

HB1125/120211/1

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL 1125
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “Redevelopment” in line 2 down through “Approval” in line 3 and substitute “Requirements”; strike beginning with “establishing” in line 4 down through “date;” in line 11 and substitute “requiring an approving body to require a redevelopment project design to meet certain requirements; authorizing a certain approving body to authorize certain alternative stormwater measures for certain redevelopment projects under certain circumstances; authorizing certain quantitative control waivers be granted to certain projects under certain circumstances; authorizing certain quantitative and qualitative control waivers be granted to certain phased development projects under certain circumstances; requiring the developer of a certain phased development project that has been granted a certain waiver to meet certain requirements under certain circumstances; authorizing a certain approving body to grant a certain administrative waiver to a certain development project that received certain preliminary approval from a certain approving body by a certain date; specifying that certain administrative waivers are subject to certain expiration; authorizing a certain approving body to grant an extension to a certain administrative waiver under certain circumstances;”; in line 11, after “terms;” insert “providing for the construction of this Act;”; in line 16, strike “4-203(b) and 4-204” and substitute “4-201.1, 4-203(b), and 4-204(a)”; and in line 21, strike “4-203(e)” and substitute “4-203.1 through 4-203.3”.

AMENDMENT NO. 2

On pages 2 through 7, strike in their entirety the lines beginning with line 2 on page 2 through line 8 on page 7, inclusive, and substitute:

“4-201.1.”

(Over)

(a) In this subtitle the following words have the meanings indicated.

(B) (1) “ADMINISTRATIVE WAIVER” MEANS A DECISION BY AN APPROVING BODY TO ALLOW THE CONSTRUCTION OF A DEVELOPMENT PROJECT TO BE GOVERNED BY THE STORMWATER MANAGEMENT ORDINANCE IN EFFECT AS OF MAY 4, 2009, IN THE LOCAL JURISDICTION WHERE THE DEVELOPMENT PROJECT WILL BE LOCATED.

(2) “ADMINISTRATIVE WAIVER” DOES NOT INCLUDE A QUANTITATIVE OR QUALITATIVE CONTROL WAIVER ISSUED IN ACCORDANCE WITH § 4-203.2 OF THIS SUBTITLE OR IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT.

(C) (1) “APPROVAL” MEANS A DOCUMENTED ACTION BY AN APPROVING BODY THAT FOLLOWS A REVIEW AND DETERMINATION BY AN APPROVING BODY THAT THE MATERIAL SUBMITTED BY A DEVELOPER IS SUFFICIENT TO MEET THE REQUIREMENTS OF A SPECIFIED STAGE IN A LOCAL DEVELOPMENT REVIEW PROCESS.

(2) “APPROVAL” DOES NOT INCLUDE AN ACKNOWLEDGEMENT BY AN APPROVING BODY THAT MATERIAL SUBMITTED BY A DEVELOPER HAS BEEN RECEIVED FOR REVIEW.

(D) “APPROVING BODY” MEANS A COUNTY, MUNICIPALITY, OR OTHER UNIT OF GOVERNMENT THAT EXERCISES FINAL PROJECT APPROVAL OR PRELIMINARY PROJECT APPROVAL AUTHORITY.

[b] (E) “Environmental site design” means using 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.

[(c)] (F) “Environmental site design” includes:

(1) Optimizing conservation of natural features, such as drainage patterns, soils, and vegetation;

(2) Minimizing use of impervious surfaces, such as paved surfaces, concrete channels, roofs, and pipes;

(3) Slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration; and

(4) Using other nonstructural practices or innovative stormwater management technologies approved by the Department.

(G) “FINAL PROJECT APPROVAL” MEANS:

(1) FINAL APPROVAL BY AN APPROVING BODY OF A STORMWATER MANAGEMENT PLAN AND EROSION AND SEDIMENT CONTROL PLAN REQUIRED TO CONSTRUCT A DEVELOPMENT PROJECT’S STORMWATER MANAGEMENT FACILITIES; AND

(2) BONDING OR OTHER FINANCING HAS BEEN SECURED BASED ON A FINAL PLAN FOR THE DEVELOPMENT PROJECT IF REQUIRED AS A CONDITION OF APPROVAL.

(H) “PRELIMINARY PROJECT APPROVAL” MEANS PRELIMINARY APPROVAL BY AN APPROVING BODY MADE AS PART OF A LOCAL PRELIMINARY DEVELOPMENT OR PLANNING REVIEW PROCESS THAT INCLUDES:

(Over)

(1) THE PROPOSED:

(I) NUMBER OF DWELLING UNITS OR LOTS;

(II) PROJECT DENSITY; AND

(III) SIZE AND LOCATION OF ALL PLANNED USES OF THE DEVELOPMENT PROJECT;

(2) PLANS THAT IDENTIFY:

(I) PROPOSED SITE 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 CALCULATIONS; AND

(3) ANY OTHER INFORMATION REQUIRED BY THE APPROVING BODY, INCLUDING:

(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 FOR DELIVERING WATER AND WASTEWATER SERVICE TO THE DEVELOPMENT PROJECT ARE ADEQUATE; OR

(III) THE SIZE, TYPE, AND GENERAL LOCATION OF ALL PROPOSED WASTEWATER AND WATER SYSTEM INFRASTRUCTURE.

(I) “QUALITATIVE CONTROL” MEANS A SYSTEM OF VEGETATIVE, STRUCTURAL, AND OTHER MEASURES THAT REDUCES OR ELIMINATES POLLUTANTS THAT MIGHT OTHERWISE BE CARRIED BY SURFACE RUNOFF.

(J) “QUANTITATIVE CONTROL” MEANS A STORMWATER MANAGEMENT SYSTEM OF VEGETATIVE AND STRUCTURAL MEASURES THAT CONTROL THE INCREASED VOLUME AND RATE OF SURFACE RUNOFF CAUSED BY MAN-MADE CHANGES TO THE LAND.

(K) “REDEVELOPMENT” MEANS:

(1) ANY CONSTRUCTION, ALTERATION, OR IMPROVEMENT PERFORMED ON A SITE IN WHICH EXISTING LAND USE IS COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR MULTIFAMILY RESIDENTIAL; AND

(2) THE EXISTING IMPERVIOUS AREA OF THE SITE EXCEEDS 40%.

4-203.

(b) [The] SUBJECT TO §§ 4-203.1, 4-203.2, AND 4-203.3 OF THIS SUBTITLE, THE Department shall adopt rules and regulations which establish criteria and procedures for stormwater management in Maryland. The rules and regulations shall:

(Over)

(1) Indicate that the primary goal of the State and local programs will be to maintain after development, as nearly as possible, the predevelopment runoff characteristics;

(2) Make allowance for the difference in hydrologic characteristics and stormwater management needs of different parts of the State;

(3) Specify that watershed-wide analyses may be necessary to prevent undesirable downstream effects of increased stormwater runoff;

(4) Specify the exemptions a county or municipality may grant from the requirements of submitting a stormwater management plan;

(5) (i) Specify the minimum content of the local ordinances or the rules and regulations of the affected county governing body to be adopted which may be done by inclusion of a model ordinance or model rules and regulations; and

(ii) Establish regulations and a model ordinance that require:

1. The implementation of environmental site design to the maximum extent practicable;

2. The review and modification, if necessary, of planning and zoning or public works ordinances to remove impediments to environmental site design implementation; and

3. A developer to demonstrate that:

A. Environmental site design has been implemented to the maximum extent practicable; and

B. Standard best management practices have been used only where absolutely necessary;

(6) Indicate that water quality practices may be required for any redevelopment, even when predevelopment runoff characteristics are maintained;

(7) Specify the minimum requirements for inspection and maintenance of stormwater practices;

(8) Specify all stormwater management plans shall be designed to:

(i) Prevent soil erosion from any development project;

(ii) Prevent, to the maximum extent practicable, an increase in nonpoint pollution;

(iii) Maintain the integrity of stream channels for their biological function, as well as for drainage;

(iv) Minimize pollutants in stormwater runoff from new development and redevelopment in order to:

1. Restore, enhance and maintain the chemical, physical, and biological integrity of the waters of the State;

2. Protect public health;

3. Safeguard fish and aquatic life and scenic and ecological values; and

4. Enhance the domestic, municipal, recreational, industrial, and other uses of water as specified by the Department;

(Over)

(v) Protect public safety through the proper design and operation of stormwater management facilities;

(vi) Maintain 100% of average annual predevelopment groundwater recharge volume for the site;

(vii) Capture and treat stormwater runoff to remove pollutants and enhance water quality;

(viii) Implement a channel protection strategy to reduce downstream erosion in receiving streams; and

(ix) Implement quantity control strategies to prevent increases in the frequency and magnitude of out-of-bank flooding from large, less frequent storm events;

(9) (i) Establish a comprehensive process for approving grading and sediment control plans and stormwater management plans; and

(ii) Specify that the comprehensive process established under subparagraph (i) of this paragraph takes into account the cumulative impacts of both plans.

4-203.1.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, AN APPROVING BODY SHALL REQUIRE A REDEVELOPMENT PROJECT DESIGN TO:

(1) REDUCE EXISTING IMPERVIOUS AREA WITHIN THE LIMIT OF DISTURBANCE BY AT LEAST 50% AS DETERMINED BY THE 2000 MARYLAND STORMWATER DESIGN MANUAL, VOLUMES I AND II;

(2) IMPLEMENT ENVIRONMENTAL SITE DESIGN TO THE MAXIMUM EXTENT PRACTICABLE TO PROVIDE WATER QUALITY TREATMENT FOR AT LEAST 50% OF THE EXISTING IMPERVIOUS AREA WITHIN THE LIMIT OF DISTURBANCE, AS DETERMINED BY THE 2000 MARYLAND STORMWATER DESIGN MANUAL, VOLUMES I AND II; OR

(3) USE A COMBINATION OF THE STORMWATER STRATEGIES UNDER ITEMS (1) AND (2) OF THIS SUBSECTION FOR AT LEAST 50% OF THE EXISTING SITE IMPERVIOUS AREA.

(B) (1) AN APPROVING BODY MAY AUTHORIZE ALTERNATIVE STORMWATER MANAGEMENT MEASURES FOR REDEVELOPMENT PROJECTS IF THE DEVELOPER DEMONSTRATES TO THE SATISFACTION OF THE APPROVING BODY THAT IMPERVIOUS AREA REDUCTION AND ENVIRONMENTAL SITE DESIGN HAVE BEEN IMPLEMENTED TO THE MAXIMUM EXTENT PRACTICABLE, AND STILL THE REQUIREMENT OF SUBSECTION (A) OF THIS SECTION CANNOT BE MET.

(2) ALTERNATIVE STORMWATER MANAGEMENT MEASURES UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE:

(I) ON-SITE STRUCTURAL BEST MANAGEMENT PRACTICES;

(II) OFF-SITE STRUCTURAL BEST MANAGEMENT PRACTICES TO PROVIDE WATER QUALITY TREATMENT FOR AN AREA GREATER THAN OR EQUAL TO 50% OF THE EXISTING SITE IMPERVIOUS AREA; OR

(Over)

(III) A COMBINATION OF IMPERVIOUS AREA REDUCTION, ENVIRONMENTAL SITE DESIGN, AND ON-SITE OR OFF-SITE STRUCTURAL BEST MANAGEMENT PRACTICES FOR AN AREA GREATER THAN OR EQUAL TO 50% OF THE EXISTING SITE IMPERVIOUS AREA WITHIN THE LIMIT OF DISTURBANCE, AS DETERMINED BY THE 2000 MARYLAND STORMWATER DESIGN MANUAL, VOLUMES I AND II.

(C) (1) AN APPROVING BODY MAY AUTHORIZE ALTERNATIVE STORMWATER MANAGEMENT MEASURES FOR REDEVELOPMENT PROJECTS IF THE DEVELOPER DEMONSTRATES TO THE SATISFACTION OF THE APPROVING BODY THAT THE REQUIREMENTS OF SUBSECTIONS (A) AND (B) OF THIS SECTION CANNOT BE MET.

(2) ALTERNATIVE STORMWATER MANAGEMENT MEASURES AUTHORIZED BY THE APPROVING BODY UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE, IN ORDER OF PRIORITY:

(I) A COMBINATION OF IMPERVIOUS AREA REDUCTION, ENVIRONMENTAL SITE DESIGN, AND ON-SITE OR OFF-SITE STRUCTURAL BEST MANAGEMENT PRACTICES;

(II) RETROFITTING, INCLUDING EXISTING BEST MANAGEMENT PRACTICE UPGRADES, FILTERING PRACTICES, AND IMPLEMENTATION OF OFF-SITE ENVIRONMENTAL SITE DESIGN;

(III) PARTICIPATION IN A STREAM RESTORATION PROJECT;

(IV) POLLUTION TRADING WITH ANOTHER ENTITY;

(V) DESIGN CRITERIA BASED ON WATERSHED MANAGEMENT PLANS DEVELOPED IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT;

(VI) PAYMENT OF A FEE-IN-LIEU; OR

(VII) A PARTIAL WAIVER OF THE TREATMENT REQUIREMENTS IF ENVIRONMENTAL SITE DESIGN IS NOT PRACTICABLE.

(3) WHEN DETERMINING WHICH ALTERNATIVE MEASURES TO AUTHORIZE UNDER THIS SUBSECTION, THE APPROVING BODY:

(I) SHALL, AFTER IT HAS BEEN DETERMINED THAT ENVIRONMENTAL SITE DESIGN HAS BEEN IMPLEMENTED TO THE MAXIMUM EXTENT PRACTICABLE, CONSIDER THE ORDER OF PRIORITY OF THE ALTERNATIVE MEASURES IN PARAGRAPH (2) OF THIS SUBSECTION; AND

(II) MAY CONSIDER WHETHER:

1. THE REDEVELOPMENT PROJECT IS LOCATED IN AN AREA DESIGNATED AS:

A. A PRIORITY FUNDING AREA UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE;

B. A TRANSIT ORIENTED DEVELOPMENT AREA UNDER TITLE 7, SUBTITLE 1 OF THE TRANSPORTATION ARTICLE; OR

C. A BASE REALIGNMENT AND CLOSURE
REVITALIZATION AND INCENTIVE ZONE UNDER TITLE 5, SUBTITLE 13 OF THE
ECONOMIC DEVELOPMENT ARTICLE;

2. THE REDEVELOPMENT PROJECT IS NECESSARY
TO ACCOMMODATE GROWTH CONSISTENT WITH THE COMPREHENSIVE PLAN
FOR THE AREA WHERE THE DEVELOPMENT PROJECT WILL BE LOCATED; OR

3. BONDING AND FINANCING HAVE BEEN SECURED
BASED ON AN APPROVAL OF A REDEVELOPMENT PLAN BY THE APPROVING
BODY.

4-203.2.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
QUANTITATIVE CONTROL WAIVER MAY BE GRANTED TO A DEVELOPMENT
PROJECT THAT IS LOCATED IN AN AREA WHERE A WATERSHED MANAGEMENT
PLAN HAS NOT BEEN DEVELOPED IN ACCORDANCE WITH REGULATIONS
ADOPTED BY THE DEPARTMENT IF:

(1) THE DEVELOPMENT PROJECT DISCHARGES DIRECTLY INTO
TIDALLY INFLUENCED RECEIVING WATERS; OR

(2) THE DEVELOPMENT PROJECT IS AN INFILL DEVELOPMENT
LOCATED IN AN AREA DESIGNATED AS A PRIORITY FUNDING AREA UNDER
TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE
WHERE:

(I) THE ECONOMIC FEASIBILITY OF THE PROJECT IS TIED TO THE PLANNED DENSITY OF THE DEVELOPMENT PROJECT;

(II) IMPLEMENTATION OF THE STORMWATER MANAGEMENT REGULATORY REQUIREMENTS ADOPTED BY THE DEPARTMENT IN 2009 WOULD RESULT IN A LOSS OF PLANNED DEVELOPMENT DENSITY; AND

(III) THE FOLLOWING CONDITIONS ARE MET:

1. PUBLIC WATER, SEWER, AND STORMWATER CONVEYANCE EXISTS;

2. THE QUANTITATIVE WAIVER IS APPLIED ONLY TO THE EXISTING IMPERVIOUS COVER ON THE SITE OF THE DEVELOPMENT PROJECT;

3. ENVIRONMENTAL SITE DESIGN IS USED TO THE MAXIMUM EXTENT PRACTICABLE TO MEET THE FULL WATER QUALITY TREATMENT REQUIREMENTS OF THE ENTIRE DEVELOPMENT PROJECT; AND

4. ENVIRONMENTAL SITE DESIGN IS USED TO THE MAXIMUM EXTENT PRACTICABLE TO PROVIDE FOR FULL QUANTITY CONTROL FOR ALL NEW IMPERVIOUS SURFACES.

(B) (1) A QUANTITATIVE AND QUALITATIVE CONTROL WAIVER MAY BE GRANTED FOR PHASED DEVELOPMENT PROJECTS IF, BY MAY 4, 2010, A STORMWATER SYSTEM HAS BEEN CONSTRUCTED THAT IS DESIGNED TO MEET:

(I) THE REGULATORY REQUIREMENTS FOR STORMWATER ADOPTED BY THE DEPARTMENT IN 2000; AND

(Over)

(II) THE LOCAL ORDINANCE REQUIREMENTS IN EFFECT FOR PHASED DEVELOPMENT AT THE TIME THE STORMWATER SYSTEM WAS CONSTRUCTED.

(2) (I) THIS PARAGRAPH APPLIES TO A PHASED DEVELOPMENT PROJECT THAT HAS RECEIVED A WAIVER UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) IF THE REGULATORY REQUIREMENTS FOR STORMWATER ADOPTED BY THE DEPARTMENT IN 2009 CANNOT BE MET FOR FUTURE PHASES OF A PHASED DEVELOPMENT PROJECT THAT ARE CONSTRUCTED AFTER MAY 4, 2010, THE DEVELOPER SHALL DEMONSTRATE TO AN APPROVING BODY THAT ALL REASONABLE EFFORTS WERE MADE TO INCORPORATE ENVIRONMENTAL SITE DESIGN INTO THESE PHASES OF DEVELOPMENT.

4-203.3.

(A) AN APPROVING BODY MAY GRANT AN ADMINISTRATIVE WAIVER TO A DEVELOPMENT PROJECT THAT RECEIVED PRELIMINARY PROJECT APPROVAL FROM THE APPROVING BODY ON OR BEFORE MAY 4, 2010.

(B) EXCEPT AS PROVIDED BY SUBSECTION (C) OF THIS SECTION, AN ADMINISTRATIVE WAIVER GRANTED UNDER SUBSECTION (A) OF THIS SECTION SHALL EXPIRE ON:

(1) MAY 4, 2013, IF THE DEVELOPMENT PROJECT DOES NOT RECEIVE FINAL PROJECT APPROVAL ON OR BEFORE THAT DATE; OR

(2) MAY 4, 2017, IF THE DEVELOPMENT PROJECT RECEIVES FINAL PROJECT APPROVAL ON OR BEFORE MAY 4, 2013.

(C) (1) AN APPROVING BODY MAY GRANT AN EXTENSION TO AN ADMINISTRATIVE WAIVER IF, BY MAY 4, 2010, A DEVELOPMENT PROJECT:

(I) HAS RECEIVED PRELIMINARY PROJECT APPROVAL; AND

(II) WAS SUBJECT TO:

1. A DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT;

2. A TAX INCREMENT FINANCING APPROVAL; OR

3. AN ANNEXATION AGREEMENT.

(2) AN ADMINISTRATIVE WAIVER THAT IS EXTENDED UNDER THIS SUBSECTION EXPIRES WHEN AN AGREEMENT OR APPROVAL UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION TERMINATES.

(D) CONSTRUCTION AUTHORIZED BY AN ADMINISTRATIVE WAIVER GRANTED UNDER THIS SECTION SHALL BE COMPLETED:

(1) ON OR BEFORE MAY 4, 2017; OR

(2) BY THE EXPIRATION DATE OF THE EXTENSION TO AN ADMINISTRATIVE WAIVER GRANTED UNDER SUBSECTION (C) OF THIS SECTION.

4-204.

(a) **(1)** [After July 1, 1984, unless] UNLESS OTHERWISE exempted FROM THE REQUIREMENTS OF THIS SECTION, AND SUBJECT TO §§ 4-203.1 AND 4-203.2 OF THIS SUBTITLE, a person may not develop any land for residential, commercial, industrial, or institutional use without [submitting]:

(I) SUBMITTING a stormwater management plan to the [county or municipality] APPROVING BODY that has jurisdiction[.]; and

(II) [obtaining] OBTAINING approval of the plan from the [county or municipality] APPROVING BODY.

(2) A grading or building permit may not be issued for a property unless a stormwater management plan has been approved that is consistent with this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to affect the requirements for a development 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, as required by regulations adopted in accordance with Title 8, Subtitle 18 of the Natural Resources Article.”;

and on page 7, in line 9, strike “2.” and substitute “3.”