of this regulation, stormwater management quantitative control waivers shall be granted only to those projects within areas where watershed management plans have been developed consistent with §E of this regulation.

(3) Except as provided in §C(5) of this regulation, if watershed management plans consistent with §E of this regulation have not been developed, stormwater management quantitative control waivers may be granted to projects:

(a) That have direct discharges to tidally influenced receiving waters;

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

(i) Public water and sewer and stormwater conveyance exist;

(ii) The quantitative waiver is applied to the project for the impervious cover that previously existed on the site only;

(iii) ESD to the MEP is used to meet the full water quality treatment requirements for the entire development; and

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

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

(4) Except as provided in §C(5) of this regulation, stormwater management qualitative control waivers apply only to:

(a) In-fill development projects where stormwater management implementation is not feasible;

(b) Redevelopment projects if the requirements of §D of this regulation are satisfied; or

(c) Sites where the approving agency determines that circumstances exist that prevent the reasonable implementation of quality control practices.

(5) Stormwater management quantitative and qualitative control waivers may be granted for phased development projects if a system designed to meet the 2000 regulatory requirements and local ordinances for multiple phases has been constructed by May 4, 2010. If the 2009 regulatory requirements cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in future phases must be demonstrated.

D. Redevelopment.

(1) An approving agency shall require that stormwater management be addressed for redevelopment. Unless otherwise specified by watershed management plans developed according to §E of this regulation, all redevelopment project designs shall do one of the following:

- (a) Reduce existing impervious area within the limit of disturbance by at least 50 percent according to the Design Manual;
- (b) Implement ESD to the MEP to provide water quality treatment for at least 50 percent of the existing impervious area within the limit of disturbance; or
- (c) Use a combination of both §D(1)(a) and (b) of this regulation for at least 50 percent of the existing site impervious area.

(2) Alternative stormwater management measures may be used to meet the requirements in §D(1) of this regulation if the developer satisfactorily demonstrates to the approving agency that impervious area reduction and ESD have been implemented to the MEP. Alternative stormwater management measures include, but are not limited to:

- (a) An on-site structural BMP;
- (b) An off-site structural BMP to provide water quality treatment for an area equal to or greater than 50 percent of the existing impervious area; or
- (c) A combination of impervious area reduction, ESD implementation, and an on-site or off-site structural BMP for an area equal to or greater than 50 percent of the existing site impervious area within the limit of disturbance.

(3) An approving agency may develop separate policies for providing water quality treatment for redevelopment projects if the requirements of §D(1) and (2) of this regulation cannot be met. Any separate redevelopment policy shall be reviewed and approved by the Administration and may include, but not be limited to:

- (a) A combination of ESD and an on-site or off-site structural BMP;
- (b) Retrofitting including existing BMP upgrades, filtering practices, and off-site ESD implementation;
- (c) Participation in a stream restoration project;
- (d) Pollution trading with another entity;
- (e) Design criteria based on watershed management plans developed according to §E of this regulation;

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

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

(4) The determination of what alternative stormwater management measures will be available may be made by the approving agency at the appropriate point in the development review process. Counties and municipalities shall consider the prioritization of alternative measures in §D(3) of this regulation after it has been determined that it is not practicable to meet the 2009 regulatory requirements using ESD. In deciding what alternative measures may be required, an approving agency may consider factors including, but not limited to:

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

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

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

(5) Stormwater management shall be addressed according to the new development requirements in the Design Manual for any net increase in impervious area.

(6) The recharge, channel protection storage volume, and overbank flood protection volume requirements specified in the Design Manual do not apply to redevelopment projects unless specified by the approving agency.

(7) On-site or off-site channel protection storage volume requirements as specified in the Design Manual may be imposed if watershed management plans developed according to §E of this regulation indicate that downstream flooding or erosion need to be addressed.

(8) Variations of this redevelopment policy shall be approved by the Administration.

E. An approving agency may develop quantitative waiver and redevelopment provisions for stormwater management that differ from the requirements of this chapter. These provisions shall be developed only as part of an overall watershed management plan. Watershed management plans developed for the purposes of implementing different stormwater management policies for waivers and redevelopment shall:

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

(2) Evaluate both quantity and quality management;

(3) Include cumulative impact assessment of watershed development;

- (4) Identify existing flooding and receiving stream channel conditions;
- (5) Be conducted at a scale determined by the approving agency; and
- (6) Specify where on-site or off-site quantitative and qualitative stormwater management practices are to be implemented.

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