COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

(1) bring the County’s stormwater management law into compliance with state stormwater management requirements for local jurisdictions; and

(2) generally amend County laws regarding stormwater management.

By amending

Montgomery County Code
Chapter 19, Sediment Control and Storm Water Management
Sections 19-20 through 19-34

Boldface
Underlining

[Single boldface brackets]
Double underlining

[[Double boldface brackets]]

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 19-20 to 19-34 are amended as follows:

ARTICLE II. [STORM WATER] STORMWATER MANAGEMENT.

19-20. Purpose of article; scope.

(a) It is the policy of the County to:

(1) protect and promote the public health, safety and general welfare through the management of storm water,

(2) protect public and private property from damage,

(3) reduce the effects of development on land and stream channel erosion,

(4) assist in the attainment and maintenance of water quality standards, and

(5) preserve and enhance the environmental quality of stream valleys.

(b) The Maryland Storm Water Management Act, under the Environment Article, Section 4-201 et seq., of the Maryland Code, provides that a local government must not issue a grading or building permit for a property unless the local government has approved a storm water management plan. This Article does not infringe on the authority given to the District by state law.

(c) The Departments of Environmental Protection and Permitting Services are responsible for coordinating and enforcing this Article.

(d) This Article does not apply to construction of a single-family residence and any accessory building on a lot of 2 or more acres.]
increased stormwater runoff from developed and developing lands. The policy of the County is to minimize damage to public and private property, reduce the effects of development on stream water quality, control stream channel erosion, reduce local flooding, and, to the extent reasonable, maintain the pre-development runoff characteristics of land after development through proper management of stormwater runoff.


In this Article, the following words and phrases have the following meanings unless the context indicates otherwise:

Administration: The Water Management Administration of the Maryland Department of the Environment.

Applicant: A landowner, contract purchaser or other person that assumes the legal responsibility for developing land subject to this Article.

Associated nonresidential property: A nonresidential property from which stormwater drains into a stormwater management facility that primarily serves one or more residential properties.

Best management practice: A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff to mitigate flooding, reduce pollution, recharge groundwater, and provide other amenities.

Board: The [[Montgomery]] County Planning Board [[of the Maryland-National Capital Park and Planning Commission]].

Channel protection storage volume: The volume used to design structural management practices to control stream channel erosion.


Department: The [[Montgomery County]] Department of [Environmental Protection] Permitting Services.
Design Manual: The applicable Maryland Stormwater Design Manual which serves as the official guide for stormwater management principles, methods, and practices in Maryland.

Development: A project that consists of subdividing land or adding buildings and other improvements to individual parcels of land.

Director: The Director of the Department of [Environmental Protection] Permitting Services or the Director's designee.

Director of [Permitting Services] Environmental Protection: The Director of the Department of [Permitting Services] Environmental Protection. or the designee of the Director of [Permitting Services] Environmental Protection.

District: The Montgomery Soil Conservation District.

Drainage area: That area, which is enclosed by a ridge line, that contributes runoff to a single point, measured in a horizontal plane.

Erosion: The process by which the ground surface is worn away by the action of wind, [or] water, ice, or gravity.

Executive: The County Executive or the County Executive’s designee.

Extreme flood volume: The storage volume required to control the infrequent but large storm events during which overbank flows reach or exceed the boundaries of the 100-year floodplain.

Functional master plan: A master plan for conserving and managing a watershed [approved by the District Council and adopted by the Commission].

Off-site [storm water] stormwater management: The design and construction of a facility to control [storm water] stormwater runoff from more than one development. An off-site [storm water] stormwater management facility may be located in a development and would be on-site with respect to that development, but the facility is off-site with respect to all other developments that the facility serves.
On-site [storm water] stormwater management: The design and construction of a facility to control all [storm water] stormwater runoff in a development.

Person: An individual, corporation, firm, partnership, joint venture, agency, organization, municipal corporation, County or state agency, or any combination of them.

Preliminary plan: A preliminary plan of subdivision, approved under Chapter 50.

Recharge volume: That portion of the water quality volume used to maintain groundwater recharge rates at a development site.

Redevelopment: Any construction, alteration, or improvement which:
(a) exceeds 5,000 square feet of land disturbance; and
(b) is performed on a site where the existing land use is commercial, industrial, institutional, or multifamily residential.

Residential property: A property that contains a detached dwelling unit, one or more townhouses, duplexes or other attached dwelling units, or a multi-family dwelling.

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

Site: Any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, which are under one ownership, or are contiguous and under diverse ownership, where development is performed as part of a unit, subdivision, or project.

[Storm water] Stormwater: That precipitation which travels over natural, altered, or impervious surfaces to the nearest stream, channel, conduit, or impoundment and appears in surface waters. [Storm water] Stormwater also includes snow melt.

[Storm water] Stormwater management facility: An infiltration device, vegetative filter, structure, channel, pipe, weir, orifice, or combination of those measures, designed and constructed to control [storm water] stormwater runoff [[in a way that prevents]] to reduce accelerated stream channel erosion and [[the]] pollution of surface waters.

[Storm water] Stormwater management plan: A set of representations, drawings or other documents, including development phasing statements, [submitted by an applicant and containing] which contains all of the information and specifications [as required by] that the Department [of Permitting Services under regulations adopted under this Article pertaining to] requires an applicant to submit in order to obtain a [storm water] stormwater management approval.

Structural maintenance: The inspection, construction, reconstruction, modification, or repair of any part of a [storm water] stormwater management facility undertaken to assure that the facility remains in the proper working condition to serve its intended purpose and prevent structural failure. Structural maintenance does not include landscaping, grass cutting, or trash removal.

Watershed: The total drainage area contributing runoff to a single point.

Watershed management plan: A plan to satisfy the regulatory requirements of the County's National Pollutant Discharge Elimination System permit issued by the Maryland Department of the Environment under the federal Clean Water Act.

Water quality volume: The volume needed to capture and treat 90 percent of the average annual runoff volume at a development site.

[Under Article 28 of the Maryland Code, the County Planning Board must prepare functional master plans for conserving and managing each watershed in the County for the County Council’s review and approval. Each functional master plan must contain, among other things, recommendations for potential locations of off-site storm water management and flood control facilities, and indicate the storage capacity required for each segment of the watershed contained in the plan. These plans must serve as a guide for public policies to protect the watersheds and for selecting and scheduling specific facilities for inclusion in the capital improvements program.]

(a) The Department of Environmental Protection, in cooperation with the Department, the Board, and other appropriate agencies, may develop watershed management plans to implement stormwater management policies that apply individually to specific watersheds in the County. Each watershed management plan should:

1. include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
2. evaluate stormwater quantity and quality, and base flow and groundwater management needs;
3. include a cumulative impact assessment of watershed development;
4. identify existing flooding, receiving stream channel, water quality, biological resources, and habitat conditions;
5. specify the types of quantitative stormwater management, stream restoration and wetlands protection practices to be implemented;
6. identify specific opportunities for stormwater retrofit, [and] stream and wetlands restoration, and groundwater recharge;
specify where the Department may grant waivers of on-site stormwater management controls:

be consistent with the Design Manual’s General Performance Standards for Stormwater Management in Maryland; and

be approved by the Administration.

The Board should prepare functional master plans under Article 28 of the Maryland Code to preserve, conserve, and manage natural resources in each of the County’s watersheds for the County Council’s review and approval. Each functional master plan should address land use, impervious impact on streams and waterways, stream buffers, wildlife and stream habitat, forest preservation, and other issues related to the permitting of stormwater management facilities and the development of watershed management plans.

Storm water management chapter.

The Executive must submit a storm water management chapter to the Council, to be included as an integral part of the 10-year water supply/sewerage systems plan that the Council adopts. The storm water management chapter must:

be guided by the adopted functional master plans, if any, for watershed conservation and management;

outline County policies and objectives for developing off-site storm water management and flood control facilities during the ensuing 10 years;

identify potential sites for off-site storm water management facilities and flood control facilities needed during and after the ensuing 6-year capital improvements program period;

daddress the problems of non-point-source contamination of streams and rivers arising inside and outside the suburban sanitary district; and
187 (e) recommend policies toward attaining national, state, regional, and
County water quality standards or objectives.]

189 **Stormwater management plans.**

190 **(a) Concept plan.** Before the Board may approve a preliminary plan of
subdivision, an applicant must submit a stormwater management
concept plan to the Department for review and approval. If a
preliminary plan of subdivision or site plan is not required, the
applicant must submit a stormwater management concept plan to the
Department for review and approval before submitting an application
for a sediment control permit. Each concept plan is subject to the
following conditions and requirements:

198 **(1) The plan must indicate how the stormwater management
criteria will be applied to each proposed development or
redevelopment project.** The Department may require a plan to
analyze the downstream effects of any proposed development or
redevelopment project. The applicant may include structural
and nonstructural stormwater management measures in the
plan. The design criteria and methodologies used in developing
the plan must be consistent with criteria specified in the Design
Manual and any other criteria established by regulation.

197 **(2) Any stormwater management plan must be consistent with any
watershed management plan that the Department of
Environmental Protection has approved or any flood
management plan that the Maryland Department of the
Environment has approved involving the site of the proposed
development or redevelopment project.**
(3) The Department must refer the concept plan back to the Board for comment before approving the plan if the Board so requests.

(4) The Department may require incrementally more specific submittals at each stage of the approval process for a project which requires site plan or development plan review.

(b) Design plan. Any person required under this Chapter to obtain a sediment control permit must include a stormwater management design plan as part of the permit application. The design plan must conform to the stormwater management concept plan and serve as the basis for all later construction. All construction specifications must adhere to the requirements in the Design Manual and any applicable regulation.

(c) Plan preparation. The Director may require the stormwater management concept and design plans to be prepared by a professional engineer, professional land surveyor, landscape architect licensed in Maryland, or any other individual whose qualifications are acceptable to the Department. If a stormwater best management practice requires either a dam safety permit from the Maryland Department of the Environment or a small pond approval from the District, the Director must require the design plan to be prepared by a professional engineer licensed by the State of Maryland.


The Executive must annually recommend the design and construction of off-site storm water management facilities as projects in the capital improvements program. Those recommendations must be guided by the adopted functional master plans, if any, the adopted 10-year water supply and sewerage systems plan, and the general policies of this Article. The Executive must recommend a construction...
schedule for capital improvements program projects to provide adequate protection of the watersheds from the increases in storm water in the basins where contributing development occurs.


(a) On-site stormwater management. A person that receives a building permit or a sediment control permit must provide on-site stormwater management unless the Director waives this requirement.

(b) County participation. If the [[Department]] Director finds that additional storage capacity in an on-site facility would correct an existing problem or provide sufficient capacity for future development or redevelopment projects, the [[Department]] County may participate financially in the construction of a stormwater management facility. The amount of participation must be determined by the extent to which the facility exceeds on-site stormwater management requirements.

(c) Waiver.

(1) An applicant seeking a waiver of any on-site stormwater management requirement must submit a request to the Department in writing in a form acceptable to the Director. The applicant must submit a separate written request for each later addition, extension, or modification to a development that has received a waiver.

(2) The Director may grant a waiver if the applicant shows that existing [[circumstances]] physical conditions prevent full compliance with any on-site stormwater management requirement.
If a site is an infill development or redevelopment site, the Director may waive channel protection requirements if:

(A) the planned development or redevelopment project will not increase the impervious surface area on the site; or

(B) runoff from the site will drain through an adequately-sized existing improved storm drain system before discharging into a natural stream channel without adversely affecting the receiving channel, and the discharge to the storm drain system will not increase erosion in the receiving waters.

The Director may also waive channel protection requirements if:

(A) an off-site facility was designed and constructed to provide the necessary runoff controls for the site; and

(B) the facility's design assures non-erosive conveyance of runoff from the site to the facility.

The Director may grant a waiver only if:

(A) the applicant satisfies criteria established by regulation; and

(B) the waiver is consistent with an applicable watershed management plan approved by the Department of Environmental Protection.

The Director may grant each waiver only on a case-by-case basis. The Director must consider the cumulative effects of all waivers granted in a drainage area or watershed.

When a waiver is granted, the Director must require the applicant to:

(A) provide a monetary contribution:
grant an easement or dedicate land for the County to construct a stormwater management facility; or

(C) take specific stream or wetland restoration measures.


The Board must not approve an application for preliminary plan of subdivision unless the application includes a statement and drawing describing, in concept, how erosion, sediment, water quality impacts, and storm water resulting from the development will be controlled or managed. This concept plan, which must be approved by the Department of Permitting Services, must indicate whether storm water will be managed on-site or off-site and, if on-site, the general location and type of management. The Department of Permitting Services must not issue a building, grading, or sediment control permit for any parcel or lot created before or after the effective date of this Article unless the Director of Permitting Services has approved a plan for on-site storm water management or a waiver of the on-site storm water management requirement for the plat or parcel.]

19-25. Contributions, dedications, and stream restoration.

(a) Contributions. Each monetary contribution required under Section 19-24 must comply with a fee schedule set by Executive regulation. The County must credit each contribution to a capital improvement program project for planning and implementation of stormwater management and stream or wetland restoration.

(b) Dedications. The County may agree with an applicant to accept an easement or dedicate land to build a stormwater management facility. If the Department consents in writing for a facility to be located on parkland, the Board [[may]] must also agree [[with]] before the applicant [[to]] may dedicate land to build a stormwater management facility.
(c) **Stream and wetlands restoration measures.** The Department may allow an applicant to construct stream or wetland restoration measures instead of on-site stormwater management controls if:

1. the Director of Permitting Services and the Director of Environmental Protection both find that it is in the County's best interest for the applicant to provide stream or wetland restoration measures; and
2. the estimated cost of the stream or wetland restoration measures do not exceed the estimated cost of on-site stormwater management controls that the applicant would otherwise be required to construct.

**19-26. On-site requirements; waivers.**

A person that applies for a building permit must provide for on-site stormwater management unless the Director of Permitting Services waives this requirement after receiving a written request from the applicant. If a waiver is granted, the Department of Permitting Services must require the applicant to provide:

(a) monetary contributions,
(b) drainage or conveyance improvements, or
(c) the grant of an easement or a dedication of land for the County to construct a stormwater management facility.

**19-26. Stormwater management design criteria.**

(a) Each applicant must use recharge volume, water quality volume, and channel protection storage volume sizing criteria to design a stormwater management facility for new development as required by the Design Manual and any applicable regulation. Each applicant must also use water quality volume and channel protection storage criteria for any redevelopment project. If the Department finds that
historical flooding problems exist at the site of a new development or redevelopment project, the Director may require the use of overbank flood protection volume and extreme flood volume criteria.

(b) The Director may reduce the minimum control requirements if the applicant incorporates nonstructural stormwater management measures into the site design plans in accordance with the Design Manual and any applicable regulation.

(c) The applicant may use alternative structural and nonstructural practices to satisfy water quality volume requirements if the Director finds that those practices satisfy the criteria in the Design Manual and any additional criteria established by regulation. The Department must approve any alternative practice used for either a new development or redevelopment project. The Administration must also approve any alternative practice used for a new development project.

[19-27.] Contributions.

(a) Monetary amount. When an applicant obtains a waiver of the required on-site storm water management, the monetary contribution required must be made under a fee schedule established as part of the regulations adopted by the Executive under Section 19-31. The fee schedule must be based on the cubic feet of storage required for on-site management of the development in question under the soil conservation service formula unless the developer and the County agree on a greater alternate contribution. The County must credit all of the monetary contributions to the appropriate capital improvements program project. The monetary contribution must not exceed the cost of the otherwise required on-site storm water management facility. The applicant must make the
monetary contribution to the County before the County issues a building permit for the development.

(b) Dedication of land. Instead of the applicant making a monetary contribution to the County when the applicant obtains a waiver of the requirement to provide for on-site storm water management under Section 19-26, the applicant may agree with the Department of Permitting Services or the Board, if the Department of Permitting Services consents in writing for the site to be added to parkland, to dedicate land for construction of a storm water management facility. The applicant must sign the agreement with the Department of Permitting Services or the Board before recording the plats. If no recorded plat is required, then the applicant must enter into the agreement with the Department of Permitting Services or the Board before the Department of Permitting Services issues the building permit. Whenever an applicant signs an agreement with the Board, the applicant must provide a certified copy to the Department of Permitting Services.

19-27. Financial security.

(a) Required.

(1) Before issuing a building permit for a development which requires a stormwater management facility, the Director must require the applicant or owner to furnish a performance or cash bond, irrevocable letter of credit, certificate of guarantee, or other instrument from a financial institution or issuing person satisfactory to the Director and the County Attorney for construction of the on-site stormwater management facility in an amount equal to the estimated cost of the construction.
As used in this Article, a certificate of guarantee is an instrument issued by an organization approved by the Director that satisfies the capitalization criteria and other reasonable criteria established by regulation. The certificate of guarantee must only be issued by the approved organization on behalf of the organization’s members in good standing. Only the Director may resolve questions concerning an applicant’s eligibility to post a certificate of guarantee.

The bond, letter of credit, certificate of guarantee, or other instrument must be conditioned on the faithful performance of the terms and conditions of an approved stormwater management plan and construction of the facility as provided in that plan and under this Article. The bond, letter of credit, certificate of guarantee, or other instrument must inure to the benefit of the County if the applicant or owner does not comply with the conditions of the bond, letter of credit, certificate of guarantee, or other instrument.

Release.

The Director must not release a bond, letter of credit, certificate of guarantee, or other instrument until the Department, after a final inspection, has found that the stormwater management facility complies with the approved plan and this Article.

The Department may agree with an applicant regarding the stages of the work to be done on the facility. After completing each stage, the applicant must notify the Department that the applicant is ready for an inspection and, after the Director certifies that the applicant has completed that stage of work.
under the approved plan and this Article, the Director may reduce
the bond, letter of credit, certificate of guarantee, or other
instrument pro rata, or may direct the Director of Finance to
refund to the applicant a prorated share of the amount that the
applicant deposited with the County.

(c) Revocation of permit. The Director must immediately revoke a building
permit if the permittee does not maintain the bond, letter of credit,
certificate of guarantee, or other instrument. If the Director finds that an
organization issuing certificates of guarantee has violated an applicable
law or regulation, the Director may immediately revoke any permit held
by that organization’s members to which a certificate of guarantee
applies.

[19-28. County participation in on-site facilities.

When the Department of Permitting Services determines that additional
storage capacity beyond that required of the applicant for on-site storm water
management is needed to correct an existing problem or to provide protection in a
more desirable fashion for future development, the Department may acquire, by
purchase or dedication, additional land from the applicant or owner as necessary, or
the Department may participate financially in the construction of a storm water
management facility to the extent that the facility exceeds the required on-site storm
water management.]


(a) Installation inspections.

(1) The Department, or an individual approved by the Department,
must inspect each stormwater management facility under
construction as needed to certify the facility’s compliance with
approved plans. The Department inspector must conduct
each inspection as provided in a checklist that the Department has approved for each type of stormwater management facility. The inspector must prepare a written inspection report that includes the following information:

(A) the date and location of the inspection;

(B) whether construction complied with the approved stormwater management plan;

(C) any variation from approved construction specifications; and

(D) any violations of law or regulations that the inspector observes.

(2) The Department must notify the applicant in writing if the inspector observes any violations of this Article during the inspection. The written notice must describe the nature of the violation and prescribe any corrective action needed.

(3) Construction work on a stormwater management facility must not proceed until the Department:

(A) inspects and approves the work previously completed; and

(B) furnishes the inspection reports to the applicant after each inspection.

(b) Inspection and maintenance of off-site facilities. The Department of Environmental Protection must inspect and approve each off-site stormwater management facility for acceptance for County maintenance. After a facility is accepted, the Department of Environmental Protection must inspect each underground facility at least once each year and each above-ground facility at least once every
3 years, and must maintain each accented facility in good working condition.

(c) Inspection and maintenance of new on-site facilities.

(1) Before issuing a building permit to develop any property that requires an on-site stormwater management facility, the Department must require the property owner to execute an easement and an inspection and maintenance agreement that is binding on all later owners of the land.

(2) The easement and agreement must give the County a perpetual right of access to the facility at all times, to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, or repair any part of the stormwater management facility within the easement as needed to assure that the facility remains in proper working condition under approved design and environmental standards. The agreement must require the owner to be responsible for all nonstructural maintenance of the facility if the development consists of residential property or associated nonresidential property. Otherwise, the agreement must require the owner to be responsible for all maintenance of the facility, including structural maintenance.

(3) The owner must record the easement and agreement in the County land records and deliver a certified copy of each recorded document to the Departments of Permitting Services and Environmental Protection before the Department may issue a completion certificate.

(4) After the Department issues a completion certificate for construction of a new stormwater management facility, the
County must perform all structural maintenance on the facility if the facility serves residential property or associated nonresidential property. No other person may perform structural maintenance on a stormwater management facility that the County is required to structurally maintain without the County's written consent.

(5) The Department of Environmental Protection must inspect each County-maintained underground facility at least once every year and each County-maintained above-ground facility at least once every 3 years.

(d) Inspection and maintenance of existing on-site facilities.

(1) The owner of an on-site stormwater management facility that is not subject to subsection (c) must perform all structural maintenance needed to keep the facility in proper working condition. The owner of a residential property or associated nonresidential property, or a homeowners' association which includes the residential property, may execute a stormwater management easement granting the County a perpetual right of access to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, or repair any part of the stormwater management facility within the easement as needed to assure that the facility remains in proper working condition under approved design standards.

(2) If the owner of a stormwater management facility grants a stormwater management easement to the County, the owner must make any structural repairs needed to place the facility in
proper working condition, as determined by the Department of Environmental Protection, before the County enters into an agreement with the owner that obligates the County to assume responsibility for structural maintenance of the facility. After the owner and the County have agreed that the County will assume responsibility for structural maintenance of the facility, the owner must record in the County land records the easement and any other agreements executed in conjunction with the easement that are binding on later owners of the land [in the County land records]. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.

(3) After the Department of Environmental Protection receives a certified copy of the easement and agreements, the County must structurally maintain and inspect the facility as provided in subsection (c).

(e) Abandonment instead of repair. The Department of Environmental Protection must inspect each stormwater management facility to see what repairs, if any, are needed to restore the facility to proper working condition. If the Director of Environmental Protection finds that the stormwater management facility is no longer needed to control stormwater runoff or that the benefits of a repaired stormwater management facility are not justified by the cost of repair, the owner of the stormwater management facility must abandon the use of the facility for stormwater functions as the Director of Environmental Protection orders. Any order issued under this subsection must not
restrict the facility from being used for recreational or other purposes not related to stormwater control.

(f) Nonstructural maintenance of on-site facilities. The owner of an on-site stormwater management facility must provide landscaping and perform any other nonstructural maintenance that impacts the effectiveness of routine structural maintenance, performed either privately or publicly. Among other actions, the owner must:

(1) prevent the accumulation of solid waste on the property and the generalized growth of weeds or plants in violation of Section 58-3;

(2) clear any woody vegetation, including trees and brush, within 25 feet of the facility's control structure and within 15 feet of an upstream or downstream dam embankment; and

(3) abate any other condition on the property that the Department of Environmental Protection reasonably finds may adversely affect the facility's proper functioning.

(g) Disposal of materials from maintenance. A person that transports materials or debris resulting from the repair, cleaning, or maintenance of a stormwater management facility must dispose of the materials at a facility that has a valid permit to accept the type of materials or debris being deposited.

(h) Emergency authority. If, after inspection, the Director of Environmental Protection finds that the condition of a privately maintained stormwater management facility presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the Director of Environmental Protection may take needed actions to protect the public and make the facility safe.
including entering the property to make needed repairs. The County must assess any costs incurred as a result of the Director of Environmental Protection’s actions against each owner of the facility. The County may collect the costs in the same manner as real property taxes are collected against the property where the facility is located. In addition, the County may seek reimbursement under any other method legally available to collect debts owed to the County.

[19-29. Inspection and maintenance of off-site storm water management facilities.

The Department must inspect and approve all off-site storm water management facilities for acceptance for County maintenance. After a facility is accepted, the Department must inspect each underground facility at least once each year and each above-ground facility at least once every 3 years. The Department must maintain each accepted facility in good working condition.]

19-29. Stormwater management loan program.

(a) The Department of Environmental Protection must create a Stormwater Management Loan Program. The Program must provide direct loans to eligible homeowners’ associations and other residential and associated nonresidential property owners to:

(1) make structural repairs to restore a stormwater management facility to acceptable design standards before the owner petitions the County to assume responsibility for future structural maintenance of the facility under Section 19-28(d), or

(2) cover the cost of abandoning a facility under Section 19-28(e).

(b) The fund for the Program consists of:

(1) all funds appropriated to the Program;

(2) all payments on any loan from the Program;
all interest earned on funds in the Program: and

all funds received from any other public or private entity.

The County Executive must adopt regulations under method (2) to administer the Program. These regulations should include:

1. lending standards and priorities:
2. terms and conditions of loans:
3. application procedures:
4. procedures for loan applicants to request reconsideration of a decision to deny a loan or a decision on interest rates, terms, and conditions: and
5. collection procedures in cases of nonpayment or default.

[19-30. Inspection and maintenance of on-site storm water management facilities.

(a) Inspection and maintenance of new facilities.

(1) Before issuing a building permit to develop any property that requires an on-site storm water management facility, the Department of Permitting Services must require the property owner to execute an easement and an inspection and maintenance agreement that is binding on all later owners of land served by the on-site storm water management facility.

(2) The easement and agreement must give the County a perpetual right of access to the facility at all times, to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, or repair any part of the storm water management facility within the easement as needed to assure that the facility remains in proper working condition under approved design and environmental standards. The agreement must require the owner to be
responsible for all nonstructural maintenance of the facility if the
development consists of residential property or associated
nonresidential property. Otherwise, the agreement must require
the owner to be responsible for all maintenance of the facility,
including structural maintenance.

(3) The owner must record the easement and agreement in the
County land records and deliver a certified copy of each recorded
document to the Departments of Permitting Services and
Environmental Protection.

(4) After the Department of Permitting Services issues a completion
certificate for the new storm water management facility under
Section 19-14, the County must perform all structural
maintenance on the facility if the facility serves residential
property or associated nonresidential property. No other person
may perform structural maintenance on a storm water
management facility that the County is required to structurally
maintain without the County’s written consent.

(b) Maintenance of existing facilities.

(1) The owner of an on-site storm water management facility that is
not subject to subsection (a) must perform all structural
maintenance needed to keep the facility in proper working
condition. The owner of a residential property or associated
nonresidential property, or a homeowners’ association which
includes the residential property, may execute a storm water
management easement granting the County a perpetual right of
access to inspect, operate, monitor, install, construct, reconstruct,
modify, maintain, or repair any part of the storm water
management facility within the easement as needed to assure that the facility remains in proper working condition.

(2) If the owner of a storm water management facility grants a storm water management easement to the County, the owner must make any structural repairs needed to place the facility in proper working condition, as determined by the Department, before the County enters into an agreement with the owner that obligates the County to assume responsibility for structural maintenance of the facility. After the owner and the County have agreed that the County will assume responsibility for structural maintenance of the facility, the owner must record the easement and any other agreements executed in conjunction with the easement that are binding on subsequent owners of land served by the facility in the County land records. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.

(3) After the Department receives a certified copy of the easement and agreements, the County must structurally maintain the facility as provided in subsection (a).

(c) Abandonment instead of repair.

The Department must inspect each storm water management facility to see what repairs, if any, are needed to restore the facility to proper working condition. If after reviewing the existing drainage patterns, age, and design of a storm water management facility, the Director finds that it is more prudent to stop using the facility for storm water control functions rather than restore it to proper working condition, or finds that the facility is no longer needed to control storm water runoff because of
later land use changes, the owner must abandon the use of the facility for storm water functions as the Director orders. Any order issued under this subsection must not restrict the facility from being used for recreational or other purposes not related to storm water control.

(d) Nonstructural maintenance.

The owner of an on-site storm water management facility must provide landscaping and perform any other nonstructural maintenance that impacts the effectiveness of routine structural maintenance, performed either privately or publicly. Among other actions, the owner must:

(1) prevent the accumulation of solid waste on the property and the generalized growth of weeds or plants in violation of Section 58-3;

(2) clear any woody vegetation, including trees and brush, within 25 feet of the facility's control structure and within 15 feet of an upstream or downstream dam embankment; and

(3) abate any other condition on the property that the Department reasonably finds may adversely affect the facility's proper functioning.

(e) Emergency authority.

If, after an inspection by the Department, the Director finds that the condition of a privately maintained storm water management facility presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, then the Director must take needed actions to protect the public and make the facility safe, including entering the property to make needed repairs. The County must assess any costs incurred as a result of the Director's actions against each owner of the facility. The assessment is a lien on the
property and may be collected in the same manner and subject to the same penalties as ordinary taxes.

Disposal of materials from maintenance. A person that transports materials or debris resulting from the repair, cleaning, or maintenance of a storm water management facility must dispose of the materials or debris at a facility that has a valid permit to accept the type of materials or debris being deposited.]

19-30. Regulations.

(a) The Executive may adopt regulations under method (2) to implement this Article. Any regulation adopted under this Article must not conflict with or waive any provision of this Chapter, and must not be less restrictive than applicable requirements under state or federal law. The regulations must establish a fee schedule for monetary contributions to be paid to the County when the Department waives any on-site stormwater management requirement. The regulations may also include design standards and other criteria or procedures necessary to implement this Article.

(b) The Executive may adopt plan review fees and inspection fees under method (3) to cover the cost of administering this Article.


The County Executive may adopt regulations under method (2) to implement this Article. Those regulations must establish a fee schedule for the monetary contributions to be paid to the County instead of constructing the required on-site storm water management facility. The regulations may also include design standards and other criteria or procedures necessary to implement this Article.]
The following development activities are exempt from the stormwater management requirements under this Article:

(a) agricultural land management activities;

(b) any addition or modification to an existing single family detached residential structure if the addition or modification does not disturb more than 5,000 square feet of land area;

(c) any development not associated with the construction of a new residential or commercial building if the development does not disturb more than 5,000 square feet of land area; and

(d) any land development activity that the Administration finds is subject to any State law that regulates stormwater management runoff.

19-32. Transition for approved plans.

Each new development or redevelopment project must comply with this Article, except that:

(a) A previously approved stormwater management concept plan remains valid if the Department issues a sediment control permit for the property covered by the plan [within one year after the effective date of this Article] before July 1, 2003. The applicant must construct the stormwater management system within 2 years after the Department issues the sediment control permit.

(b) A residential lot containing 2 or more acres is exempt from any on-site stormwater management requirement if the preliminary plan creating the lot was approved before [the effective date of this Article] July 1, 2002 and the Department issues the sediment control permit [within one year after the effective date of this Article] before July 1, 2003.

(a) Procedures.

(1) Before issuing a building permit to construct a development requiring a storm water management facility, the Director of Permitting Services must require from the applicant or owner a performance or cash bond, irrevocable letter of credit, certificate of guarantee, or other instrument from a financial institution or issuing person, in a form satisfactory to the Director of Permitting Services and the County Attorney, for the construction of the on-site storm water management facility in an amount equal to the estimated cost of that construction.

(2) For purposes of this Article, a certificate of guarantee is an instrument issued by a person that is approved by the Director of Permitting Services and meets the capitalization and other reasonable criteria established by regulation. These criteria must include the demonstrated expertise of the issuing person or its members in storm water management and the incidence of noncompliance with this Chapter by all members of the issuing person. The certificate of guarantee must only be issued by the approved person on behalf of members in good standing of that person. Any question concerning the eligibility of an applicant to post a certificate of guarantee must be resolved by the Director of Permitting Services.

(3) The bond, letter of credit, certificate of guarantee, or other instrument must be conditioned on the faithful performance of the terms and conditions of the approved storm water management plan and the construction of the facility as provided in that plan and this Article. The bond, letter of credit, certificate of...
guarantee, or other instrument must inure to the benefit of the County and to any person aggrieved by the failure of the applicant or owner to comply with the conditions of that bond, letter of credit, certificate of guarantee, or other instrument.

(4) The Director of Permitting Services must not release the bond, letter of credit, certificate of guarantee, or other instrument until the Department of Permitting Services has made a final inspection and found that the storm water management facility complies with the approved plan and this Chapter.

(5) The Department of Permitting Services may also permit an applicant to enter into an agreement with the County and provide a bond, letter of credit, certificate of guarantee, or other instrument equal to the cost of the storm water management facility to the County. The agreement must specify the various stages of the work to be done on the facility. After completing each stage, the applicant must notify the Department that the applicant is ready for an inspection and, after the Director of Permitting Services certifies that the applicant has completed that stage under the approved plan and requirements of this Chapter, the Director of Permitting Services may reduce the bond, letter of credit, certificate of guarantee, or other instrument pro rata may direct the Director of Finance to refund to the applicant a prorated share of the amount deposited by the applicant with the County.

(b) The Director of Permitting Services must immediately revoke the building permit if the permittee does not maintain the bond or certificate of guarantee. Whenever the Director of Permitting Services finds that a person issuing certificates of guarantee has violated an applicable law or
regulation, the Director of Permitting Services may immediately revoke all permits of members of that person for which a certificate of guarantee has been posted. The Director of Permitting Services may also post stop work orders wherever applicable until the person substitutes an appropriate bond or other instrument acceptable to the County for the certificates of guarantee.

19-33. Agreements between the County and municipalities.

(a) The Executive must inform any incorporated municipality in the County that may regulate stormwater management of any proposed stormwater management facility, development or plan that could affect stormwater management in the municipality. The Board must inform any municipality of any functional master plan or preliminary plan of subdivision that may affect stormwater management in the municipality.

(b) The County and the Board may enter into cooperative agreements with any incorporated municipality in the County concerning any matter relating to stormwater management, including the planning, design, construction, and maintenance of stormwater management facilities and monetary contributions for stormwater management. The County and the Board may enter into those cooperative agreements to coordinate stormwater management activities with any municipality to avoid duplication of effort and to minimize the costs associated with an effective stormwater management program.

(c) If a municipality operates a stormwater management program that serves substantially the entire municipality and meets all
applicable federal and state standards, the County must reimburse the
municipality, subject to appropriation, for the cost of operating the
program, limited to the amount the Director of Environmental
Protection estimates the County would spend for that municipality if it
were operating the program, by means of a cooperative agreement under
subsection (b).

[19-34. Storm water management loan program.

(a) The Department must create a Storm Water Management Loan
Program. The Program must provide direct loans to eligible
homeowners' associations and other residential and associated
nonresidential property owners to:

(1) make structural repairs to restore a storm water management
facility to acceptable design standards before the owner petitions
the County to assume responsibility for future structural
maintenance of the facility under Section 19-30(b), or

(2) cover the cost of abandoning a facility under Section 19-30(c).

(b) The fund for the Program consists of:

(1) all funds appropriated to it;

(2) all payments on any loan from the Program;

(3) all interest earned on funds in the Program; and

(4) all funds received from any other public or private entity.

(c) The County Executive must adopt regulations under method (2) to
administer the Program. These regulations should include:

(1) lending standards and priorities;

(2) terms and conditions of loans;

(3) application procedures;
procedures for loan applicants to request reconsideration of a
decision to deny a loan or a decision on interest rates, terms, and
conditions; and

(5) collection procedures in cases of nonpayment or default.]


* * *

(b) The Charge must be imposed on each residential property and
associated nonresidential property, as specified in regulations
adopted by the Executive under Method (1) to administer this Section.
The regulations may define different classes of real property, depending
on the amount of impervious surface on the property, [[storm water]]
stormwater runoff from the property, and other relevant characteristics,
for purposes of applying the charge.

* * *

(f) The Director must deposit funds raised by the Charge, and funds for this
purpose from any other source, into a [[storm water]] stormwater
management fund. The fund must only be appropriated for:

(1) construction, operation, and maintenance of [[storm water]]
stormwater management facilities, and related expenses;

(2) enforcement and administration of this Article; and

(3) any other activity authorized by this Article or Maryland Code,
Environment Art., §4-204.

(g) This Charge does not apply to any property located in a municipality in
the County which:

(1) operates a [[storm water]] stormwater management program that
meets all applicable federal, state, and County requirements and
has received any necessary federal or state permit; and
(2) imposes a similar charge or other means of funding its [[storm water]] stormwater management program in that municipality.

(h) A person that believes that the Director of Environmental Protection has mistakenly assigned a Charge to the person’s property or commuted the Charge incorrectly may apply to the Director of Environmental Protection in writing for a review of the Charge, and request an adjustment to correct any error, within 21 days after receiving a bill for the Charge. If the Director of Environmental Protection denies any requested adjustment, the applicant may request reconsideration of the Director’s denial in writing within 10 days after the date of the denial. An aggrieved property owner may appeal the Director’s final decision to the County Board of Appeals within 10 days after the Director issues the decision. The Board of Appeals may hear and decide all appeals taken from a final decision of the Director of Environmental Protection under this subsection as provided in Article I of Chapter 2A.

Sec. 2. Transition. Until superseded, a Regulation issued before this Act took effect remains in effect to the extent the regulation is consistent with Chapter 19, as amended by this Act. This Act does not apply to a violation of Chapter 19 that initially accrued before this Act took effect.

Approved:

Steven A. Silverman, President, County Council

Approved:

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council