

VI. IMPLEMENTATION

As outlined in these guidelines, protection of natural features relies on adherence to construction standards and requirements and the establishment of undisturbed natural buffers. In order to identify these measures and ensure that they are carried out during development, the Planning Board may include one or more of the following methods of enforcement into the development plan approval.

A. Development Agreements

When required by the Planning Board, the applicant/owners of the property shall enter into a binding agreement with the M-NCPPC to ensure that the constructed development meets appropriate standards and requirements defined in the conditions for approval of the plan. It is assumed that all County and State environmental requirements will be met through normal regulatory and permitting processes. However, to ensure compliance with the Planning Board's conditions of approval, a development agreement may be required as part of the regulatory process to ensure adherence to:

- Noise mitigation requirements.
- Forest and tree conservation and protection plans (as addressed in *Trees: Approved Technical Manual*).
- Requirements for engineering measures to address soils constraints.
- Construction and maintenance requirements for off-site stormwater management facilities within parkland.
- Homeowners associations (HOA) maintenance requirements for stormwater management facilities.

The agreement must be submitted for approval with the record plat submission. An executed copy is to be recorded with the first record plats and any subsequent plats. In addition, there is to be appropriate language included in the Homeowners Association documentation referencing the agreement and the obligations to be undertaken by the Homeowners Association.

During construction, and until the property and/or facility subject to the agreement is conveyed to the HOA, the responsibility for compliance with the agreement will remain with the developer. The developer must convey such property/facility to the HOA with all customary warranties as to its fitness for the intended usage. When appropriate thereafter, the Homeowners Association must assume responsibility.

Appropriate language for the development agreements will be worked out between the Park and Planning Department staff and the Legal Department. Examples of the agreement language can be obtained from the Legal Department.

B. Conservation Easements

Protection of natural features, as outlined in these guidelines, relies heavily on the establishment of undisturbed natural areas. A problem associated with the establishment of these natural areas is finding the appropriate method of enforcement. Controlling the limits of grading during the construction process is the lowest level of environmental protection. This control is implemented through development agreements or conditions of approval and does not require permanent easements to be recorded on the plat. Under the grading control approach, protection beyond the construction period relies primarily upon the value of the resource to the first and subsequent homeowners.

In some instances, however, the value of the resource requires a more permanent protection mechanism than grading limits. In these cases, a conservation easement may be established to prohibit actions compromising the natural area both during and after construction. The limits of the easement must be recorded along with the easement agreement. M-NCPPC Legal Department versions of the easement agreements will be pre-recorded in the Office of Land Records. These versions may be rewritten to suit specific circumstances and recorded by the applicant.

In general, situations for which long-term protection in the form of a conservation easement is necessary include: 1) all buffers identified in Use III/III-P streams, 2) stream buffers identified in Use I/I-P and IV/IV-P streams where the Planning Board finds that resources of exceptional quality exist, and/or the likelihood of buffer compromise is great, and 3) forest conservation areas (as detailed in *Trees: Approved Technical Manual*).

Conservation easements may also be required to protect trees along the property boundaries of adjacent land for compatibility reasons. Appropriate long-term protection measures may be determined on a case-by-case basis. Applicants are encouraged to suggest methods other than conservation easements for long-term protection of natural areas.

C. Waivers of Base Zone Standards and Specifications for Environmental Reasons

If waivers or variances from base zone standards are requested, various sections of the the Zoning Ordinance require a finding by the Planning Board or County Council that a requested variance will result in a development that is more desirable from an environmental perspective. These sections include: Section 59-C-1.621 concerning waivers of minimum percentages of certain housing types within MPDU developments; Section 59-C-1.395 concerning minimum percentage of housing types within Transferable Development Rights (TDR) developments; Section 59-C-1.532 concerning minimum area for cluster developments within RE-2C and RE-1 zones; Section 59-C-7.131 concerning percentages for one-family and multi-family units; and Section 59-C-1.393(b) regarding a waiver of the requirement for two-thirds (2/3) of the TDR increment for a development.

Staff will make recommendations on these findings based on information supplied by the applicant at the preliminary plan stage. For purposes of comparison, all waiver submissions (except the waiver of provision of 2/3 of the TDR increment) must include a conceptual base zone development plan (i.e., a plan without waivers) that fully responds to environmental guidelines and regulations, and uses all available options to maximize environmentally compatible development on the site. Requirements for justifying the waiver of 2/3 TDRs will be treated separately, since denial of this waiver would require

either more units to be placed on the property, or more of the proposed units to be TDRs.

1. Waiver Justification Based on Water Quality and Quantity Benefits

In high quality watersheds (Use III/III-P, IV/IV-P, and high quality Use I/I-P) and Special Protection Areas as defined in Chapter 19 of the County Code, the primary justification for waivers to the base zone standards specified in the Zoning Ordinance must be based on a finding that the proposed development, with waivers, provides a significant improvement to water quality and/or quantity that correlates to the magnitude of the proposed waiver. The effects of a proposed development shall be compared to the effects of a conceptual base zone development plan, as defined above. In order to fully analyze an application for such waivers based on these benefits, the following minimum information must be included with each submission, comparing the proposed development, with waivers, to development under base zone standards:

- a) Discharge computations for the first 0.5" and 1.0" of runoff, including the pre-development land use condition in addition to the base zone and proposed development conditions.
- b) Runoff computations for the 2-year and 10-year frequency storm, including the pre-development land use condition in addition to the base zone and proposed development conditions.
- c) Expected pollutant loadings and/or concentration levels, and the expected frequency and magnitude of violations of State water quality standards. Include use of appropriate best management practices (BMPs) in the calculations for the base zone and proposed development, and compare the estimated pollutant loadings with that from the pre-development land use condition.
- d) Number of acres and the percentage of the site that will be impervious.
- e) Number of acres and the percentage of the site that will be disturbed.
- f) Number of acres of forest, pasture, and transitional areas.
- g) Number of acres within forest conservation areas.
- h) Conceptual location and type of stormwater management and storm drainage facilities.
- i) Number of acres of wetlands, showing areas of unavoidable disturbance and compensation areas.

2. Waiver Justification Based on Other Environmental Benefits

In all other areas of the County not included under section C.1, or where water quality improvements as required in Special Protection Areas are insufficient for waiver justification and need enhancement, staff will consider innovative and/or extraordinary measures to protect or improve the built and natural environment. Such measures must be demonstrated to be over and above the requirements or guidelines of the County, State, and M-NCPPC. Such measures may include, but not be limited to the following:

- a) Enhanced sediment control protection, and use of effective best management practices (BMPs)
- b) SWM quantity and/or quality controls for a significant amount of off-site area that would not be controlled under the base zone scenario
- c) Correction of existing off-site drainage and/or stream valley degradation problems, (e.g. through extensive reforestation, stream channel improvements, cleanup of debris, etc.)
- d) Unique site designs for noise mitigation, or mitigation of noise levels through use of topography or barriers beyond what would ordinarily be required
- e) A forest preservation and/or an afforestation/reforestation program beyond the minimum required
- f) Dedication of land for conservation easement and/or parkland, if acceptable to the M-NCPPC Department of Park and Planning
- g) Stream monitoring, the scope of which shall be determined on a case-by-case basis

The measures listed above represent various means of protecting or improving the environment and will not be accepted as enhancements for waiver justification unless a case can be made that stream health will not be degraded, but rather protected or improved.

3. Waiver Justification for 2/3 Minimum TDR Requirement

The TDR (Transferrable Development Rights) waiver brings into focus the tension that sometimes surfaces between two different, but equally important policy objectives: promotion of a strong TDR program, and environmental compatibility and protection issues. The TDR program strives to maintain a balance between the market supply and demand for TDRs, so that farmers have a place to sell and developers have a place to purchase TDRs. The zoning ordinance requires that a developer utilizing the TDR optional method of development must incorporate into their plan at least two thirds the maximum number of TDRs allowed by the site's zoning and master planning designations. This is intended to maintain a vigorous market for TDRs involving those developers electing to so participate and, further, it is to ensure that sufficient density will be located on the site to warrant the public sector's commitment of providing supporting infrastructure, typically at an accelerated pace. In some instances a site may not be able to accommodate a higher level of density due to environmental or compatibility reasons. At that point, the Board must balance the need to achieve higher TDR density levels against the resulting intrusions that would occur against environmental or compatibility standards and expectations. This balancing is conducted through the TDR waiver request, allowing the Board to approve less density than would ordinarily be available on a less constrained site. Its characterization as a waiver may be misleading in that it is not a request to relax environmental protection to facilitate more density; rather it becomes a justification to realize less density.

In order to obtain the waiver, an applicant must demonstrate and the Planning Board must find that the proposed plan:

- Uses the most efficient combination of unit types to attempt to maximize density within the unconstrained area of the site.
- Is reasonably close to reaching the 2/3 number of TDRs required.
- That the level of encroachment into the constrained area of the site in order to obtain the full 2/3 TDRs is unacceptable from an environmental standpoint, based upon the criteria set forth below.

The following points are derived from the rationale for the waiver justification:

- If the number of TDRs needed to meet the 2/3 requirement is small AND the area of encroachment is considered to be acceptable with appropriate environmental mitigation measures as determined by the Planning Board, the development may be allowed to encroach into the constrained area to meet the TDR requirement. Alternatively, the developer may choose to purchase the remaining TDRs to avoid mitigation measures.
- If the number of TDRs proposed on the plan is NOT reasonably close to the 2/3s required and a different unit mix would not alter the ratio or be feasible, the Board may elect to deny the applicant's election to utilize the TDR optional method of development. Alternatively, the developer may be allowed to purchase the remaining TDRs in order to obtain the higher density.

The following development plan scenarios and elements will be analyzed to determine if the development plan applicant has established a case for justifying the environmental waiver:

- The proposed plan, delineating areas of environmental constraints and indicating the proposed number and the particular unit types (include rationale for rejecting certain unit types over others).
- The plan showing areas of development utilizing the full 2/3 TDRs and development within both constrained and unconstrained areas, including mitigation proposals for development within the constrained area.
- A quantitative analysis of the percent of the constrained area used versus the percent of TDRs obtained.
- An environmental analysis comparing the proposed plan with the full TDR usage plan, in terms of the following elements (to be determined by staff; not all elements may be required):
 - difference in stormwater discharge and runoff computations
 - expected pollutant loadings
 - imperviousness
 - acreage of forest/tree areas disturbed
 - acreage of stream buffer/wetlands disturbed

D. Exceptions to the Guidelines

The guidelines contained in this document form the basis for staff recommendations to the Planning Board, who may then choose to accept, reject, or modify these recommendations on a case-by-case basis. Exceptions to the guidelines may be recommended by the staff on a case-by-case basis where strict compliance with the guidelines herein would result in unreasonable hardship; and when it can be demonstrated that safety, County road standards, storm drainage, stormwater management, erosion and sediment control, engineering, design, or planning issues can be satisfactorily addressed to benefit the environment, the general public, or both. Furthermore, staff are receptive to other ideas and techniques that enhance environmental compatibility and achieve the same purpose as those identified in this document.