

**ORDINANCE NO. 417**

AN ORDINANCE OF THE COMMISSIONERS OF ST. MICHAELS TO AMEND THE CODE OF THE TOWN OF ST. MICHAELS, CHAPTER 281 (STORMWATER MANAGEMENT) FOR THE PURPOSE OF REVISING THE STORMWATER MANAGEMENT ORDINANCE AS REQUIRED BY THE MARYLAND DEPARTMENT OF THE ENVIRONMENT (“MDE”) SO THAT THE TOWN’S STORMWATER MANAGEMENT ORDINANCE AS AMENDED ADDRESSES THE REVISED STORMWATER MANAGEMENT STANDARDS MDE SEEKS TO IMPOSE STATEWIDE, INCLUDING THE INTRODUCTION OF ENVIRONMENTAL SITE DESIGN (“ESD”) TO THE MAXIMUM EXTENT PRACTICAL (“MEP”) BY AMENDING ARTICLE I §281-1 (PURPOSE; OBJECTIVES; APPLICATION; ENFORCEMENT AUTHORITY) SUBSECTION B IS AMENDED TO ADD LANGUAGE REFERENCE “THE STORMWATER DESIGN MANUAL AS REFERENCED IN SECTION 281-3 AND THIS CHAPTER” AND TO DELETE B(3)(4) (5) AND §281-1(C); TO RENUMBER §281-1D TO §281C (ENFORCEMENT AUTHORITY) AND TO DELETE THE REVIEW AND APPROVAL RESPONSIBILITIES OF THE COMMISSIONERS OF ST. MICHAELS AND THE ZONING INSPECTOR AND ASSIGN THOSE RESPONSIBILITIES TO THE TOWN’S CONSULTING ENGINEER; TO ADD A NEW PARAGRAPH D (STATUTORY AUTHORITY FOR ADOPTION/AFFECT ON OTHER PROVISIONS) HAS BEEN AMENDED TO NOTE THAT THIS CHAPTER SHALL APPLY TO ALL NEW AND REDEVELOPMENT OCCURRING WITHIN THE TOWN (CURRENTLY NOTED AS §281-2); §281-C(3) IN ITS ENTIRETY AND REPLACE WITH §281—2 (STATUTORY AUTHORITY FOR ADOPTION/AFFECT ON OTHER PROVISIONS; WITH THE DELETION OF §281-3 PARAGRAPHS §281-3 THRU §281-9.1 HAVE BEEN RE-IDENTIFIED TO REFLECT THIS DELETION §281-3 (DEFINITIONS) IS AMENDED TO DELETE THE FOLLOWING TERMS: STANDARD PLAN, STREETS, REASONABLY PRACTICLE, STORMWATER MANAGEMENT, TOWN COMMISSIONERS, POLLUTENT; TO ADD THE FOLLOWING DEFINITIONS: APPLICANT, DESIGN MANUAL, DIRECT DISCHARGE, ENVIRONMENTAL SITE DESIGN, FINAL STORMWATER MANAGEMENT PLAN, INFILL DEVELOPMENT, MAINTENANCE PROJECT, MAXIMUM EXTENT PRACTICAL, OFF SITE STORMWATER MANAGEMENT, PERSON, PRIVATE STORMWATER MANAGEMENT PRACTICE, PLANNING TECHNIQUES, PRELIMINARY PLAN, PRIVATE STORMWATER MANAGEMENT SYSTEM, SKETCH PLAN, STORMWATER AND TO AMEND THE EXISTING DEFINITIONS FOR THE FOLLOWING TERMS TO BRING SUCH TERMS INTO COMPLIANCE WITH THE INTENT OF THOSE SET OUT IN THE MD MODEL STORM WATER MANAGEMENT ORDINANCE OF JUNE 2009: CHANNEL PROTECTION STORAGE VOLUME (CPV), ENFORCEMENT AUTHORITY, MAJOR PROJECT, MINOR PROJECT, OWNER, POINT OF STUDY, RECHARGE VOLUME (REV), REDEVELOPMENT, RETROFITTING, SITE, AND WAIVER; ARTICLE II APPLICABILITY §281-5 (EXEMPTIONS) PARAGRAPH A HAS BEEN AMENDED TO DELETE THE WORD ACTIVITIES AND REPLACE IT WITH PRACTICES AND TO DELETE PARAGRAPH C AS IT RELATED TO STREETS, ALLEYS AND SIDEWALKS; §281-6 WAIVERS; WATERSHED MANAGEMENT PLANS; STANDARD PLAN PARAGRAPH A HAS BEEN AMENDED TO INCLUDE THE GRANT OF A QUALITATIVE OR QUANTITATIVE STORMWATER MANAGEMENT UNDER CERTAIN CONDITIONS AND TO REFERENCE THE CORRECT SUBSECTIONS FOR ADDITIONAL INFORMATION; §281-7 (REDEVELOPMENT), PARAGRAPH D HAS BEEN AMENDED TO STATE THAT IN CASES WHERE IMPERVIOUS AREA REDUCTION OR ON-SITE SWM ARE PROHIBITIVE ALTERNATIVES MAY BE CONSIDERED, AND TO RESTRICT THE USE OF COLLECTED FEES TO PROJECTS IMPLEMENTING PUBIC STORMWATER MANAGEMENT PROJECTS WITHIN THE TOWN; PARAGRAPH E SETS OUT THOSE FACTORS TO BE MEASURED BY THE TOWN’S CONSULTING ENGINEER WHEN CONSIDERING ALTERNATIVE STORMWATER MANAGEMENT MEASURES; §281-8 (VARIANCES) PARAGRAPH B(6) SETS OUT STANDARDS FOR THE GRANT OF A VARIANCE; ARTICLE III STORMWATER MANAGEMENT CRITERIA

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§281-9. (CRITERIA ENUMERATED; COMPLIANCE REQUIRED) HAS BEEN MODIFIED TO NOTE THAT THE STORMWATER MANAGEMENT CRITERIA SHALL BE THOSE SPECIFIED IN THE STORMWATER DESIGN MANUAL AND THIS CHAPTER TO IMPLEMENT ESD TO THE MEP UNLESS OTHERWISE STATED OR EXEMPTED IN THIS CHAPTER; §281-10 (MINIMUM CONTROL REQUIREMENTS) PARAGRAPH A HAS BEEN AMENDED TO ESTABLISH THE MINIMUM CONTROL REQUIREMENTS ESTABLISHED IN THIS CHAPTER AND THE STORMWATER DESIGN MANUAL; §281-11 (STORMWATER MANAGEMENT PRACTICES) HAS BEEN AMENDED TO REQUIRE THAT THE ESD HAS BEEN IMPLEMENTED TO THE MEP BEFORE THE USE OF A STRUCTURAL SMP IS CONSIDERED IN DEVELOPING THE STORMWATER MANAGEMENT PLAN AND ESTABLISHING THE REVIEW PROCESS; §281-14 (CONTENTS OF PLAN) HAS BEEN AMENDED TO DELETE THE TERMS CONCEPT PLAN, APPROVING AUTHORITY, APPROVING AGENCY, SITE DEVELOPMENT AND REPLACED WITH SKETCH PLAN, ENFORCEMENT AUTHORITY AND PRELIMINARY PLAN; §281-15 (PREPARATION OF PLAN) HAS BEEN AMENDED TO NOTE THAT THE INDIVIDUAL PREPARING THE PLAN SHALL BE ACCEPTABLE TO THE TALBOT COUNTY DEPARTMENT OF PUBLIC WORKS/TOWN'S CONSULTING ENGINEER; §281-22 (INSPECTIONS) HAS BEEN AMENDED TO CLARIFY INSPECTION REQUIREMENTS; §281-30 (SEVERABILITY) HAS BEEN ADDED WHICH NOTES THAT SHOULD ANY PORTION OF THIS CHAPTER IS HELD INVALID OR UNCONSTITUTIONAL THE REMAINING PORTIONS OF THIS CHAPTER WILL REMAIN VALID. FOR CLARITY PURPOSES THE ENFORCEMENT AUTHORITY HAS BEEN IDENTIFIED THROUGHOUT THIS CHAPTER AS THE TOWN OF ST. MICHAELS; PROVIDING THAT THE TITLE OF THIS ORDINANCE SHALL BE DEEMED A FAIR SUMMARY OF ORDINANCE NO. 417; AND MATTERS GENERALLY RELATING TO STORMWATER MANAGEMENT IN THE TOWN OF ST. MICHAELS.

WHEREAS, the Commissioners of St. Michaels (the "Town Commissioners") are empowered by Maryland Code (1957) Art 23A Section 2, as amended, and by the Charter of the Town of St. Michaels (1980), to enact ordinances for securing persons and property from danger or destruction, and for the protection of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town; and

WHEREAS, it is the intention of the Town Commissioners and it is hereby ordained that the provisions of this Ordinance shall be included in the Code of the Town of St. Michaels, that the sections and subsections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" shall be changed to "section" or other appropriate word, as required for codification; and

WHEREAS, the Stormwater Management Act of 2007 (Act) required that the Code of Maryland Regulations (COMAR) be modified and a model ordinance developed for the purpose of implementing environmental site design (ESD) to the maximum extent practicable (MEP) statewide; and

WHEREAS, in response to this mandate, MDE adopted significant changes to COMAR and the 2000 Maryland Stormwater Design Manual, Volumes I & II (Design Manual). These changes specify how to implement ESD and meet the MEP standard and how to integrate the review of erosion and sediment control and stormwater management; and

WHEREAS, MDE adopted a regulation requiring local governments to revise their stormwater management ordinances in conformity with a new model ordinance developed by MDE to assist counties and municipalities with its State wide effort implement ESD to MEP standards for stormwater management; and

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WHEREAS, the Town, utilizing the Maryland Model Stormwater Management Ordinance dated June 2009 as prepared by MDE, is proposing revisions to Chapter 281 (Stormwater Management) as set forth herein.

SECTION 1.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS, that Chapter 281 (Stormwater Management) of the St. Michaels Code is hereby amended as follows:

**Article I General Provisions (§ 281-1 — § 281-3)**

**§ 281-1 Purpose; objectives; application; Enforcement Authority.**

- A. Purpose. 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 increased stormwater runoff caused by the development of land in the Town. Proper management of stormwater runoff will minimize damage to public and private property, reduce the effects of development on land and on the quality of water in the Chesapeake Bay and its tributaries, control stream channel erosion, reduce local flooding, and maintain after development, as nearly as possible, the predevelopment runoff characteristics.
- B. Objectives. The objectives of this Chapter are to:
- 1) Manage stormwater by using environmental site design (ESD) to the maximum extent practicable (MEP) to maintain after development as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, and use appropriate structural best management practices (BMPs) only when necessary. This should help to restore, enhance, and maintain the chemical, physical, and biological integrity of streams, minimize damage to public and private property, and further the purpose of this Chapter.
  - 2) Design, construct, operate and maintain stormwater management systems to control runoff from all land developed in accordance with the documents referenced in Section 281-2 and this Chapter;
- C. Enforcement Authority.
- 1) For minor projects, the Enforcement Authority shall be the Town's Consulting Engineer. The decision of the Enforcement Authority on the Final Stormwater Plan shall be the final decision of the Town, unless applicant abandons a proposed project before submitting a Final Stormwater Plan, in which event any decision on the plan last submitted by applicant shall be considered the final decision.
  - 2) For major projects, the Enforcement Authority shall be the Town's Consulting Engineer. The decision of the Enforcement Authority on the Final Stormwater Plan shall be the final decision of the Town, unless applicant abandons a proposed project before submitting a Final Stormwater Plan, in which event any decision on the plan last submitted by applicant shall be the final decision of the Town.
- D. Statutory authority for adoption; affect on other provisions. The provisions of this Chapter, pursuant to the Maryland Code, Environment Article, Title 4, Subtitle 2, 2009 replacement volume, are adopted under the authority of the Charter of the Town of St. Michaels and shall apply to all new and redevelopment occurring within the incorporated area of the Town of St. Michaels. The application of this Chapter and provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by State or

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Town statute. This Chapter applies to all new and redevelopment projects that have not received final approval for erosion and sediment control and stormwater management plans by May 4, 2010.

**§ 281-2 Incorporation of certain documents by reference.**

For the purpose of this Chapter, the following documents are incorporated by reference:

- A. The 2000 Maryland Stormwater Management Design Manual, Volumes I and II (Maryland Department of the Environment, April 2000), and all subsequent revisions, (hereafter the “Stormwater Design Manual”) is incorporated by reference and shall serve as the official guide for stormwater principles, methods, and practices.
- B. USDA Natural Resources Conservation Service Maryland Conservation Practice Standard Pond Code 378 (January 2000).

**§ 281-3 Definitions.**

For the purpose of this Chapter, the following definitions describe the meanings of the terms used in this Chapter:

**ADMINISTRATION**

The Maryland Department of the Environment (MDE) Water Management Administration (the Administration).

**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, which is or may potentially be harmful or injurious to human health, welfare, safety, or property, or to biological productivity, diversity, or stability, or which unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

**AGRICULTURAL LAND MANAGEMENT PRACTICES**

Those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

**APPLICANT**

Any person, firm, or governmental agency who executes the necessary forms to procure official approval of a project or a permit to carry out construction of a project.

**CHANNEL PROTECTION STORAGE VOLUME (C<sub>pv</sub>)**

The volume used to design structural stormwater management practices to control stream channel erosion. Methods for calculating the channel protection storage volume are specified in the 2000 Maryland Stormwater Design Manual.

**CLEARING**

The removal of trees and/or bushes from the land but not the ordinary mowing of grass or fields.

**CONTROL**

The application of one or more stormwater management practices intended or designed to control the volume and rate of stormwater runoff for the purposes of minimizing damage to public and private property, reducing the effects of development on land and on the quality of water, controlling stream channel erosion, reducing local flooding, and maintaining after development, as nearly as possible, the predevelopment stormwater runoff characteristics.

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**DEVELOP LAND**

To change the stormwater runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

**DEVELOPMENT**

Refers only to projects disturbing an area of more than 5,000 square feet.

**DIRECT DISCHARGE**

The concentrated release of stormwater to tidal waters or vegetated tidal wetlands from new development or redevelopment projects in the Critical Area.

**DRAINAGE AREA**

That area enclosed by a ridgeline and contributing stormwater runoff to a single point.

**EASEMENT**

A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

**ENFORCEMENT AUTHORITY**

The Town's Consulting Engineer is responsible for the administration and enforcement of the provisions of this Chapter.

**ENVIRONMENTAL SITE DESIGN (ESD)**

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. Methods for designing ESD practices are specified in the Stormwater Design Manual.

**EXEMPTION**

Those land development activities that are not subject to the stormwater management requirements contained in this Chapter.

**FINAL STORMWATER PLAN**

The plans and submissions required by § 281-13C-D of this Chapter.

**GRADING**

Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled or any combination thereof.

**IMPERVIOUS AREA (SURFACE)**

Nonporous ground covers or areas, such as sidewalks, roads, parking areas, and rooftops that prevent penetration of water into the ground.

**INFILL DEVELOPMENT**

The use of vacant land and property within a built-up area for further construction or development as part of an existing neighborhood.

**INFILTRATION**

The passage or movement of stormwater runoff into the soil surface.

**MAINTENANCE PROJECT**

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Pavement overlay and/or patching and replacement of deteriorated brick and concrete walkways.

**MAXIMUM EXTENT PRACTICABLE (MEP)**

Designing stormwater management systems so that all reasonable opportunities for using ESD planning techniques and treatment practices are exhausted and only where absolutely necessary, a structural SMP is implemented.

**MAJOR PROJECT**

An application entailing a commercial development of one-half (1/2) or more acres or two (2) or more separate uses, a residential development of two (2) or more acres or four (4) or more dwelling units, or any institutional or industrial use.

**MINOR PROJECT**

An application entailing a commercial development of less than one-half (1/2) acre and a single permissible use, or a residential development of less than two (2) acres and less than four (4) dwelling units of a permissible size and type within the zoning district.

**MINOR SUBDIVISION**

The division of a single lot, tract, or parcel of land into four or fewer lots, tracts, or parcels of land for the purpose, whether immediate or future, of transfer of ownership or of building development.

**OFF-SITE STORMWATER MANAGEMENT**

The design and construction of a facility necessary to control stormwater from more than one development.

**ON-SITE STORMWATER MANAGEMENT**

The design and construction of systems to control stormwater runoff from within an immediate development and located on the project site.

**OWNER**

Any person or entity, or its successor in interest, that:

- A. Is the deed holder of land that is required by this Chapter to have an approval under this Chapter;
- B. Is the deed holder of land that is the subject of an application for approval or permit under this Chapter; or
- C. Has executed the necessary forms to procure official approval under this Chapter of, and will be held responsible under this Chapter for, a project to develop land or a permit to carry out construction of a project to develop land.

**PERSON**

The Federal Government, the State, any county, municipal corporation, or other political subdivision of the State or any of their units, an individual, a receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind, any partnership, firm, association or public or private corporation, or any other entity.

**PLANNING TECHNIQUES**

A combination of strategies employed early in project design to reduce the impact from development and to incorporate natural features into a stormwater management plan.

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**POINT OF STUDY**

Any point on the boundary of a property or downstream flow path convergence at which stormwater runoff is quantified for the purposes of stormwater management.

**PRELIMINARY PLAN**

The plans and submissions required pursuant to § 281-14B of this Chapter.

**PRIVATE STORMWATER MANAGEMENT PRACTICE**

A single stormwater management practice, which is owned or controlled by one or more persons or nongovernmental entities.

**PRIVATE STORMWATER MANAGEMENT SYSTEM**

A group of two or more stormwater management practices, which together are owned or controlled by one or more persons or nongovernmental entities.

**PUBLIC WAYS**

All streets, avenues, roads, highways, public thoroughfares, lanes and alleys, whether privately owned or owned by the Town or other public entity.

[Added 12-12-2007 by Ord. No. 267]

**RECHARGE VOLUME (Rev)**

That portion of the water quality volume necessary to maintain predevelopment groundwater recharge rates at a development site. Methods for calculating the recharge volume are specified in the Stormwater Design Manual.

**REDEVELOPMENT**

Any construction, alteration, or improvement that results in a disturbance of more than 5,000 square feet and that significantly alters the footprint of the impervious surface, or constitutes the demolition and substantial or complete rebuilding of previously existing structures, buildings, and/or impervious surfaces on a site, or contiguous sites, where existing and/or proposed site impervious area exceeds 40%.

**RETROFITTING**

Implementation of ESD practices, the construction of a structural SMP, or the modification of an existing structural SMP in a previously developed area to improve water quality over current conditions.

**SCD**

The Talbot Soil Conservation District.

**SEDIMENT**

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

**SITE**

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

**SKETCH PLAN**

The plans and submissions required pursuant to § 281-13A of this Chapter.

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**STABILIZATION**

The prevention of soil movement by any of various nonstructural and/or structural means.

**STORMWATER**

Water that originates from a precipitation event.

**STORMWATER DESIGN MANUAL**

The 2000 Maryland Stormwater Design Manual, Volumes I and II, (Maryland Department of the Environment, April 2000), as it is from time to time hereafter modified, amended and/or replaced by MDE or its successor state agency to serve as its official and lawful guide for stormwater management principles, methods, and practices.

**STORMWATER MANAGEMENT PLAN**

A set of drawings or other documents relating to a site, containing all of the necessary information and specifications pertaining to stormwater management to be implemented for the site, submitted to the Town as a prerequisite to obtaining from the Town stormwater management approval for the site.

**STORMWATER MANAGEMENT PRACTICE (SMP)**

A nonstructural stormwater management practice or a structural stormwater management facility intended or designed to treat, control and/or temporarily store stormwater runoff in order to minimize damage to public and private property, to reduce the effects of development on land and on the quality of water, to control stream channel erosion, to reduce local flooding, and to maintain after development, as nearly as possible, the predevelopment stormwater runoff characteristics. A stormwater management practice that conforms to the requirements of the Stormwater Design Manual is also known as a “best management practice” or “BMP.”

**THE COMMISSIONERS OF ST. MICHAELS**

The Maryland municipal corporation whose corporate name is “The Commissioners of St. Michaels,” also commonly known as “St. Michaels” or the “Town of St. Michaels,” and referred to in this Chapter as “the Town” or “COSM.”

**TREAT**

The application of one or more stormwater management practices intended or designed to remove pollutants from stormwater runoff for the purposes of minimizing damage to public and private property, reducing the effects of development on the quality of water, and maintaining after development, as nearly as possible, the predevelopment stormwater runoff characteristics.

**VARIANCE**

The modification of the minimum stormwater management requirements, on a case-by-case basis, according to the procedures and standards of § 281-9 of this Chapter.

**WAIVER**

The release by the Enforcement Authority from the legal duty to satisfy specific stormwater management requirements for a specific development on a case-by-case review basis.

**A. QUALITATIVE STORMWATER MANAGEMENT WAIVER**

- A waiver from water quality volume and/or recharge volume design parameters after ESD to the MEP has been demonstrated.

**B. QUANTITATIVE STORMWATER MANAGEMENT WAIVER**

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- A waiver from channel protection storage volume design parameters after ESD to the MEP has been demonstrated.

**WATER QUALITY VOLUME (WQv)**

The volume needed to capture and treat the stormwater runoff from 90% of the average annual rainfall at a development site. In numerical terms, it is equivalent to one inch of rainfall multiplied by the volumetric runoff coefficient (Rv) and site area. Methods for calculating the water quality volume are specified in the Stormwater Design Manual. In this Chapter, water quality volume is a requirement for addressing qualitative treatment of stormwater runoff.

**WATERSHED**

The total drainage area contributing stormwater runoff to a single point.

**ARTICLE II Applicability (§ 281-4 — § 281-8)**

**§ 281-4 Scope.**

No person shall develop any land for residential, commercial, industrial, or institutional uses without having provided stormwater management practices that control and manage stormwater runoff from such development in accordance with an approved stormwater management plan, all as required by this Chapter. The stormwater management practices shall be designed, constructed and operated consistent with the Stormwater Design Manual and this Chapter. Where this Chapter imposes a standard that is higher than, but not in conflict with, the Stormwater Design Manual, the higher standard of this Chapter shall prevail over the Stormwater Design Manual.

**§ 281-5 Exemptions.**

The following land use activities are exempt from the provisions of this Chapter and the requirements of providing stormwater management relating thereto:

- A. Agricultural land management practices;
- B. Construction activities that do not constitute development as defined in § 281-4 of this Chapter; or
- C. Land development activities that the Administration determines will be regulated under specific state laws, which provide for managing stormwater runoff.

**§ 281-6 Waivers; watershed management plans; standard plan.**

- A. A qualitative or quantitative stormwater management waiver may be granted when an applicant can demonstrate that the project shall return the disturbed area to a predevelopment runoff condition (no hydrologic change), i.e. pipeline or conduit projects, certain landscaping projects, or certain maintenance projects as defined in Section 281-4. Projects shall also be eligible for qualitative or quantitative stormwater management waivers according to the provisions of Subsections B through H.
- B. Quantitative stormwater management waivers shall be granted only to:
- 1) Projects within areas where watershed management plans have been developed consistent with Subsections G and H of this section,. Written requests for quantitative stormwater management waivers shall be submitted that contain sufficient descriptions, drawings, and any other information that is necessary to demonstrate that ESD has been implemented to the MEP. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions, or modifications to a development receiving a waiver;
  - 2) Within areas where watershed management plans have not been developed, stormwater management quantitative control waivers may be granted to the following projects provided that it has been demonstrated that ESD has been implemented to the MEP:
    - a. Developments to which the Enforcement Authority determines that existing circumstances prevent the reasonable implementation of the otherwise required quantitative control practices;
    - b. Developments to which the Enforcement Authority determines that runoff has been reduced, by the implementation of ESD, to a volume for which the use of structural practices for the quantity requirement would provide insignificant management; or
    - c. Developments that discharge directly into tidally influenced receiving waters.
    - d. Projects 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.
- C. Qualitative stormwater management waivers shall be granted only to:
- 1) Infill development projects where ESD has been implemented to the MEP and it has been demonstrated that other SMPs are not feasible i;
  - 2) Redevelopment projects if the requirements of § 281-7 of this Chapter are satisfied;
  - 3) Developments for which the enforcement authority determines that existing circumstances prevent the reasonable implementation of the otherwise required qualitative control practices;
  - 4) Developments for which the enforcement authority determines that ESD has been implemented to the MEP and the remaining untreated volume is insignificant compared to the treated volume.
- D. 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

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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.

- E. Waivers shall only be granted when it has been demonstrated that ESD has been implemented to the MEP and must:
  - 1) Be on a case-by-case basis;
  - 2) Consider the cumulative effects of the Town's waiver policy; and
  - 3) Reasonably ensure the development will not adversely impact stream quality.
- F. If the Town has established an overall watershed management plan for a specific watershed, then the Town may develop quantitative waiver and redevelopment provisions that differ from Subsection B of this Section and § 281-7.
- G. A watershed management plan developed for the purpose of implementing different stormwater management policies for waivers and redevelopment shall:
  - 1) Include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
  - 2) Evaluate both quantity and quality management and opportunities for ESD implementation;
  - 3) Include a cumulative impact assessment of current and proposed watershed development;
  - 4) Identify existing flooding and receiving stream channel conditions;
  - 5) Be conducted at a reasonable scale;
  - 6) Specify where on-site or off-site quantitative and qualitative stormwater management practices are to be implemented;
  - 7) Be consistent with the General Performance Standards for Stormwater Management in Maryland found in the Stormwater Design Manual; and
  - 8) Be approved by the Administration.
- H. To apply for a waiver under Subsection B(2) of this section, the owner shall submit a written request containing descriptions, drawings, and any other information necessary to evaluate the proposed development. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions, or modifications to a development receiving a waiver.

**§ 281-7 Redevelopment.**

- A. Stormwater management plans for redevelopment shall be consistent with the Stormwater Design Manual except that the recharge and channel protection storage volume requirements shall apply only if required by the enforcement authority.
- B. Subject to Subsections C and D below, all redevelopment designs shall:
  - 1) Reduce impervious area within the limit of disturbance (LOD) by at least 50 percent according to the Stormwater Design Manual; or
  - 2) Implement ESD to the MEP to provide water quality treatment for at least 50 percent of the existing impervious area within the LOD; or
  - 3) Use a combination of Section 281-8 B. (1) and (2) of this Chapter for at least 50 percent of the existing site impervious area.
- C. Alternative stormwater management measures may be used to meet the requirements in Section 281-7 B. of this Chapter if the owner/developer satisfactorily demonstrates to the Enforcement Authority that impervious area reduction has been maximized and ESD has been implemented to the MEP. Alternative stormwater management measures include, but

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are not limited to:

- 1) An on-site structural SMP; or
- 2) An off-site structural SMP to provide water quality treatment for an area equal to or greater than 50 percent of the existing impervious area; or
- 3) A combination of impervious area reduction, ESD implementation, and an on-site or off-site structural SMP for an area equal to or greater than 50 percent of the existing site impervious area within the LOD.

D. In cases where conditions prevent impervious area reduction or on-site stormwater management, practical alternatives may be considered. The alternatives listed below shall be considered when Items in B and C above cannot be met.

- 1) **Retrofitting:** Includes implementing Alternate Surfaces, Nonstructural and Micro-Scale Practices within public property and Town right-of-ways that include impervious surfaces that are currently untreated.; or
- 2) **Watershed or stream restoration:** Includes implementing Alternate Surfaces, Nonstructural and Micro-Scale Practices for the purpose of improving the water quality of a degraded watershed or stream within Town limits; or
- 3) **Fees in amounts to be set by the COSM by resolution.** Fees will be considered only after items 1 and 2 of this section have been found to be impractical and must be dedicated to implementing public stormwater management projects within Town limits.

E. The determination of what alternative stormwater management measures will be available may be made by the Enforcement Authority at the appropriate point in the development review process. Enforcement Authority shall consider the prioritization of alternative measures in Section 281-8C & D of this Chapter after it has been determined that it is not practicable to meet the requirements of Section 281-8B using ESD. In deciding what alternative measures may be required, Enforcement Authority may consider factors including, but not limited to:

- 1) 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;
- 2) Whether the project is necessary to accommodate growth consistent with comprehensive plans; or
- 3) Whether bonding and financing have already been secured based on an approved development plan.

F. Stormwater management shall be addressed according to the new development requirements in this Chapter and in the Stormwater Design Manual for any net increase in impervious area.

**§ 281-8 Variances.**

In the case of minor projects only, the St. Michaels Board of Appeals may grant a written variance from any requirement of Article III (Stormwater Management Criteria) of this Chapter if the Board determines that the variance request meets the standards of Subsection B of this section. St. Michaels Board of Appeals shall not grant a variance unless and until sufficient justification is provided by the person developing land that the implementation of ESD to the MEP has been investigated thoroughly.

A. **Process.** Application for a variance shall be made in writing to the Board of Appeals in accordance with the fee schedule and application rules adopted by resolution of the Town Commissioners. The Board of Appeals shall conduct a public hearing on the application. Notice of the hearing shall be given as in § 340-74A(3) of the Code of the Town of St. Michaels. The applicant shall have the

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burden of proof and the burden of persuasion to overcome the presumption of nonconformance with this Chapter.

- B. Standards. Before granting a variance to the requirements of Article III of this Chapter, the Board of Appeals shall make written findings demonstrating that each of the following standards has been met:
- 1) Special conditions or circumstances exist that are peculiar to the land or structure involved such that a literal enforcement of provisions and requirements of the Town's stormwater management criteria would result in unwarranted hardship. "Unwarranted hardship" shall mean that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is sought.
  - 2) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
  - 3) The granting of a variance shall be in harmony with the general spirit and intent of Chapter 281 of the Code of the Town of St. Michaels.
  - 4) The variance granted shall be the minimum that will overcome the unwarranted hardship, i.e., will restore reasonable and significant use of the parcel or lot for which the variance is sought.
  - 5) The variance request is supported by a favorable recommendation from the Enforcement Authority for stormwater projects. A favorable recommendation from the Enforcement Authority for stormwater projects shall not be construed as requiring approval of the variance.
  - 6) The Board of Appeals shall not grant a variance unless and until sufficient justification is provided by the person developing land that the implementation of ESD to the MEP has been investigated thoroughly.
- C. Evidence. Findings by the Board of Appeals shall be based on competent and substantial evidence. With due regard for the person's technical competence and specialized knowledge, the written findings may also be based on evidence introduced and testimony presented by:
- 1) The applicant;
  - 2) The Town, the Enforcement Authority, or any other government agency; or
  - 3) Any other person deemed appropriate by the Board of Appeals.
- D. Conditions and mitigation. The Board of Appeals may impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of Chapter 281 is maintained.
- E. Appeals. Appeals of decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the Town for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this section.

**ARTICLE III Stormwater Management Criteria (§ 281-9 - § 281-12)**

**§281-9. 9 Criteria enumerated; compliance required.**

The stormwater management criteria shall consist of the planning techniques, stormwater management practices, and design methods specified in the Stormwater Design Manual and this Chapter that will be used to implement ESD to the MEP. Unless otherwise stated or exempted by this Chapter, each stormwater management plan shall satisfy the requirements stated in the following stormwater management criteria of this Article III.

**§ 281-10 Minimum control requirements.**

- A. The minimum control requirements established in this Chapter and the Stormwater Design Manual are as follows:
- 1) The use of ESD planning techniques and treatment practices must be exhausted before any structural SMP is implemented. Stormwater management plans for development projects subject to this Chapter shall be designed using ESD sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria according to the Stormwater Design Manual. The MEP standard is met when channel stability is maintained, predevelopment groundwater recharge is replicated, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary.
  - 2) For sites that discharge to closed storm drain systems or non-tidal open ditch systems, management control of the 2-year and 10-year frequency storm events to predevelopment rates shall be provided. This requirement may be waived if the requirements of § 281-11 E of this Chapter are satisfied.
- B. Stormwater management and development plans, where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the Maryland Department of the Environment in accordance with the Flood Hazard Management Act of 1976, as it may be amended from time to time.

**§ 281-11 Stormwater management practices.**

The ESD planning techniques and practices and structural stormwater management measures established in this Chapter and the Stormwater Design Manual shall be used, either alone or in combination, in a stormwater management plan. The owner or licensed engineering representative shall demonstrate that ESD has been implemented to the MEP before the use of a structural SMP is considered in developing the stormwater management plan.

A. ESD Planning Techniques and Practices.

- 1) The following planning techniques or some combination thereof shall be considered and where appropriate applied according to the Stormwater Design Manual to satisfy the applicable minimum control requirements established in Section 281-10 of this Chapter:
  - a. Preserving and protecting natural resources;
  - b. Conserving natural drainage patterns;
  - c. Minimizing impervious area;
  - d. Reducing runoff volume;
  - e. Using ESD practices to maintain 100 percent of the annual predevelopment groundwater recharge volume;
  - f. Using green roofs, permeable pavement, reinforced turf, and other alternative surfaces;
  - g. Limiting soil disturbance, mass grading, and compaction;
  - h. Clustering development; and/or
  - i. Any other practices approved by the Administration.

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- 2) The following ESD treatment practices shall be designed according to the Stormwater Design Manual to satisfy the applicable minimum control requirements established in Section 281-10 of this Chapter:
    - a. Disconnection of rooftop runoff;
    - b. Disconnection of non-rooftop runoff;
    - c. Sheet flow to conservation areas;
    - d. Rainwater harvesting;
    - e. Submerged gravel wetlands;
    - f. Landscape infiltration;
    - g. Infiltration berms;
    - h. Dry wells;
    - i. Micro-bioretenion;
    - j. Rain gardens;
    - k. Swales;
    - l. Enhanced filters; andAny practices approved by the Administration
  - 3) Requirements in the Town's Zoning Code or in other Town ordinances regulating development will not excuse implementation of ESD to the MEP. As the Town implements this stormwater management chapter, the Commissioners will evaluate provisions in the Town Zoning Code or other ordinances or development requirements as necessary or appropriate in order to eliminate or mitigate impediments to implementing ESD to the MEP according the Stormwater Design Manual.
- B. Structural stormwater management practices.
- 1) The following structural stormwater management practices shall be designed according to the Stormwater Design Manual. In accordance with § 281-11A(1) and (2), these or any other structural practices shall be employed only after implementing ESD to the MEP and the stormwater management requirements of § 281-10 have not been met.
    - a. Stormwater management ponds. The outer slope from the rim of any embankment to preconstruction grade shall not be steeper than 10:1;
    - b. Stormwater management wetlands;
    - c. Stormwater management infiltration;
    - d. Stormwater management filtering systems; and
    - e. Stormwater management open channel systems.
  - 2) The performance criteria specified in the Stormwater Design Manual with regard to general feasibility, conveyance, pretreatment, treatment and geometry, environment and landscaping, and maintenance shall be considered when selecting structural stormwater management practices.
  - 3) Structural stormwater management practices shall be selected to accommodate the unique hydrologic or geologic regions of the Town.
  - 4) Proprietary stormwater structures utilized for underground stormwater management shall, be approved by the Administration and installed per the manufacturer's specifications. All performance criteria specified in the Stormwater Design Manual shall be met by such devices.
- C. ESD planning techniques and treatment practices and structural stormwater management measures used to satisfy the minimum requirements in Section 281-10 of this Chapter must be recorded in the land records of the County and remain unaltered by subsequent property owners. Prior approval from the Enforcement Authority shall be obtained before any stormwater management practice is altered.
- D. Alternative ESD planning techniques and treatment practices and structural stormwater

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measures may be used for new development runoff control if they meet the performance criteria established in the Stormwater Design Manual and all subsequent revisions and are approved by the Administration. Practices used for redevelopment projects shall be approved by the Enforcement Authority.

- E. For the purposes of modifying the minimum control requirements or design criteria, i.e. increasing the allowable post peak flow above the pre-developed discharge, the owner/developer shall submit to the Enforcement Authority an analysis of the impacts of stormwater flows downstream in the watershed. The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development upon a dam, highway, structure, storm drain, culvert or natural point of restricted stream flow. The point of investigation is to be established with the concurrence of the Enforcement Authority, downstream of the first downstream tributary whose drainage area equals or exceeds the contributing area to the project or stormwater management facility.
- F. Stormwater management facilities and practices generally shall not be open to the public and, when not located on a privately owned residential or commercial lot, shall be protected against intrusions by the public. The purpose of this provision is to protect the public and the integrity of the stormwater management facility.

**§ 281-12 Specific design criteria.**

The basic design criteria, methodologies, and construction specifications, subject to the approval of the enforcement authority and the Administration “MDE”, shall be those of the Stormwater Design Manual, as modified without conflict by this Chapter.

**ARTICLE IV Stormwater Management Plans (§ 281-13— § 281-15)**

**§ 281-13 Review and approval.**

- A. For any proposed development not exempt under § 281-6, the owner shall submit phased stormwater management plans or waiver application to the enforcement authority for review and approval. At a minimum, plans shall be submitted for the sketch plan, preliminary and final stormwater management construction phases of project design. Each plan submittal shall include the minimum content specified in Section 281-14 of this Chapter and meet the requirements of the Stormwater Design Manual and Article III of this Chapter.
- B. The Enforcement Authority shall perform a comprehensive review of the stormwater management plans for each phase of site design. Coordinated comments will be provided for each plan phase that reflects input from all appropriate agencies including, but not limited to the Soil Conservation District (SCD), Critical Area Commission, Technical Advisory Committee and the Planning Commission. All comments from the enforcement authority and other appropriate agencies shall be addressed and approval received at each phase of project design before subsequent submissions.
  - 1) Major projects shall not receive approval for each phase earlier than 45 days after a complete application is received by the enforcement authority.
  - 2) The approved final stormwater management plan shall serve as the basis for all subsequent construction.
- C. Notification of approval or reasons for disapproval or modification shall be given to the owner. If a decision is not made within 90 days, the owner shall be informed of the status of the review process

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and the anticipated completion date. The stormwater management plan shall not be considered approved without the inclusion on the plan of the dated signature of the enforcement authority.

- D. For sites with minimal improvements, such that ESD to the MEP is clearly met based upon the sketch plan review, the Town Engineer has the discretion to delete the preliminary development phase and move directly to the final development phase. This determination will be made at the sketch site plan review phase.

**§ 281-14 Contents of plan.**

- A. The owner shall submit a sketch plan that provides sufficient information for an initial assessment of the proposed project and whether stormwater management can be provided according to Section 281-11 of this Chapter and the Stormwater Design Manual. Plans submitted for sketch plan approval shall include, but are not limited to:
- 1) A map at a scale specified by the enforcement authority showing site location, existing natural features, water and other sensitive resources, topography, and natural drainage patterns;
  - 2) The anticipated location of all proposed impervious areas, buildings, roadways, parking, sidewalks, utilities, and other site improvements;
  - 3) The location of the proposed limit of disturbance, erodible soils, steep slopes, and areas to be protected during construction;
  - 4) Preliminary estimates of stormwater management requirements, the selection and location of ESD practices to be used, and the location of all points of discharge from the site;
  - 5) A narrative that supports the sketch plan design and describes how ESD will be implemented to the MEP; and
  - 6) Any other information required by the enforcement authority that is consistent with the preliminary nature of sketch plan submittals and is not specifically required to be submitted at a later approval stage under Subsections B through E of this Section.
- B. Following sketch plan approval by the enforcement authority, the owner/developer shall submit preliminary plans that reflect comments received during the previous review phase. Plans submitted for preliminary plan approval shall be of sufficient detail to allow site development to be reviewed and include but not be limited to:
- 1) All information provided during the sketch plan review phase;
  - 2) Final site layout, exact impervious area locations and acreages, proposed topography, delineated drainage areas at all points of discharge from the site, and stormwater volume computations for ESD practices and quantity control structures;
  - 3) A proposed erosion and sediment control plan that contains the construction sequence, any phasing necessary to limit earth disturbances and impacts to natural resources and an overlay plan showing the types and locations of ESD and erosion and sediment control practices to be used;
  - 4) A narrative that supports the preliminary plan design and describes how ESD will be used to meet the minimum control requirements, accompanied by sufficient technical data and information to establish that the proposed ESD may feasibly be implemented. Where structural stormwater management measures are proposed, applicant shall provide sufficient technical data and information to satisfy the Enforcement Authority that the minimum control requirements cannot be satisfied with ESD employed to the MEP or that the structural stormwater management measures offer merely redundant protection that is not necessarily required to achieve compliance with this Chapter and provides other aesthetic or desirable features or benefits; and
  - 5) Any other information required by the enforcement authority that is consistent with the level of detail required in preliminary plan submittals and is not specifically required to be submitted at a latter approval stage under Subsections C-E of this Section, unless such information is necessary to establish the feasibility of proposed ESD or to establish that ESD cannot be used to meet the

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minimum control requirements.

- C. Following preliminary plan approval by the enforcement authority, the owner/developer shall submit final erosion and sediment control and stormwater management plans that reflect the comments received during the previous review phase. Plans submitted for final approval shall be of sufficient detail to allow all approvals and permits to be issued according to the following:
- 1) Final erosion and sediment control plans shall be submitted according to COMAR 26.17.01.05; and
  - 2) Final stormwater management plans shall be submitted for approval in the form of construction drawings and be accompanied by a report that includes sufficient information to evaluate the effectiveness of the proposed runoff control design.
- D. Reports submitted for final stormwater management plan approval shall include, but are not limited to:
- 1) Geotechnical investigations including soil maps, borings, site specific recommendations, infiltration tests and any additional information necessary for the final stormwater management design;
  - 2) Drainage area maps depicting predevelopment and post development runoff flow path segmentation and land use;
  - 3) Hydrologic computations of the applicable ESD and unified sizing criteria according to the Stormwater Design Manual for all points of discharge from the site;
  - 4) Hydraulic and structural computations for all ESD practices and structural stormwater management measures to be used;
  - 5) A narrative that supports the final stormwater management design;
  - 6) Downstream analysis as required by Section 281-11 E; and
  - 7) Any other information required by the enforcement authority.
- E. Construction drawings submitted for final stormwater management plan approval shall include, but are not limited to:
- 1) A vicinity map;
  - 2) Existing and proposed topography and proposed drainage areas, including areas necessary to determine downstream analysis for proposed stormwater management facilities;
  - 3) Any proposed improvements including location of buildings or other structures, impervious surfaces, storm drainage facilities, and all grading;
  - 4) The location of existing and proposed structures and utilities;
  - 5) An easement plat, rights-of-way plat and ESD components, structural SMP facilities with applicable description. Maintenance responsibilities shall be defined;
  - 6) The delineation, if applicable, of the 100-year floodplain and any on-site wetlands;
  - 7) Structural and construction details including representative cross sections for all components of the proposed drainage system or systems, and stormwater management facilities;
  - 8) All necessary construction specifications;
  - 9) A sequence of construction;
  - 10) Data for total site area, disturbed area, new impervious area, and total impervious area;
  - 11) A table showing the ESD and unified sizing criteria volumes required in the Stormwater

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Design Manual;

- 12) A table of materials to be used for stormwater management facility planting;
- 13) All soil boring logs and locations;
- 14) An inspection and maintenance schedule;
- 15) Certification by the owner/developer that all stormwater management construction will be done according to this plan;
- 16) An as-built certification signature block to be executed after project completion;
- 17) Any other information required by the Enforcement Authority; and
- 18) Easement plan for individual stormwater management components on private or common property.

- F. If a stormwater management plan involves the direction or redirection of some or all runoff from the site, a change in stormwater runoff volume, and/or a change in the nature of such runoff, it is the responsibility of the owner to obtain from adjacent property owners, including Talbot County or the State of Maryland, any easements of necessary property interests concerning flowage of water. Approval of a stormwater management plan does not create or affect any right to change the location, volume or other nature of stormwater runoff from the site onto adjacent property without the permission of the property owner.
- G. Only a decision by the enforcement authority on the final stormwater plan shall be subject to judicial review, unless applicant abandons a project as the result of a decision of the enforcement authority on a sketch plan or a preliminary plan.

**§ 281-15 Plan Preparer.**

- A. The design of stormwater management plans shall be prepared by any individual whose qualifications are acceptable to the Enforcement Authority. Enforcement Authority requires that the design be prepared and sealed by a professional engineer. All plats to be recorded shall be prepared by a professional land surveyor. All landscaping plans for ESD shall be prepared by a licensed landscape architect. All professionals shall be licensed in the State, as necessary to protect the public or the environment.
- B. If a stormwater SMP requires either a dam safety permit from MDE or small pond approval from the Talbot Conservation District, the Enforcement Authority shall require that the design be prepared by a professional engineer licensed in the State.

**ARTICLE V Permits (§ 281-16 — § 281-19)**

**§ 281-16 Plan approval required for permit issuance.**

If a stormwater management plan may be required by this Chapter for a parcel or lot of land, a grading or building permit shall not be issued for such parcel or lot of land unless a stormwater management plan has been approved or waived according to the specifications of this Chapter 281 of the Code. A building permit may not be issued without:

- A. Recorded easements for the placement of all stormwater management practices, and easements to provide adequate access to and from such stormwater management practices for inspection and maintenance of such stormwater management practices from a public right-of-way;
- B. A recorded maintenance agreement, in accord with § 281-25, relating to all such stormwater management practices;

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- C. A performance bond for the construction of all such stormwater management practices in accordance with the approved stormwater management plan;
- D. Written and recorded permission from adjacent property owners as necessary; and
- E. In the case of building permits for residential or commercial lots, a site plan for each lot showing all proposed construction and delineating all areas to be occupied by nonstructural stormwater management practices for which curve number (CN) credits have been taken in the approved stormwater management plan. This site plan shall become the basis for inspections conducted in accord with §§ 281-23A(7) and 281-24C(3)(i).

**§ 281-17 Fees.**

A nonrefundable permit fee shall be paid by the owner to the Town at the time the stormwater management plan or application for waiver is submitted. The permit fee shall be set by resolution of the COSM.

Applicant shall pay all fees incurred for the review and recommendation of the Town's Consulting Engineers and/or assessed against the Town by the Enforcement Authority. Applicant shall deposit with the Town those fees and charges reasonably anticipated for engineering review. Any overage deposited with the Town shall be returned to applicant.

**§ 281-18 Permit conditions.**

In granting the plan approval, the enforcement authority may impose such conditions that may be deemed necessary to ensure compliance with the provisions of this Chapter and the preservation of the public health and safety.

**§ 281-19 Permit suspension and revocation.**

Any permit, approval, or waiver issued pursuant to this Chapter by the enforcement authority may be suspended or revoked after written notice is given by the enforcement authority to the owner for any of the following reasons:

- A. Any violation of such permit, approval, or waiver, or any violation of any plan or condition that is the subject or basis of such a permit, approval, or waiver;
- B. Any change in any site runoff characteristics upon which such permit, approval, or waiver was granted;
- C. Failure of the owner, its agent, or assignee to perform in accordance with such permit, approval, or waiver, or any plan or condition that is the subject or basis of such a permit, approval, or waiver;
- D. Noncompliance with any correction notice or stop-work order issued for, or relating to, the construction, maintenance, or operation of a stormwater management practice; or
- E. Existence of an immediate danger in a downstream area which, in the opinion of the enforcement authority, may be caused, exacerbated, or relieved by the existence, termination of operation, or maintenance of, or any failure relating to, a stormwater management practice that is the subject of such permit, approval, or waiver.

**ARTICLE VI Performance Bond (§ 281-20 — § 281-21)**

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**§ 281-20 Amount of security.**

The owner shall provide to the Town a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the Town prior to the issuance of any permit, approval or waiver involving the grading, construction or operation of a stormwater management practice, system or facility. The amount of the security shall not be less than the total estimated construction cost of the stormwater management practice, system or facility. The bond required in this section shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all of the provisions of this Chapter, and other applicable laws and regulations, as well as any time limitations for making such practice, system or facility fully operational and completed.

**§ 281-21 Release of security.**

The performance bond or other security shall not be fully released without a final inspection of the completed work by the Enforcement Authority, submission of sealed as-built plans by the owner to the enforcement authority, and certification of completion by the owner to the enforcement authority that the stormwater management facilities comply with the approved plan and the provisions of this Chapter. A procedure may be used to release parts of the bond or other security held by the Town after various stages of construction have been completed and accepted by the enforcement authority after inspection by the Enforcement Authority. The procedures used for partially releasing performance bonds or other security must be specified by the enforcement authority in writing, prior to stormwater management plan approval.

**ARTICLE VII Inspections (§ 281-22 — § 281-23)**

**§ 281-22 Inspection schedule and reports.**

- A. The owner shall notify the Enforcement Authority:
- 1) At least 48 hours before commencing any work in conjunction with the stormwater management plan;
  - 2) Upon completion of any element of the plan requiring inspection according to § 281-23A; and
  - 3) Upon completion of the project when a final inspection will be conducted.
- B. Regular inspections shall be made and documented for each ESD planning technique and practice at the stages of construction specified in the Stormwater Design Manual by the enforcement authority, its authorized representative, or certified by a professional engineer licensed in the State of Maryland. At a minimum, all ESD and other nonstructural practices shall be inspected upon completion of final grading, the establishment of permanent stabilization, and before issuance of use and occupancy approval.
- C. Inspections in accord with §281-23 shall be conducted by the Enforcement Authority at the cost of the owner.
- D. The Enforcement Authority shall make written reports of all inspections to the Town. Written inspection reports shall include:
- 1) The date and location of the inspection;
  - 2) Whether construction was in compliance with the approved stormwater management plan;
  - 3) Any variations from the approved construction specifications; and
  - 4) Any violations that exist.
- E. When violations are reported, the enforcement authority shall notify the owner and on-site personnel in writing. Written notification shall describe the nature of the violation and the required corrective

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action. The failure to notify the owner of a violation shall not absolve the owner of responsibility for such violation.

**§ 281-23 Inspection requirements during construction.**

- A. For each practice listed below in this subsection, inspections shall be made and documented at the specified stages of construction. Additional inspections may be required as the Enforcement Authority deems necessary. For any practice, work shall not proceed to a new stage of construction until the Enforcement Authority has approved completion of the preceding stage of construction and have furnished the Town with the written inspection reports required by Subsection C of this section.
- 1) For surface ponds and subsurface chambers:
    - a. Upon completion of excavation to sub foundation and when required, installation of structural supports or reinforcement for structures, including but not limited to:
      - i. Core trenches for structural embankments;
      - ii. Inlet and outlet structures, antiseep collars or diaphragms, and watertight connectors on pipes; and
      - iii. Trenches for enclosed storm drainage facilities.
    - b. During placement of structural fill, concrete, and installation of piping and catch basins;
    - c. During backfill of foundations and trenches;
    - d. During embankment construction; and
    - e. Upon completion of final grading and establishment of permanent stabilization.
    - f. For sub-surface stormwater chambers or rain tanks, surveyed elevations of the stone foundation shall be taken at each corner and a minimum of two within the perimeter.
  - 2) For wetlands:
    - a. At the stages specified for pond construction in Subsection A(1) of this section;
    - b. During and after wetland reservoir area planting; and
    - c. During the second growing season to verify a vegetation survival rate of at least 50%.
  - 3) For infiltration trenches:
    - a. During excavation to sub grade;
    - b. During placement and backfill of under drain systems and observation wells;
    - c. During placement of geotextiles and all filter media;
    - d. During construction of appurtenant conveyance systems such as diversion structures, prefilters and filters, inlets, outlets, and flow distribution structures; and
    - e. Upon completion of final grading and establishment of permanent stabilization;
  - 4) For infiltration basins:
    - a. At the stages specified for pond construction in Subsection A (1) of this section; and
    - b. During placement and backfill of under drain systems.
  - 5) For filtering systems:
    - a. During excavation to sub grade;
    - b. During placement and backfill of under drain systems;
    - c. During placement of geotextiles and all filter media;
    - d. During construction of appurtenant conveyance systems such as flow diversion structures, pre-filters and filters, inlets, outlets, orifices, and flow distribution structures; and
    - e. Upon completion of final grading and establishment of permanent stabilization.
  - 6) For open channel systems:
    - a. During excavation to sub grade;
    - b. During placement and backfill of under drain systems for dry swales;
    - c. During installation of diaphragms, check dams, or weirs; and
    - d. Upon completion of final grading and establishment of permanent stabilization.
  - 7) For nonstructural practices, including those on residential or commercial lots that are privately owned or are intended to be privately owned:

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- a. Upon completion of final grading;
  - b. Upon the establishment of permanent stabilization; and
  - c. Before issuance of use and occupancy approval.
- B. The Enforcement Authority may for enforcement purposes use any one or a combination of the following actions:
- 1) Issuance of a notice of violation, specifying one or more violations of a stormwater management plan, and the nature of the correction(s) needed;
  - 2) Issuance of a stop-work order for the site by the enforcement authority if a violation persists;
  - 3) Withholding of the bonds or securities, or the initiation of legal action against such bonds or securities; or
  - 4) In addition to any other sanctions, a civil action or criminal prosecution against any person in violation of the Maryland Code, Environment Article, Stormwater Management Subtitle, or this Chapter.
- C. Any step in the enforcement process may be taken at any time, depending on the severity of the violation.
- D. Once all construction is complete, the owner shall cause an as-built plan and certification of completion to be submitted to the Town by either a professional engineer or professional land surveyor licensed in the State to ensure that constructed stormwater management practices and conveyance systems comply with the specifications contained in the approved plans. At a minimum, an as-built certification shall include a set of sealed drawings comparing the approved stormwater management plan with what was constructed. The enforcement authority may require additional information.
- E. The enforcement authority shall submit notice of construction completion to the Administration “MDE” on a form supplied by the Administration “MDE” for each stormwater management practice within 45 days of construction completion. The type, number, total drainage area, and total impervious area treated by all ESD techniques and practices shall be reported to the Administration “MDE” on a site by site basis. If a stormwater management practice requiring SCD approval is constructed, upon completion thereof, a notice of construction completion shall be submitted to the appropriate SCD.

**ARTICLE VIII Maintenance (§ 281-24 — § 281-26)**

**§ 281-24 Inspections and reports.**

- A. By inspecting all ESD treatment systems and structural stormwater management measures, the Town shall ensure that preventative maintenance is performed. Inspections shall occur during the first year of operation and at least once every three years thereafter. In addition, for privately owned ESD treatment practices and structural stormwater management measures, a maintenance agreement between the owner and Town shall be executed as described in § 281-25 of this Chapter.
- B. Inspection reports shall be maintained by the Town for all ESD treatment systems and structural stormwater management measures.
- C. Inspection reports for ESD treatment systems and structural stormwater management measures shall include the following:
- 1) The date of inspection;
  - 2) Name of inspector;

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- 3) An assessment of the quality of the stormwater management system related to ESD treatment practice efficiency and the control of runoff to the MEP;
  - 4) The condition of:
    - a. Vegetation or filter media;
    - b. Fences or other safety devices;
    - c. Spillways, valves, or other control structures;
    - d. Embankments, slopes, and safety benches;
    - e. Reservoir or treatment areas;
    - f. Inlet and outlet channels or structures;
    - g. Underground drainage;
    - h. Sediment and debris accumulation in storage and forebay areas;
    - i. Any nonstructural practices, including those on privately owned residential or commercial lots; and
    - j. Any other element that could affect the proper functioning of the stormwater management system.
  - 5) Description of needed maintenance.
- D. The Enforcement Authority shall provide to the owner notification of any deficiencies discovered through the inspection. After notification is provided, the owner shall have 30 days, or other time limit mutually agreed to between the enforcement authority and the owner, within which to correct the deficiencies. The enforcement authority shall then cause to be conducted a subsequent inspection to ensure that repairs have been completed.
- E. If repairs are not undertaken or are not completed properly, then enforcement procedures following Subsection D of § 281-25 of this Chapter shall be followed by the enforcement authority.
- F. If, after an inspection, the condition of a stormwater management facility presents an immediate danger to the public health or safety, because of an unsafe condition or improper maintenance, the Town shall take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the Town shall be assessed against the owner, as provided in Subsection C of § 281-25 of this Chapter.

**§ 281-25 Inspection, maintenance, and operation agreements.**

- A. Prior to the issuance of any grading or building permit relating to a private stormwater management system or practice, the owner of the subject stormwater management system or practice shall execute an inspection, maintenance, and operation agreement with the Town that is binding on the owner and all subsequent owners of land served by the subject stormwater management system, or served by the stormwater management system of which the subject stormwater management practice is a part. Such agreement shall provide for access to the subject stormwater management system or practice at reasonable times for regular inspections by the Enforcement Authority at the owner's expense to ensure that the subject stormwater management system or practice is maintained in proper working condition to meet the stormwater management plan as approved and the design standards of this Chapter. Further, such agreement shall require that the owner or its successor in interest shall perpetually operate, maintain, repair, and replace the subject stormwater management system or stormwater management system of which the subject stormwater management practice is a part.
- B. A maintenance agreement shall be promptly recorded in the land records of Talbot County, Maryland by the owner, and a copy of the recording receipt and a copy of the inspection, maintenance, and operation agreement containing the recording stamp of the Clerk of Court, including the date and time of recording, shall be promptly furnished by the owner to the Town.

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- C. Before commencing operation of a private stormwater management system the owner of said private stormwater management system shall provide to the Town a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the Town for the maintenance of all stormwater management practices which are a part of the private stormwater management system. The amount of the security shall not be less than the total estimated by the Town to reasonably secure the maintenance of the private stormwater management system. The bond required in this section shall include provisions relative to forfeiture for failure to maintain the private stormwater management system in accordance with the maintenance agreement relating to said private stormwater management system, the provisions of this Chapter, and other applicable laws and regulations, and any time limitations.
- D. The inspection, maintenance, and operation agreement shall also provide that, after notification by the Town under § 281-24D, if satisfactory corrections have not been made by the owner within the time period specified, the Town may temporarily or permanently perform, or cause the performance of, all or any part of the operations, maintenance, repairs, and/or replacements of the subject stormwater management system or the stormwater management system of which the subject stormwater management practice is a part, and may operate, or place in condition to operate as designed in the approved stormwater management plan, the subject stormwater management system or the stormwater management system of which the subject stormwater management practice is a part. The owner of the facility shall be assessed with any penalties associated with such violations and/or deficiencies, and with the cost incurred by the Town in performing or causing the performance of the operations, maintenance, repairs, and/or replacements which were initiated by the Town as the result of such violations and/or deficiencies. This may be accomplished by the Town placing a lien against the property which is served by the subject stormwater management system in violation, or by the stormwater management system of which the subject stormwater management practice in violation is a part. Such lien, up to the amount of the costs incurred by the Town in making such maintenance, repairs, replacements, and/or operation, plus the collection costs, shall be placed against such parcels of real property served by the stormwater management system in the same proportion as such parcels of real property are assessed and billed for contributions to revenue to cover the regular operating budget by the homeowners' or community association of which the owners of such properties are members. If and to the extent not voluntarily paid within 30 days after bills are mailed to the property owners, then such costs incurred by the Town may be collected by the Town in the same manner as unpaid real property taxes are collected by the Town according to Maryland law, except to the extent permissible by Maryland law there shall be no waiting period between the placing of the due date of the payment, the placing of the lien, and the commencement of the procedures to sell the property.

**§ 281-26 Operation and maintenance responsibility.**

- A. The owner of the property on which work has been done pursuant to this Chapter for a private stormwater management system or a private stormwater management practice, or any other person or agent in control of such property, shall operate and maintain in good condition and promptly repair and restore all ESD practices, structural stormwater management measures, including, but not limited to, all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such operation, maintenance, repairs and/or restoration shall be in accordance with the approved stormwater management plan and this Chapter.
- B. An inspection and maintenance schedule shall be developed for the entire life of every private stormwater management facility or system of ESD practices, and shall state the frequency and nature of the inspections, the maintenance to be completed, the time period for completion, and who shall

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perform the maintenance. This inspection and maintenance schedule shall be printed on the approved stormwater management plan.

- C. The owner of a private stormwater management system shall maintain complete records relating to that system, including, but not limited to, the following:
- 1) Operating budget;
  - 2) Capital budget;
  - 3) Assessments to the owners of properties served by the system;
  - 4) All documents relating to inspections or testing of the system;
  - 5) All documents relating to repairs, maintenance and replacements of the system, including engineering plans and specifications, and the cost thereof;
  - 6) Audits; and
  - 7) All other documents which the Town may, in its sole discretion, request.
- D. The owner of a private stormwater management system shall at least annually, and more frequently as requested by the Town, supply to the Town all such records as are requested by the Town relating to that private stormwater management system.
- E. The Enforcement Authority shall have the discretion to require of the owner of a private stormwater management system to submit to the Town a performance security prior to issuance of the permit approving such private stormwater management system, or component thereof, in order to insure that the stormwater management practices and system are maintained by the owner as required by the approved stormwater management plan and this Chapter. The amount of the maintenance performance security shall be determined by the Town, not to exceed the maintenance costs estimated in the stormwater management plan for the period during which the owner has operating and maintenance responsibility. The maintenance performance security shall contain forfeiture provisions for failure to maintain the stormwater management system in accordance with the approved maintenance plan relating to the private stormwater management system to which the maintenance performance security relates. Upon the termination of the owner's duties to operate and maintain a private stormwater management system, and the satisfactory completion of such operation and maintenance, such maintenance performance security shall be released.

**ARTICLE IX Appeals; Penalties (§ 281-27 — § 281-28)**

**§ 281-27 Appeals.**

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, 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 Circuit Court for Talbot County. The appeal shall be filed within the time and in the manner required by Article VIII, Board of Appeals Procedure, of the St. Michaels Code, Chapter 340 (Zoning).

**§ 281-28 Violations and penalties.**

Any person convicted of violating the provisions of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than \$5,000 or imprisonment not exceeding one year, or both, for each violation, with costs imposed in the discretion of the court. Each day that a violation continues shall be a separate offense. In addition, the enforcement authority may institute injunctive, mandamus or other appropriate action or proceedings of law to correct violations of this Chapter. Any court of competent jurisdiction shall have the right to issue temporary or permanent restraining orders, injunctions or mandamus, or other appropriate forms of relief. Alternatively, the

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Enforcement Authority can issue a civil citation for each and every violation in an amount of up to \$1,000 per day per violation.

**ARTICLE X Interpretation of Provisions - (§ 281-29 - §281-30)**

**§ 281-29 Resolution of inconsistencies.**

In the event of an inconsistency between any or all of the following, the Stormwater Design Manual shall control over any inconsistent provision of this Chapter and/or any inconsistent regulation adopted by the COSM in conjunction with this Chapter; and this chapter shall control over any inconsistent regulation adopted by the COSM in conjunction with this Chapter.

**§ 281-30 Severability**

If any portion of this Chapter is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall not affect the validity of the remaining portions of this Chapter. It is the intent of COSM that this Chapter shall stand, even if a section, subsection, sentence, clause, phrase, or portion may be found invalid.

SECTION 2.

AND BE IT FURTHER ORDAINED AND ENACTED, that this Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2) meetings of The Commissioners of St. Michaels and having been passed by a ye and nay vote of the Commissioners of St. Michaels.

HAVING BEEN INTRODUCED, read for the first time and ordered posted on the Town bulletin board at the Public Meeting of the Commissioners of St. Michaels held on this 10th day of November, 2010, at 5:00 o'clock p.m. in the meeting room at the Town Office, St. Michaels, Maryland.

 (SEAL)  
CHERIL S. THOMAS  
Town Clerk\Manager

HAVING BEEN READ for the second time and passed by a ye and nay vote of The Commissioners of St. Michaels at a Public Meeting of The Commissioners of St. Michaels held on this 15<sup>th</sup> day of December, 2010, at 6:30 o'clock p.m., in the meeting room of the Town Office, St. Michaels, Maryland.

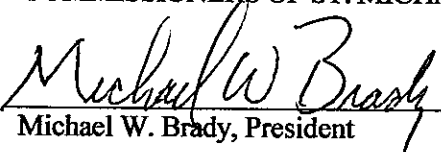
BRADY	-	<u>yea</u>
CLARK	-	<u>yea</u>
duPONT	-	<u>nay</u>
HUNT	-	<u>yea</u>
VLAHOVICH	-	<u>nay</u>

I HEREBY CERTIFY that the above Ordinance No. 417 was passed by a ye and nay vote of The Commissioners of St. Michaels on the 15<sup>th</sup> day of December, 2010.

ATTEST:

THE COMMISSIONERS OF ST. MICHAELS

  
Cheril S. Thomas, Town Clerk\Manager

By:  (Seal)  
Michael W. Brady, President

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I HEREBY CERTIFY that an exact copy of this Ordinance was posted from the 16th day of December, 2010, at 8:30 o'clock a.m. to the 4<sup>th</sup> day of January, 2011, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No. 417, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read on the bulletin board of the Town Office, St. Michaels, Maryland, for at least twenty (20) days following the passage, has been published at least once each week for two (2) consecutive weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: January 5, 2011

Cheryl S. Thomas (Seal)  
Cheryl S. Thomas, Town Clerk\Manager