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COUNTY COUNCIL

OF

CIRCUIT COURT
DORCHESTER COUNTY

DORCHESTER COUNTY, MARYLAND

20 15 Legislative Session,
Legislative Day No. 2

Introduced By: County Council

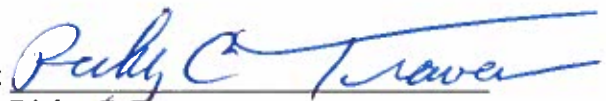
BILL NO. 2015 - 2

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND PURSUANT TO THE AUTHORITY OF THE ENVIRONMENT ARTICLE, TITLE 4 SUBTITLE 1 OF THE ANNOTATED CODE OF MARYLAND AND PURSUANT TO ARTICLE 25A, SECTION 5(S) OF THE ANNOTATED CODE OF MARYLAND TO REPEAL AND REENACT CHAPTER 100 OF THE DORCHESTER COUNTY CODE ENTITLED "GRADING, EROSION AND SEDIMENT CONTROL" PROVIDING FOR THE PROTECTION, MAINTENANCE AND ENHANCEMENT, PUBLIC SAFETY AND GENERAL WELFARE BY ESTABLISHING MINIMUM REQUIREMENTS AND PROCEDURES TO CONTROL THE ADVERSE IMPACTS ASSOCIATED WITH ACCELERATED SOIL EROSION AND THE RESULTANT SEDIMENTATION.

Introduced, read first time, ordered posted on the official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, February 3, 2015, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:50 p.m.

By order:



Ricky C. Travers

President of the County Council

Dec.14

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CHAPTER 100**GRADING, EROSION AND SEDIMENT CONTROL****ARTICLE I****Purpose and Authority****§ 100-1. Title.**

This chapter shall be known and may be cited as the "Erosion and Sediment Control Chapter of Dorchester County."

§ 100-2. Purpose; Authority.

A. The purpose of this chapter is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with accelerated soil erosion and the resultant sedimentation and land disturbances; and to minimize soil erosion and prevent offsite sedimentation by using soil erosion and sediment control practices designed in accordance with the Code of Maryland Regulations (COMAR) 26.17.00, the 2011 Maryland Standards and Specifications (Standards and Specifications) and the Stormwater Management Act of 2007 (Act). Implementing this Chapter will help reduce the negative impacts of land development on water resources, maintain the chemical, physical, and biological integrity of streams, and minimize damage to public and private property.

B. The provisions of this chapter, pursuant to the Environment Article, Title 4, Subtitle 1, of the Annotated Code of Maryland, are adopted under the authority of the Dorchester County Code and shall apply to all grading occurring within the unincorporated area of Dorchester County. The application of the chapter and the provisions expressed herein shall be the minimum erosion and sediment control requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. The Dorchester County Department of Public Works shall be responsible for the coordination and enforcement of the provisions of this chapter.

§ 100-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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

B. **Agricultural Land Management Practices:** Those methods and procedures used in the cultivation of land in order to further crop and livestock production and the conservation of related soil and water resources. Logging and timber-removal operations may not be considered a part of this definition.

C. Applicant: Any person, firm, or government agency that executes the necessary forms to procure official approval of the project or a permit to carry out the construction of a project.

D. Approval authority: The entity responsible for the review and approval of erosion and sediment control plans. The Dorchester Soil Conservation District shall be responsible for the review and approval of erosion and sediment control plans.

E. Best management practice (BMP): A structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.

F. Clear: Any activity which removes the vegetative ground cover while leaving the root mat intact.

G. Department: The Maryland Department of the Environment.

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

I. Environmental site design (ESD): The use of small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources

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

K. Erosion and Sediment Control: A system of structural and vegetative measures that minimize soil erosion and off-site sedimentation.

L. Erosion and Sediment Control Plan: An erosion and sediment control strategy or plan to minimize erosion and prevent off-site sedimentation.

M. Exemption: Those land development activities that are not subject to the erosion and sediment control requirements contained in this chapter.

N. Final Erosion and Sediment Control Plan: Along with the final stormwater management plan, the last of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02. Final erosion and sediment control plans shall be prepared and approved in accordance with the specific requirements of the Dorchester Soil Conservation District and this Chapter and designed in accordance with the Standards and Specifications.

O. Grade: To cause the disturbance of earth. This shall include but not be limited to any excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.

P. Grading unit: The maximum contiguous area allowed to be graded at a given time. For the

purposes of this Chapter, a grading unit is 20 acres or less.

Q. Highly erodible soils: Those soils with a slope greater than 15 percent or those soils with a soil erodability factor, K, greater than 0.35 and with slopes greater than 5 percent.

R. Inspection Agency: The Department or, if enforcement authority is delegated, the Dorchester County Department of Public Works.

S. Maximum extent practicable (MEP): The designing stormwater management systems so that all reasonable opportunities for using ESD planning techniques and treatment practices are exhausted and only where absolutely necessary is a structural BMP implemented.

T. Owner/Developer: A person undertaking, or for whose benefit, activities covered by this Chapter are carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

U. Permittee: Any person to whom a grading permit has been issued.

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

W. Responsible Personnel: Any foreman, superintendent or project engineer who is in charge of on-site clearing and grading operations or the implementation and maintenance of an erosion and Sediment control plan. X. Sediment: Soils or other surficial materials transported or deposited by the action of wind, water, ice, gravity or other artificial means.

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

Z. Sketch plan: The first of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02 and shall include the information necessary to allow an initial evaluation of a proposed project.

AA. Preliminary Land Development plan: The second of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02. A Preliminary Land Development plan shall include the information necessary to allow a detailed evaluation of a proposed project.

BB. Stabilization: The prevention of soil movement by any of various vegetative and/or structural means.

CC. Standards and Specifications:-The "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control" or any subsequent revisions.

DD. Stormwater: Water that originates from a precipitation event.

EE. Stormwater management system: The natural areas, ESD practices, stormwater

management measures, and any other structure through which stormwater flows, infiltrates, or discharges from a site.

FF. Variance: A modification of the minimum erosion and sediment control requirements for exceptional circumstances such that strict adherence to the requirements would result in unnecessary hardship and not fulfill the intent of this Chapter.

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

HH. Wetlands: Any area that has saturated soils or periodic high groundwater levels and vegetation adapted to wet conditions and periodic flooding.

§ 100-4. Applicability; Variances.

A. Scope. No person shall clear or grade land without implementing soil erosion and sediment controls in accordance with the requirements of this chapter and Chapter 96, Forest Conservation Standards, of this Code, except as provided within this section. An erosion and sediment control plan must be submitted to and approved by the Dorchester Soil Conservation District and a grading permit issued by the Dorchester County Department of Public Works.

B. Exemptions are as follows:

1. Agricultural land management practices, provided that a person engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a one-year period must file a declaration of intent as provided for in § 100-14 which includes:
 - a. A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for at least five years from the date of the declaration; and
 - b. A sketch map of the property which shows the area to be cleared.
2. Clearing or grading activities that disturb less than 5,000 square feet of land area and disturb less than 100 cubic yards of earth.
3. Clearing or grading activities that is subject exclusively to state approval and enforcement under state law and regulations.

C. Variances. The Dorchester Soil Conservation District may grant a written variance from the requirements of the Standards and Specifications if strict adherence to the specifications will result in unnecessary hardship and not fulfill the intent of this chapter. The developer shall submit a written request for a variance to the Dorchester Soil Conservation District. The request shall state the specific variances sought and reasons for requesting the variance. The Dorchester Soil Conservation District shall not grant a variance unless and until sufficient specific reasons justifying the variances are provided by the developer.

D. The provisions of these regulations shall be held to be the minimum requirements to meet the stated purpose and intent of these regulations. Where the provisions of these regulations

impose greater restrictions than those of any statute, other regulations or Chapter, the provisions of these regulations shall prevail. Where the provisions of any statute, other regulation or Chapter impose greater restrictions than those of this chapter, the provisions of such statute, regulations or Chapter shall prevail.

§ 100-5. Erosion and sediment control plans.

A. Review and approval of erosion and sediment control plans.

1. A person may not clear or grade land without first having his erosion and sediment control plan approved by the Dorchester Soil Conservation District.
2. The Dorchester Soil Conservation District shall review erosion and sediment control plans to determine compliance with this Chapter and the Standards and Specifications prior to approval. In approving the plan, the Dorchester Soil Conservation District may impose such conditions that may be deemed necessary to ensure compliance with the provisions of this Chapter, COMAR 26.17.00, the Standards and Specifications, and the preservation of public health and safety.
3. The review and approval process shall be in accordance with the comprehensive and integrated plan approval process described in the Standards and Specifications (see note above), Dorchester County Stormwater Chapter, and the Act.
4. At a minimum, a sketch plan must include the mapping of natural resources and sensitive areas including highly erodible soils and slopes greater than 15 percent as well as information required under the Dorchester County Stormwater Management Code Chapter 134. These areas are to remain undisturbed or an explanation must be included with either the Sketch or Preliminary Land Development plan describing enhanced protection strategies for these areas during construction.
5. A Preliminary Land development plan submittal must include all sketch plan information and indicate how proposed erosion and sediment control practices will be integrated with proposed stormwater management practices. The latter is to be done through a narrative and an overlay plan showing both ESD and erosion and sediment control practices. An initial sequence of construction and proposed project phasing to achieve the grading unit restriction should be submitted at this time.
6. An applicant shall submit a final erosion and sediment control plan to the Dorchester Soil Conservation District for review and approval. The plan must include all of the information required by the Sketch and Preliminary Land Development plans as well as any information in section §100-5.B. not already submitted.
7. The Dorchester Soil Conservation District shall notify the applicant of approval or the reasons for disapproval or modification within 30 days after submission of the completed erosion and sediment control plan. If a decision is not made within 30 days, the Dorchester Soil Conservation District shall inform the applicant of the status of the review process and the anticipated completion date. The erosion and sediment control plan shall not be considered approved without the inclusion of the signature and date of

signature of the Dorchester Soil Conservation District on the plan.

8. Approved plans may remain valid for two years from the date of approval unless renewed by the Dorchester Soil Conservation District. Solid waste disposal sites and surface mining site plans will remain valid for five (5) years to coincide with their respective MDE permits.

9. Grandfathering of Approved Plans:

- a. Any plans that receive final approval after July 1, 2015 must be in compliance with the requirements of this Chapter and the Standards and Specifications.
- b. A plan that receives final approval by July 1, 2015 may be reapproved under its existing conditions if grading activities have begun on the site by July 1, 2017, with the exception of stabilization requirements.
- c. Stabilization practices on all sites must be in compliance with the requirements of this Chapter and the Standards and Specifications by July 1, 2015, regardless of when an approved erosion and sediment control plan was approved.

B. Contents of the erosion and sediment control plan.

1. The applicant is responsible for submitting an erosion and sediment control plan which meets the requirements of the Dorchester Soil Conservation District, this chapter, the State Sediment Control Regulations, COMAR 26.17.00 and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control. The plan shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation. The applicant shall certify on the drawings that all clearing, grading, drainage, construction and development shall be conducted in strict accordance with the plan.

2. At a minimum, applicants shall submit the following information:

- a. A letter of transmittal indicating the tax map, parcel and/or lot numbers and the total area of the site.
- b. A vicinity map indicating North arrow, site location, scale and other information necessary to easily locate the property.
- c. Plans shall be at an appropriate scale indicating at least:
 - (1.) The name, address and telephone number and e-mail address of:
 - (a.) The owner of the property where the grading is proposed.
 - (b.) The developer.
 - (c.) The applicant.

(2.) The existing topography and improvements as well as proposed topography and improvements at a scale between 1" = 10' and 1" = 50' with 2 foot contours or other approved contour intervals.

(3.) The proposed grading and earth disturbance, including:

- (a.) The surface area involved.
- (b.) The volume of cut and/or spoil material.
- (c.) The volume of fill and/or borrow material.
- (d.) The limits of grading, including the limitation of mass clearing and grading wherever possible.
- (e.) Delineation of the initial, interim and final phases of disturbance.

d. Drainage area map(s) at a 1" = 200' minimum scale showing existing, interim, and proposed topography, proposed improvements, standard symbols for proposed sediment control features, and pertinent drainage information including provisions to protect downstream areas from erosion for a minimum of 200 feet downstream or to the next conveyance system.

e. The location of natural resources, wetlands, floodplains, highly erodible soils, slopes 15 percent and steeper, and any other sensitive areas.

f. A general description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local soil conservation district or the USDA Natural Resources Soil Conservation Service.

g. Proposed stormwater management practices.

- (1.) The velocities and quantities of flow at outfalls and all proposed conveyance systems requiring stabilization.
- (2.) The site conditions around points of all surface water discharge from the site.
- (3.) Existing and proposed bridges, storm drains, culverts, outfalls, etc.

h. The erosion and sediment control practices to minimize on-site erosion and prevent off-site sedimentation, including:

- (1.) The provisions to preserve topsoil and limit disturbance.
- (2.) The details of grading practices including location, type and phasing of grading units, if applicable.
- (3.) The design details and data for all erosion and sediment control practices.
- (4.) The details of temporary and permanent stabilization measures, including placement of the following statement on the plan: Following the initial soil disturbance or re-disturbance, permanent or temporary stabilization shall be completed within:

- (a) Three (3) calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes steeper than 3 horizontal to 1 vertical (3:1); and
- (b) Seven (7) calendar days as to all other disturbed or graded areas on the project site not under active grading.”
- (c) Details for areas requiring accelerated stabilization; and
- (d) Maintenance requirements as defined in the Standards and Specifications;

(5). The requirements of Subsection B (3) e (4) (a) and (b) do not apply to those areas which are shown on the plan and are currently being used for material storage or for those areas on which actual construction activities are currently being performed or to the interior areas of a surface mine site where the stabilization material would contaminate the recoverable resource. Maintenance shall be performed as necessary to ensure that the stabilized areas continuously meet the appropriate requirements of the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.

i. Details for areas requiring accelerated stabilization.

j. Maintenance requirements as defined in the Standards and Specifications.

k. The sequence of construction, describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization, and the various stages or phases of earth disturbance and construction. Any changes or revisions to the sequence of construction must be approved in writing by the Dorchester Soil Conservation District prior to proceeding with construction. The sequence of construction shall, as a minimum, include a schedule and time frame for the following activities:

- (1). A request for a pre-construction meeting with the appropriate enforcement authority;
- (2.) Clearing and grubbing for those areas necessary for the installation of perimeter controls.
- (3.) Construction of perimeter controls.
- (4.) Remaining clearing and grubbing within installed perimeter controls.
- (5.) Road grading.
- (6.) Grading for the remainder of the site.
- (7.) Utility installation and connections to existing structures.
- (8.) Construction of buildings, roads, and other construction.
- (9.) Final grading, landscaping or stabilization.
- (10.) Installation of stormwater management measures;
- (11.). Removal of controls and stabilization of areas that are disturbed by removal of sediment controls. Approval by the Dorchester County Department of Public Works is required prior to removal of sediment controls.

1. A statement placed on the plan indicating that the developer shall request that

the Dorchester County Department of Public Works approve work completed in accordance with the approved erosion and sediment control plan, the grading permit and this chapter.

(1.) On all sites with disturbed areas in excess of two acres, approval of the inspection agency shall be requested upon completion of the installation of perimeter erosion and sediment controls and approval obtained before proceeding with any other earth disturbance or grading.

(2.) Approval shall be requested upon the final stabilization of all sites with disturbed areas in excess of two acres before the removal of controls.

m. A certification by the owner or developer that any clearing, grading, construction or development, or all of these, will be done pursuant to this plan and that responsible personnel involved in the construction project will have a certificate of training at a Maryland Department of the Environment approved training program for the control of sediment and erosion before beginning the project. The certificate of training for responsible personnel requirement may be waived by the Dorchester Soil Conservation District on any project involving four or fewer residential units.

n. Any additional information or data deemed appropriate by the Dorchester Soil Conservation District.

o. Certification by a professional engineer, land surveyor, landscape architect, architect, or forester (for forest harvest operations only) registered in the State that the plans have been designed in accordance with erosion and sediment control laws, regulations, and standards, if required by the Dorchester Soil Conservation District or the Administration.

C. Modifications to erosion and sediment control plans.

1. The Dorchester Soil Conservation District may revise approved plans as necessary. The Dorchester County Department of Public Works may also revise or modify approved plans in accordance with §100-7C.

2. Modifications may be requested by a permittee, the Dorchester County Department of Public Works and the Dorchester County Planning and Zoning Department.

D. Standard Erosion and Sediment Control Plan

1. The Dorchester County Soil Conservation District may adopt a standard erosion and sediment control plan for activities with minor earth disturbances, such as single-family residences, small commercial and other similar building sites, minor maintenance grading, and minor utility construction.

2. A standard erosion and sediment control plan must meet the requirements of this Chapter and the Standards and Specifications.

3. MDE shall review and approve a standard plan prior to its adoption.

§ 100-6. Permits.

A. Permit requirements. Before a grading permit is issued by the Dorchester County Department of Public Works or a zoning certificate (building permit) is issued by the Dorchester County Planning and Zoning Department, the Dorchester Soil Conservation District must review and approve or exempt or waive an erosion and sediment control plan for the site.

B. Permit expiration and renewal. The grading permit shall expire *two* years from the date of issuance unless extended or renewed by the Dorchester County Department of Public Works. Application for permit renewal should be made at least two months prior to the permit expiration date.

C. Permit fee. A permit fee schedule may be established by the Dorchester County Council for the administration and management of the erosion and sediment control program. Publicly owned projects, including refuse disposal areas, sanitary landfills and public works projects, shall be exempt from the permit fee.

D. Permit suspension and revocation. The Dorchester County Department of Public Works may suspend or revoke any grading permits after providing written notification to the permittee based on any of the following reasons:

1. Any violation(s) of the terms or conditions of the approved erosion and sediment control plan or permit.
2. Noncompliance with a violation notice(s) or stop-work order(s) issued.
3. Changes in the site characteristics upon which plan approval and permit issuance was based.
4. Any violation(s) of this chapter or any rules and regulations adopted under it.

E. Permit conditions. In issuing the grading permit, the Dorchester County Department of Public Works may impose such conditions thereto as may be deemed necessary to ensure compliance with the provisions of this chapter or the preservation of the public health and safety.

§ 100-6.1. Permits and approvals within Critical Area.

No approval, permit, variance or special exception for any property located within the Critical Area as regulated by this chapter shall be issued, unless the person seeking the permit, approval, variance or special exception has:

- A. Fully paid all administrative, civil, and criminal penalties imposed by this chapter for violation for the subject property within the Critical Area; and

B. Prepared a restoration or mitigation plan approved by the County to abate impacts to water quality or natural resources as a result of the violation for the subject property within the Critical Area; and

C. Performed the abatement measures in the approved plan in accordance with the County's Critical Area Program, for the subject property, under this chapter; and

D. Satisfaction of all conditions specified under this section shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property; and

E. Unless an extension of time is appropriate because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

§ 100-7. Inspections; Complaints.

A. Inspection frequency and reports.

1. The permittee shall maintain a copy of the approved erosion and sediment control plan on the site.

2. On all sites with disturbed areas in excess of two (2) acres, the permittee shall request that the Dorchester County Department of Public Works inspect the work completed, at the stages of construction specified below, to ensure accordance with the approved erosion and sediment control plan, the grading permit and this chapter.

a. Upon completion of the installation of perimeter erosion and sediment controls, prior to proceeding with any other earth disturbance or grading.

b. Upon final stabilization before the removal of sediment controls.

3. Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on the average of once every two weeks.

4. Inspectors shall prepare written reports after every inspection. The inspection report shall describe:

a. The date and location of the site inspection.

b. Whether or not the approved plan has been properly implemented and maintained.

c. Any practice deficiencies or erosion and sediment control plan deficiencies.

d. If a violation exists, the type of enforcement action taken.

5. The Dorchester County Department of Public Works shall notify the on-site personnel or the owner/developer, in writing, when violations are observed, describing:

a. The nature of the violation.

- b. The required corrective action.
- c. The date by which to have the violation corrected.

B. Right of entry. It shall be a condition of every grading permit that the Dorchester County Department of Public Works has the right to enter property periodically to inspect for compliance with this chapter.

C. Modifications to erosion and sediment control plans. When inspection of the site indicates that the approved erosion and sediment control plan needs modification, the modification shall be made in compliance with the erosion and sediment control criteria contained in the standards and specifications as follows:

1. The permittee shall submit requests for major modifications to approved erosion and sediment control plans, such as the addition or deletion of a sediment basin, to the plan approval agency to be processed appropriately. This processing includes modifications due to plan inadequacies for controlling erosion and sediment as revealed through inspection.
2. The inspector may approve minor modifications to approved erosion and sediment control plans in the field if they are documented on a field inspection report. The plan approval agency shall, in conjunction with the inspection agency, develop a list of allowable field modifications for use by the inspector. The Department must approve any list of minor modifications prior to its implementation.

D. Complaints. The Dorchester County Department of Public Works shall receive complaints and initiate enforcement procedures when violations are confirmed. Any complaint received shall be acted upon routinely within seven days, and the complainant shall be notified of any action or proposed action routinely within 10 days of the receipt of the complaint.

§ 100-8. Enforcement.

- A. When the Dorchester County Department of Public Works or an inspector determines that a violation of the approved erosion and sediment control plan has occurred, the inspector shall notify the on-site personnel or the permittee, in writing, of the violation, describe the required corrective action and the date by which to have the violation corrected.
- B. If the violation persists after the date specified for corrective action in the notice of violation, the Dorchester County Department of Public Works shall stop work on the site. The Dorchester County Department of Public Works shall determine the extent to which work shall be stopped, which may include all work on the site except that work necessary to correct the violation.
- C. If reasonable efforts to correct the violation are not undertaken by the permittee, the Dorchester County Department of Public Works shall take legal action on the violation.
- D. The Dorchester County Department of Public Works may deny the issuance of any future permits to an applicant for related work on the site when the Dorchester County Department of Public Works determines that the applicant is not in compliance with the provisions of a grading permit or an approved erosion and sediment control plan.

E. Any step in the enforcement process may be taken at any time, depending upon the severity of the violation.

F. If a person is working without a permit, the Dorchester County Department of Public Works shall stop work on the site, except activity necessary to provide erosion and sediment control.

§ 100-9. Appeals.

A. Any person aggrieved by the action of any official charged with the enforcement of this chapter, as the result of the disapproval of a properly filed application for a permit, the issuance of a written notice of violation or an alleged failure to properly enforce this chapter in regard to a specific application, shall have the right to appeal the action to the three-member committee consisting of the Dorchester County Department of Public Works, the Dorchester Soil Conservation District and the Dorchester County Planning and Zoning Department. The appeal shall be filed, in writing, within 30 days of the date of official transmittal of the final decision or determination to the applicant and shall state clearly the grounds on which the appeal is based.

B. Any person aggrieved by the final action of the three-member committee, consisting of the Dorchester County Department of Public Works, the Dorchester Soil Conservation District and the Dorchester County Planning and Zoning Department, may further appeal the action within 15 days after said action to the Circuit Court for Dorchester County in accordance with Title 7, Chapter 200, "Judicial Review of Administrative Agency Decisions" of the Maryland Rules of Procedure.

§ 100-10. Severability.

If any portion, section, subsection, sentence, clause or phrase of this chapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion of this chapter, it being the intent of the County Council of Dorchester County that this chapter shall stand notwithstanding the invalidity of any portion, section, subsection, sentence, clause or phrase hereof.

§ 100-11. Violations and penalties.

A. Any person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction in a court of competent jurisdiction, is subject to a fine not exceeding \$10,000 or imprisonment not exceeding one year, or both, for each violation, with costs imposed in the discretion of the court. Each day upon which the violation occurs constitutes a separate offense.

B. Any agency whose approval is required under this chapter or any interested person may seek an injunction against any person who violates or threatens to violate any provision of this chapter.

C. Additional penalties.

1. In addition to any other sanction under this chapter, a person who fails to install or to maintain erosion and sediment control in accordance with an approved plan shall be liable to the County Council of Dorchester County or the state, in a civil action, for damages in an amount equal to double the cost of installing or maintaining the controls and correcting damages caused by the violations.

2. Any governing authority that recovers damages in accordance with this subsection shall deposit them in a special fund, to be used solely for:

- a. Correcting, to the extent possible, the failure to implement or maintain erosion and sediment control.
- b. The administration of the sediment control program.

§ 100-12. Effective date.

Sections 100-1 through 100-11 of this Chapter 100 are effective July 1, _____, 2015.

§ 100-13. Critical area protection.

A. Intent. The intent of this section is to control soil erosion and sedimentation so as to protect water quality and natural habitat associated with the Chesapeake Bay, in compliance with the Critical Area Law (Natural Resources Article of the Annotated Code of Maryland, § 8-1801 et seq.).

B. Interpretation. The provisions of this section are in addition to other regulations within this chapter. In all cases of conflicting requirements, the provision which represents the greatest restriction or highest standard shall govern.

C. Definitions.

The following definitions shall be used for the purpose of interpreting and applying this section:

1. Critical Area: All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide, all state and private tidal wetlands and all land and water areas within 1,000 feet of the landward boundary of heads of tides and state or private tidal wetlands, as modified pursuant to Natural Resources Article, § 8-1807.

2. Developed Woodland: An area containing mainly trees and natural vegetation but which also includes residential, commercial or industrial structures and uses, and covering a land area of one acre or more.

3. Development Area: A means of land classification within the critical area which

recognizes existing land uses and serves as a basis for future growth limitations and other controls. "Development areas" include intensely developed areas, limited development areas and resource conservation areas.

4. Forest: A biological community dominated by trees and other woody plants and covering a land area of one acre or more. This definition also includes forests that have been cut but not cleared.

5. Habitat Protection Area: A site or zone of special significance that provides a living environment for valuable plant or animal species. "Habitat protection areas" include the tidewater buffer, non-tidal wetlands, habitat for species of concern, plant and wildlife habitat and anadromous fish propagation waters.

6. Highly Erodible Soils: Soils with slopes greater than 15% or soils with an erosion (K) value exceeding .35 and slopes greater than 5%.

7. Intensely Developed Area: An area of 20 acres or more where residential, commercial, industrial and institutional land uses predominate, and where relatively little natural habitat occurs. "Intensely developed areas" have a residential density equal to or greater than four dwelling units per acre; a concentration of commercial, industrial or institutional uses; or public water and sewerage systems with a residential density greater than three dwelling units per acre.

8. Limited Development Area: An area which is currently developed in low- or moderate-intensity uses, but also contains natural plant and animal habitat areas. The quality of stormwater runoff from these areas has not been substantially altered or impaired. "Limited development areas" have a residential density ranging from one dwelling unit per five acres up to four dwelling units per acre; no domination by surface water, wetlands, agriculture, forests, barren land or other open space uses; or a public water or public sewerage system.

9. Overburden: The natural strata or material overlying a mineral deposit or lying between mineral deposits.

10. Plant and Wildlife Habitat: "Plant habitat" means a community of plants commonly identifiable by its vegetative composition and physiographic characteristics, and "wildlife habitat" means those plant communities and physiographic features that provide food, water, cover, nesting and foraging or feeding conditions necessary to maintain animal populations in the critical area.

11. Reclamation: The rehabilitation of disturbed land for useful purposes and the protection of adjacent water bodies and other natural resources.

12. Renewable Resources: A resource that can renew or replace itself and, with proper management, can be harvested indefinitely.

13. Resources Conservation Area: An area characterized by natural environments, such as wetlands or forests, or by resource utilization activities, such as agriculture or surface mining. "Resource conservation areas" have a residential density less than one dwelling unit per five acres or domination by surface water, wetlands, agriculture, forests, barren

land or other open space uses.

14. Shore Erosion Protection Works: Those structures or measures constructed or installed to prevent or minimize shoreline erosion in the critical area.

15. Significantly Eroding Areas: Areas that erode at the rate of two feet or more annually.

16. Spoil Pile: Overburden and reject materials that are piled or deposited during surface mining.

17. Steep Slopes: Slopes of fifteen-percent or greater incline.

18. Surface Mining: Any activity or process for the extraction or removal of sand, gravel, rock, stone, earth, fill or other mineral resources from their original location, including exploratory activity. This definition encompasses breaking of the surface soil preparatory to mining, removal of overburden and any processing of minerals at the extraction site.

19. Tidewater Buffer: A protective vegetated area established landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands. The width of the buffer is a minimum of 100 feet and may be expanded beyond 100 feet to include contiguous, sensitive areas of nontidal wetlands, soils with high erosion potential, hydric soils, and, in case of contiguous slopes of 15% or greater, the buffer shall be expanded 4 feet for every 1% of slope, or to the top of the slope, whichever is greater.

20. Wash Plant: A facility where sand and gravel is washed during processing.

21. Any other critical area definition can be found in the Zoning Regulations Chapter 155-47.1 and are incorporated herein.

D. General regulations.

1. All development activity and other land disturbance in the critical area shall be planned and executed so as to prevent or minimize soil erosion and sedimentation.

2. Development on steep slopes, as measured before development, shall be prohibited in limited development areas and resource conservation areas, unless the project is the only effective way to maintain or improve the stability of the slope.

3. New agricultural land shall not be created by the clearing of forests or woodlands on highly erodible soils.

4. All roads, bridges and utilities in limited development areas and resource conservation areas that must cross a habitat protection area shall be located, designed, constructed and maintained so as to provide maximum erosion protection.

5. Discharge of sediments into anadromous fish spawning streams shall be minimized.

Construction and maintenance activities associated with roads, bridges or other stream crossings or utilities which occur instream or disturb the tidewater buffer shall be prohibited each year between March 1 and May 15.

6. Dredging shall be conducted in a manner which causes the least disturbance to water quality and to aquatic and terrestrial habitat within the critical area. Dredged spoil material shall not be placed within a habitat protection area, except as necessary for:

- a. Back fill for permitted shore erosion protection measures;
- b. Use in approved vegetated shore erosion projects;
- c. Placement on previously approved channel maintenance spoil disposal areas; and
- d. Beach nourishment.

E. Surface mining.

1. An erosion and sediment control plan is required for any surface mining operations that disturb one acre or more of land. The plan shall include measures to protect surface water and groundwater quality and to protect or conserve habitat areas.
2. All available measures shall be taken to minimize pollution from surface mining operations, including but not limited to sedimentation and siltation, chemical use and spillage and storage or disposal of wastes, dusts and spoils.
3. Existing surface mining activities affecting a habitat protection area shall protect or conserve such resources. The tidewater buffer shall be respected to the extent possible; owners must certify that their operations are meeting this requirement or justify any failure to do so.
4. Existing wash ponds and other disturbed areas shall be reclaimed as soon as possible after extraction is completed. Appropriate post excavation uses for mineral resource sites may be identified by the Dorchester County Planning and Zoning Office.
5. Future surface mining operations shall be prohibited within the tidewater buffer and in other habitat protection areas where threatened and endangered species, rare groupings of species, areas of scientific value or other important natural resources occur. Future wash plants, including associated ponds, spoil piles and equipment, shall not be permitted within the established buffer area.
6. Surface mining shall be prohibited in highly erodible soil areas.
7. Future surface mining activities in the critical area shall be prohibited where the use of renewable resource lands would result in the substantial loss of long-range productivity of forests or agriculture or would result in a degrading of water quality or loss of vital habitat. Where mineral resource sites occur on productive forest or agricultural lands, the mining of such sites shall be completed and the sites returned to their former forest or agricultural use within 25 years.

F. Shoreline protection.

1. Appropriate shore erosion protection works should be provided where necessary to protect eroding shorelines in the critical area. Nonstructural shore protection measures are preferred and should be used wherever they would be effective and practical in preventing or reducing erosion.

2. Where significant erosion is occurring and effective and practical erosion control would require the use of structural measures, such measures are encouraged. The structural measure that best provides for the conservation of plant and wildlife habitat shall be selected.

3. If significant alteration in the characteristics of a shoreline occurs, the erosion control measure that best fits the change may be used for sites in that area.

4. Cutting of trees or removal of natural vegetation is permitted where necessary to install or construct an approved shore erosion protection measure. Individual trees may be removed which are in danger of falling and resulting in accelerated shore erosion.

5. Interference with natural transport of sand shall be minimized.

G. General habitat protection area regulations. The following regulations shall apply to all habitat protection areas:

1. Roads, bridges and utilities may not be located in any habitat protection area unless no feasible alternative exists. This provision is not applicable to intensely developed areas.

2. All roads, bridges and utilities that must cross a habitat protection area shall be located, designed, constructed and maintained so as to avoid negative impacts to wildlife, aquatic life and their habitat. Hydrologic processes and water quality shall be maintained.

H. Tidewater buffer. The following regulations shall apply to the tidewater buffer area:

1. Cutting or clearing of trees in the tidewater buffer shall be prohibited, except as follows and shall meet the requirements of Subsection H.2. below:

- a. Tree cutting or removal of natural vegetation may be performed where necessary to provide access to private piers, or to install or construct a shore erosion protection measure or a water dependent facility. Such measure or facility must first have received all necessary federal and state permits.
- b. Individual trees may be cut for personal use, provided that this cutting does not impair the water quality or other functions of the buffer. The trees shall be replaced on an equal basis for each tree cut.
- c. Individual trees may be removed which are in danger of falling causing damage to structures, blockage of streams or accelerated shore erosion.
- d. Pruning and other horticultural practices may be used to maintain the health of individual trees.
- e. Other cutting techniques may be undertaken within the buffer if necessary to

preserve forests from extensive pest or disease infestation or threat from fire. Advice and guidance from the Maryland Department of Agriculture and Maryland Department of Natural Resources shall be obtained.

2. Proposed clearing of trees and other vegetation in the tidewater buffer will be allowed only upon approval of a buffer management plan. The requirements for content, submittal, review and approval of the buffer management plan are as follows:

- a. Plan requirements. A person may not clear land in the tidewater buffer without an approved buffer management plan. The plan must meet the requirements of the Dorchester County Forestry Board, the Dorchester County Critical Area Protection Program and this section.
- b. Content of plans. The buffer management plan shall contain information and drawings sufficient to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed clearing activity on water resources and the effectiveness and acceptability of compensatory measures.
- c. The buffer management plan shall be prepared by the person proposing to clear vegetation on the site, in consultation with the Dorchester County Forestry Board.
- d. Review and approval of plans. The applicant shall submit the buffer management plan to the Maryland Forest Service for initial review. The Maryland Forest Service shall forward the plan, together with any comments, to the Dorchester County Forestry Board for approval.
- e. The buffer management plan shall be reviewed by the Dorchester County Forestry Board, which shall solicit comments from the Dorchester County Soil Conservation District, the Maryland Fish, Heritage and Wildlife Administration (if it involves a habitat protection area on individual lots) and other appropriate agencies. In approving the plan, the Forestry Board shall consider all agency comments and may impose such conditions as deemed necessary.
- f. The approved buffer management plan shall be fully implemented by the applicant in conjunction with any clearing activity on the site.
- g. Plan revisions. Buffer management plan revisions may be requested by the applicant or by the Dorchester County Soil Conservation District. All revisions must be approved by the Dorchester County Forestry Board.

3. Nothing in this chapter shall prevent the normal and customary maintenance of lawns located in the buffer that were established prior to the adoption of this section.

4. A grading permit from the Dorchester County Department of Public Works shall be required before forest or developed woodland is cleared; and forests which have been cleared before obtaining a grading permit, or that exceed the maximum area allowed in Subsection I.2. shall be replanted at three times the areal extent of the cleared forest.

I. Critical area mitigation.

1. The following regulations shall apply to development in intensely developed areas:

- a. When the cutting or clearing of trees in forests and developed woodlands is

associated with current or planned development activities, such activities shall be designed and implemented to protect forest and woodland vegetation. Urban forestry practices such as street tree plantings, gardens, landscaping and buffer plantings shall be employed.

b. Public access to shoreline areas should be improved or maintained within intensely developed areas.

2. The following regulations shall apply to development in limited development areas and resource conservation areas:

a. Forests and developed woodlands which are cleared after the adoption of this section are to be replaced on not less than an equal basis. The formula for replacement of these forests is as follows:

(1) If less than 20% of the forested land on the parcel is cleared, the forest shall be replaced on an equal basis.

(2) If between 20% and 30% of the forested land on the parcel is cleared, the afforested area shall consist of 1 1/2 times the total surface acreage of the disturbed forest.

b. Forests and developed woodlands located on lots which were recorded prior to December 1, 1985, may be cleared beyond the thirty-percent limitation established above. In such a case, the following conditions apply:

(1) The total area to be cleared shall be less than one acre.

(2) The clearing must be necessary and incidental to providing an area for the home site, sewage reserve area, driveway, lawn and so forth.

(3) The afforested area shall consist of three times the total surface acreage of the disturbed forest.

c. Where sufficient land area does not exist on the site for afforestation, an applicant may make arrangements with other landowners or the county to reforest their lands within the critical area.

d. There is hereby created a Forest Replacement Fund which shall be used to collect and disburse moneys for the sole purpose of afforestation and reforestation in the critical area. The fund shall be administered by the Dorchester County Forestry Board.

(1) Any person unable to reforest to meet the standards established above shall pay into the Forest Replacement Fund a dollar amount equal to the cost of replacing the forest land to be cleared, including appropriate penalties.

(2) The fee shall be calculated on a per-acre basis and shall be determined annually by the Dorchester County Forestry Board and the Maryland Forest, Park and Wildlife Service. All fees shall be made payable to the County Treasurer.

e. Except as provided for otherwise, all clearing of forests and developed woodlands must take place outside of the tidewater buffer.

f. If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of 15% of the parcel that is being developed.

g. Clearing, grading and sediment activities in a BEA must comply with

requirements in §155-47.1J (5) of the Dorchester County Zoning Regulations.
h. Development in the buffer which is not located in a buffer exemption area shall be required to mitigate at a two-to-one ratio for development impacts.

J. Vegetation and wildlife. The following regulations shall apply to vegetation and wildlife protection:

1. Clearing, grading and sediment activities shall be prohibited within the protection areas established for species of concern and for plant and wildlife habitat, unless it can be shown that these activities will not have or cause adverse impacts on these species or habitats. Where protection areas would be impacted by development activities, an appropriate strategy shall be devised which features best management practices to protect and conserve the resources in those areas. New water-dependent facilities shall be located so as to prevent disturbance to such protection areas.
2. In the case of riparian and upland forests which are documented wildlife breeding areas, any development activity shall be conducted so as to conserve significant habitat. Corridors of existing forest or woodland vegetation shall be maintained to connect wildlife habitat areas.
3. Physical alterations which may change the course or circulation of a fish spawning stream shall be prohibited, and artificial surfaces shall not be installed on natural stream bottoms unless it can be demonstrated that water quality and fish habitat will be improved.
4. In the case of watersheds within the critical area which drain into fish spawning streams, development activities and other land disturbances shall be minimized. Construction activities which involve instream or buffer areas shall be prohibited each year between March 1 and May 15.
5. Proposed projects which may affect vegetation and wildlife areas will be reviewed in accordance with the process described in the Dorchester County Critical Area Program, Volume 1, Chapter 8, and Chapter 5, Section D, reference to which is hereby made and incorporated herein by reference.

K. Variances. Variances to the critical area section of these regulations may be granted as follows:

1. Variances to these regulations may be granted where, owing to special features of a site or other circumstances, implementation of the provisions of this section or of the Dorchester County Critical Area Protection Program would result in unwarranted hardship to an applicant. The following conditions apply:
 - a. Findings must be made which demonstrate that special conditions or circumstances exist which are peculiar to the land or structure involved, and that literal enforcement of the provisions of the Critical Area Protection Program would result in unwarranted hardship.
 - b. A literal interpretation of the Critical Area Protection Program and related Chapters will deprive the applicant of rights commonly enjoyed by other

properties in similar parts of the critical area.

- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied to other land or structures within the critical area.
- d. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
- e. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area, and will be in harmony with the general spirit and intent of the Critical Area Law.

2. Applications for a variance shall be made in writing to the Dorchester County Department of Public Works, in accordance with the procedures set forth herein. The Chesapeake Bay Critical Area Commission shall receive a copy of the application for any variance that relates to the critical area at least 15 days prior to any hearing on such matter and shall receive a copy of the finding.

3. Variance decisions may be appealed as provided herein. In addition, the Chairman of the Critical Area Commission may appeal an action or decision, even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

§ 100-13.1. Civil penalties in Critical Area; administrative abatement orders.

A. Civil penalties in the Critical Area. In addition to any other penalties for violations of this chapter, any person, including a contractor, property owner or any other person who committed, assisted, authorized or participated in a violation of Title 8, Subtitle 18, of the Annotated Code of Maryland entitled "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" or a violation of this chapter relating to land and property within the Critical Area shall be guilty of a civil infraction under Chapter 147 of the Dorchester County Code.

- 1. The maximum civil penalty for each violation under this section shall be \$10,000;
- 2. Each violation constitutes a separate offense;
- 3. Each calendar day that a violation continues constitutes a separate offense;
- 4. For each offense, a person shall be subject to a separate civil penalty;
- 5. Civil penalties for continuing violations shall accrue without a requirement for an additional assessment, or notice;
- 6. On consideration of all the factors included in this section and other factors in the County's Critical Area Program, the Director of the Dorchester County Department of Public Works (herein the "Director") shall impose the amount of the civil penalty;
- 7. In determining the amount of the civil penalty to be assessed under this section, the Director shall consider:

- a. The gravity of the violation;
- b. Any willfulness or negligence involved in the violation;
- c. The environmental impact of the violation; and
- d. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to the state or local authorities for performing, supervising, or rendering assistance to the restoration and mitigation.

8. In this section, "owner" or "property owner" includes two or more persons holding title to the property under any form of joint ownership;

9. In this section "person" includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, including a contractor, property owner or any other person who committed, assisted, authorized or participated in a violation of Title 8, Subtitle 18, of the Annotated Code of Maryland entitled "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" or a violation of this chapter relating to land and property within the Critical Area;

10. The Director is hereby authorized to issue citations for civil infractions for Critical Area violations under this chapter, in accordance with §147-2 of the Dorchester County Code and the amount of the civil penalty or fine to be assessed under this section. All civil penalties or fines for civil infractions under this section shall be payable to the County;

11. If a final adjudication of a notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs; and

12. Application for a variance constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

B. Administrative abatement orders. The Director is also authorized to issue with the citation for civil infractions an administrative abatement order requiring the owner, property owner or person to abate or to correct a Critical Area violation under this chapter or to cease work or activity being performed in the Critical Area. The administrative abatement order shall be served with the citation for civil infraction pursuant to Chapter 147, § 147-2 et seq. of this Code. The administrative abatement order shall be enforced pursuant to § 147-6F(4) and G of Chapter 147 of the Dorchester County Code.

§ 100-14. Grading, erosion and sediment control.

A. Intent. It is the intent of this section to provide, as authorized by the Natural Resources

Article of the Annotated Code of Maryland, § 5-1601 et seq., necessary development controls to protect and enhance the existing forest resources of Dorchester County.

B. Interpretation. The provisions in this section are in addition to other regulations of this chapter. In all cases of conflicting requirements, the provisions which represent the greatest restriction shall govern. Various other requirements are also applicable, including but not limited to Chapter 96, Forest Conservation Standards, of the Dorchester County Code and Chapter 140, Subdivision Regulations, Article XIII, Forest Conservation Protection, of the Dorchester County Code.

C. Definitions. The following definitions shall be used for the purpose of interpreting and applying this section:

AFFORESTATION

- (1) Establishment of a forest on an area from which forest cover has been absent for a long period of time;
- (2) Planting of open areas which are not presently in forest cover; or
- (3) Establishment of a forest according to procedures set forth in the Dorchester County Forest Conservation Technical Manual.

AGRICULTURAL AND RESOURCE AREAS

Those areas of Dorchester County with the following zoning classifications as identified on the official Dorchester County Zoning Map(s): Conservation District (C); Resource Conservation District (RC); and Resource Conservation Area (RCA).

CRITICAL AREA

All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide, all state and private tidal wetlands and all land and water areas within 1,000 feet of the landward boundary of heads of tides and state or private tidal wetlands, as modified pursuant to Natural Resources Article, § 8-1807, Annotated Code of Maryland.

DECLARATION OF INTENT

A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property;

- (1) Is for certain activities exempted under this section.
- (2) Does not circumvent the requirements of this section.
- (3) Does not conflict with the purposes of any other declaration of intent.

DEPARTMENT

The Dorchester County Department of Public Works.

DORCHESTER COUNTY FOREST CONSERVATION TECHNICAL MANUAL

The Forest Conservation Manual - Guidance for the Conservation of Maryland's Forests

During Land Use Changes Under the 1991 Forest Conservation Act, dated December 31, 1991. The term shall also apply to any amendment of the manual or any locally authored manual which supersedes the state manual.

FOREST

(1) A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.

(2) Includes:

(a) Areas that have at least 100 live trees per acre, with at least 50% of those trees having a two-inch or greater diameter at 4.5 feet above the ground and larger; and

(b) Areas that have been cut but not cleared.

(3) Does not include orchards or Christmas tree plantations.

FOREST CONSERVATION THRESHOLD

The percentage of the net tract area at which the reforestation requirement changes from a ratio of one-fourth (1/4) acre planted for each acre removed above the threshold to a ratio of two acres planted for each acre removed below the threshold.

FOREST STAND DELINEATION

The methodology for evaluating the existing vegetation on a site proposed for grading, as provided in the Dorchester County Forest Conservation Technical Manual, incorporated herein by reference.

MAINTENANCE AGREEMENT

The short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, § 5-1605, Annotated Code of Maryland, and this section.

NET TRACT AREA

(1) Except in agricultural and resource areas, the total area of a parcel, including both forested and nonforested areas, to the nearest one-tenth (1/10) acre, reduced by the area to be found within the critical area, and the incorporated limits of any municipality, unless the municipality has assigned authority to the county.

(2) In agricultural and resource areas, the part of the total tract for which land use will be changed or will no longer be used for primary agricultural activities, reduced by the area to be found within the critical area, and the incorporated limits of any municipality, unless the municipality has assigned authority to the county.

PERSON

The federal government, state, county, municipal corporation or other political subdivision of the state or any of their units, or an individual, receiver, trustee, guardian, executor,

administrator, fiduciary or representative of any kind, or any partnership, firm, association, public or private corporation or any other their affiliates, or any other entity.

PRIORITY FUNDING AREA

Means an area designated as a priority funding area under § 5-7b-02 of the State Finance and Procurement Article.

PUBLIC UTILITY

Any:

- (1) Transmission line or electric generating station; or
- (2) Water, sewer, electric, gas, telephone or television cable service line.

REFORESTATION

- (1) The creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre, with at least 50% of those trees having the potential of attaining a two-inch or greater diameter measured at 4.5 feet above the ground within seven years; or
- (2) Establishment of a forest according to procedures set forth in the Dorchester County Forest Conservation Technical Manual

STREAM RESTORATION PROJECT

Means an activity that:

1. Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;
2. Avoids and minimizes impacts to forests and provides for replanting on-site an equivalent number of trees to the number removed by the project;
3. May be performed under a municipal separate storm sewer system permit, a Watershed Implementation Plan growth offset, or another plan administered by the State or Local government to achieve or maintain water quality standards; and
4. Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.

TREE

A large woody plant that reaches a height of at least 20 feet at maturity, having one or several self-supporting stems or trunks and numerous branches.

D. Exemptions.

- (1) Grading and sediment control activities which are entirely located in the critical area and are subject to § 100-13.

(2) Grading and sediment control activities which are entirely located within the limits of a municipality, unless such requirements under Natural Resources Article, § 5-1601 et seq., Annotated Code of Maryland are assigned to and accepted by the County.

(3) Commercial logging and timber harvesting operations, including harvesting resources conducted subject to the forest conservation and management program under Tax-Property Article, § 8-211, Annotated Code of Maryland, that are completed:

(a) Before July 1, 1991; or

(b) After July 1, 1991, on property which:

[1] Has not been the subject of application for a grading permit for development within five years after the logging or harvesting operation; and

[2] Is the subject of a declaration of intent as provided for in Subsection E of this section.

(4) Routine maintenance or emergency repairs of a public utility or county-maintained right-of-way if:

(a) The right-of-way existed before the effective date of this section; or

(b) The right-of-way's initial construction was approved before the effective date of this section.

(5) A residential construction activity conducted on an existing single lot of any size if the activity:

(a) Does not result in the cumulative cutting, clearing or grading of more than 20,000 square feet of forest;

(b) Does not result in the cutting, clearing or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this section; and

(c) Is the subject of a declaration of intent filed with the Department, as provided for in Subsection E of this section, stating that the lot will not be the subject of a regulated activity within five years of the cutting, clearing or grading of forest.

(6) A final site plan or a grading or sediment control plan approved before the effective date of this section.

(7) Cutting or clearing activities on county-maintained rights-of-way, provided that the provisions of § 96-8 of Chapter 96, Forest Conservation Standards, are satisfied.

(8) Grading and sediment control activities for subdivisions subject to the forest conservation protection provisions of Chapter 140, Subdivision Regulations, Article XIII, Forest Conservation Protection, of the Dorchester County Code

- (9) An activity on a previously developed area covered by impervious surface and located in a Priority Funding Area.
- (10) Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure.
- (11) A stream restoration project, as defined in Sub-section C of this Ordinance, for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner or owners.
- (12) An activity required for the purpose of constructing a dwelling intended for the use of the owner, or a child of the owner, if the activity:
- (a) Does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest; and
 - (b) Is the subject of a declaration of intent, as provided for in regulation e of this chapter, stating that the lot will not be the subject of further subdivision or a regulated activity within 5 years of the cutting, clearing, or grading of forest;
- (13) Noncoal surface mining regulated under environment Article, Title 15, Subtitle 8, Annotated Code of Maryland;
- (14) Agricultural activities not resulting in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, except that a person who is engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a 1-year period may not receive an agricultural exemption unless the person files a declaration of intent as provided for in regulation e of this chapter which includes:
- (a) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and
 - (b) A sketch map of the property, which shows the area to be cleared;
- (15) The cutting or clearing of public utility rights-of-way licensed under Public Utilities Article, § 7-207 and § 7-208 or § 7-205, Annotated Code of Maryland, or land for electric generating stations licensed under Public Utilities Article, § 7-207 and § 7-208 or § 7-205, Annotated Code of Maryland if:
- (a) Required certificates of public convenience and necessity have been issued under Natural Resources Article § 5-1603(f), Annotated Code of Maryland; and
 - (b) Cutting or clearing of the forest is conducted to minimize the loss of forest.

E. Declaration of intent.

- (1) The declaration of intent is effective for five years.
- (2) The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:
 - (a) Does not conflict with the purpose of any existing declaration of intent; and
 - (b) Complies with the applicable requirements for an exempted activity.
- (3) If a regulated activity on the area covered by the declaration of intent occurs within five years of the effective date of the declaration of intent:
 - (a) There shall be an immediate loss of exemption; or
 - (b) There may be a noncompliance action taken by the Department, as appropriate, under this section.
- (4) An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this section are satisfied.
- (5) The Department may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent, at the discrimination of the Department, to:
 - (a) Meet the retention, afforestation and reforestation requirements established in Chapter 96, Forest Conservation Standards, of this Code;
 - (b) Pay a noncompliance fee of \$0.30 per square foot of forest cut or cleared under the declaration of intent;
 - (c) Be subject to other enforcement actions appropriate under Natural Resources Article, §§ 5-1601 through 5-1612, Annotated Code of Maryland and this section; or
 - (d) File a declaration of intent with the Department.
- (6) In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this section.

F. General requirements.

- (1) A person making application for a grading permit after the effective date of this section on an area of land of 40,000 square feet or greater, unless specifically exempted under Subsection D, shall:
 - (a) Submit to the Department a forest stand delineation and forest conservation plan for the lot or parcel on which the grading activity is located, in accordance with Chapter 96, Forest Conservation Standards, of the Dorchester County Code; and

- (b) Use methods as provided in the Dorchester County Forest Conservation Technical Manual to protect and retain forests and trees during construction.
- (2) If a local agency or person using state funds makes application for grading and erosion control, the following applies:
- (a) The application for a grading permit shall be submitted to the Department, which shall notify the Department of Natural Resources within seven days of receipt of the application.
- (b) The Department may not approve an application until it receives notice from the Department of Natural Resources that the standards and requirements of the state have been satisfied.
- (3) Forest stand delineation. A forest stand delineation prepared in the manner prescribed by Chapter 96, Forest Conservation Standards, of this Code shall be submitted with any grading and sediment control application not exempt under Subsection D. This delineation will be prepared for an entire lot or parcel, when more than 50% of the parcel is affected by the proposed development. When less than 50% of the parcel is affected, delineation may be on only that portion affected by the development.
- (4) Forest conservation plan.
- (a) A forest conservation plan prepared in the manner prescribed by Chapter 96, Forest Conservation Standards, of this Code shall be submitted with any grading and sediment and erosion control plan not exempt under Subsection D.
- (b) For disturbance of forest less than five acres, the applicant may submit a forest stand delineation and a forest conservation plan together.
- (c) The Department's review of a final forest conservation plan shall be concurrent with the review of the final grading and sediment and erosion control plan.
- (d) The Department may revoke an approved forest conservation plan if it finds that:
- [1] A provision of the plan has been violated;
- [2] Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement or omission of a relevant or material fact; or
- [3] Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.
- (e) Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing.
- (5) Afforestation and retention.
- (a) A person making application for a grading permit after the effective date of this section on an area of land of 40,000 square feet or greater, unless specifically exempted under Subsection

D, shall conduct afforestation in accordance with the following:

[1] In agricultural and resources areas, if the net tract area has less than 20% forest cover, the net tract area shall be afforested up to at least 20%.

[2] In areas other than agricultural and resource areas, if the net tract area has less than 15% forest cover, the net tract area shall be afforested up to at least 15%.

Zoning District Percentage	Threshold
AC	50
AC-RCA	50
RC	50
RR-C	50
RR-RCA	50
SR-RCA	50
RR	25
SR	20
V	15
B-1	15
B-2	15
I-1	15
I-2	15

[3] The required afforestation level shall be determined by the amount of forest existing on the net tract area before cutting or clearing begins. Existing forest cut or cleared below the afforested levels stated above shall be reforested or afforested at a two-to-one ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level.

(b) Those trees, shrubs and plants and specific areas identified in Chapter 96, Forest Conservation Standards, of the Dorchester County Code as priority areas for retention and protection shall be left in an undisturbed condition unless the applicant can demonstrate to the Department that reasonable efforts have been made to protect them.

(6) Reforestation.

(a) After reasonable efforts to minimize the cutting or clearing of trees have been exhausted in

the grading or sediment or control plan, the forest conservation plan shall provide for:

[1] Reforestation in accordance with Chapter 96, Forest Conservation Standards, of the Dorchester County Code and the forest conservation threshold described below; or

[2] Payment into the forest conservation fund if such a fund is established by Chapter 96, Forest Conservation Standards, of the Dorchester County Code.

(b) The forest conservation threshold shall be as follows:

(c) For all existing forest cover measured to the nearest one-tenth ($1/10$) acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of one-fourth ($1/4$) acre planted for each acre removed.

(d) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under Subsection F(6)(c) of this section. The calculation of the credit shall be according to the criteria provided in the Dorchester County Forest Conservation Technical Manual.

(e) For all existing forest cover measured to the nearest one-tenth ($1/10$) acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at the ratio of two acres planted for each acre removed.

(7) Land partially located within the critical area.

(a) When a portion of land proposed for grading, erosion and sediment control is located within the critical area, the applicant may conduct some or all of the afforestation or reforestation required by this section on that portion of the parcel located within the critical area.

(b) For purposes of calculating the minimum afforestation or reforestation requirements of this section, the applicant may consider the entire acreage of the parcel, including land within the critical area, rather than only the area being proposed for grading or sediment and erosion control. In such an instance, the term "net tract area" shall be construed to mean the entire parcel.

(c) The requirements for afforestation or reforestation in this subsection shall be construed to be considered in addition to, rather than in lieu of, any requirements for afforestation or reforestation pursuant to the Dorchester County Critical Area Protection Program and attendant ordinances.

G. Variances.

1. A person may request a variance from this section in the same manner as provided for in §100-4 of this chapter.

2. In addition, the applicant for a variance will:

a. Describe the special conditions peculiar to the property which would cause

- the unwarranted hardship;
- b. Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- c. Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- d. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- e. Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
- f. Verify that the granting of a variance will not adversely affect water quality.

3. The Dorchester Soil Conservation District shall make findings that the applicant has met the requirements in this section before it may grant a variance.

4. The Department shall provide copies of the application for a variance to the Department of Natural Resources within 15 days after receipt from the applicant.

5. There is established by this section the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceedings or appeal in the state concerning an approval of a variance under National Resources Article, §5-1601 et seq., Annotated Code of Maryland or this section.

H. Violations and penalties.

1. The enforcement provisions in this section are in addition to any other provisions in this chapter.

2. The Department may issue a stop-work order against a person who violates a provision of this section or a regulation, order, approved forest conservation plan or maintenance agreement.

3. A person found to be in noncompliance under this section, the forest conservation plan or maintenance agreement may be assessed by the Department the penalty of \$0.30 per square foot of the area found to be in noncompliance. Moneys collected under this section shall be deposited in the Forest Conservation Fund and may be used by the Department for purposes related to implementing this section.

4. The Department may seek an injunction requiring the person to cease violation of this section and take corrective action to restore or reforest an area.

5. Any person or persons found guilty of a violation of any of the provisions of this section shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than \$1,000 or be imprisoned for not more than 30 days, or both. Each and every day such violation occurs shall be considered a separate offense.

I. Fees and charges. The County Council shall establish a schedule of fees, charges and expense and a collection procedure for the review and approval of the forest stand delineation, forest conservation plan and review of other plans or agreements as required by this section. This fee will provide for the cost of plan review, administration and management of the plan approval

process and inspection and monitoring of all projects subject to this section. Recording fees, if required by filing a declaration of intent or long-term protective agreement, will be considered extra. Such schedule shall be posted in the Department and may be altered or amended, from time to time, without a public hearing, only by the County Council upon the recommendation of the Department or the Dorchester Soil Conservation District.

SECTION TWO: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that General Code Publishers is directed to codify new Chapter 100 in the Dorchester County Code accordingly.

SECTION THREE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that this Bill shall be known as Bill No. 2 of Dorchester County, Maryland and shall take effect on the 1st day of July, 2015.

PASSED This 3rd DAY OF February 2015.

ATTEST:

THE COUNTY COUNCIL OF
DORCHESTER COUNTY, MARYLAND

BY: 
JEREMY GOLDMAN
Acting County Manager


BY: 
RICKY C. TRAVERS
President

APPROVED this 3rd day of February 2015.

ATTEST:

THE COUNTY COUNCIL OF
DORCHESTER COUNTY, MARYLAND

BY: 
JEREMY GOLDMAN
Acting County Manager

BY: 
RICKY C. TRAVERS
President

NICHOLS - ABSENT

BRADSHAW- *aye*

PRICE- *aye*

TRAVERS- *aye*

SATTERFIELD- *aye*

BILL NO. 2015-2