



Gregory J. Swain, County Attorney

MEMORANDUM

To: Council Members, Anne Arundel County Council

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Through: Gregory J. Swain, County Attorney /s/

Date: September 8, 2020

Subject: Bill No. 67-20, Floodplain Management, Erosion and Sediment Control, and Stormwater Management – Stormwater Management

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 67-20, a Bill related to stormwater management practices that will be owned or maintained by Homeowner's Associations ("HOA").

Background. This Bill is a result of a number of meetings of the Anne Arundel County Stormwater Workgroup, which exists to discuss various stormwater-related issues of concern among representatives of the broader development industry and HOA's. Attendees include representatives from the Office of the County Executive, Inspections and Permits, the Office of Planning and Zoning, Department of Public Works, and Law, along with representatives from HOAs, contractors, consultants, and homebuilders. This particular Bill addresses the responsibility requirements with regard to stormwater management practices that will be owned or maintained by HOA's by requiring applicants¹ to post a warranty and security to correct any deficiencies that occur within the warranty period.

¹ "Applicant" is the term used throughout Article 16 to refer to the person or entity that applies for the grading permit.

Purpose. The purpose of the Bill is to require the applicant to have responsibility over certain stormwater management practices known as best management practices² (“BMPs”) that will be owned or maintained by HOA’s. Under the Bill, the applicant will be responsible for repair or restoration of BMPs to be owned or maintained by HOA’s for at least two years after approval of the as-built plans.³ The Bill requires that the applicant provide a two-year warranty and post a security for the BMPs, and authorizes I&P to inspect the BMPs and to require the applicant to make repairs or restoration to BMPs during the warranty period.

The following changes are made in **SECTION 1.** of the Bill.

Section **16-3-212(2)** is revised to be consistent with State law to change the time for expiration of a grading permit from two years to three years after approval by the Soil Conservation District, unless a renewal is obtained.

Subsection **16-4-302(a)** is revised to require that the as-built plans and certification submitted when construction is complete shall meet the latest as-built submittal requirements set by I&P. There is no change to § 16-3-302(b).

Subsection **16-4-302(c)** is new and establishes the requirements and process for the warranty and security for BMPs to be owned or maintained by an HOA. Subsection **(c)(1)** limits the scope of subsection **(c)** to clarify that it does not apply to a BMP installed by the County, Board of Education or a public utility, or that is not required for a new development or redevelopment project.⁴

Subsection **(c)(2)** requires that at the time of submission of the as-built plans and certification, the applicant shall provide I&P with a written warranty of any BMP to be owned by an HOA. The original warranty period is two years from the date of the approval of the as-built plans.

In accordance with **(c)(3)**, the form and content of the warranty shall be acceptable to the County and shall warrant that the BMP complies with all applicable requirements. The warranty

² BMP is defined in the County Code (§ 16-1-101(8)) to have the definition in COMAR 26.17.02.02 which is: “a structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.”

³ “As-built plan” means “a plan drawn to the same scale as the approved plans which shows that the location, dimensions, elevations, and status of the resulting grading, drainage structures, drainage systems, and erosion and sediment control practices are in substantial conformance with the previously approved plans, noting any substantial deviations.” § 16-1-101(6).

⁴ The intent of the Ordinance is to cover BMPs in new and redevelopment projects required to achieve stormwater control standards. The Ordinance is not intended to apply BMPs that are installed voluntarily and not required as a result of a development project that do not need to achieve stormwater control standards.

must also provide the applicant with a right of entry onto the HOA property to repair or restore a BMP. The Office of Law will be creating a form for the warranty document.

Subsection **(c)(4)** requires that the warranty be accompanied by a security posted by the applicant in a form approved by I&P. The security shall be in an amount equal to the construction costs of the BMP and shall secure any repair or restoration during the period of the warranty.

Subsection **(c)(5)** requires that I&P inspect the BMP during the warranty period and prior to release of the warranty. The inspection will be conducted in accordance with the County Procedures Manual,⁵ in which the elements of inspections of a BMP are outlined in section 10. If I&P determines that any repair or restoration to a BMP is required, a notice shall be issued to the applicant.

Under subsection **(c)(6)**, the warranty will be extended for an additional year if the applicant is issued a notice from I&P to repair or restore a BMP. If a notice to repair or restore a BMP is issued during an extended warranty period, the warranty and security shall be extended for one additional year. In no circumstance will the total length of the warranty period be longer than four years.

If the applicant fails to repair or restore a BMP as directed by the County, the security shall be forfeited to the County in accordance with subsection **(c)(7)**. The security will be used to complete the work to repair or restore a BMP, and if the cost is greater than the security, the excess amount will be billed to the applicant.

Subsection **(c)(8)** regulates the release of the security. Under **(c)(8)(i)**, the County shall conduct a final inspection at least 30 days prior to the expiration of the warranty period to ensure the BMP functions as designed. If no repair or restoration of the BMP is required, the security shall be released upon expiration of the warranty period, as extended. Subsection **(c)(8)(ii)** allows for partial release of a security for an extended warranty of up to 75% of the security if I&P determines that the partial release will not impair implementation of the written warranty. The partial release of the warranty does not relieve the applicant of its obligations to repair or restore the BMP or to be responsible for the costs to the County for repair or restoration under subsection **(c)(6)**.

Subsection **16-4-303(a)** is revised to clarify that the requirements for preventive maintenance and inspections apply to private stormwater management systems. Language requiring I&P to inspect all private stormwater management practices during the first year of operation is deleted. The requirement for inspection is every three years after release of the grading permit security, or for BMPs that require a warranty under § 16-4-302(c), every three years after the expiration of the two year warranty, as extended.

⁵This is the Anne Arundel County Stormwater Management Practices and Procedures Manual. § 16-1-101(15). It is available at this link: https://www.aacounty.org/departments/planning-and-zoning/development/forms-and-publications/Practices_Procedures_Manual.pdf

SECTION 2. (uncodified) is a grandfathering clause and provides that the Ordinance shall apply to any new application for a grading permit or any major revision to a pending or issued grading permit, filed on or after the effective date of the Ordinance.

SECTION 3. (uncodified) provides that the bill takes effect on January 1, 2021.

The Office of Law is available to answer any additional questions regarding this Bill.
Thank you.

cc: Honorable Steuart Pittman, County Executive
Matthew Power, Chief Administrative Officer
Dr. Kai Boggess-de Bruin, Chief of Staff
Peter Baron, Legislative Liaison
Matt Johnston, Director of Environmental Policy
Greg Africa, Director of Department of Inspections and Permits
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