

26.17.02.01 (3/10/10)

**.01 Purpose and Scope.**

A. — C. (text unchanged)

*D. The provisions of these regulations may not be construed to affect the requirements for a project located in an Intensely Developed Area of the Chesapeake and Atlantic Coastal Bays Critical Area to comply with the 10 percent Pollution Reduction Requirement under COMAR 27.01.02.03 D(3).*

**.01-2 Grandfather Provisions.**

*A. In this regulation, the following terms have the meanings indicated:*

*(1) Administrative waiver. (a) "Administrative waiver" means a decision by the approving agency pursuant to this regulation to allow the construction of a development to be governed by the stormwater management ordinance in effect as of May 4, 2009 in the local jurisdiction where the project will be located. (b) "Administrative waiver" is distinct from a waiver granted pursuant to Regulation .05 C of this regulation.*

*(2) Approval. (a) "Approval" means a documented action by a county or municipality following a review to determine and acknowledge the sufficiency of submitted material to meet the requirements of a specified stage in a local development review process. (b) "Approval" does not mean an acknowledgement by the approving agency that submitted material has been received for review.*

*(3) Final project approval. (a) "Final project approval" means approval of the final stormwater management plan and erosion and sediment control plan required to construct a project's*

stormwater management facilities. (b) "Final project approval" also includes securing bonding or financing for final development plans if either is required as a prerequisite for approval.

(4) "Preliminary project approval" means an approval as part of a local preliminary development or planning review process that includes, at a minimum:

(a) The number of planned dwelling units or lots;

(b) The proposed project density;

(c) The proposed size and location of all land uses for the project;

(d) A plan that identifies:

(i) The proposed drainage patterns;

(ii) The location of all points of discharge from the site; and

(iii) The type, location, and size of all stormwater management measures based on site-specific stormwater management requirement computations; and

(e) Any other information required by the approving agency including, but not limited to:

(i) The proposed alignment, location, and construction type and standard for all roads, access ways, and areas of vehicular traffic;

(ii) A demonstration that the methods by which the development will be supplied with water and wastewater service are adequate; and

(iii) The size, type, and general location of all proposed wastewater and water system infrastructure.

B. An approving agency may grant an administrative waiver to a development that received a preliminary project approval prior to May 4, 2010. Administrative waivers expire according to §C of this regulation and may be extended according to §D of this regulation.

C. Expiration of Administrative Waivers.

- (1) Except as provided for in §D of this regulation, an administrative waiver shall expire on:*
- (a) May 4, 2013, if the development does not receive final project approval prior to that date; or*
  - (b) May 4, 2017, if the development receives final project approval prior to May 4, 2013.*
- (2) All construction authorized pursuant to an administrative waiver must be completed by May 4, 2017 or, if the waiver is extended as provided in §D of this regulation, by the expiration date of the waiver extension.*

*D. Extension of Administrative Waivers.*

- (1) Except as provided in §D(2) of this regulation, an administrative waiver shall not be extended.*
- (2) An administrative waiver may only be extended if, by May 4, 2010 the development:*
- (a) Has received a preliminary project approval; and*
  - (b) Was subject to a Development Rights and Responsibilities Agreement, a Tax Increment Financing approval, or an Annexation Agreement.*
- (3) Administrative waivers extended according to §D(2) of this regulation shall expire when the Development Rights and Responsibilities Agreement, the Tax Increment Financing approval, or the Annexation Agreement expires.*

26.17.02.05 (3/9/10)

**.05 When Stormwater Management is Required.**

A. — B. (text unchanged)

C. Waivers.

(1) (text unchanged)

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

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

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

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

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

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

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

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

[(b)] (c) (text unchanged)

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

(a) — (c) (text unchanged)

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

#### D. Redevelopment.

(1) — (2) (text unchanged)

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

[(a) Retrofitting;]

*(a) A combination of ESD and an on-site or off-site structural BMP;*

*(b) Retrofitting including existing BMP upgrades, filtering practices, and off-site ESD implementation;*

[(b) Stream restoration;

(c) Pollution trading; or]

*(c) Participation in a stream restoration project;*

*(d) Pollution trading with another entity;*

[[d)] (e) Design criteria based on watershed management plans developed according to §E of this [regulation.] *regulation;*

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

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

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

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

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

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

[(4)] (5) — [(7)] (8) (text unchanged)

E. (text unchanged)