

Deep Creek Watershed Compendium of Law

May, 2014

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HOT LINK INTERNET CITES IN THE COMPENDIUM

The web sites listed here are important links for researching the laws and regulations of the Deep Creek Watershed. You may link to these documents from this page or from certain footnotes.

Code of Public General Laws (Statutes) of Maryland:

<http://mgaleg.maryland.gov/webmga/frmStatutes.aspx?pid=statpage&tab=subject5>

Code of Maryland Regulations (COMAR Links):

<http://www.dsd.state.md.us/comar/>

Garrett County, Maryland Code of Ordinances:

[http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettco_md/garrettcounnymarylandcodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:garrettco_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettco_md/garrettcounnymarylandcodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:garrettco_md)

Deed of Conservation Easement between lakefront property owners at DCL and State of Md:

<http://www.dnr.state.md.us/publiclands/dceasement.asp>

Deep Creek Lake NRMA Guidelines for Special Permits and Conservation Easement Alterations:

http://www.dnr.state.md.us/publiclands/pdfs/SPCE_guidelines2013.pdf

Deep Creek NRMA Conservation Easement Alteration Application:

http://www.dnr.state.md.us/publiclands/pdfs/conservation_easement_application2013.pdf

Deep Creek Lake NRMA Buffer Strip Use Permit Application:

http://www.dnr.state.md.us/publiclands/pdfs/BSUP_application2013.pdf

Deep Creek Lake NRMA Special Permit Application:

http://www.dnr.state.md.us/publiclands/pdfs/special_permit_application.pdf

Deep Creek Lake Recreation and Land Use Plan:

<http://www.dnr.state.md.us/publiclands/dcreport.asp>

Code of Federal Regulations (CFR):

<http://www.ecfr.gov/cgi-bin/text-idx?tpl=%2Findex.tpl>

US Coast Guard Navigation Rules International - In Land:

http://www.uscg.mil/directives/cim/16000-16999/cim_16672_2d.pdf

Guide to Hunting and Trapping in Maryland, 2013-2014:

http://www.eregulations.com/31987630-979C-499A-887E-39AD3F9A4D16/FinalDownload/DownloadId-48A57A0F3A4FC524F180B7CB9F395C82/31987630-979C-499A-887E-39AD3F9A4D16/wp-content/uploads/2013/06/13MDHD_FINAL-LR.pdf

HOT LINK INTERNET CITES IN THE COMPENDIUM (continued)

MDE 2007 Permit for Deep Creek Dam, Number GA1992S009(07):

http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf.

PRB February 22, 2011 letter to MDE requesting changes:

[http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/DCL%20PRB%20Lake%20Water%20Level%20Comments%20to%20MDE%20\(M0694618\).PDF](http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/DCL%20PRB%20Lake%20Water%20Level%20Comments%20to%20MDE%20(M0694618).PDF)

Maryland Standards and Specifications for Soil Erosion and Sediment Control, December 2011

<http://www.mde.maryland.gov/programs/Water/StormwaterManagementProgram/SoilErosionandSedimentControl/Documents/2011%20MD%20Standard%20and%20Specifications%20for%20Soil%20Erosion%20and%20Sediment%20Control.pdf>.

Maryland Stormwater Design Manual, Volumes I & II (October 2000, Revised May 2009)

http://www.mde.maryland.gov/programs/water/stormwatermanagementprogram/marylandstormwaterdesignmanual/pages/programs/waterprograms/sedimentandstormwater/stormwater_design/index.aspx

EPA Search Site

<http://www.epa.gov/enviro/facts/pes-icis/search.html>

MDE Total Maximum Daily Load (TMDL) Site

<http://www.mde.state.md.us/programs/Water/TMDL/Pages/Programs/WaterPrograms/tmdl/index.aspx>

EPA: Maryland: Cherry Creek, Treating Acid Mine Drainage Improves Creek

http://water.epa.gov/polwaste/nps/success319/md_cherry.cfm

Maryland Marcellus Shale Safe-Drilling Initiative Advisory Commission

<http://msa.maryland.gov/msa/mdmanual/26excom/html/23marcellus.html>

Maryland Chesapeake Bay Critical Area Protection Plan

<http://www.dnr.state.md.us/criticalarea>.

Deep Creek Watershed Zoning Map

http://garrettcounty.org/resources/planning-land-development/pdf/zoning/DCL_zoning_LU.pdf

Garrett County Comprehensive Plan Site

<http://garrettcounty.org/planning-land-development/comprehensive-planning>

Garrett County Subdivision Administration Site

Garrett County Subdivision Administration “Checklists & Forms.”

HOT LINK INTERNET CITES IN THE COMPENDIUM (continued)

Maryland Byways

<http://www.marylandroads.com/oed/MarylandScenicByways.pdf>

Garrett County Sensitive Areas Site (with maps)

[Sensitive Areas Map](#)

Garrett County Health Department – Sewage Disposal Systems

<http://garretthealth.org/departments/Environmental/sewage.htm>

Garrett Soil Conservation District Site

<http://garrettscd.org/>

Garrett County Stormwater Management Ordinance 2010

http://garrettcounty.org/resources/permits-inspections/pdf/2010_Stormwater_Ordinance.pdf

Maryland State Highway Administration: Guidelines for residential entrances to State Highways

[Guidelines for Residential Entrances to State Highways.](#)

US Fish and Wildlife Service: Environmental Conservation Online System

[U.S. FWS Endangered Species listing.](#)

Maryland DNR, Endangered Species Site

[Summary of Maryland Endangered Species.](#)

Maryland Department of Agriculture Board of Review Factsheet: Maryland Agricultural Land Preservation Foundation

http://mda.maryland.gov/about_mda/Pages/md-land-preservation.aspx

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Acknowledgments

In 2013, the Deep Creek Lake Policy and Review Board unanimously endorsed the production of this Compendium so that those with an interest in the Deep Creek Watershed will have a single, readable document to which they can refer when they try to understand the governing law of the watershed. Secretary John Griffin of Maryland DNR wholeheartedly supported this Compendium and found funding to support the initial writing by Walton Shephard, now a lawyer practicing in WV. This Compendium was subsequently supported by Secretary Griffin’s successor, Joseph Gill, Esq.

Several experienced and skilled Maryland public servants took many hours reviewing the initial draft document to assure its accuracy. These included Jennifer Wazenski, Esq. and Matt Standeven, Esq. of the Maryland Attorney General’s office, John Nelson and Debbie Carpenter

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The Policy and Review Board greatly appreciates the dedicated work of all these persons.

The Deep Creek Lake Policy and Review Board
May, 2014

I. Introduction

A. History of Deep Creek Lake

Deep Creek Lake (DCL) and its surrounding watershed (the Deep Creek Watershed) is one of the natural resource jewels of the State of Maryland. Surrounded by scenic mountains, it is the State's largest freshwater lake and the economic engine of Garrett County. The competing demands made on such a valuable asset are as unique as the lake's history, and the purpose of this compendium is to summarize how local, state, and federal law affects the myriad uses of the lake and its watershed.

The lake was formed in 1925 upon the construction of a hydroelectric dam by Pennsylvania Electric Company. "Penelec" was the long-time owner and manager of the lake and of the lands surrounding it. Over the years, Penelec sold much of that land, though it retained a "buffer strip" of property that circles the lake, even as the area around the lake developed into a recreational resort region through the mid-1900s.

Despite these private beginnings, control of the lake was gradually ceded to the state. The recreational and natural resource value of the lake grew to such an extent that, in 1980, though Penelec retained ownership, the State of Maryland took over the management of the lake and access to it, and instituted the beginnings of regulations that still guide the Maryland Department of Natural Resources (DNR) in their management of the lake and buffer strip. The dam has always been, and is today, operational, and after a period of federal oversight, the State was granted jurisdiction over the hydroelectric project in 1991. Today, the Maryland Department

of the Environment (MDE) oversees the dam operation and the level of water it may draw from the lake.

This growing level of State control was completed in 2000, when the State purchased from Penelec's holding company the lake bottom, the "buffer zone" around the lake, and other parcels around the lake. To fully manage the State's newly purchased natural resource asset, the General Assembly codified¹ DNR's management of the lake, which is further refined in the DNR's COMAR regulations.²

Those laws and regulations, and all other laws and regulations that might affect DCL and the Deep Creek Watershed (DCW), are the subject of this compendium.

B. How to Use this Guide

1. State Law, COMAR, and County Ordinances

Maryland law is typically divided into State code, which are the commonly referred to "laws" the General Assembly passes, and the subsequent COMAR "regulations," which are the underlying, often more specific rules that implement the code passed by the Assembly. In a sense, the General Assembly's code is the skeleton, while the COMAR regulations provide the "flesh on the bone" required for the laws to be fully effective. Regulations are often created by the government body that is charged with overseeing the code which the regulations refine. For example, State code authorizes the MDE to require permits for using water to operate a dam;³

¹ Md. Code Ann., Nat. Res. § 5-215, *et seq.* To search for the actual written Maryland Code, see <http://mgaleg.maryland.gov/webmga/fmStatutes.aspx?pid=statpage&tab=subject5>, enter the Article, as in this case, "Natural Resources," and the Section, as in this case 5-215.

² COMAR 08.08.01, *et seq*

³ Md. Code Ann., Envir. § 5-501, *et seq*

subsequent MDE COMAR regulations institute a more specific permit regime, with all its attendant rules, fees, exceptions, and so on.⁴

a. *How to Read State Code*

State code is first divided into non-numbered categories (e.g. the Natural Resources Article, the Environmental Article, etc.), and then subarticles. Thus, for example, the state code that created DCL funding is the Natural Resources Article, Title 5 (“Forests and Parks”), Subtitle 2 (“Organization and Authority of Department Pertaining to Forests and Parks – in General”), Section 215 (“Deep Creek Lake Recreation Maintenance and Management Fund”). Title 5, Subtitle 2, Section 215 of the Natural Resources Article can be recognized by this format: Natural Resources Article, 5-215. Thus, state code and some other references in the Compendium can be recognized by two numbers separated by a dash (e.g. “2-421.”)

b. *How to Read State Regulations (COMAR)*

State regulations⁵ (“COMAR,” which stands for “Code of Maryland Regulations”) are also divided into categories, such as DNR Title (Title 8), which includes all regulations pertaining to and administered by DNR. However, they are divided into numbered titles, subtitles, and further subdivisions. For example, COMAR 08.08.05.01(D)(1) is the title (08), subtitle (.08), chapter (.05), regulation (.01), section (.D), and subsection (.1) which outlines the authority of the Lake Manager.⁶ State regulations can be recognized by a format of two or more

⁴ COMAR 26.17.06.06.

⁵ See generally <http://www.dsd.state.md.us/comar/>.

⁶ COMAR 08.08.05.01(D)(1).

numbers separated by periods (e.g. “30.12.3”), which can often be further refined, depending on the specificity of the regulation, into something like 30.12.3.4(D)(2)(iii).

c. How to Read County Regulations

In addition to the regulations of DCL and the DNR-managed buffer strip, local regulations, in the form of the Garrett County Ordinance, are the primary body of law that regulates land use in the larger Deep Creek Watershed. In fact, most would agree that local ordinances have a far greater impact on the DCW, excepting the state-managed lake and buffer strip. These are, of course, ordinances passed at the local level, in response to local concerns, needs, and priorities that may or may not exist elsewhere in the State. Indeed, the DCW is singled out with its own zoning ordinance, which strictly delineates what land uses and structures are permitted or prohibited in each particular zoning district of the watershed. County regulations are typically identified by two three-digit codes, separated by a period (e.g. “236.521”).

d. Federal Regulations

Because of the considerable powers vested in the States (powers that are then often delegated to local governments, which are political subdivisions of the state), federal regulations impact local watersheds in only a few narrow categories, and then only indirectly through State laws. Those categories typically involve things that can cross state boundaries, notably water, but also other categories like endangered species or other wildlife. Even then, however, all federal law is delegated to the states for enactment and enforcement, including the federal Clean Water Act, which is almost wholly administered by State law in Maryland. Thus, there is no federal regulation section in this compendium, though several federal regulations are noted when they are administered through State laws.

2. How to Use Footnote References

Each of these laws, regulations, and ordinances, when described and summarized in this compendium, is cited by the use of a footnote, which is signified by a small number, such as the one at the end of this sentence.⁷ Readers may use the information included in the text of the footnote to find and read the law or regulation itself, or to read some other form of background information that is provided.

On pages i- ____, before the Table of Contents and throughout the footnotes, thirty one separate hot links are included which, when ‘left clicked’ will directly bring the reader to a web site for the referred document. However, citations of County Ordinances can only be linked to a central page, found in this footnote,⁸ and the reader must then click his or her way to the specific ordinance cited in the footnote, a relatively simple process.

If a footnote is preceded by the word “*see*,” the cited material does not directly state the rule of law as stated by the authors of this compendium, but can usually be inferred. “*See generally*” indicates that the authority cited in the footnote is best reviewed as a “general” overview of the relevant law or background material, and “*see, e.g.*” indicates that the cited material is but one of, at least, several examples. “*Id.*” in a footnote (which is an abbreviation of the Latin phrase for “in the same place”) simply means that the cited authority comes from the source cited in the previous footnote.

Some footnotes refer the reader to other sections of the Compendium in the form “*see infra (or supra)* Section III.B.8,” for example.

⁷ [Footnote].

⁸ [http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettc0_md/garrettc0countymarylandcodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:garrettc0_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettc0_md/garrettc0countymarylandcodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:garrettc0_md)

3. Disclaimer and Suggestions for the Reader

This compendium is intended for reference purposes only, as an unofficial guide for those interested in the DCW. As such, there is no representation or warranty as to this Compendium's accuracy, correctness, or completeness, nor is it an authoritative source of law or regulation. If any reader wishes to cite the law, he or she should cite the source documents of COMAR, State or federal law, local ordinances, or relevant case law.

This compendium does not contain, nor does it attempt to contain, every law or regulation that might possibly relate to the DCW. Instead, the compendium attempts to include the most salient law and regulation that might be of interest to, or potentially affect, most readers. Furthermore, many areas of the law and regulation, such as administrative, procedural, or relatively boilerplate "legalese" sections, are either referenced in passing or are not addressed by this compendium. Any person with a legal question or potential conflict should consult a qualified attorney.

When you read this Compendium on a given subject, before completing your search, be sure to search in other parts of the document for additional information on the same subject.

Since this is the first edition of this Compendium, which exceeds 100 pages, inevitably, the reader will come across errors or may realize that information has, inadvertently, been omitted. The authors would appreciate notice of these. Please send these to dcarpenter@garrettcounty.org, so we can make corrections and additions. We hope to update this Compendium, yearly, and will show the date of update on the title page.

II. State Law

A. Natural Resources Law

1. Lake Purchase and Buydown

The State purchased the DCL bottom and buffer strip (which had been retained by Penelec) in 2000, under the authority of the Department of Budget and Management (DBM) and the Board of Public Works.(PBW)⁹ The State subsequently sold the buffer strip to private buyers. While not allowed to direct those monies for DCL purposes,¹⁰ the State's contract of sale with Penelec required that any buffer strip parcels sold by the State be subject to a conservation easement.¹¹ It is this legal instrument¹² that prevents the buffer strip from being developed in a manner inconsistent with the recreation and conservation goals of the State.

2. The Easement

When buying any part of the buffer strip, private buyers granted to the State a perpetual conservation easement that attaches several irrevocable conditions to ownership of the purchased buffer strip.¹³ These allowed and disallowed uses of the buffer strip are outlined in the conservation easement "contract" between the State and the buyer.

⁹ Md. Code Ann., State Fin. & Proc. § 4-401, *et seq*

¹⁰ Md. Code Ann., State Fin. & Proc. § 10-306

¹¹ Black's Law Dictionary defines a conservation easement as a "recorded, perpetual, nonpossessory interest in real property held by a government entity . . . that imposes restrictions or affirmative obligations on the property's owner or lessee to retain or protect natural, scenic, or open-space values of real property, ensure its availability for agricultural, forest, recreational, or open-space use, protect natural resources and habitat, maintain or enhance air or water quality.

¹² <http://www.dnr.state.md.us/publiclands/dceasement.asp>.

¹³ *See generally id.*

The conservation easement and its restrictions “run with the land,” and are thus binding on all future owners of the buffer strip property subject to the easement.¹⁴ The terms of the conservation easement may be altered for a limited range of reasons by submitting to DNR the “Conservation Easement Alteration Application,”¹⁵ which is used for alterations in the following categories: landscaping, installation of lighting or electrical fixtures, stairs/walkways, non-permanent storage buildings/gazebo, non-permanent pavilion/shelter/deck, and “other.”¹⁶

The restrictions are as follows. Industrial and commercial activities are prohibited on the buffer strip, except for certain recreational access-related uses.¹⁷ No building, structure, or walkway of any kind is permitted on the purchased buffer strip; however, wood, stone, or permeable walkways may be built for access between the lake and contiguous property.¹⁸ Exceptions like these are overseen by DNR.

Subject to State approval, property owners may also construct recreational and commercial related utilities, as well as temporary structures, provided that the maximum footprint is 120 square feet.¹⁹ Trees and shrubs may not be burned, cut, or removed; however, with DNR approval, dead or diseased vegetation, vegetation for erosion control, vegetation impeding reasonable lake access, and vegetation under a forest management plan may be altered

¹⁴ See *id.* at Article I.

¹⁵ http://www.dnr.state.md.us/publiclands/pdfs/conservation_easement_application2013.pdf

¹⁶ *Supra* Note 12.

¹⁷ *Id.* at I(A).

¹⁸ *Id.*

¹⁹ *Id.* and II(A) & (B).

or removed.²⁰ Dumping or storage of any materials on the buffer strip is prohibited,²¹ as is excavation or mining;²² However, temporary excavation is permitted, subject to State approval, for specific lake access or septic-related purposes.²³ Wetland disruption of any kind is prohibited.²⁴ Signs are also prohibited, except for temporary signs to advertise the rental or sale of the property.²⁵

3. Deep Creek Lake Management and the Policy and Review Board

The State granted DNR with the ability to fund the management and maintenance of the land, facilities, and services associated with DCL, by establishing the DCL Recreation and Management Fund.²⁶ The Fund was created by the State for maintaining and managing the land, facilities, and services related to the Lake.²⁷ The Fund is supplied by all boat launch fees at DCL State Park, all DCL permit fees, contracts, grants, and gifts to the DCL management program and any investment earnings from the Fund.²⁸ However, twenty-five percent of each quarter's Fund revenue is paid to the Board of County Commissioners of Garrett County,²⁹ and the Fund may also be used for DCL administrative costs.³⁰

²⁰ *Id.* at II(B).

²¹ *Id.* at II(E).

²² *Id.* at II(F).

²³ *Id.*

²⁴ *Id.* at II(G).

²⁵ *Id.* at II(H).

²⁶ Md. Code Ann., Nat. Res. § 5-215.

²⁷ § 5-215(b)

²⁸ § 5-215(c)(1)

²⁹ § 5-215(c)(2).

³⁰ § 5-215(c)(4).

The Fund does not lapse,³¹ and it may not be “raided” for the State’s General Fund.³² Permit fees may be changed only by agreement between the DCL PRB and the DNR Secretary,³³ and must be preceded by a public notice and comment process in Garrett County.³⁴ In addition to fee proposals, the DCL PRB must consent to all proposed regulations by DNR, if the regulations pertain to implementing the DCL recreation and land use plan.³⁵

DNR is granted broad authority to adopt regulations relating to DCL.³⁶ To guide the long-term planning of DCL, particularly as a natural resource, a recreational asset, and as a State asset to be sustainably conserved,³⁷ DNR and the DCL PRB was required by law to create a “DCL Recreation and Land Use Plan.”³⁸ The plan was to evaluate the lake and buffer area as a “recreational, water, natural, and scenic resource,” and as such must consider:

1. land use;
2. carrying capacity;
3. zoning;
4. visitor access;
5. recreation areas; and

³¹ § 5-215(c)(3)(i).

³² Md. Code Ann., Nat. Res. § 5-215(c)(3)(ii).

³³ § 5-215(d).

³⁴ § 5-215(e).

³⁵ § 5-215.1(d)(2).

³⁶ § 5-215.1(d)(1).

³⁷ § 5-215.1(a)(2).

³⁸ § 5-215.1(b)(1).

6. commercial and private use.³⁹

The plan must also “reflect” outdoor activities like fishing, boating, and hiking for public enjoyment.⁴⁰ The resulting plan⁴¹ clearly meets these requirements and is a valuable tool for understanding the multitude of public purposes served by DCL and how to best sustain them.

The DCL PRB is broadly required to “review and advise the [DNR] Secretary on matters that relate to the DCL Recreation Maintenance and Management Fund and the DCL management program.”⁴² The Board has several statutorily-required components, such as composition,⁴³ Board member terms,⁴⁴ and quorum.⁴⁵ The DCL Recreation and Land Use Plan provides for additional procedures of the PRB.⁴⁶ The Governor names the chairperson from among those persons she appoints.⁴⁷ The Board, whose members may not receive compensation other than expenses,⁴⁸ must hold meetings at least four times a year, all of which must be in Garrett County.⁴⁹ The Board may also, at its discretion, “review and make recommendations to the

³⁹ § 5-215.1(b)(2).

⁴⁰ *Id.*

⁴¹ <http://www.dnr.state.md.us/publiclands/dcreport.asp>

⁴² § 5-216(g)(1).

⁴³ § 5-216(b)(1): Five members appointed by the Governor, two of whom must be Garrett County residents, one a representative of the MD Bass Federation and State resident, and two members at large; the State Senator of district 1, or her designee; the State Delegate of district 1A or her designee; a County Commissioner, chosen by the Board, or an alternative Commissioner serving as a designee; the president of the DCL property owner’s association or her designee; and the chairman of the Garrett County Chamber of Commerce or designee.

⁴⁴ § 5-216(b)(3): Terms are concurrent with the term of the Garrett County Commission, even if appointed after a term has begun.

⁴⁵ § 5-216(d): A simple majority is sufficient for quorum, though members of the Maryland General Assembly or designee must abstain from voting on proposed fees or regulations from the DNR.

⁴⁶ *See supra* note 41

⁴⁷ § 5-216(c).

⁴⁸ § 5-216(f).

⁴⁹ § 5-216(e).

[DNR] Secretary on budgetary matters that concern the management and maintenance of the lake and buffer area.”⁵⁰

4. Deep Creek Lake Law

The management of DCL by DNR is most explicitly guided by the Code of Maryland Regulations (“COMAR”) in Title 08 (“Department of Natural Resources”),⁵¹ Subtitle 08 (“Deep Creek Lake”).⁵² It should be noted, however, that other subtitles of the DNR title (such as “Fishing”⁵³ and “Boating”⁵⁴) apply to DCL as well, either explicitly, or by virtue of DCL being a state park (DCL State park is listed as both a “Waterfront Park” and a “Natural Resources Management Area” of the State park system listed in DNR regulations⁵⁵).

While a host of other laws and regulations affect the larger DCW, DCL’s own subtitle in COMAR has the single greatest impact on property owners around the lake and buffer strip. Thus, the bulk of the DCL subtitle dictates how the DNR must regulate the buffer strip, through its various rules and permitting processes.

a. General Provisions

The DCL subtitle begins by outlining “general provisions.”⁵⁶ This includes a statement, of a type often included as a “big picture” preface to many laws and regulations, of the “premises

⁵⁰ § 5-216(g)(2).

⁵¹ See COMAR Title 8, *et seq.*

⁵² See COMAR 08.08.01, *et seq.*

⁵³ See COMAR 08.02.01, *et seq.*

⁵⁴ See COMAR 08.04.01, *et seq.*

⁵⁵ See COMAR 08.07.06.02(I)(3), & (M)(3).

⁵⁶ COMAR 08.08.01.01.

and purpose” of the DCL COMAR regulations.⁵⁷ This broad statement of legislative policy is valuable for understanding the underlying goals and motivations that animate these regulations. As such, the “premises and purpose” are expressed in large, overarching terms: the three primary purposes of the DCL regulations are to protect the “lake as a natural resource,” to preserve the lake’s “ecological balance,” and to further its “highest use as a recreational resource,” while explicitly noting that “overuse” of the lake is an “abuse” and would threaten its “well-being.”⁵⁸

This explicit awareness of the potential for “overuse” guides much of the stated premises and purpose.⁵⁹ The regulations recognize, then, that a “balance” must be struck between both the “*level* of recreational use” and the “*quality*” of that recreational use.⁶⁰ Achieving that balance between usage and quality is the stated justification for providing “control of the level of usage” through regulation.⁶¹

Accordingly, the “introduction” of the regulations states that, because the State owns the lake, the land under the lake, and the buffer strip, use of those resources and that space by the public and by private property owners is a “privilege.”⁶² As such, property ownership around the lake or use of the lake does not constitute any kind of “permanent or long-term property interest[.]” in the lake, lake bottom, or buffer strip.⁶³

⁵⁷ *Id.*

⁵⁸ COMAR 08.08.01.01(A).

⁵⁹ *See id.*

⁶⁰ *Id.* (emphasis added)

⁶¹ *Id.*

⁶² COMAR 08.08.01.01(B).

⁶³ *Id.*

Lastly, the “introduction” acknowledges that other State regulations govern many aspects of lake uses, such as boating, fishing, and other uses of the lake and buffer strip. Thus, the DCL Subtitle “defines how the [DNR] will carry out this *additional* right and responsibility” of managing DCL beyond the DNR’s statewide duties outlined in other Subtitles.⁶⁴

b. Definitions

The second chapter of the DCL regulations is the always-important “Definitions” section, which is often essential for pinpointing the precise “who, what, when, and where” of how the DCL Subtitle might apply. The definitions section is most likely useful as a cross-reference when reading and applying specific terms of the regulations later in the Subtitle. Nonetheless, the primary defined terms in the longer list are: “adjacent landowner,” “buffer strip,” “buffer strip use permit,” “commercial landowner,” “deeded access,” “development permit,” “general public,” “recreational permit,” “special permit,” and “usable buffer strip.”⁶⁵

c. Buffer Strip Uses

The third chapter is entitled “Buffer Strip Uses,” and the first subchapter, “General Public Use of the Buffer Strip” outlines what any member of the “general public”⁶⁶ may and may not do. The enumerated permissible uses are walking along any portion of the buffer strip, using it for access to and from the lake in an emergency, and fishing with a valid fishing license.⁶⁷

⁶⁴ COMAR 08.08.01.01(C); (Emphasis added.)

⁶⁵ COMAR 08.08.01.02(B).

⁶⁶ COMAR 08.08.01.02(B)(10); defined as “those persons who do not hold a valid buffer strip use permit or who are not the tenants or guests of a person who holds a valid buffer strip use permit.”

⁶⁷ COMAR 08.08.03.01(B).

The general public is prohibited from putting in place any dock or other structure on or in the buffer strip/lake or from modifying the land and vegetation in any way and from camping, picnicking, swimming, or doing any other similar non-pedestrian activity, unless done in an area designated for those uses by the public.⁶⁸ The general public may not use or in any way interfere with any dock, equipment, or facility on the buffer strip placed there by a commercial or adjacent landowner.⁶⁹ The general public may not place garbage or any other kind of debris on the buffer strip or in the lake, nor may the general public tie a rope or cable around any tree or shrub on the buffer strip.⁷⁰

“Adjacent Landowner Use of the Buffer Strip,” the second subchapter in the “Buffer Strip Uses” chapter, addresses their rights and duties. “Adjacent landowners”⁷¹ must obtain a buffer strip use permit from the lake manager if the landowner wishes to use the buffer strip beyond those uses allowed to the general public.⁷² Such additional rights to use the buffer strip are also extended to persons belonging to a group that has a validly permitted common dock facility.⁷³ Similarly, “commercial landowners”⁷⁴ must be regulated in the same manner as

⁶⁸ COMAR 08.08.03.01(C).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ “‘Adjacent Landowner’ means a person, other than a commercial landowner, who: (a) Owns property immediately adjacent to the buffer strip; (b) Owns property immediately adjacent to a public right-of-way that is adjacent to the buffer strip; (c) Has deeded access to the buffer strip; or (d) Is eligible to apply for a buffer strip use permit pursuant to COMAR 08.08.05.02B(1)(b).” *See* COMAR 08.08.01.02B(1)

⁷² COMAR 08.08.03.02.

⁷³ *Id.*

⁷⁴ “‘Commercial landowner’: (a) Means a person who owns or leases property immediately adjacent to the buffer strip or property immediately adjacent to a public right-of-way that is adjacent to the buffer strip and who legally pursues a trade, business, or other nonpersonal enterprise on that property; and (b) Does not include those persons eligible for a development permit.” *See* COMAR 08.08.01.02B(4).

adjacent landowners, are subject to the same provisions, and must have their buffer strip use permits specifically validated for “commercial use.”⁷⁵

d. Permits

Because the purpose of the DCL regulations is to regulate the uses in the lake in such a way that upholds its highest use, Chapter 5, simply entitled “Permits,” constitutes the bulk of the DCL regulations. The “Permits” Chapter is divided into the following subchapters:

- 1). General Provisions;
- 2). Buffer Strip Use Permits;
- 3). Uses Permitted with a Buffer Strip Use Permit;
- 4). Uses Not Permitted within a Buffer Strip Use Permit;
- 5). Special Permits;
- 6). Development Permits;
- 7). Notice of Application for Development Permit or Commercial Validation; and
- 8). Nonconforming Use Permits.

The early “General Provisions”⁷⁶ subchapter of the “Permits” chapter outlines the scope and limits of DCL permits, the areas to which permits apply, the scope of authority of the lake manager, the order of the allocation of new slips, and permit duration.

The “Scope of Permits” subchapter grants guests and tenants of a permittee the same uses as the permittee.⁷⁷ However, unless otherwise authorized by a special, development, or

⁷⁵ COMAR 08.08.03.03.

⁷⁶ COMAR_08.08.05.01.

⁷⁷ COMAR 08.08.05.01(A)(3).

nonconforming use permit, permittees only have the same rights to use the buffer strip as those given to the general public.⁷⁸ The “Scope of Permits” section also protects the multi-use purposes of the lake by disallowing the sanctioning of any interference with any authorized public use of the buffer strip or lake, or with the hydroelectric operation.⁷⁹

The “Area of Use” granted a permittee is determined by extending the permittee’s property lines to the water’s edge.⁸⁰ In more topographically complicated or curvilinear areas, such as coves, where property lines intersect less predictably, the lake manager must equitably divide the permitted use area among the permittees, “based on the amount of buffer strip frontage of each.”⁸¹ The lake manager is also authorized to examine deeds or other instruments when necessary for determining the area of use for an adjacent landowner who claims buffer strip access through deeded access or who participates in a common dock facility.⁸² In any event, the area of use must be specifically designated by the lake manager on the permit.⁸³

The lake manager is granted discretionary authority to deny or to limit any permit, if she determines that such a denial or limitation is “necessary to protect public safety or welfare or to carry out” the premises and purposes outlined above.⁸⁴ While denying or limiting a permit is at the Lake Manager’s discretion, if she does do so, she must consider the following factors:

1. configuration of lake frontage;

⁷⁸ COMAR_08.08.05.01(A)(4).

⁷⁹ COMAR_08.08.05.01(A)(2).

⁸⁰ COMAR_08.08.05.01(C)(1).

⁸¹ COMAR 08.08.05.01(C)(2).

⁸² COMAR 08.08.05.01(C)(3).

⁸³ COMAR 08.08.05.01(C)(4).

⁸⁴ COMAR 08.08.05.01(D)(1)(a); *see also* 08.08.01.01.

2. fluctuation of the water line;
3. depth of water at the proposed site;
4. density of existing boat usage or other recreational uses;
5. number of pre-existing docks in the area;
6. potential navigation problems;
7. preservation of aquatic vegetation and wildlife; and
8. protection of the lake's ecological balance.⁸⁵

Denial of a dock permit under this section⁸⁶ does not preclude the lake manager from considering and granting a permit for a common dock facility for adjoining landowners, provided all other eligibility requirements are met.⁸⁷

The lake manager must, within 30 days of receiving a permit application, approve or disapprove the application and notify the applicant in writing which states the grounds for the decision.⁸⁸ The lake manager must keep all applications on file.⁸⁹ The manager must review, and grant or deny, by December 31 all permits for new slips received between September 2 of the preceding year and September 1 of the current year. Granted permits represent the allocation of new slip allocations for the following year.⁹⁰ Permits may be valid for no longer than one year, and expire on March 31 of each year unless otherwise specified.⁹¹

⁸⁵ COMAR 08.08.05.01(D)(1)(a)

⁸⁶ COMAR 08.08.05.01.

⁸⁷ COMAR 08.08.05.01(D)(1)(b).

⁸⁸ COMAR 08.08.05.01(D)(2).

⁸⁹ *Id.*

⁹⁰ COMAR 08.08.05.01(E)(2).

⁹¹ COMAR 08.08.05.01(F).

e. Buffer Strip Use Permits

The “Buffer Strip Use Permits” subchapter⁹² outlines the application process,⁹³ eligibility,⁹⁴ fee,⁹⁵ and display⁹⁶ requirements, so adjacent and commercial landowners may use the lake and buffer strip beyond the uses granted the general public.⁹⁷ The application must be submitted on a form provided by DNR,⁹⁸ on which the landowner must provide all requested information and certify that the proposed use conforms to the zoning laws of the DCW.⁹⁹ In the event of joint ownership or deeded access that results in multiple eligible persons, only one person may apply for a permit. In such a case, that applicant must represent at least two-thirds of the eligible persons.¹⁰⁰

Non-discretionary Permits

The lake manager has a non-discretionary duty¹⁰¹ to issue buffer strip permits to the following persons:

1. a person with deeded access to DCL from a lot that meets zoning requirements for a residential dwelling;
2. a person seeking a permit pursuant to a development permit;

⁹² COMAR 08.08.05.02.

⁹³ COMAR 08.08.05.02(B).

⁹⁴ COMAR 08.08.05.02(C).

⁹⁵ COMAR 08.08.05.02(D).

⁹⁶ COMAR 08.08.05.02(E).

⁹⁷ COMAR 08.08.05.02(A).

⁹⁸ See http://www.dnr.state.md.us/publiclands/pdfs/BSUP_application2013.pdf.

⁹⁹ *Id*

¹⁰⁰ *Id*.

¹⁰¹ COMAR 08.08.05.02(C)(1).

3. a person with less than 100 feet of frontage but who desires only recreational use, and not a dock or mooring;
4. a person who owns at least 100 feet of frontage on the buffer strip (or on an adjacent public right-of-way) if the property was subdivided and recorded after August 12, 1983, provided the property meets zoning requirements;
5. a person who has a recreation permit from Penelec,¹⁰² a valid dock permit from DNR, and has continually maintained that dock, or who shows good cause why these criteria are not met;
6. an owner of adjacent land conveyed by Penelec after January 1, 1994, with frontage eligible for a permit before that date; and
7. a landowner of property eligible for a dock permit prior to August 12, 1983.

Prohibited Permits

Notwithstanding the non-discretionary permits above, the lake manager may not¹⁰³ issue a buffer strip use permit in the following cases:

1. for any applicant whose permit has been revoked in the past five years or is currently in violation of 08.08;
2. for property for which a required development permit has not been obtained;
3. for an applicant with less than 100 feet of frontage, unless a buffer strip use permit was issued before July 10, 1989.

¹⁰² COMAR 08.08.05.02(C)(1)(a).

¹⁰³ COMAR 08.08.05.02(C)(2).

If granted a permit, a permittee must pay the fee specified on the permit upon receipt of the permit, and the permit is only valid after the manager has received the fee.¹⁰⁴ Permit identification numbers must be displayed on docks, buoys, and other structures and must be visible from the lake and from land.¹⁰⁵

Uses Permitted with a Buffer Strip Permit

A buffer strip permit entitles an adjacent landowner the following uses of the buffer strip:

1. nonprofit recreational use;
2. fishing; and
3. maintenance of grass vegetation.¹⁰⁶

Permittees may install mooring buoys and boating and swimming structures,¹⁰⁷ so long as the permittee does not exceed the following limitations. The permittee may have only one dock, with slip space for no more than three boats; the permittee may not keep more than four boats on the lake, both docked and moored, of which only two may be power boats, and only three of which may be a combination of power boats and personal watercraft. If beached boats or vessels other than the four allowed on docks and moorings are kept, none may exceed 500 pounds.¹⁰⁸

Any permitted dock or swimming structure must be nonpermanent and easily removable, float or have wheels, and have securely-fastened and non-harmful flotation devices. (If a drum is used as a dock flotation device, it must visibly float if it were to detach from the dock.) Docks

¹⁰⁴ COMAR 08.08.05.02(D).

¹⁰⁵ COMAR 08.08.05.02(E).

¹⁰⁶ COMAR 08.08.05.03(A).

¹⁰⁷ COMAR 08.08.05.03(B).

¹⁰⁸ *Id.*

and swimming structures must be located within 100 feet of shore or within 1/3 distance to the opposite shore, whichever is less,¹⁰⁹ and be removed from the lake between November 31 and April 2.¹¹⁰

Mooring buoys must be white with a blue band, nonpermanent, marked by buoys sized between 500 and 4,000 cubic inches, marked with its permit number, and have no substantial metallic portion within 2 feet of the surface.¹¹¹ They must be located within 100 feet of shore or within 1/3 distance to the opposite shore, whichever is less,¹¹² and be removed from the lake between November 31 and April 2.¹¹³

Uses Not Permitted Under a Buffer Strip Use Permit

A buffer strip permittee may not:

1. interfere with the hydroelectric project or public works improvement or installation;
2. discharge sewage;
3. install or expand septic systems on the buffer strip;
4. remove or plant trees or shrubbery on the buffer strip without written consent from the lake manager;
5. erect fences or other obstructions on the buffer strip;

¹⁰⁹ COMAR 08.08.05.03(F).

¹¹⁰ COMAR 08.08.05.03(G).

¹¹¹ COMAR 08.08.05.03(E).

¹¹² COMAR 08.08.05.03(H).

¹¹³ COMAR 08.08.05.03(G).

6. perform landscaping maintenance, other than mowing grass, on the buffer strip without a special permit;
7. interfere with authorized public use of the lake; or
8. create a hazard by stringing a rope or cable across the water.

f. Special Permits

“Special permits” allow for a buffer strip use permittee to go beyond the uses allowed under a standard buffer strip permit. Potential special permit uses include altering, modifying, or improving the buffer strip or lake.¹¹⁴

A special permit application¹¹⁵ must include a detailed plan describing materials to be used, construction methods, timetables, and location.¹¹⁶ A commercial landowner must obtain a special permit if she desires to install more than one dock with three slip spaces or moorings, or to use a boat launch ramp for commercial purposes.¹¹⁷ Such applications must include a detailed plan, including the placement of docks, the number of slips, and the types of uses proposed.¹¹⁸

The lake manager may request additional information for any special permit application, which must be denied if the requested information is not provided.¹¹⁹ The manager may also require a bond to cover the possible damage to the lake or buffer strip as a result of the use covered by a special permit; failure to submit a required bond must result in a permit denial.¹²⁰

¹¹⁴ COMAR 08.08.05.05(A)(1)(a).

¹¹⁵ See http://www.dnr.state.md.us/publiclands/pdfs/special_permit_application.pdf

¹¹⁶ COMAR 08.08.05.05(A)(2)(b).

¹¹⁷ COMAR 08.08.05.05(A)(1)(b).

¹¹⁸ COMAR 08.08.05.05(A)(2)(a).

¹¹⁹ COMAR 08.08.05.05(A)(3).

¹²⁰ COMAR 08.08.05.05(A)(4).

The permittee will forfeit the bond if the permittee does not remove permitted structures or facilities within the time required by the manager, and the proceeds will be applied to removal, damage, and storage costs.¹²¹

The regulations grant the lake manager discretion in whether to grant a special permit for installing permanent structures, excavating or filling the buffer strip or lake, or removing vegetation.¹²² The manager's discretion is to be applied¹²³ primarily by assessing whether the proposed activity meets the "Area of Use" standards set forth in the "General Provisions" section.¹²⁴ The manager must specify the uses and activities allowed under a granted special permit, and the permittee is liable for any damages due to departing from those specified limits.¹²⁵

Guidelines for Special Permits

The issuance of special permits is guided by DNR's "Guidelines for Special Permits and Conservation Easements."¹²⁶ The "Guidelines" provide "general conditions," as well as specific restrictions and requirements for:

1. proposed structures;
2. stairs and walkways;
3. lighting and electrical improvements;
4. landscaping;

¹²¹ COMAR 08.08.07.05.

¹²² COMAR 08.08.05.05(B)(1)(b).

¹²³ COMAR 08.08.05.05(B)(1)(a).

¹²⁴ COMAR 08.08.05.01(C).

¹²⁵ 08.08.05.05(B)(1)(b).

¹²⁶ See http://www.dnr.state.md.us/publiclands/pdfs/SPCE_guidelines2013.pdf.

5. play areas, playgrounds, and swings or hammocks;
6. shoreline erosion control; and
7. other improvements such as fire rings.¹²⁷

Special Permits for Commercial Landowners

Special permit applications by commercial landowners are subject to further potential restrictions, if the applicant requests a dock to accommodate more than three slips or the commercial use of a boat launch ramp.¹²⁸ The manager still has the discretionary authority to deny the permit if she finds such use would be inconsistent with the entirety of the DCL regulations.¹²⁹ Furthermore, the manager may not approve more than one slip space or mooring for every 50 feet of buffer strip frontage that is titled to the applicant, if the special permit application requests additional slips or moorings for:

1. the overnight storage of boats (not including rentals, marina employee boats, or boats “stored for service”); or
2. leasing boat slips to the public.¹³⁰

However, in an exception, this restriction does not apply if a permit was issued before May 5, 1986 and the commercial use has not changed significantly.¹³¹ In an exception to the exception, in the event commercial use of a permittee has changed significantly and special permit slips are reduced in total number by the manager, the manager is permitted to reassign those slips to the

¹²⁷ *Id.*

¹²⁸ COMAR 08.08.05.05(B)(2).

¹²⁹ COMAR 08.08.05.05(B)(2)(a).

¹³⁰ COMAR 08.08.05.05(B)(2)(c)

¹³¹ *Id.*

commercial permittee in a special permit, in excess of the one-slip-per-50 feet of frontage rule stated above.¹³²

The manager may grant less than one slip or mooring per 50 feet of frontage to meet the broad public safety and welfare standards specified in 08.08.05.01(D).¹³³ This one-per-50 feet of frontage rule for slips and moorings does not apply if the use of them does not include overnight storage or involve ramping or dry storage for overnight storage.¹³⁴

If a commercial landowner's special permit approves the use of a boat launch ramp, the manager must designate a specific number and type of launchings permitted, subject to change under the policies set forth in 08.08.01.01.¹³⁵

g. Development Permits

“Development permits” are required for those who wish to develop property adjacent to the buffer strip that will result in future requests for at least one buffer strip use permit,¹³⁶ if the property and/or buffer strip are to be used in any of the following ways¹³⁷:

1. constructing more than one residential unit with deeded access to the same buffer strip area;
2. constructing multiple family dwellings with buffer strip access;
3. installing or expanding a common dock facility; or

¹³² 08.08.05.05(B)(2)(c)(1).

¹³³ 08.08.05.05(B)(2)(d).

¹³⁴ COMAR 08.08.05.05(B)(2)(e).

¹³⁵ COMAR 08.08.05.05(B)(2)(f).

¹³⁶ COMAR 08.08.05.06.

¹³⁷ *Id.*

4. constructing or expanding a hotel, motel, condo, or convention center with buffer strip access.

The development permit application must include a plan and plat showing:

1. affected lake frontage and property to be developed;
2. the number of dwellings to be placed on the property;
3. the number of persons who will use the frontage; and
4. a detailed plan for use of the buffer strip.

The required detailed plan for use of the buffer strip must include:

1. dock placement;
2. the number of slips, and
3. any boat number or size restrictions.¹³⁸

h. Development Permit Issuance

The manager has discretion in issuing or denying a development permit: she must deny the permit if the proposed plan is inconsistent with these regulations, and such a denial applies by extension to subsequent buffer strip use permits requested for the developer, the developer's successors in title, and the developer's lessees.¹³⁹ The manager may require as a precondition of issuance of a development permit that covenants and contracts (legal instruments that help to guarantee plans for and conditions of future development that will occur) be executed by the

¹³⁸ COMAR 08.08.05.06(B).

¹³⁹ COMAR 08.08.05.06(D)(1)(a).

¹⁴⁰ COMAR 08.08.05.06(C).

applicant.¹⁴⁰ Development permits are themselves a precondition to issuing subsequent buffer strip use permits.¹⁴¹

The manager must set a termination date for a development permit, which may be extended upon evidence of substantial progress. A developer can achieve substantial progress if there are financing commitments or subcontractor or material contracts that extend beyond the permit's existing termination date; installation of footers for more than 60 % of the project; or sales contracts for more than 5% of the development.¹⁴²

The manager has discretion to approve or disapprove the specific proposal of dock and mooring locations. The manager is not permitted to approve more than one slip space or mooring buoy for every 50 feet of buffer strip frontage belonging to the original development permit applicant,¹⁴³ and may grant less than one per 50 feet at her discretion, under 08.08.05.01(C).¹⁴⁴

Personal watercraft may be permitted at a common dock under a development permit, but only if:

1. the manager determines it is necessary under 08.08.05.01(C);¹⁴⁵ and
2. the number of allowed personal watercrafts permitted does not exceed 1/3 of the total slip allocations under that permit.¹⁴⁶

¹⁴¹ COMAR 08.08.05.06(D)(1).

¹⁴² COMAR 08.08.05.06(G).

¹⁴³ COMAR 08.08.05.06(D)(1)(d).

¹⁴⁴ COMAR 08.08.05.06(D)(1)(e).

¹⁴⁵ COMAR 08.08.05.06(D)(1)(f).

¹⁴⁶ COMAR 08.08.05.06(D)(1)(f)(ii).

i. Prohibited Development Permits

There are several instances in which the manager may not issue a development permit.¹⁴⁷

The manager may not issue one if the development plan includes any of the following:

1. a planned common area with less than 200 feet of buffer strip frontage;¹⁴⁸
2. the use of more than one portion of buffer strip which do not have a contiguous boundary line between the applicant and the State;¹⁴⁹
3. the placement of a common dock facility apart from the common use area;
4. an intention to enter long term leases with a commercial facility in order to obtain more slips or ramping access for those without boat slips in the common area;¹⁵⁰
5. separate docks for less than three boats as well as a common dock;¹⁵¹
6. the use of buffer strip already permitted to be used by a single residence, unless a minimum of 100 feet of separate buffer strip can be adequately designated;¹⁵²
7. the creation of lots not in compliance with local zoning;¹⁵³ or
8. the use of a boat ramp for day use or storage of a number of boats that exceeds the slip and mooring allocation delineated in .01D,¹⁵⁴ when combined with the number of stored boats.

¹⁴⁷ COMAR 08.08.05.06(D)(2).

¹⁴⁸ COMAR 08.08.05.06(D)(2)(a).

¹⁴⁹ COMAR 08.08.05.06(D)(2)(b).

¹⁵⁰ COMAR 08.08.05.06(D)(2)(d).

¹⁵¹ COMAR 08.08.05.06(D)(2)(e).

¹⁵² COMAR 08.08.05.06(D)(2)(f).

¹⁵³ COMAR 08.08.05.06(D)(2)(g).

¹⁵⁴ See COMAR 08.08.05.06(D)(2)(h).

In seeking a development permit, a developer may not publicly claim that he or she has already received or will receive approval for any number or type of buffer strip use or facility.¹⁵⁵

j. Recent Law Regarding Development Permits

Under the Maryland Land Use Statute, development is defined as "an activity that materially affects the existing condition or use of any land or structure."¹⁵⁶ The only activity that is specifically excluded from the definition is normal agricultural activity.¹⁵⁷ The Maryland Code for Real Property does not provide a specific definition for general development, but as the Land Use Statute applies to real property, its definition of development would appear to be applicable.

Furthermore, in *F.D.R. Srouer P'ship v. Montgomery Cnty.*,¹⁵⁸ the Court of Appeals held that the definition of development in relation to a particular county provision was similar to the definition provided in the Maryland Land Use Statute. The county ordinance provided that development in relation to real property was defined as "the carrying out of any building activity or the making of any material change in the use of any structure or land which requires issuance of a building permit."¹⁵⁹

Based on these two uses of the word "development" in reference to real property, the main requirement in order for something to be deemed a "development" might appear to be a material change in the condition of the land or existing structure. Under this definition of development, it might be argued that the plan to place several new docks on a parcel of land

¹⁵⁵ COMAR 08.08.05.06(D)(3).

¹⁵⁶ Md. Code Ann., Land Use § 1-101(f)(1).

¹⁵⁷ Md. Code Ann., Land Use § 1-101(f)(2).

¹⁵⁸ 407 Md. 233, 964 A.2d 650 (2009)

¹⁵⁹ *Id.* at 236, 964 A. 2d. at 652.

owned by a marina would be considered a material change to the real property and therefore be seen as a development of that property.

However, the “development” referenced in the “Development Permit” is a narrower class of activities than those defined by the case law or the general Land Use statute: under the DCL regulations, a person must obtain a “development permit” if the “property or the buffer strip are to be used in any of [four] following ways...” The “development” that triggers the obligation to obtain a development permit at DCL can be (1) residential construction of more than one unit with deeded access to the same area of buffer strip; (2) multi family dwelling construction with access to the buffer strip; (3) installing or expanding a common dock facility (a common dock facility is one associated with a residential use.); or (4) constructing or adding onto a hotel, motel, condo or convention center.¹⁶⁰

k. Notice for Development permits and commercial validation

The lake manager must provide public notice of any application for a development permit, as well as for a special permit requesting commercial use requiring installation of more than one dock with three slip spaces.¹⁶¹ Specifically, upon receipt of the application, the manager must publish a notice and summary in a Garrett County newspaper for at least two consecutive weeks.¹⁶² The manager must also alert bordering property owners, as well as each member of the

¹⁶⁰ COMAR 08.08.05.06; *see supra* Section G.

¹⁶¹ COMAR 08.08.05.07(A).

¹⁶² COMAR 08.08.05.07(A)(1).

¹⁶³ COMAR 08.08.05.07(A)(2).

DCL Advisory and Review Committee, by sending copies of the application.¹⁶³ The manager must consider comments received regarding any application.¹⁶⁴

l. Non-Conforming Use Permits

The DCL regulations allow for “grandfathering in” by permit property uses that are now otherwise disallowed (“non-conforming use”), provided such a permit was appropriately applied for before November 5, 1986.¹⁶⁵ Non-conforming use permits must be revoked if:

1. the non-conforming component is altered, expanded, or changed in character (beyond routine maintenance);¹⁶⁶
2. the nonconforming component is unused for over one year;¹⁶⁷ or
3. the property covered by the permit is transferred or sold.¹⁶⁸

m. Permit revocation

Any permit may be suspended or revoked if the manager finds the permittee violates these regulations or the terms of her permit.¹⁶⁹

Permit suspension or revocation by the lake manager requires “due process” procedure.¹⁷⁰ Any such permit action must be in writing and delivered by mail,¹⁷¹ with a 15-day “grace period”

¹⁶⁴ COMAR 08.08.05.07(C).

¹⁶⁵ COMAR 08.08.05.08(A).

¹⁶⁶ COMAR 08.08.05.08(F).

¹⁶⁷ COMAR 08.08.06.02(E)(4)(b).

¹⁶⁸ COMAR 08.08.06.02(E)(4)(c).

¹⁶⁹ COMAR 08.08.06.01.

¹⁷⁰ COMAR 08.08.06.02(A)

¹⁷¹ COMAR 08.08.06.02(B).

allowed for correcting the violation before suspension or revocation may occur.¹⁷² If a permit is suspended or revoked for more than 15 days, the permittee must remove any dock, mooring buoy or structure within 15 days of notice.¹⁷³

n. Permit expiration

While all permits expire annually (except for special permits validated for commercial use),¹⁷⁴ there are other conditions under which permits automatically expire.

Buffer strip use permits expire when the property is sold or transferred, though common dock facility privileges remain in effect for remaining property owners.¹⁷⁵

Recreation permits expire upon sale or transfer of the property or when the permit is not renewed for more than one year.¹⁷⁶

Special permits expire if commercial property converts to noncommercial use, or if the commercial operations change significantly enough to require substantial modifications to the permit.¹⁷⁷

o. Required removal of facilities

There are specific regulations for removing structures or facilities if a permit is suspended or revoked. Any permanent structure must remain with the land,¹⁷⁸ unless the DNR

¹⁷² COMAR 08.08.06.02(C).

¹⁷³ COMAR 08.08.06.02(D)(4).

¹⁷⁴ COMAR 08.08.06.02(E).

¹⁷⁵ COMAR 08.08.06.02(E)(1).

¹⁷⁶ COMAR 08.08.06.02(E)(2).

¹⁷⁷ COMAR 08.08.06.02(E)(3).

¹⁷⁸ COMAR 08.08.07.01(A).

orders removal due to safety hazard,¹⁷⁹ interference with the hydroelectric project,¹⁸⁰ interference with public use of the buffer strip,¹⁸¹ or for aesthetic reasons due to dilapidation.¹⁸² Any temporary structure or facility must be removed at permittee's expense and the land restored to its natural condition.¹⁸³ Removal must be completed within 30 days of notice, after which the DNR may remove at permittee's expense.¹⁸⁴ Any safety hazard may be immediately removed at permittee's expense, who must be notified of such removal by certified mail.¹⁸⁵

p. Appeals

Citizens are accorded a due process right to appeal decisions by the manager regarding permit applications or violations. To do so, a person must file a written appeal to the Secretary of the DNR within 31 days of the manager's final decision, or, if the manager fails to act, within 31 days from the last day the manager may act under 08.08.05.01(D).¹⁸⁶ The person is then entitled to an appeal hearing and final decision by the Secretary, as well as to subsequent judicial review, under already existing State law and regulations.¹⁸⁷

¹⁷⁹ COMAR 08.08.07.01(A)(1).

¹⁸⁰ COMAR 08.08.07.01(A)(2).

¹⁸¹ COMAR 08.08.07.01(A)(3).

¹⁸² COMAR 08.08.07.01(A)(4).

¹⁸³ COMAR 08.08.07.01(B).

¹⁸⁴ COMAR 08.08.07.03(A).

¹⁸⁵ COMAR 08.08.07.02.

¹⁸⁶ COMAR 08.08.08.01(A); *see* 08.08.05.01(D).

¹⁸⁷ COMAR 08.08.08.01(B) & (C); *see e.g.* State Govt Article §10-222.

5. Boating Regulations

With a few exceptions, the State’s boating laws and regulations apply with equal force on DCL as they would elsewhere. The primary boating regulations are COMAR’s DNR Title 08, Subtitle 04 and Subtitle 08. Subtitle 04 - “Boating,” These primarily address boat ownership and registration, accident reporting, and mooring distances. Subtitle 18 - “Boating – Speed Limits and Operation of Vessels-” addresses speed and other operational issues. Within Subtitle 18 is Chapter 33, “Deep Creek Lake ” which addresses DCL-specific operational and speed rules.¹⁸⁸

a. Statewide Boating Regulations

The statewide “Boating” Subtitle prohibits, with a few exceptions pursuant to federal law,¹⁸⁹ the use of any vessel that:

1. has not been issued a certificate of number,¹⁹⁰ which is visibly displayed on both sides of its forward half;¹⁹¹
2. does not have onboard a valid certificate of number or temporary certificate;¹⁹² or
3. does not have a validation sticker in accord with S 8-712 Code of MD,¹⁹³ if the vessel is numbered by the State.¹⁹⁴

¹⁸⁸ See e.g. COMAR 08.18.33.01.

¹⁸⁹ See 33 CFR 173.13; see also 33 CFR 173.17. (To search the CFR, Code of Federal Regulations, go to <http://www.ecfr.gov/cgi-bin/text-idx?tpl=%2Findex.tpl>)

¹⁹⁰ COMAR 08.04.03.01(A)(1).

¹⁹¹ COMAR 08.04.03.01(B).

¹⁹² COMAR 08.04.03.02(A).

¹⁹³ COMAR 08.04.03.10(A).

¹⁹⁴ COMAR 08.04.03.10.

Additionally, any vessel titled under DNR laws¹⁹⁵ must have a hull identification number displayed on the vessel.¹⁹⁶

Operators must submit a detailed¹⁹⁷ report if any of the following occurs while boating:

1. the injury of a person sufficient to require medical attention;¹⁹⁸
2. the loss or damage to property, including to vessels, of \$200 or more;¹⁹⁹
3. the death of any person;²⁰⁰
4. the disappearance of any person from onboard.²⁰¹

“Marine gatherings,” an intentional congregation of at least 100 vessels that creates extra or unusual hazards,²⁰² require a special permit from the Natural Resources Police.²⁰³

Before departure, rented boats must be equipped with all lifesaving and safety equipment required by the State,²⁰⁴ and no boat may be rented to a person born after July 1, 1972, unless she possesses a boating safety certificate.²⁰⁵

The rental of personal watercraft (“jet-skis”) is more restrictive, with rental operators required to:

¹⁹⁵ COMAR 08.04.03.10(A); *see also* Md. Code Ann., Nat Res. § 8-712.

¹⁹⁶ COMAR 08.04.03.11(B).

¹⁹⁷ COMAR 08.04.07.01(C).

¹⁹⁸ COMAR 08.04.07.01(C)(3).

¹⁹⁹ COMAR 08.04.07.01(C)(4).

²⁰⁰ COMAR 08.04.07.01(C)(1).

²⁰¹ COMAR 08.04.07.01(C)(2).

²⁰² COMAR 08.04.06.01(B)(2)(a).

²⁰³ COMAR 08.04.06.02.

²⁰⁴ COMAR 08.04.08.01(A).

²⁰⁵ COMAR 08.04.08.01(C).

1. display COMAR's personal watercraft regulations;
2. advise customers to read them; and
3. certify on the rental contract that renters have indeed read them.²⁰⁶

Personal watercrafts may not be rented unless the renter is over 16 and has a boating safety certificate (if born after 7/1/72).²⁰⁷ However, the rental operator may instead administer a test before renting in lieu of requiring the boating safety certificate.²⁰⁸

Moorings may not be placed in such a manner which interferes with the access through any bridge.²⁰⁹

b. Additional General Statewide Boating Regulations

There are additional general boating regulations that apply to all waters in a separate subtitle.²¹⁰ These regulations, however, would not apply to a tournament or other event, if approved by the DNR.²¹¹

²⁰⁶ COMAR 08.04.08.02(A).

²⁰⁷ COMAR 08.04.08.02(B).

²⁰⁸ COMAR 08.04.08.02(D).

²⁰⁹ COMAR 08.04.13.02(B).

²¹⁰ 08.18.01, *et seq.*

²¹¹ 08.18.01.02(A).

²¹² *See generally* 33 U.S.C. § 2071, *et seq*

The Rules of the Road

The “Rules of the Road” for vessel operation are incorporated by reference to the Federal Inland Navigation Rules Act of 1980,²¹² the Federal International Navigational Rules Act of 1977,²¹³ and the U.S. DOT “U.S. Coast Guard, Navigation Rules, International-Inland.”²¹⁴

There is a general requirement not to operate at any “unsafe” speed when taking into account a variety of factors such as visibility, traffic, and wind velocity.²¹⁵ A person may not operate in any “reckless” or “negligent” manner,²¹⁶ or operate under the influence of any intoxicant.²¹⁷ If towing an individual, operators must stay at least 100 feet away from the shore, any structures in the water such as piers, and from other vessels when passing, and maintain a towline no more than 75 feet in length.²¹⁸ Wake surfing vessels, however, may not be operated within 200 feet of shorelines, marine structures, swimming platforms, other vessels, or individuals in the water.²¹⁹ Every vessel, including kayaks, sailboats, and the like, must be equipped with an approved lifesaving device for each person on board.²²⁰

²¹³ *Id.*

²¹⁴ *See generally* http://www.uscg.mil/directives/cim/16000-16999/cim_16672_2d.pdf

²¹⁵ 08.18.01.04(B).

²¹⁶ 08.18.01.05(A)-(B).

²¹⁷ 08.18.01.07.

²¹⁸ 08.18.01.06(B).

²¹⁹ 08.18.01.09.

²²⁰ 08.18.04.02.

Noise Limits

DCL has specific noise level limits for vessels.²²¹ The maximum limit is 88dB(a), if the engine was manufactured after 1/1/93, or 90dB(a) if manufactured before. All vessels on DCL must also operate with a continuous muffler or noise suppression system, and may not bypass them in any way.²²²

Personal Watercraft

Personal watercraft also have their own chapter in the boating regulations,²²³ which outlines safety requirements, who may rent and operate them, and at what speed. Most operators must be at least 16 years old,²²⁴ and if born after July 1, 1972, must carry a Boater Safety Education certificate.²²⁵ Operators and passengers must wear an approved PFD,²²⁶ and may not operate between sunset and sunrise²²⁷ Jet-skis must have a three person capacity²²⁸ and adhere to several specific safety design standards.²²⁹

On non-Atlantic waters, including DCL, personal watercraft may not be operated within 100 feet of shore, structure, other vessel (unless overtaking), or person in the water at a speed in excess of 6 knots.²³⁰ An operator may not exceed idle speed in waters less than 18 inches deep.²³¹

²²¹ COMAR 08.18.03.03.

²²² COMAR 08.18.03.08.

²²³ COMAR 08.18.02.

²²⁴ COMAR 08.18.02.05(A).

²²⁵ COMAR 08.18.02.05(C).

²²⁶ COMAR 08.18.02.05(D).

²²⁷ COMAR 08.18.02.05(E).

²²⁸ COMAR 08.18.02.05(B)(1).

²²⁹ COMAR 08.18.02(F)-(I).

²³⁰ COMAR 08.18.02(K)-(L).

²³¹ COMAR 08.18.02(P).

There are a variety of “negligent” activities prohibited, including jumping wake within 100 feet of a vessel and weaving through traffic.²³² Regulations must be displayed to renters and verified as read in the rental contract.²³³ A DNR regulation sticker must be visibly affixed to most jet-skis.²³⁴

Whitewater Rafting

Whitewater rafting on the Youghiogheny River, designated as Class V (expert) by the DNR,²³⁵ has specific safety requirements.²³⁶ All individuals must use approved PFDs at all times.²³⁷ Any person in charge of a commercial vessel must carry an approved first aid kit,²³⁸ as well as grab loops or safety lines attached to the vessel.²³⁹ Safety helmets are required of individuals using whitewater kayaks or covered canoes.²⁴⁰ DNR must make safety information available to each registered whitewater outfitter and guide²⁴¹ and make available to the public a list of registered outfitters and guides.²⁴²

²³² COMAR 08.18.02(M).

²³³ COMAR 08.18.02(N).

²³⁴ COMAR 08.18.02(O).

²³⁵ COMAR 08.18.01.08(D)(3).

²³⁶ COMAR 08.18.01.08(E).

²³⁷ COMAR 08.18.01.08(E)(1).

²³⁸ COMAR 08.18.01.08(E)(2).

²³⁹ COMAR 08.18.01.08(E)(3).

²⁴⁰ COMAR 08.18.01.08(E)(4).

²⁴¹ COMAR 08.18.01.08(F)(5).

²⁴² COMAR 08.18.01.08(F)(6).

c. Boating on Deep Creek Lake

Boating on DCL is afforded its own section in COMAR.²⁴³ Due to the uniqueness of DCL, the chapter primarily addresses what kinds of vessels are permitted,²⁴⁴ vessel speed limits, and skiing restrictions.²⁴⁵

The length restriction for vessels is 26 feet, unless it is a pontoon boat of no more than 30 feet, a boat with a molded platform of no more than 27 feet, or has a nonconforming use permit.²⁴⁶ Vessels may not be operated if its engine(s) exceeds its recommended maximum horsepower or exceeds a total displacement of 550 cubic inches.²⁴⁷

No individual may:

1. use a houseboat;²⁴⁸
2. use a siren on a vessel;²⁴⁹
3. use a vessel with a sanitation device that can discharge any sewage into water;²⁵⁰
4. deposit waste of any kind into lake water;²⁵¹
5. operate or be towed by a “parasailing” vessel;²⁵²

²⁴³ COMAR 08.18.33 (“Deep Creek Lake”).

²⁴⁴ COMAR 08.18.33.03(A), (B), (D), & (F).

²⁴⁵ COMAR 08.18.33.03.

²⁴⁶ COMAR 08.18.33.02(A).

²⁴⁷ COMAR 08.18.33.02(B).

²⁴⁸ COMAR 08.18.33.02(D).

²⁴⁹ COMAR 08.18.33.02(C).

²⁵⁰ COMAR 08.18.33.02(F).

²⁵¹ COMAR 08.18.33.02(E).

²⁵² COMAR 08.18.33.02(I).

6. operate a vessel inshore from a public swimming area buoy;²⁵³
7. operate a personal watercraft or air-cushioned vessel from 11 AM to 4 PM Saturday-Monday on Memorial Day weekend or the Saturdays, Sundays, and holidays from July 1 through Labor Day;²⁵⁴
8. utilize an aircraft on the Lake without written permission from DNR [and Penelec];²⁵⁵
9. exceed minimum wake zone speed within 100 feet of shoreline, unless towing a skier immediately away from a dock or the shore;²⁵⁶
10. tow a skier, from 12 noon until sunset on each Saturday, Sunday, and each holiday, from North Glade Cove lying eastward of a line beginning at the Penelec monument designated Y-84 and extending to the Penelec monument designated N-351;²⁵⁷ or
11. exceed minimum wake zone speeds in the following areas²⁵⁸:
 - a. the area of Meadow Mountain Run lying east of Meadow Mountain Bridge as it enters DCL State Park;
 - b. north of a line drawn from Penelec monument N-266 in an easterly direction to the southernmost point on a peninsula in McHenry Cove, then continuing on in an easterly direction to Penelec monument N-683;
 - c. that portion of Red Run Cove lying southwest of a line drawn between Penelec monuments SS-78 and N-181-1/2;

²⁵³ COMAR 08.18.33.02(G).

²⁵⁴ COMAR 08.18.33.02(J).

²⁵⁵ COMAR 08.18.33.04; *see also* COMAR 11.03.04(B)(3)(c). This regulation has not been amended since Penelec sold the lake to the state.

²⁵⁶ COMAR 08.18.33.03(B)(1).

²⁵⁷ COMAR 08.18.33.03(A).

²⁵⁸ COMAR 08.18.33.03(B)(2)-(8).

- d. that portion of Thayerville Cove lying southwest of a line drawn from the easternmost point of the Arrowhead peninsula extending in a southeasterly direction to the Penelec monument designated Y-60;
- e. that portion of Hoop Pole Cove which lies southwest of a line drawn from Penelec monument N-518 to Penelec monument N-764;
- f. those portions of Pawn Run Cove which lie northwest of a line drawn from Penelec monument N-467 to the southeasternmost point of the Penn Cove Peninsula, and southwest of a line drawn from that same point on the peninsula to Penelec monument N-468; or
- g. from 11 a.m. to 4 p.m., each Saturday and Sunday, and each holiday from Memorial Day holiday weekend through Labor Day, that area of North Glade Cove which connects to Beckman's Cove, lying north of a line drawn from Penelec monument Y-82 to monument S-317c and south of a line drawn from Penelec monument N-330 to monument Y-80.

6. State Park Regulations

DCL, the buffer strip, and DCL State Park are all regulated under DNR state park regulations.²⁵⁹ DCL is designated as both a “Waterfront Park”²⁶⁰ as well as a “Natural Resources Management Area.” (NRMA)²⁶¹ NRMA’s are areas where “multiple-use management practices are employed for the maximum use of natural resources.”²⁶² In such an area, the development and management plans are the joint responsibility of the DNR’s Park Service, as well as other DNR agencies.²⁶³ In this way, DCL is not only considered a park for recreational enjoyment, but a more vast asset that requires more extensive natural resource management.

²⁵⁹ COMAR 08.07.06.

²⁶⁰ COMAR 08.07.06.02(I).

²⁶¹ COMAR 08.07.06.02(M).

²⁶² COMAR 08.07.06.02(C).

²⁶³ *Id.*

DCL State Park is a designated hunting area,²⁶⁴ though no firearms are permitted until a designated date each fall, and waterfowl hunting is prohibited.²⁶⁵ Permanent stands, stationary blinds,²⁶⁶ and baiting²⁶⁷ are prohibited in all State Parks. No person may take more than two antlerless deer in DCL State Park, excluding Junior Hunt day.²⁶⁸ Except for licensed hunting purposes or as otherwise excepted by the Park Service, weapons are not permitted in any State Park.²⁶⁹ Fishing for finfish is permitted in DCL, and a permit is required for non-fish fishing.²⁷⁰

Swimming or wading is allowed unless posted otherwise.²⁷¹ A permit from the Park Service is required for each of the following in any State Park:

1. camping;²⁷²
2. commercial activities;²⁷³
3. fires in non-designated areas;²⁷⁴

²⁶⁴ COMAR 08.07.06.03; and Guide to Hunting and Trapping in MD, 2013-2014 at page 48. See http://www.eregulations.com/31987630-979C-499A-887E-39AD3F9A4D16/FinalDownload/DownloadId-48A57A0F3A4FC524F180B7CB9F395C82/31987630-979C-499A-887E-39AD3F9A4D16/wp-content/uploads/2013/06/13MDHD_FINAL-LR.pdf

²⁶⁵ *Id.*

²⁶⁶ COMAR 08.07.06(A)(5) and (B).

²⁶⁷ COMAR 08.07.06(B).

²⁶⁸ COMAR 08.03.03.07.

²⁶⁹ COMAR 08.07.06.04.

²⁷⁰ COMAR 08.07.06.05.

²⁷¹ COMAR 08.07.06.07.

²⁷² COMAR 08.07.06.08.

²⁷³ COMAR 08.07.06.09.

²⁷⁴ COMAR 08.07.06.10.

4. posting signs, notices, or literature;²⁷⁵
5. removing plants, rocks, or animals;²⁷⁶
6. grazing animals;²⁷⁷
7. digging for relics or treasures;²⁷⁸
8. possession of alcohol in designated shelters or other areas;²⁷⁹
9. possessing or using fireworks;²⁸⁰ and
10. amplifying sound.²⁸¹

There are several activities which are prohibited in State Parks, including depositing garbage or litter;²⁸² possessing a glass container in a swimming area or beach;²⁸³ entering an area without paying a required fee;²⁸⁴ not leashing a pet in an unrestricted area;²⁸⁵ disorderly conduct;²⁸⁶ and private encroachments, such as fences, woodpiles, and mowing or clearing.²⁸⁷

²⁷⁵ COMAR 08.07.06.11.

²⁷⁶ COMAR 08.07.06.13.

²⁷⁷ COMAR 08.07.06.16.

²⁷⁸ COMAR 08.07.06.18.

²⁷⁹ COMAR 08.07.06.19.

²⁸⁰ COMAR 08.07.06.22.

²⁸¹ COMAR 08.07.06.26.

²⁸² COMAR 08.07.06.12.

²⁸³ *Id.*

²⁸⁴ COMAR 08.07.06.15.

²⁸⁵ COMAR 08.07.06.17.

²⁸⁶ COMAR 08.07.06.20.

²⁸⁷ COMAR 08.07.06.24.

Violations of State Park regulations are misdemeanors, payable by a fine not to exceed \$500 for the first offense.²⁸⁸

The DCL NRMA is designated as an off-road vehicle (ORV) “trail” for snowmobiles, with stark restrictions.²⁸⁹ Specifically, snowmobiles are the only ORVs allowed, which may be operated on the frozen lake surface only.²⁹⁰ Access to the frozen lake is permitted only at a designated parking area at the State Park, or from a permitted buffer strip use site (with permission from the permittee).²⁹¹

7. Fishing

In order to manage fisheries in DCL, the DNR is authorized to close up to three tributaries of the lake at any one time, or prohibit fishing from one hour after sunset to 30 minutes before sunrise in order to police the area.²⁹² A person must generally be annually licensed to fish in any nontidal water (including DCL), unless the angler is a landowner or tenant (or family member of such person) bordering on that water.²⁹³ No bows and arrows²⁹⁴ or spear guns²⁹⁵ may be used for fishing on DCL. Icefishing is permitted, provided the angler is licensed, the hole is no more than 10 inches across, and no more than 5 rods are used.²⁹⁶ The introduction

²⁸⁸ Md. Code Ann., Nat. Res. § 5-1301.

²⁸⁹ COMAR 08.01.03.11(A).

²⁹⁰ COMAR 08.07.03.11(G).

²⁹¹ *Id.*

²⁹² Md. Code Ann. Nat Res § 4-625.

²⁹³ § 4-604; COMAR 08.02.01.07.

²⁹⁴ COMAR 08.02.11.04(B)(3).

²⁹⁵ COMAR 08.02.11.04(E).

²⁹⁶ COMAR 08.02.11.04(G).

of nonindigenous fish is prohibited,²⁹⁷ as is removing the head or tail of any fish while at the fishing location.²⁹⁸

There are a variety of open seasons, and limits on creel, possession, and size for game and freshwater fish that apply statewide.²⁹⁹ The only variation from statewide limits for DCL are as follows: there is a closed season for walleye from March 1-April 15;³⁰⁰ there are trout limits addressed in the next paragraph;³⁰¹ there is a creel limit of 10 yellow perch,³⁰² and there is no minimum size restriction for yellow perch.³⁰³

Trout fishing on DCL is open year round, and there is no minimum size limit.³⁰⁴ Put-and-take areas of fishing are closed from 10 PM to 5:30 AM., and daily creel and possession limits are both set at 5.³⁰⁵ No gigs may be used.³⁰⁶

8. Wildlife

The DCW is subject to all state wildlife laws and regulations. In relation to geese and other wildlife, DNR is authorized to reduce wildlife population if it has been determined that the

²⁹⁷ COMAR 08.02.11.04(I).

²⁹⁸ COMAR 08.02.11.04(N).

²⁹⁹ COMAR 08.02.11.C.

³⁰⁰ COMAR 08.02.11.C(1)(a).

³⁰¹ COMAR 08.02.11.C(1)(b).

³⁰² COMAR 08.02.11.C(2)(s).

³⁰³ COMAR 08.02.11.C(3)(s).

³⁰⁴ COMAR 08.02.11.01(A).

³⁰⁵ COMAR 08.02.11.01(B)(1)-(6).

³⁰⁶ COMAR 08.02.11.04(A)(3).

³⁰⁷ Md. Code Ann., Nat. Res. § 10-206.

population is “seriously injurious to agricultural or other interests of the affected area.”³⁰⁷ DNR has discretion for the methods of reduction, but trapping is preferred if feasible.³⁰⁸

The Resident Canada Goose Depredation Control regulations³⁰⁹ permit the taking of resident Canada geese, as permitted by federal law.³¹⁰ The preferred method is by egg oiling.

Almost all hunting requires a valid permit.³¹¹ Additionally, any hunter must carry a photo identification in addition to a valid hunting license.³¹² Electronic or recorded bird or wildlife calls are prohibited,³¹³ as is shooting from or across any public highway.³¹⁴ Guided hunting for economic gain is prohibited on land controlled by DNR, including DCL State Park.³¹⁵

9. Tree removal or maintenance services

State law has specific licensing requirements for anyone who offers or provides professional tree expert services.³¹⁶ The “Licensed Tree Expert” chapter incorporates by reference several required tree expert standards systems, including several American National Standards Institute (ANSI) standards for pruning practices, soil management, lightning protection systems, transplanting, and tree risk assessment.³¹⁷ A licensed tree expert’s

³⁰⁸ *Id.*

³⁰⁹ COMAR 08.03.07.10.

³¹⁰ 50 CFR 21.50.

³¹¹ Md. Code Ann., Nat. Res. § 10-301

³¹² COMAR 08.03.10.13.

³¹³ COMAR 08.03.10.02.

³¹⁴ COMAR 08.03.10.05.

³¹⁵ COMAR 08.03.10.10.

³¹⁶ COMAR 08.07.07.01, *et seq.*

³¹⁷ COMAR 08.07.07.02.

responsibilities include employing ANSI standards,³¹⁸ entering into written contracts with specific, required terms,³¹⁹ and obtaining written permission from neighboring landowners before she may use their land to access her client’s property.³²⁰ DNR has authority to suspend the license of a tree expert for violation of this chapter.³²¹

B. Environmental Law

1. Water Appropriation

DCL was formed as a result of the construction of a dam by Penelec. The LLC entity that now operates the dam, Brookfield Power Piney and Deep Creek, is commonly referred to as “Brookfield.” Because the hydroelectric project is still operational and relies upon the sale of electricity, DCL itself is fundamentally influenced by the dam’s operations. While hydroelectric dams are typically regulated by the Federal Energy Regulatory Commission (FERC), in 1991 FERC transferred authority to the State, which now issues permits to Brookfield for its dam operations. The Maryland Department of the Environment (MDE) has authority for water appropriations, which require a permit.³²² Water appropriation permits also require a public notice and comment process.³²³

Brookfield’s “Water Appropriation and Use Permit,” granted by the Water Management Administration of the MDE, balances the use of DCL water to meet the “downstream” needs for

³¹⁸ COMAR 08.07.07.03(B).

³¹⁹ COMAR 08.07.07.03(D).

³²⁰ COMAR 08.07.07.01.

³²¹ COMAR 08.07.07.08.

³²² See Md. Code Ann., Envir. § 5-501, et. seq

³²³ See Md. Code Ann., Envir. § 5-506, *see also* 5-204.

electricity generation, temperature enhancement for trout, whitewater enhancement for recreation enhancement, and minimum flows of the Youghiogheny River.³²⁴ However, in addition to these considerations, protecting DCL itself as a natural and recreational resource is perhaps the highest priority of the permit specifications, through the “rule band” limitations.³²⁵ Thus, downstream ecological and recreational needs, the “upstream” ecological and recreational needs of DCL, and the profitability needs for the hydroelectric project are all balanced in the permit conditions that follow below.

a. Permit Introduction

Brookfield’s MDE water appropriation permits have both general requirements under COMAR,³²⁶ as well as specific conditions aimed at DCL water and recreation quality and downstream water quality. Water appropriation permits for the Brookfield dam are for 12 years,³²⁷ and the current permit, GA1992S009 (08), expires on April 1, 2019.³²⁸ The permit is officially reviewed by MDE every three years,³²⁹ though the permit conditions may be revised or added to at any time under MDE’s broad authority to “properly protect, control and manage the water resources of the state.”³³⁰ Indeed, this last condition was recently invoked at least partly in

³²⁴ See http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf.

³²⁵ See *id.*

³²⁶ COMAR 26.17.06.06.

³²⁷ COMAR 26.17.06.06(A)(1).

³²⁸ See http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf.

³²⁹ See *id.*

³³⁰ See *id.*

response to lower-than-average lake water levels.³³¹ Additionally, semi-annual reports from Brookfield are required by January 31 and July 31, which must show monthly totals of water released,³³² and a more comprehensive annual report to MDE accounting for the primary requirements of Brookfield is required by January 31.³³³ Brookfield is limited to water withdrawals of a daily average of 94,000,000 gallons, on a yearly basis, and a maximum daily withdrawal of 420,000,000 gallons.³³⁴ Water withdrawals must be measured by Brookfield each day, subject to inspection.³³⁵

b. DCL Rule Band

Brookfield is required to operate the dam in such a way that DCL water elevation levels stay within the “rule band.”³³⁶ Lake water levels must be recorded daily, and be reported to MDE annually.³³⁷ The rule band is a variable range of several feet (above mean sea level), depending upon the month, which at the highest end never exceeds 2461 feet in April through July, and at the lowest end never descends below 2455 feet in November through January.³³⁸ Brookfield may release water as needed, if the water levels exceed the upper rule band. However, from May

³³¹ See [http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/DCL%20PRB%20Lake%20Water%20Level%20Comments%20to%20MDE%20\(M0694618\).PDF](http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/DCL%20PRB%20Lake%20Water%20Level%20Comments%20to%20MDE%20(M0694618).PDF)

³³² See http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *See id.*

³³⁷ *See id.*

³³⁸ See http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf.

through October, the water level may exceed the upper rule band by 0.3 feet, though for no more than 21 days.³³⁹

The rule band does not apply in the following unusual or emergency situations: when the PJM regional electric grid requires maximum emergency generation, loading, or control; when there is a structural emergency at the dam; when an outage requires the shutdown of dam intake; when the dam or shoreline needs maintenance that requires lowering the water level below the rule band; or when excessive rainfall or runoff appears likely to spill over the dam.³⁴⁰

c. Downstream Requirements

In addition to DCL's rule band, there are a variety of downstream ecological requirements in the Youghiogheny River that must be met by Brookfield as well. These requirements are water temperature, flow rate, and dissolved oxygen minimum levels.

Brookfield must adhere to a MDE-approved plan that will result in June, July, and August water temperatures in the Youghiogheny (between the dam and Sang Run) below 25 degrees C.³⁴¹ Brookfield must continually monitor river temperatures, report them to MDE in an annual report, and notify MDE within 30 days of all temperature exceedances.³⁴²

There must be a minimum flow of 40 cfs below the dam's tailrace, at all times, with similar reporting requirements.³⁴³ However, the minimum flow may be adjusted, with MDE

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *See id.*

³⁴² *Id.*

³⁴³ *See id.*

permission, if lake levels are one foot or below the rule band.³⁴⁴ Additionally, there must be a continuous flow of at least 9 cfs in the tailrace itself during the months of June, July, August, and September.

Downstream water must also meet minimum dissolved oxygen standards under State law,³⁴⁵ which are 5 ppm daily, 6 ppm daily average. Brookfield must annually monitor and report levels during June 1 to October 1, and maintain a tailrace weir to meet required minimum levels.³⁴⁶

For whitewater recreation purposes on the Youghiogheny River, there are scheduled whitewater releases (WWR). Importantly, however, most releases are subject to the rule band requirements and the maximum temperature requirements.³⁴⁷ Most releases, called “standard” WWRs, occur every Friday-Monday between April 15 and October 15, for a duration of 3 hours, starting at either 10 AM ET or 11 AM ET.³⁴⁸

“Special” WWR include, at a minimum, a six-hour release on the fourth Saturday in July, for the Team Friendsville Upper Yough Race (subject to the lake elevation being more than one foot below the lower rule band),³⁴⁹ and three 3-hour releases on Tuesday, Wednesday, and Thursday, the week before the Gauley Festival in West Virginia.³⁵⁰

³⁴⁴ See http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf

³⁴⁵ See COMAR 26.08.02.01, *et seq.*

³⁴⁶ See http://www.mde.state.md.us/programs/Water/Water_Supply/Documents/Deep%20Creek%20Lake/dcl-p-07.pdf.

³⁴⁷ See *id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

Other Special WWRs may be requested, and all Special WWRs are contingent upon sufficient lake water levels.³⁵¹ During actual Special WWR days, Brookfield is exempted from meeting temperature requirements otherwise required under Condition 16.³⁵² In order to maintain appropriate whitewater-related flow, Brookfield must also follow several additional operating rules between April 15th and October 15th, depending on both the lake water level and the natural flows at the Friendsville USGS Gage.³⁵³

2. Soil Erosion and Sediment Control

In order to prevent erosion and the harmful deposition of sediment in State waters,³⁵⁴ State law requires approved grading and sediment control plans before any grading or building permits may be granted.³⁵⁵ Such grading and building requirements must be included in the Garrett County ordinance,³⁵⁶ which must also comply with the “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”³⁵⁷ The approval of a plan is based on that guide’s criteria and upon the adequacy of the proposed measures.³⁵⁸ Garrett County has

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ Md. Code Ann., Envir. § 4-101.

³⁵⁵ § 4-103

³⁵⁶ *Id.*; see Garrett County Ordinance Chapter 154; see also *infra* Section III.B.7.

³⁵⁷ COMAR 26.17.01.04(A); see generally <http://www.mde.maryland.gov/programs/Water/StormwaterManagementProgram/SoilErosionandSedimentControl/Documents/2011%20MD%20Standard%20and%20Specifications%20for%20Soil%20Erosion%20and%20Sediment%20Control.pdf>.

³⁵⁸ COMAR26.17.01.08(A).

enforcement authority of these State-required standards, pursuant to its capability of enforcing compliance.³⁵⁹

a. Required Control Plans

Before construction may commence, the County must first review and approve the sediment control plan,³⁶⁰ and permittees must then implement the approved plan and conduct construction in accordance with it.³⁶¹ There are several specific requirements of a submission of a control plan, such as a map, soil types, and proposed grading and earth disturbances.³⁶² Subsequent changes to a sediment control plan require approval.³⁶³ Penalties for violating these requirements, a misdemeanor, are fines up to \$10,000 or imprisonment up to one year, or both, as well as liability in a civil suit.³⁶⁴

b. Exemptions

These requirements do not apply to most agricultural activities or to construction of single-family dwellings that disturb an area of less than one-half acre and occur on lots of two acres or more.³⁶⁵ Grading activities do not require a plan if they are for agricultural management or disturb less than 5,000 square feet of land area and less than 100 cubic yards of earth.³⁶⁶

³⁵⁹ *Id.*; *See also* Garrett County Code, Chapter 154.

³⁶⁰ Md. Code Ann., Envir. § 4-105.

³⁶¹ *Id.*

³⁶² COMAR 26.17.01.07(B).

³⁶³ *Id.*

³⁶⁴ Md. Code Ann., Envir. § 4-116.

³⁶⁵ § 4-102.

³⁶⁶ COMAR 26.17.01.05(A).

3. Stormwater control

In order to reduce erosion, pollution, sedimentation, and flooding, state law regulates stormwater runoff³⁶⁷ by, similarly to the sediment control plan process, requiring the submission and approval of a stormwater management plan before a grading or building permit may be issued for developments.³⁶⁸ These requirements apply to any development or redevelopment of land. They do not apply to agricultural activities³⁶⁹ or to developments that disturb less than 5,000 square feet of land, including additions to single family structures.³⁷⁰ Penalties for violating these requirements, a misdemeanor, are fines up to \$10,000 or imprisonment up to one year, or both, as well as liability in a civil suit.³⁷¹

Each county and municipality has ordinances³⁷² in support of this stormwater oversight, and provides the necessary approvals³⁷³ through a comprehensive review and approval process.³⁷⁴ The local ordinances must have minimum control requirements under law and the 2000 Maryland Stormwater Design Manual, Volumes I & II.³⁷⁵ The control requirements

³⁶⁷ Md. Code Ann., Envir. § 4-201.

³⁶⁸ § 4-204.

³⁶⁹ COMAR 26.17.02.01(B).

³⁷⁰ COMAR 26.17.02.05(B).

³⁷¹ Md. Code Ann., Envir. § 4-215.

³⁷² See Garrett County Stormwater Ordinance and see *infra* Section III.B.9, Stormwater Regulations

³⁷³ Md. Code Ann., Envir. § 4-202.

³⁷⁴ COMAR 26.17.02.04(B).

³⁷⁵ COMAR 26.17.02.06(A); see generally http://www.mde.maryland.gov/programs/water/stormwatermanagementprogram/marylandstormwaterdesignmanual/pages/programs/waterprograms/sedimentandstormwater/stormwater_design/index.aspx

mandate that stormwater management plans utilize “environmental site design” to the maximum extent practicable.³⁷⁶

The owner/developer must submit, according to the local ordinances, phased plans, including a concept plan, a site development plan, a final stormwater management plan, and construction drawings.³⁷⁷ Advance notice must be given, prior to construction, and then regular inspections performed during construction.³⁷⁸ The regulations require post-construction, maintenance to ensure proper functioning.³⁷⁹

4. Sewage and Water Supply

While there are a few exceptions,³⁸⁰ a residence or commercial establishment that will require an on-site sewage disposal system³⁸¹ may not be built or altered without first obtaining a sewage disposal permit with MDE,³⁸² nor may a county issue a building permit.³⁸³ Once permitted, a person must follow the terms of the permit when disposing of waste.³⁸⁴ Water

³⁷⁶ *Id.*

³⁷⁷ COMAR 26.17.02.09(E).

³⁷⁸ COMAR 26.17.02.10.

³⁷⁹ COMAR 26.17.02.11.

³⁸⁰ COMAR 26.04.02.02(B)(1).

³⁸¹ Defined as a “sewage treatment unit, collection system, disposal area, and related appurtenances.” COMAR 26.04.02.01B(28).

³⁸² COMAR 26.04.02.02(D).

³⁸³ *Id.*

³⁸⁴ *Id.*

supply, when not served by a community system, may be achieved only through COMAR-approved wells³⁸⁵ or surface water systems.³⁸⁶

Applications for sewage permits must be on MDE forms, and must include a site plan.³⁸⁷ A permit will not be issued unless the project conforms with the county water and sewer plan.³⁸⁸ The system may not be used until inspected and approved.³⁸⁹

The septic system disposal area and two recovery areas for a lot may not be less than 10,000 square feet,³⁹⁰ and the regulations include minimum distances between disposal systems, and their recovery areas, and certain features like steep slopes and drainage ways.³⁹¹ Systems and recovery areas must be at least 100 feet away from wells³⁹² and downhill from private water supplies.³⁹³ Residential septic tanks have minimum size requirements according to the number of bedrooms,³⁹⁴ while commercial system capacities are determined by a usage formula.³⁹⁵

³⁸⁵ COMAR 26.04.04.02(G); *also see* COMAR 26.04.04.01, *et seq.*

³⁸⁶ *See* 26.04.01.01, *et seq.*

³⁸⁷ COMAR 26.04.02.02(I).

³⁸⁸ COMAR 26.04.02.02(J).

³⁸⁹ COMAR 26.04.02.02(O)

³⁹⁰ COMAR 26.04.02.04(C).

³⁹¹ COMAR 26.04.02.04(J).

³⁹² COMAR 26.04.02.05(B).

³⁹³ COMAR 26.04.02.05(C).

³⁹⁴ COMAR 26.04.02.05(E).

³⁹⁵ COMAR 26.04.02.05(G).

³⁹⁶ COMAR 26.04.02.05(I).

³⁹⁷ COMAR 26.04.02.05(K).

³⁹⁸ COMAR 26.04.02.05(O).

Minimum absorption areas,³⁹⁶ deep trench system requirements,³⁹⁷ percolation tests,³⁹⁸ mound system requirements,³⁹⁹ and similar requirements are also specified.⁴⁰⁰

Recently passed State law imposes additional requirements for on-site sewage systems in subdivisions, as they relate to 5-104 of the Land Use Article.⁴⁰¹ While there are exceptions for some subdivisions,⁴⁰² a local jurisdiction may not permit on-site sewage disposal systems for subdivisions unless 5-104 has been adopted by the local jurisdiction.⁴⁰³ Additionally, residential subdivision plats may not be approved unless the area will be served by public sewer or if on-site sewer will be used in certain limited circumstances,⁴⁰⁴ with a few exceptions.⁴⁰⁵ Lastly, land platted for subdivision may not be sold or developed unless certain water and sewer information is provided to MDE,⁴⁰⁶ and until any subsequent documentation or water and sewer requirements from the Department are met by the owner.⁴⁰⁷ Other water-related restrictions are placed on minor subdivisions.⁴⁰⁸

³⁹⁹ COMAR 26.04.02.05(Q).

⁴⁰⁰ *See generally* COMAR 26.04.02.05.

⁴⁰¹ Md. Code Ann., Envir. § 9-206; *see generally* Md. Code Ann. Land Use § 5-104; *Also see infra* Section III.B.3.h.

⁴⁰² Md. Code Ann., Envir. § 9-206(b)(2) & (c)(1).

⁴⁰³ Md. Code Ann., Envir. § 9-206(b)(2) & (c)(1).

⁴⁰⁴ § 9-206(g).

⁴⁰⁵ § 9-206(h).

⁴⁰⁶ § 9-206(j).

⁴⁰⁷ Md. Code Ann., Envir. § 9-206(k).

⁴⁰⁸ 9-206(h)

5. Nontidal wetlands permitting

Projects that impact any wetland require in advance a nontidal wetland permit, which have specific requirements before it may be issued.⁴⁰⁹ While there are an extensive number of exemptions,⁴¹⁰ activities that require a nontidal wetland permit before commencing are:

1. removal or dredging of soil or other material;⁴¹¹
2. changing drainage, sedimentation, flooding and other characteristics;
3. disturbing water levels by drainage;
4. dumping or filling with material;
5. grading that would alter topography; or
6. destruction of plant life that would alter wetland character.⁴¹²

Wetlands in the DCW typically occur near the confluence of small streams with DCL. Additionally, there are several areas in Garrett County listed as areas of “special State concern,”⁴¹³ which have more stringent environmental restrictions.⁴¹⁴ This includes “The Glades,” an important and unique wetland that is also the County’s largest, which is largely in the Cherry Creek watershed and contains naturally occurring peat bogs; and Hammel Glade, west of DCL.⁴¹⁵

⁴⁰⁹ See COMAR 26.23.01.01, *et seq.*

⁴¹⁰ See COMAR 26.23.01.02; COMAR 26.23.01.01(b); COMAR 26.23.05.01(B); COMAR 26.23.05.02(B).

⁴¹¹ If a waterway improvement district is desired for state supported dredging, as outlined in State law, a specific request must be submitted to DNR. See Md. Code Ann., Nat. Res. § 8-705; Md. Code Ann., Nat. Res. § 8-707(a)(3); and COMAR 08.04.11.01.

⁴¹² COMAR 26.23.01.01(B)(74).

⁴¹³ See COMAR 26.23.06.01(K).

⁴¹⁴ See COMAR 26.23.06.03, *et. seq.*

⁴¹⁵ COMAR 26.23.06.01(K).

Applications have extensive requirements,⁴¹⁶ and a public notice and comment process is required for completed applications.⁴¹⁷ Specific criteria guides whether the MDE or authorized County authority⁴¹⁸ may issue the permit.⁴¹⁹

6. Water Pollution Discharge Regime

Pollution standards for all waters in the State are governed by the State’s Water Pollution Control subtitle.⁴²⁰ Discharge of wastes or pollutants into State waters are often illegal without a permit.⁴²¹ If permitted, discharges require compliance with a National Pollution Discharge Elimination System permit (NPDES).⁴²² However, discharge of any kind of waste from a vessel into the waters of DCL is specifically prohibited by the State’s water pollution regulations.⁴²³ There are a variety of “general” permits that each provide coverage for a broad array of activities,⁴²⁴ including, for example, certain animal feeding operations (AFO) that require discharge permits.⁴²⁵ A search for current and past NPDES permits can be accessed on the U.S. EPA website.⁴²⁶

⁴¹⁶ COMAR 26.23.02.01.

⁴¹⁷ COMAR 26.23.02.02(G).

⁴¹⁸ COMAR 26.23.01.03.

⁴¹⁹ COMAR 26.23.02.04.

⁴²⁰ *See* Md. Code Ann., Envir. § 9-101

⁴²¹ COMAR 26.08.03.01; *see also* Md. Code Ann., Envir §.Env Title, 9-3.

⁴²² COMAR 26.08.04.01; *see also* COMAR 26.08.03.01(C)(b) & (c).

⁴²³ COMAR 26.08.03.01(A)(9).

⁴²⁴ COMAR 26.08.04.09.

⁴²⁵ COMAR 26.08.03.09.

⁴²⁶ *See* <http://www.epa.gov/enviro/facts/pcs-icis/search.html>

The federal Clean Water Act is administered by the State, through its own water pollution laws and regulations which meet or exceed federal standards. While there are several components to the Clean Water Act statute, as embodied in State law, the primary requirements of the law consist of setting minimum water quality standards, and then ensuring those standards are met, often through NPDES permits.

First, the State must set water quality standards (WQS) for waterbodies according the particular functions they serve. If the WQS for a particular pollutant is not met in a specific waterbody, federal law requires that the amount of that pollutant be reduced until the waterbody is no longer “impaired” by the excessive levels of that pollutant.

That reduction is historically done through both the permitting process, in conjunction with assigning a Total Maximum Daily Load (TMDL) to that water. A TMDL⁴²⁷ is essentially a “pollution diet” that determines how future sources of a pollutant will be allocated, in order to reduce the total amount of the pollutant in the impaired waterbody, by utilizing stringent permit limitations.

Under State law, as required by the federal Clean Water Act, DCL and its tributaries are designated as Use III-P waterbodies (“Non-tidal Cold Water” and “Public Water Supply”).⁴²⁸ Under the water quality standards for those uses of water, there are three components of DCL and its watershed which are not in compliance, and are thus included on the “303(d) list,” named for the section of the Clean Water Act that requires the listing of such impaired waters.

⁴²⁷ See generally Maryland MDE TMDL FAQ. <http://www.mde.state.md.us/programs/Water/TMDL/Pages/Programs/WaterPrograms/tmdl/index.aspx>

⁴²⁸ COMAR 26.08.02.02.

The first is DCL itself, as it has excessive levels of mercury in fish tissue, and has thus been assigned a TMDL.⁴²⁹ As the TMDL report states, however, the primary source of mercury in DCL is from air-borne pollution from power plants,⁴³⁰ rendering the reduction of mercury to permissible levels unlikely to be achieved at the State or local level.

Second, there is a biological impairment in DCL, primarily consisting of excessive nutrients (nitrogen and phosphorous) and bacteria.⁴³¹ MDE determined that the lake is not meeting the designated use for the “protection of aquatic life because of biological impairments.”⁴³²

The third State-identified impairment in the DCW is Cherry Creek, which has excessive levels of phosphorous, largely due to acid mine drainage.⁴³³ However, the EPA recently cited Cherry Creek as a success story in the attempts to bring it into compliance.⁴³⁴

DCL used to be listed as impaired and out of compliance for phosphorous, based on eutrophication. While the lake was delisted in 2010,⁴³⁵ the delisting report notes that there are still localized areas with eutrophication.⁴³⁶ Low pH (likely caused by acid mine drainage) and

⁴²⁹ See http://www.mde.state.md.us/programs/Water/TMDL/ApprovedFinalTMDLs/Pages/Programs/WaterPrograms/TMDL/approvedfinaltmdl/tmdl_deepcreeklake_hg_final.aspx

⁴³⁰ *Id.*

⁴³¹ MDE Impairment Listing: Watershed Report for Biological Impairment of the Deep Creek Lake Watershed http://www.mde.state.md.us/programs/Water/TMDL/Documents/BSID_Reports/DeepCreek_BSID_Report_012412_revisedfinal.pdf.

⁴³² *Id.*

⁴³³ See http://www.mde.state.md.us/programs/Water/TMDL/ApprovedFinalTMDLs/Pages/Programs/WaterPrograms/TMDL/approvedfinaltmdl/tmdl_cherrycreek_final_ph.aspx.

⁴³⁴ See http://water.epa.gov/polwaste/nps/success319/md_cherry.cfm

⁴³⁵ See generally http://www.mde.state.md.us/programs/Water/TMDL/ApprovedFinalTMDLs/Documents/www.mde.state.md.us/assets/document/WQA_Deep_Creek_Nut_07292011_final.pdf.

⁴³⁶ *Id.* at 30.

stream morphology (the physical characteristics of the watershed geology) are listed as the likely causes.⁴³⁷

BEACH WATER QUALITY

The MDE also regulates, by delegating responsibility to the Garrett County Health Department's Environmental Health Program, the health and usability of Maryland's beaches, which include DCL . Beach water quality is guided by the federal BEACH Act,⁴³⁸ which, like the Clean Water Act, is another federal law implemented at the State level.

7. Marcellus Shale Drilling

Because the Marcellus shale formation underlies Garrett County, there is a pronounced interest in horizontal drilling to tap vast deposits of natural gas. This process involves hydraulic fracturing ("fracking"), which requires injection of large quantities of water and chemicals deep underground and the flowback of potentially harmful substances. Thus, the State is assessing the potential environmental costs in order to weigh them against the economic and energy resources gains to be gained, through the Governor's Marcellus Shale Safe-Drilling Initiative Advisory Commission.⁴³⁹ No permits for Marcellus shale drilling will be issued until after the Commission's final report is released and assessed. The final report is due in August 2014.⁴⁴⁰

⁴³⁷ *Id.* at iv.

⁴³⁸ Beaches Environmental Assessment and Coastal Health Act of 2000, Pub. L. No. 106-284, 114 Stat. 870 (2000).

⁴³⁹ See generally <http://msa.maryland.gov/msa/mdmanual/26excom/html/23marcellus.html>

⁴⁴⁰ *Id.*

C. Agriculture Land

Garrett County comprises the Garrett Soil Conservation District,⁴⁴¹ whose supervisors may, through the regulation and rulemaking process, require:

1. specific standards of earthen-based engineering operations;
2. certain methods of cultivation; and
3. similar means for conserving soil resources and preventing erosion.⁴⁴²

1. Nutrient management plans

Many agricultural operations are required under soil conservation law to create nutrient management plans for their fertilizer use,⁴⁴³ which take into account nitrogen and phosphorous levels in the soil and water.⁴⁴⁴ A nutrient management plan is a method for ensuring fertilizers are not applied excessively or unnecessarily. This planning requirement does not apply to agricultural operations with less than \$2,500 in gross income or to livestock operations with less than eight animal units.⁴⁴⁵ There are also educational requirements⁴⁴⁶ and fertilizer application requirements⁴⁴⁷ for many farming operations. Local government is not authorized to create laws or rules of any kind in regard to the application of fertilizers.⁴⁴⁸

⁴⁴¹ Md. Code Ann., Agric. § 8-301

⁴⁴² § 8-307.

⁴⁴³ § 8-801; *see also* COMAR 15.20.06.01, *et seq*;

⁴⁴⁴ Md. Code Ann., Agric. § 8-802.

⁴⁴⁵ § 8-803.1(b).

⁴⁴⁶ § 8-803.3; *See also* COMAR 15.20.06.03.

⁴⁴⁷ Md. Code Ann., Agric. § 8-803A.

⁴⁴⁸ § 8-803.8.

2. Fertilizer Law

Recently, Maryland agricultural law placed restrictions on how lawn fertilizer may be used and applied by lawn care professionals and homeowners.⁴⁴⁹ Beginning in October of 2013, both lawn care professionals and homeowners will have to follow specific lawn fertilizer guidelines, including:

1. No application on impervious surfaces or frozen ground;
2. No applications within 15 feet of waterways; and no applications between December 1 (November 15 if a homeowner) and March 1; and
3. All fertilizer must be applied using University of Maryland recommendations.

III. County Ordinances and Regulations

A. The Comprehensive Plan

1. Introduction to Local Land Use Planning and Regulation

Because there is very little local land use authority or capacity residing in the federal government, and it is often impractical for states to oversee local land use decisions, local government is usually the source of the most impactful land use regulations. States typically delegate local planning and local regulation to counties and municipalities, and Maryland is no exception. Through a “comprehensive planning” process, designated local officials assess, in a public process, the long-term development prospects of a County or Municipality, taking into account the jurisdiction’s assets to be protected as well as potentially undesirable trends that should be avoided. Using that long-term assessment, which is embodied in the Comprehensive

⁴⁴⁹ See generally Md. Code Ann., Agric. § 8-801-8-803.9.

Plan, County and Town zoning ordinances are passed in order to enact that vision. County and town ordinances, then, are based on the vision and goals laid out in their respective Comprehensive Plan, and may not be contrary to the Plan.⁴⁵⁰ With respect to the DCW, the Garrett County Comprehensive Plan is a very valuable tool for understanding the underlying County ordinances designed to support it.

Because the DCW does not drain into the Chesapeake Bay, it is not subject to the State's Chesapeake Bay Critical Area Protection Act.⁴⁵¹ However, because the Bay Act integrates much of the "best management practices" in regard to sediment, erosion, stormwater control, and nutrient runoff, anyone with an interest in long-term watershed planning in Maryland might wish to familiarize herself with the law's watershed-planning provisions.

2. The Garrett County Comprehensive Plan

The Garrett County Comprehensive Plan, (Comp Plan),⁴⁵² last revised in 2008, is not itself law, but instead provides guidance for future development and a rationale for local ordinances. Thus it is an extremely useful document for understanding the larger trends that affect local regulation in Garrett County. Indeed, it refers to itself as the "policy guide" for Garrett County's growth and development, with a planning horizon of 2030, including a particular focus and entire chapter on the DCW.⁴⁵³

⁴⁵⁰ See Md. Code Ann., Land Use § 4-202.

⁴⁵¹ See generally The Critical Area Commission: <http://www.dnr.state.md.us/criticalarea>.

⁴⁵² See <http://garrettcountry.org/resources/planning-land-development/pdf/Comprehensive%20Planning/2008GarrettCountyAdoptedPlan-FULL.pdf>.

⁴⁵³ *Id.*

By State law, the Comp Plan must address certain goals, including: concentrating development in certain areas, protecting sensitive areas, directing rural growth to existing population centers, and conserving resources.⁴⁵⁴ The Maryland General Assembly recently enacted a Bill to change the cycle for review of Comprehensive Plans from every six years to ten years.⁴⁵⁵

a. Land Use Categories

Because of its unique and considerable natural resources, the DCW is the only watershed with zoning in Garrett County.⁴⁵⁶ In order to better achieve watershed-wide planning and the ordinances used to achieve that planning, the zoned land is divided into 9 zoning districts, each of which has its own permitted and prohibited uses, structures, and associated regulations. In the DCW,⁴⁵⁷ the primary categories are Rural Resource,⁴⁵⁸ Agricultural Resource,⁴⁵⁹ Lake Residential 1,⁴⁶⁰ Lake Residential 2,⁴⁶¹ Town Residential,⁴⁶² Town Center,⁴⁶³ General

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.* at Chapter 157.

⁴⁵⁷ See Deep Creek Watershed Zoning Map at http://garrettcountry.org/resources/planning-land-development/pdf/zoning/DCL_zoning_LU.pdf.

⁴⁵⁸ See *supra*, note 452 at 3-12.

⁴⁵⁹ See *supra*, note 452 at 3-13.

⁴⁶⁰ See *supra*, note 452 at 3-16.

⁴⁶¹ *Id.*

⁴⁶² See *supra*, note 452 at 3-17.

⁴⁶³ *Id.*

Commercial,⁴⁶⁴ Commercial Resort 1,⁴⁶⁵ and Commercial Resort 2.⁴⁶⁶ Overlaid across many of these designated land use zones are also “Scenic Protection Areas.”⁴⁶⁷ The DCL Recreation and Land Use Plan provides additional discussion of each of these land use zones.⁴⁶⁸

Each of these land use designations and their specific uses are discussed in the Comprehensive Plan. Based on that general designation, very specific allowed uses and prohibited uses are allocated to each land use in the subsequent County Zoning ordinance. (Note to reader: The Zoning Ordinance is frequently more detailed than the brief descriptions, below.)

Rural Resource

The zoning of Rural Resource (“RR”) districts aims to retain natural resources like timber for future use, while allowing for limited residential development.⁴⁶⁹ These lands include DCL State Park, the Rock Lodge Trust property, and areas west of the dam.⁴⁷⁰ Accordingly, in order to retain the natural resource value of the land, the Zoning Ordinance only allows subdivision with a minimum lot size of 3 acres (or of 1 acre in specific instances).⁴⁷¹

Agricultural Resource

Agricultural Resource (“AR”) zoning districts are similar to RR in their natural resource protection goals, though in this case it is to protect agricultural land for future use, while also

⁴⁶⁴ *Id.*

⁴⁶⁵ *See supra*, note 452 at 3-18.

⁴⁶⁶ *Id.*

⁴⁶⁷ *See supra*, note 452 at 4-23

⁴⁶⁸ *See supra*, note 41 at 9-10.

⁴⁶⁹ *See supra*, note 452 at 3-12, 3-14, and 4-15.

⁴⁷⁰ *See supra*, note 452 at 4-15.

⁴⁷¹ *See* Garrett Code Article 3, § 157.023(B).

allowing for limited residential growth.⁴⁷² AR districts largely exist in the Cherry Creek and upper Glade Run watersheds, and in the southwestern portion of the watershed.⁴⁷³ Thus, the Zoning Ordinance has the same relatively large minimum subdivision lot sizes as the Rural Resource district.⁴⁷⁴

Lake Residential 1

Lake Residential 1 (“LR1”) districts, the dominant land use zone around DCL itself, are intended to allow mixed use such as agriculture, recreational, and low-density housing with access to public sewer service.⁴⁷⁵ The relatively low maximum residential density is envisioned in the Comp Plan as one dwelling unit per acre,⁴⁷⁶ which is indeed the restriction in the subsequent Zoning Ordinance.⁴⁷⁷ (Most of the surface of DCL is also zoned LR1.⁴⁷⁸)

Lake Residential 2

Lake Residential 2 (“LR2”) zones, like LR1, aim to allow mixed use such as agriculture, recreational, and low-density housing, but are areas that do not currently have access to public sewer service.⁴⁷⁹ However, LR2 is even less dense than LR1, with one dwelling unit envisioned

⁴⁷² See *supra*, note 452 at 3-12, 3-14, and 4-15.

⁴⁷³ See *supra*, note 452 at 4-15.

⁴⁷⁴ See § 157.023(A).

⁴⁷⁵ See *supra*, note 452 at 3-16.

⁴⁷⁶ *Id.*

⁴⁷⁷ See Garrett Code, Article 3, § 157.023(C).

⁴⁷⁸ See *supra*, note 452 at 4-15, fn. 1

⁴⁷⁹ See *id.*

⁴⁸⁰ See *supra*, note 452 at 3-17

per two acres.⁴⁸⁰ The ordinance upholds that limit within areas not planned for public water or public sewer service.⁴⁸¹

Town Residential

Town Residential (“TR”) zoning districts are intended to provide higher density development near town and village centers.⁴⁸² Accordingly, TR areas are oriented only on the peripheries of McHenry and Thayerville. TR residential densities are as high as 8 multi-family dwellings and about five single-family dwellings per acre, and minimum lot sizes are 10,000 square feet (and larger if served by on site sewer and water), and TR allows for mixed housing types.⁴⁸³ The Zoning Ordinance sets the average residential density as 4 to 5 units per acre.⁴⁸⁴

Town Center

Town Center (“TC”) zones also allow for denser development: in addition to the higher density residential use found in TR areas, TC zones also allow for mixed uses like retail, service, and commercial.⁴⁸⁵ The Ordinance accordingly provides for even denser residency than in TR districts, at 5 to 6 units per acre.⁴⁸⁶

⁴⁸¹ See Garrett Code, Article 3, § 157.023(D); and see *infra* Section III.B.2.

⁴⁸² See *id.*

⁴⁸³ *Id.*

⁴⁸⁴ See Garrett Code Article 3, § 157.023(E).

⁴⁸⁵ *Id.*

⁴⁸⁶ See Garrett Code Article 3, § 157.023(F).

⁴⁸⁷ *Id.*

General Commercial

General Commercial (“GC”) allows for light industrial use, in addition to retail, service, and commercial development. As such, residential use is typically discouraged.⁴⁸⁷ The two GC zones are along 119 in Thayerville.

Commercial Resorts, 1 & 2

Lastly, Commercial Resort 1 (“CR1”) and Commercial Resort 2 (“CR2”) provide for specific commercial recreation uses like the Wisp Resort and the Garrett County Fairgrounds, and their associated commercial and residential uses. CR1 is aimed at visitor-oriented commercial development, and CR2 addresses low-density residential development as well as family-oriented land-based, commercial development.⁴⁸⁸ Accordingly, the Zoning Ordinance allows no major residential development in CR1 districts, though it allows for a modest 1 unit per acre residential density in CR2 districts.⁴⁸⁹

B. County Ordinances

1. Introduction

Largely pursuant to the long-term planning goals of the Comprehensive Plan, the Garrett County Code (the “County Code”)⁴⁹⁰ provides not only zoning regulations for the DCW, but extensive and specific regulatory guidance for a host of County-wide local land uses. Such wide-ranging regulations include how utility equipment like gas and power lines may be placed along

⁴⁸⁸ See *supra*, note 452 at 3-18.

⁴⁸⁹ See 157.023(H).

⁴⁹⁰ See Garrett County Code: [http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettco_md/garrettcounymarylandcodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:garrettco_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettco_md/garrettcounymarylandcodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:garrettco_md)

county roadways,⁴⁹¹ plumbing⁴⁹² and building codes,⁴⁹³ and unsafe structure abatement.⁴⁹⁴ And, of course, an entire chapter of the Comprehensive Plan is devoted to the extensive zoning regulations of the DCW.⁴⁹⁵

2. The Deep Creek Watershed Zoning Ordinance

a. Introduction and Overview of Zoning Ordinance Contents

Outside of the municipalities, the Deep Creek Watershed is the only area of Garrett County that is subject to comprehensive zoning ordinances. While the vast majority of the non-zoning related ordinances in the County Code apply uniformly county-wide, including in the DCW, the Deep Creek Watershed Zoning Ordinance applies only within that watershed.

The Zoning Ordinance is enforced through zoning permits. A zoning permit must be secured from the County Zoning Administrator for any structure or use of land, as well as for any change in use for any structure or land use.⁴⁹⁶

The Ordinance is comprised of several discrete Articles including the “General Provisions” Article containing much of the legalese that accompanies most ordinances,⁴⁹⁷ as well as the all-important “Definitions.”⁴⁹⁸

⁴⁹¹ See Chapter 54.

⁴⁹² See Chapter 150.01.

⁴⁹³ See Chapter 150.02-.04.

⁴⁹⁴ See Chapter 161.

⁴⁹⁵ See Chapter 157.

⁴⁹⁶ Article 10, § 157.146.

⁴⁹⁷ Article 1, § 157.001-006.

⁴⁹⁸ Article 2, § 157.007.

The “Zoning Districts and Use Regulations” Article is typically the most impactful part of a zoning ordinance, as it governs what uses are permitted or prohibited in any of the areas enumerated in the Comprehensive Plan (LR1, LR2, GC, etc.).⁴⁹⁹

The “Lot Area and Yard Regulations,” much like the county-wide Subdivision Ordinance, outline the various dimensions required of any given lot, as well as of the appurtenances thereto.⁵⁰⁰

The “General Regulations” Article, as the title suggests, regulates any of the various components of land use that aren’t captured in the other Articles, be it lighting requirements, traffic visibility at corners, commercial campground design, and so forth.⁵⁰¹

The “Off-Road Parking and Loading” Article mandates how many parking spaces must be offered for each non-residential use of land,⁵⁰² while the “Sign Regulations” Article governs the size and other requirements for signs in the watershed.⁵⁰³

Uses that were “grandfathered in” upon passage of the Zoning Ordinance, but which would otherwise be disallowed (“nonconforming uses”), are governed by the “Nonconformities” Article.⁵⁰⁴

⁴⁹⁹ Article 3, § 157.036; *see* sections x and z.

⁵⁰⁰ Article 5, § 157.040-053.

⁵⁰¹ Article 6, § 157.061-079.

⁵⁰² Article 7, § 157.090-093.

⁵⁰³ Article 8, § 157.105-113.

⁵⁰⁴ Article 9, § 157.125-131.

The DCW Zoning Ordinance specifically adopts the County-wide Sensitive Areas Ordinance to govern the use of steep slopes⁵⁰⁵ and the development near stream buffers.⁵⁰⁶

The administrative requirements for zoning, including zoning permits and the powers of the Zoning Administrator, are covered in the “Administration” Article.⁵⁰⁷ The appeals process for zoning decisions and the rules governing the Board of Appeals are outlined in the “Board of Appeals” Article.⁵⁰⁸ Finally, the process for amending the Zoning Ordinance as well as for enforcing it and enacting penalties is covered in the “Amendments, Remedies, and Penalties” Article.⁵⁰⁹

b. Zoning Districts and Use Regulations

Introduction

The bulk of the straightforward and informative “Zoning Districts and Use Regulations” is comprised of a table that outlines whether a given land use is permitted or prohibited in each zoning district. Thus, no land or structure may be used except in a way permitted, as indicated in the “Table of Use Regulations.”⁵¹⁰ For example, while a “single family detached dwelling” is a “permitted” use in almost every zoning district (as indicated in the table by a “P,” which stands for “permitted by right”), it is not a permitted use in a General Commercial District or in a Commercial Resort 1 district (as indicated by an “N,” which stands for “not permitted”).⁵¹¹

⁵⁰⁵ Article 6, § 157.071.

⁵⁰⁶ Article 6, § 157.072.

⁵⁰⁷ Article 10, § 157.145-149.

⁵⁰⁸ Article 11, § 157.160-173.

⁵⁰⁹ Article 12, § 157.185-193.

⁵¹⁰ Article 3, § 157.022(A).

⁵¹¹ Article 3, § 157.024(B)(1).

In addition to the binary “permitted by right” and “not permitted” categories of uses, there are also the categories of “permitted accessory uses” (indicated by an “A”) and “special exceptions” (indicated by an “SE”).

“Special exception” (SE) uses are uses that have been approved on a case-by-case basis by the Board of Zoning Appeals,⁵¹² and which are subject to ongoing conditions and requirements.⁵¹³ For example, while a mobile home park is a permitted use (P) in a General Commercial district and a prohibited use (N) in the Commercial Resort 1 district, it may be allowed as a special exception (SE) use in all other districts.⁵¹⁴ Therefore, to operate a mobile home park in any district other than in a GC or CR1 district, one would need a special exception from the County.

A “permitted accessory use” is a use of land or property that is conducted on the same lot as the primary use, to which the accessory use is related and incidental to, and often found in connection with, that primary use.⁵¹⁵ Thus, for example, the “A” designation might apply to things like “on-premises advertising signs”⁵¹⁶ or to “agricultural wind energy devices,” which are only allowed as accessory uses in zoning districts that also allow agricultural use, which is the “primary use.”⁵¹⁷ “Accessory uses” are less common than “special exceptions.”

⁵¹² Such approval must have been granted pursuant to Article 6, § 157.160 *et seq.*

⁵¹³ Article 3, § 157.024.

⁵¹⁴ Article 3, § 157.024(B)(8).

⁵¹⁵ See Article 2(B): definition of “Accessory Use.”

⁵¹⁶ Article 3, § 157.024(E)(22)(b).

⁵¹⁷ § 157.024(G)(4)(i).

The Table of Use Regulations

It would be impractical to summarize the already compact table that sets forth the various uses that are permitted, not permitted, or otherwise.⁵¹⁸ The table is divided into several categories of uses:

1. natural resources and agricultural uses;⁵¹⁹
2. residential uses;⁵²⁰
3. public or private recreational uses;⁵²¹
4. institutional, educational, and utility uses;⁵²²
5. retail and commercial services uses;⁵²³
6. manufacturing and industrial uses;⁵²⁴ and
7. miscellaneous and accessory uses.⁵²⁵

The table is relatively simple to use and covers well over 100 potential uses of land and structures. To provide but one example of the information conveyed by the Table of Use Regulations, the “conversion of a dwelling or other building into 3 or more dwelling units” is a permitted by right use in the TR, TC, CR1, and CR2 zoning districts, is not permitted in the GC district, and may be permitted by special exception in the RR, AR, LR1, and LR2 districts.⁵²⁶ A

⁵¹⁸ See § 157.024.

⁵¹⁹ § 157.024(A).

⁵²⁰ § 157.024(B).

⁵²¹ § 157.024(C).

⁵²² § 157.024(D).

⁵²³ § 157.024(E).

⁵²⁴ § 157.024(F).

⁵²⁵ § 157.024(G).

⁵²⁶ § 157.024(B)(11).

variety of other uses, and in which districts they may or may not be allowed, can be found in the Table.

c. The Scenic Protection Overlay District

Just as the unique qualities and value of the DCW guides the larger Zoning Ordinance, preserving the scenic value of the lake and its surrounding mountains is the purpose of the “Scenic Protection Overlay District.”⁵²⁷ An “overlay” district can overlap several or even all other zoning districts, if the “scenic” land in question crosses the boundaries of other districts. As such, an overlay district’s requirements “supplement the requirements of the underlying zoning district[s] and apply to all land delineated as a scenic protection area.”⁵²⁸ As the name implies, the scenic protection district seeks to “preserve views of the [scenery from the lake and shoreline of the surrounding mountains] and thereby protect the natural beauty of the area.”⁵²⁹

The overlay district accomplishes this scenic protection by applying to any land where any part of a structure could be silhouetted against the sky, when viewed from the lake or on the shoreline.⁵³⁰ Thus, any development that is not visible from the lake or the shoreline is exempt from the requirements of the overlay district.⁵³¹

The scenic protection district minimizes the effect of the visual impact of structures primarily through the requirement of tree retention and planting.⁵³² Structures subject to the

⁵²⁷ See Article 4, § 157.036.

⁵²⁸ § 157.036(B)(1).

⁵²⁹ § 157.036(A).

⁵³⁰ § 157.036(B)(2).

⁵³¹ § 157.036(B)(3).

⁵³² § 157.036(C).

ordinance are required to have trees around them, to blend the new structure into the surrounding landscape (from the perspective of the lake and shoreline), thus retaining the lake’s “forested crests.”⁵³³

A vegetation plan is required for any zoning permit or subdivision approval in the overlay district, which shows the location, size, and species of trees to be retained, removed, and planted, as well as any proposed grading.⁵³⁴ Minimum tree planting standards are applied if trees are removed, requiring at least one large deciduous canopy tree for every 15 feet of the building’s non-lake facing façades.⁵³⁵ Planted trees must be native, and at least 8 feet tall at the time of planting.⁵³⁶ A tree protection easement must also be granted to the County if tree planting or retention is required, thus, in the event trees are cut or die at any point in the future, the County is legally entitled to replanting.⁵³⁷

d. Lot Area and Yard Regulations

Similar to the subdivision regulations for the rest of Garrett County, the Lot Area and Yard Regulations Article⁵³⁸ sets the overall lot size requirements for each zoning district, depending on the particular land use, as well as other spatial requirements, such as minimum setbacks and height restrictions.

⁵³³ § 157.036(C)(1).

⁵³⁴ § 157.036(C)(2).

⁵³⁵ § 157.036(C)(4).

⁵³⁶ § 157.036(C)(6)-(7).

⁵³⁷ § 157.036(C)(5).

⁵³⁸ Article 5, § 157.040 *et seq.*

The lot size requirements are set forth much like the Table of Use Restrictions: minimum lot areas, minimum lot areas based on per dwelling unit (if applicable), minimum lot width, and minimum required yard sizes are specified in tables.⁵³⁹ The tables are divided according to uses: residential, recreational, institutional and educational, retail and commercial service, manufacturing, and miscellaneous and other uses.⁵⁴⁰

Each table shows a spectrum of size requirements, depending upon:

- 1) the category of use (residential, recreational, etc.);
- 2) the more specific use within that category (single family home, miniature golf course, etc.); and
- 3) the particular zoning district (LR1, LR2, etc.) in which specific use takes place.⁵⁴¹

In setting forth this wide variety of minimum lot sizes across several uses, the Zoning Ordinance attempts to match the particular uses and burdens of each land use with the priorities of the Comprehensive Plan and with other land use planning goals.

Exceptions

As is common in land use planning and with regulations generally, there are a host of exceptions to the lot sizes required by the “Table of Dimensional Requirements.”⁵⁴² Non-conforming lots that have been “grandfathered in” because they predated the County Ordinance may have smaller lot sizes than otherwise required;⁵⁴³ however, they must still comply with

⁵³⁹ 157.041(B)-(G).

⁵⁴⁰ *Id.*

⁵⁴¹ *See generally* Article 5, § 157.041(B)-(G).

⁵⁴² *See* § 157.042-045.

⁵⁴³ § 157.042.

Health Department regulations and be served by centralized water and sewer systems.⁵⁴⁴ If such non-conforming lots are not served by central water and sewer systems, then the lot size must be sufficient to meet state and local sewage disposal regulations.⁵⁴⁵

Lots adjoining public recreation land (including DCL) may have a width no less than 2/3 of the minimum width otherwise required for the same lot.

In determining the width of a front yard for any building, the required width may be reduced by the average depth of front yards existing on the adjoining lots provided; however, this exception is only available if there is a building on each of the adjoining lots and the existing buildings lie within 100 feet of the proposed new building and lie nearer the road line than the required front yard depth specified in the “Table of Dimensional Requirements.”⁵⁴⁶ The same exception may be applied to rear lots. However, in no case may a structure be located closer than 5 feet from the front or rear property line.⁵⁴⁷ Any yard adjoining a non-alley public road is deemed a front yard.⁵⁴⁸

The “Table of Dimensional Requirements” does not apply to other housing features, including:

1. Fences or any wall less than 6 feet above the natural grade;

⁵⁴⁴ *Id.*; see § 157.040(B).

⁵⁴⁵ *Id.*

⁵⁴⁶ § 157.044.

⁵⁴⁷ *Id.*

⁵⁴⁸ § 157.047.

2. Raised terraces, decks, porches, and the like that are no higher than 3 feet above the building's ground floor level, so long as the feature is no closer than 5 feet from the property line;
3. Steps and patios;
4. Projections such as bay windows, chimneys, and entrances less than 10 feet in length may extend into required yards up to four feet; and
5. Bear-proof containers that are at least 5 feet from side-lot lines.⁵⁴⁹

In the TC zoning district, dwelling units incorporated into a permitted principle non-residential use, on a lakefront lot, may have up to 3 accessory dwelling units without additional land area. However, the floor area of the additional units is subject to maximum floor area restrictions.⁵⁵⁰

Height regulations

No principle building or structure may exceed 35 feet or 3 stories in height. Special exceptions to this restriction may be granted to multi-family dwellings in the TC and CR2 zoning districts, and to hotels under 60 feet and 6 stories high in the TC, CR1, and CR2 zoning districts.⁵⁵¹ Height restrictions, however, do not apply to agricultural buildings, churches, chimneys, utility poles and towers, air conditioning equipment atop buildings, or similar utility-like equipment.⁵⁵²

⁵⁴⁹ § 157.045.

⁵⁵⁰ § 157.050.

⁵⁵¹ § 157.048(A).

⁵⁵² § 157.048(C).

The height restrictions for domestic or agricultural wind energy devices are 50 feet for domestic wind turbines and 100 for agricultural turbines.⁵⁵³

Accessory structures may not exceed 20 feet in height or have a roof higher than 32 feet above the lowest level of ground abutting the structure.⁵⁵⁴

Additional Setback Requirements

Accessory structures (subordinate structures like a garage, greenhouse, barn, or playhouse⁵⁵⁵) that are separated from any other structure by at least 5 feet may occupy required rear and side yards, but may not be closer than 5 feet to the property line;⁵⁵⁶ however, the same such accessory structures in lake front lots in the LR1 district must be at least 40 feet from the rear property line and 25 feet from the front property line.⁵⁵⁷ In any lake front lot adjoining property bought from the State of Maryland, accessory structures of less than 120 square feet may not be closer than 5 feet to the State's land, and such structures also require a DNR permit.⁵⁵⁸

Marina retail boat showrooms have different minimum yard requirements specified in the "Table of Dimensional Requirements" for marinas: they must be setback at least 20 feet from the front line, 15 from the sides, and 25 from the rear.⁵⁵⁹

Domestic and agricultural wind devices must be:

⁵⁵³ § 157.048(D).

⁵⁵⁴ § 157.048(B).

⁵⁵⁵ Article 2, § 157.007(B).

⁵⁵⁶ Article 5, § 157.046(A).

⁵⁵⁷ § 157.046(B)(1).

⁵⁵⁸ § 157.046(B)(2); *see* special permit

⁵⁵⁹ § 157.050.

1. at least 1000 feet away from schools and sites on the National Register of Historic Places;
2. 200 (domestic) or 500 feet (agricultural) from other residential structures;
3. 100 (domestic) or 200 feet (agricultural) from any non-residential structure on another lot; and
4. at least 2 times the height of the device from any parcel boundary.

Subdivisions in AR and RR Zoning Districts

Because Agricultural Resource and Rural Resource zoning districts seek to protect the undeveloped character of those areas,⁵⁶⁰ they have their own subdivision requirements.⁵⁶¹ Most lots have a 3 acre minimum size requirement and a 3 acre minimum average lot area per dwelling unit requirement, and a minimum lot width of 200 feet.⁵⁶²

However, there are exceptions for creating smaller lot sizes if:

1. the lot is being subdivided to transfer to a child or grandchild;⁵⁶³
2. the original lot is 20 acres or less and meets additional requirements;⁵⁶⁴ or
3. the subdivision is done as a cluster subdivision and meets additional standards.⁵⁶⁵

If cluster subdivisions are undertaken in the RR or AR districts, there are increasing levels of incentives for creating open space.⁵⁶⁶

⁵⁶⁰ See *supra*, note 452 at 3-12, 3-14, and 4-15.

⁵⁶¹ Article 3, § 157.053.

⁵⁶² § 157.053(A).

⁵⁶³ § 157.053(B)(1).

⁵⁶⁴ § 157.053(B)(2).

⁵⁶⁵ § 157.053(C); see *supra*, page 72, *Single Family Cluster Option*; also see generally *infra* Section III.B.3.

⁵⁶⁶ See § 157.053(D)-(F).

e. General Regulations

The “General Regulations” Article⁵⁶⁷ regulates much of the non-residential uses of land in the DCW, as well as a few more innovative forms of subdivision development.⁵⁶⁸

Erosion Control

If a grading permit is required from the County under The Sediment and Erosion Control Ordinance,⁵⁶⁹ a zoning permit will be withheld until evidence of compliance with the grading permit is given. A grading permit is required in the DCW for:

1. any introduction of sediment into any waterway or drainageway;
2. the movement of more than 100 yards of earth: or
3. the disturbance of more than 5,000 square feet of surface area.⁵⁷⁰

Special Setbacks for General Regulation Uses

Any land use or building subject to regulation under the general regulation section⁵⁷¹ must be setback at least 200 feet from any subdivision. The land use or building must also be setback 200 feet from any lot with a residence, school, church, or human care institution, (unless it is on the same lot).⁵⁷²

General Performance Standards

No land use may cause a nuisance. Generally speaking, a nuisance is excessive, dangerous, or objectionable results of land use that can be felt across property lines.⁵⁷³ In pursuit

⁵⁶⁷ Article 6, § 157.061-079.

⁵⁶⁸ See, e.g., § 157.067 and 157.073.

⁵⁶⁹ See Chapter 154, §154.01; see *infra* section III.B.7.

⁵⁷⁰ § 157.061.

⁵⁷¹ § 157.061-079

⁵⁷² § 157.062.

⁵⁷³ § 157.063.

of this minimum living standard of preventing nuisance, the Zoning Administrator is empowered to ensure that zoning applicants show in advance that the proposed land use will not constitute a nuisance.⁵⁷⁴ The Zoning Ordinance also requires compliance with State standards for the regulation of noise and vibration,⁵⁷⁵ air quality,⁵⁷⁶ fire and explosion hazards,⁵⁷⁷ water quality,⁵⁷⁸ water and sewer service, and stormwater and sediment control.⁵⁷⁹ *(NOTE: The State has not delegated authority for the County to regulate most environmental concerns. The County, however, requires, in the context of land use, that the applicant's "comply" with State standards.)*

Extractive Industry Regulation

The DCW Zoning Ordinance requires compliance with State standards for extractive uses.⁵⁸⁰ However, the County also creates its own performance standards,⁵⁸¹ which apply in the event they are more stringent than State requirements.⁵⁸² The County's performance standards include setback requirements, topsoil requirements, slope and regrading requirements, and

⁵⁷⁴ § 157.063(A).

⁵⁷⁵ § 157.063(C).

⁵⁷⁶ § 157.063(D).

⁵⁷⁷ § 157.063(F).

⁵⁷⁸ § 157.063(G).

⁵⁷⁹ § 157.063(E).

⁵⁸⁰ § 157.064(A).

⁵⁸¹ § 157.064(C).

⁵⁸² § 157.064(A).

planting and revegetation requirements.⁵⁸³ Zoning applications for extractive uses also have additional procedural and plan submission requirements.⁵⁸⁴

Traffic Visibility Requirements at Corners

Lot owners who abut the intersection of two roads must maintain a cleared triangular area on the corner that provides a safe level of visibility for road-users.⁵⁸⁵ The triangle must be free of any visual obstruction between 2 and 7 feet high, and be formed by drawing a straight line from 25 feet from the corner on the edge of one road to 25 feet on the edge of the other road.⁵⁸⁶

Mobile Home Park Standards

Permitted mobile home parks have the following standards:⁵⁸⁷

1. each mobile home must be on at least a 5,400 square foot lot;
2. the maximum number of mobile homes is limited according to total available space;
3. the overall density may never exceed 5 mobile homes per acre;
4. mobile homes must:
 - a. be at least 100 feet away from roads and lot lines;
 - b. be at least 25 feet from adjoining mobile home park roads, parking areas, and common areas;
 - c. be 20 feet from each other;
 - d. be on concrete pads that are at least 50 by 25 feet, or be made stable by another approved support or anchor method;

⁵⁸³ § 157.064(C).

⁵⁸⁴ § 157.064(B).

⁵⁸⁵ § 157.065.

⁵⁸⁶ *Id.*

⁵⁸⁷ § 157.066.

- e. meet specific road standards and be paved according to County specifications;
- f. maintain a buffer strip of evergreen trees and shrubs 10 feet wide along all boundaries;
- g. provide a minimum of 10% usable open space; and
- h. have safe and all-season pedestrian walkways.

Planned Residential Development

An alternative to traditional subdivision development, that seeks to preserve environmental features and provide open space, is planned residential development (PRD).⁵⁸⁸ Subject to many restrictions⁵⁸⁹ and conditions,⁵⁹⁰ PRDs may provide a flexible method of addressing many of the zoning restrictions imposed on subdivision and residential development found elsewhere in the Ordinance, including minimum lot sizes⁵⁹¹ and specified road designs.⁵⁹²

In exchange for this relative flexibility, common open space must be provided and original natural features must be maintained as much as possible.⁵⁹³ PRDs, due to their non-conventional nature, are subject to their own rigorous approval and oversight procedures.⁵⁹⁴

Single Family Cluster Option

While the DCW Zoning Ordinance largely supplants the County-wide “Subdivision Design Requirements” Article,⁵⁹⁵ the watershed ordinance does adopt the County standards for

⁵⁸⁸ See generally Article 6, § 157.067.

⁵⁸⁹ See, e.g. § 157.067(B).

⁵⁹⁰ See, e.g., § 157.067(C) and (L).

⁵⁹¹ § 157.067(F).

⁵⁹² § 157.067(H).

⁵⁹³ § 157.067(C).

⁵⁹⁴ § 157.067(M)(1)-(10).

⁵⁹⁵ Chapter 159, Article 3, § 159.025(B); see generally Article 3.

the “single family cluster” option.⁵⁹⁶ Similar in intent to a PRD, the cluster option reduces the minimum residential lot size requirements, in exchange for less environmentally and economically consumptive forms of development.⁵⁹⁷

Cluster developments in the DCW must meet size restrictions and open space preservation requirements, according to a table provided in the ordinance.⁵⁹⁸ The cluster development must also serve a demonstrable valid “public purpose,” such as permanent preservation of valuable open space.⁵⁹⁹ The open space must be able to be used for prescribed purposes and meet specific design standards.⁶⁰⁰ The DCL ordinance also requires specific administrative procedures to obtain approval of a cluster development.⁶⁰¹

Commercial Campgrounds

Commercial campgrounds of any kind must operate solely for transient or vacationing customers.⁶⁰² As such, campsites, which include RV parking spaces, may only be rented by the day or week, and no one person may remain in one for more than 60 days in any 6 month period.⁶⁰³

Campsite design standards are as follows:

1. the minimum width of RV campsites is 35 feet;

⁵⁹⁶ Article 6, § 157.073(B)(1); *see generally* 159.030.

⁵⁹⁷ *See* § 159.030(A)(1).

⁵⁹⁸ § 157.073(C).

⁵⁹⁹ § 159.030(C).

⁶⁰⁰ § 159.030(E).

⁶⁰¹ § 159.073(B)(2)-(4).

⁶⁰² § 157.068(A).

⁶⁰³ § 157.068(B)(8).

2. the average campsite density may not exceed 10 per acre, with a maximum density of 15 for any one acre;
3. campsites must be 75 feet from any road right-of-way that abuts the campground and 100 feet from any other boundary line;
4. there must be 25 feet between every campsite and any road, common parking area or other common area within the campground;
5. road design must minimize congestion and hazards at entrances and exits; and
6. no campsite may have direct vehicular access onto a public road.

Commercial Resorts

Commercial resort facilities, like mobile home parks and campgrounds, have their own setback, minimum size requirements, and similar restrictions. Resort developments must meet the following requirements:⁶⁰⁴

1. resort sites must be at least 20 acres, with direct vehicular access to a state or county highway;
2. no building may be erected within 100 feet of any boundary line;
3. the resort must have an office and lobby;
4. the total ground floor area may not cover more than 35% of the resort site, and no eating area may cover more than 10% of the site;
5. there may be no more than one sleeping space for every 2,000 square feet of the site, and each sleeping area may not be less than 250 square feet, including bathroom and closet space;

⁶⁰⁴ § 157.069(A)-(B).

6. distances between buildings may not be less than 25 feet, or 15 feet if there is no driveway;
7. there must be at least one parking space per sleeping area that is no more than 300 feet away, per sleeping area;
8. there must be one parking space for one for every 100 square feet of eating area space and one for every 1.5 employees at peak periods; and
9. off-road parking areas must be paved and at least 50 feet away from property lines, and at least 30 feet away from sleeping areas if they serve an eating area.

Development with Access to DCL and other Public Lands

Residential property with either a “common use area” adjoining DCL or other public land, or with the right to use a point-of-entry to such land must comply with additional zoning requirements.⁶⁰⁵ These regulations do not supplant DNR requirements, including buffer strip permits.⁶⁰⁶ Every such development must have a “common use area” bounded by a right-of-way line or by a property line of the public land (the “common property line”).⁶⁰⁷ That common use area must also be bounded by a right-of-way or property line generally parallel to and at least 25 feet away from the common property line.⁶⁰⁸ Any access to the nearest road must be screened by approved materials, such as vegetation.⁶⁰⁹

⁶⁰⁵ § 157.070.

⁶⁰⁶ § 157.070(E).

⁶⁰⁷ § 157.070(A).

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

In the LR1 or LR2 zoning districts, the length of the common property line must be at least:

1. 100 feet if only one lot or dwelling may use the common use area;
2. 200 feet if there are 8 or fewer lots or dwellings that may use the common area; or
3. 300 feet if there are 20 or fewer lots or dwellings that may use the common area.

The common property line must be increased by 15 feet for every lot or dwelling over 20.⁶¹⁰

In the TR and TC zoning districts, the common property line length must be at least 75 feet for 3 or fewer lots or dwelling units, or at least 150 feet for ten or fewer. The line must increase by 10 feet for every dwelling or lot above 10.⁶¹¹

Office and Other Trailers

Office trailers and other similar types of trailers may only be used for construction or for temporary real estate office purposes for the sale of a property. They may never be used housing units.⁶¹²

Group Homes

Group homes, defined generally as dwellings for the purpose of providing special care,⁶¹³ may only house a maximum of 8 unrelated persons for whom care is being provided,⁶¹⁴ and a maximum of 3 caregivers may work there who do not live there.⁶¹⁵ At least one off-street parking

⁶¹⁰ § 157.070(B).

⁶¹¹ § 157.070(C).

⁶¹² § 157.074.

⁶¹³ See Article 2, § 157.007(B), definition of “group home.”

⁶¹⁴ § 157.075(C).

⁶¹⁵ § 157.075(G).

space must be provided for each employee during peak periods.⁶¹⁶No sign may identify the facility,⁶¹⁷ and the home must have a similar appearance to surrounding dwellings if in a residential zoning district.⁶¹⁸

Outdoor Lighting of Commercial or Industrial Uses

Outdoor lighting of industrial and commercial sites must be diffused by a cover to eliminate direct visibility of the light from public roads or dwellings. Light pollution affecting other properties must be prevented by directing, shielding, and containing the light on the lot, and light may not shine into the eyes of motorists.⁶¹⁹

Design Standards in TC, TR, and GC Zoning Districts

In order to maintain the visual quality in town center, town residential, and general commercial districts for the overall benefit of the entire area, any new non-residential buildings or sites in those zones must adhere to general design standards (which are not, however, intended to dictate any particular style, design, or material).⁶²⁰ Buildings must be of high quality material that is compatible with the materials used in the surrounding architecture, with no more than 60% of any building façade comprised of metal siding, if visible from a public road.⁶²¹ If any sides of a building are visible from a road or public area, they must be built of the same quality, material, and style as the front of the building.⁶²² Roofs must resemble those in the area as much

⁶¹⁶ § 157.075(D).

⁶¹⁷ § 157.075(I).

⁶¹⁸ § 157.075(H).

⁶¹⁹ § 157.076.

⁶²⁰ § 157.078(A).

⁶²¹ § 157.078(C)(1).

⁶²² § 157.078(C)(2).

as possible, and flat roofs are generally not permitted.⁶²³ Businesses on lakefront lots must maintain, if feasible, pedestrian access to the buffer strip and walkways or seating areas with views of the lake and adjacent to the buffer strip.⁶²⁴ Commercial uses must be designed to provide safe and convenient pedestrian access between parking, sidewalks, and other non-residential buildings.⁶²⁵

Transient Vacation Rental Units

Vacation rental units in the Deep Creek watershed must also meet several requirements.⁶²⁶ One off-street parking space must be provided for each bedroom, or for every 1.5 bedrooms if part of a larger complex that already has at least 20 parking spaces.⁶²⁷ A bear-proof trash container must be provided, and be at least 5 feet from side lot lines if in a front or side yard,⁶²⁸ and weekly trash collection must be provided.⁶²⁹ All living facilities must be located in the primary structure, with accessory buildings limited to storage, game room, or similar secondary uses.⁶³⁰ For a proposed large unit of 6 to 8 bedrooms, a relevant professional must first evaluate such unit's overall effect on and trend in the proposed neighborhood.⁶³¹

⁶²³ § 157.078(C)(4).

⁶²⁴ § 157.078(D).

⁶²⁵ § 157.078(E).

⁶²⁶ § 157.078.

⁶²⁷ § 157.078(B).

⁶²⁸ § 157.078(C).

⁶²⁹ § 157.078(D).

⁶³⁰ § 157.079(F).

⁶³¹ See Article 6, § 157.079(G).

Required Off-Road Parking Spaces

Many building or land uses are required to have a certain number of off-road parking spaces.⁶³² All requirements are specified in an easy to use table, according to land use category.⁶³³

All spaces must be within 400 feet of the associated use.⁶³⁴ Provisions exist where the use of parking spaces is shared across multiple uses, subject to the condition that such use does not significantly overlap and, thus, compete for the shared spaces.⁶³⁵

Parking lots and spaces must meet minimum dimension, design, and safety standards.⁶³⁶ Permitted boat launch areas must provide a minimum of 20 spaces for vehicles with trailers attached.⁶³⁷

Loading Areas

Any permitted use requiring truck loading and unloading space must provide sufficient area to ensure that no loading vehicle stands in or projects into any public road (during normal operations).⁶³⁸

Sign Regulations

Signs are extensively regulated in the DCW.⁶³⁹ Except for on-premises signs smaller than 2 square feet, temporary signs smaller than 6 feet, and government signs, most signs require a

⁶³² Article 7, § 157.090.

⁶³³ § 157.090(A)-(F).

⁶³⁴ § 157.090(G).

⁶³⁵ § 157.090(E).

⁶³⁶ § 157.092.

⁶³⁷ § 157.092(I).

⁶³⁸ § 157.093(A).

⁶³⁹ Article 8, § 157.105-113.

permit.⁶⁴⁰ If attached to a building, no sign may exceed 3 feet above the roof or project out more than 14 inches.⁶⁴¹ If not attached to a building, a sign may not exceed 20 feet above the ground, though special exceptions may be granted, subject to certain restrictions.⁶⁴² Lighting of signs may not create light pollution onto a public road or residential area, and no flashing or rotating illumination is allowed.⁶⁴³

Signs larger than 18 square feet must be set back at least 10 feet from road rights-of-way if less than 10 feet in height, or have a 20 foot setback if higher than 10 feet; however, these setbacks do not apply to subdivision signs on private roads, or to on-premises signs in the TC and GC zones along state highways.⁶⁴⁴ Special provisions apply to LED, LCD, and scrolling message signs.⁶⁴⁵

Signs permitted as accessory uses in the “Table of Use Regulations”⁶⁴⁶ are required to be located on the same lot as the permitted use.⁶⁴⁷ Signs may also be subject to restrictions depending upon the permitted use and the nature of the sign.⁶⁴⁸

⁶⁴⁰ § 157.107(A).

⁶⁴¹ § 157.109(A).

⁶⁴² § 157.109(B).

⁶⁴³ § 157.109(D).

⁶⁴⁴ § 157.109(E).

⁶⁴⁵ § 157.109(F).

⁶⁴⁶ Article 3, § 157.024; *see, e.g.*, 157.024(E)(22)(a).

⁶⁴⁷ § 157.112(A).

⁶⁴⁸ § 157.112(B)(1)-(7).

⁶⁴⁹ § 157.024.

“Off-premises” signs, which direct a person to a property other than that on which the sign is placed, if permitted by the “Table of Use Regulations,”⁶⁴⁹ have restrictions, depending on whether they are directional signs,⁶⁵⁰ advertising signs,⁶⁵¹ or temporary signs.⁶⁵²

Nonconforming Uses

Article 9 of the DCW Zoning Ordinance addresses lots, structures, and uses that existed prior to the adoption of the Ordinance. The provisions of Article 9 regulate how nonconforming uses, lots, and structures are to be determined, how or if they may be extended or enlarged, how and if they may be restored when damaged, and determines how or if they may be changed or adjusted.

3. Subdivision Regulation

The approval, siting, and design standards of County subdivisions is extensively regulated to ensure their “orderly and efficient integration” and to meet a host of other public welfare and public planning goals.⁶⁵³ Indeed, more than 40 percent of the subdivisions built in Garrett County between 1986 and 1996 were in the DCL area.⁶⁵⁴ The subdivision regulations apply to all County subdivisions, and to the roads and sewer and water mains associated with

⁶⁵⁰ § 157.113(B).

⁶⁵¹ § 157.113(C).

⁶⁵² § 157.113(D).

⁶⁵³ See § 159.002, “Purposes.”

⁶⁵⁴ See <http://www.dnr.state.md.us/publiclands/dcreport.asp#jaa>

⁶⁵⁵ § 159.003 (A) & (B).

them.⁶⁵⁵ The “Subdivision Design” standards do not apply in the DCL watershed, which has its own subdivision design standards.⁶⁵⁶

Recent legislation, entitled The Sustainable Growth and Agricultural Preservation Act of 2012, has imposed a dramatic impact on local subdivision regulations by severely limiting the number of new lots that may be developed with septic systems on parcels of land that are primarily devoted to agriculture or forest land cover. The new State law limits development to a maximum of seven new lots utilizing septic systems as a means of sewage disposal on all parcels located in TIER 4 areas as shown on the Tier Mapping adopted by the Board of County Commissioners on December 4, 2012. (See <http://garrettcounty.org/planning-land-development/comprehensive-planning>)

a. Introduction

The County Subdivision Ordinance provides for a broad category of requirements that apply in the Deep Creek watershed. The multi-stage plat submission process has a variety of requirements.⁶⁵⁷ Minor subdivisions and lot line adjustments are afforded an Article,⁶⁵⁸ as are plat recording requirements⁶⁵⁹ and the infrastructure funding and development guarantees required of subdivision developers.⁶⁶⁰ Design standards for roads, water supply, sidewalks, road

⁶⁵⁶ See generally *supra* § III, B, 3

⁶⁵⁷ Chapter 159, Articles 4-6.

⁶⁵⁸ Chapter 159, Article 7.

⁶⁵⁹ Chapter 159, Article 9.

⁶⁶⁰ Chapter 159, Article 8.

signs,⁶⁶¹ mobile homes and mobile home parks are subject to specific regulations.⁶⁶² There are exemptions to the requirements of the Subdivision Ordinance relating to large lots not intended for more than one dwelling, merged lots that will never be resold as individual lots, and lots with no buildings.⁶⁶³

b. Major and Minor Subdivisions

The regulations often distinguish between minor and major subdivisions. Minor subdivisions are generally lot line adjustments or subdivisions of no more than 5 new residential lots that do not require an extended or new road.⁶⁶⁴ However, if six or more new lots are approved as minor subdivisions from the same parent tract within the previous three years, it is deemed to be a “major subdivision.”⁶⁶⁵ Major subdivisions are any subdivision other than a minor subdivision.⁶⁶⁶

c. Plat Requirements

Detailed maps of proposed and approved major subdivisions (“plats”) are required to be submitted to the Subdivision Administrator,⁶⁶⁷ in a multi-stage process: the sketch plat (which is

⁶⁶¹ Chapter 159, Article 10.

⁶⁶² Chapter 159, Article 11.

⁶⁶³ § 159.004.

⁶⁶⁴ Chapter 159, Article 2, “Definitions.”

⁶⁶⁵ *Id.*

⁶⁶⁶ *Id.*

⁶⁶⁷ See generally [Garrett County Subdivision Administration “Checklists & Forms.”](#)

optional),⁶⁶⁸ the preliminary plat,⁶⁶⁹ and the final plat.⁶⁷⁰ Minor subdivisions require similar, although much simplified, procedural requirements.⁶⁷¹

Preliminary plats are the relatively basic plats that display the design and layout of a proposed subdivision.⁶⁷² Copies must be distributed at least 21 days before a regular Planning Commission meeting, to the Commission and other entities such as the Health Department and the County Engineer.⁶⁷³ The plat itself must meet several drafting requirements,⁶⁷⁴ and it must include:

1. general, natural, and man-made features;⁶⁷⁵
2. the proposed layout;⁶⁷⁶
3. the utility plan;⁶⁷⁷ and
4. the road plan profiles.⁶⁷⁸

This same information must also be submitted in the final plat.

⁶⁶⁸ Chapter 159, Article 4.

⁶⁶⁹ Chapter 159, Article 5.

⁶⁷⁰ Chapter 159, Article 6

⁶⁷¹ Chapter 159, Article 7.

⁶⁷² § 159.055.

⁶⁷³ § 159.056(B).

⁶⁷⁴ § 159.057(B).

⁶⁷⁵ § 159.057(C)-(E).

⁶⁷⁶ § 159.057(F).

⁶⁷⁷ § 159.057(G).

⁶⁷⁸ § 159.057(H).

The final plat, which must be submitted within 10 years of preliminary plat approval,⁶⁷⁹ is far more extensive, as it specifies the exact dimensions of the lots and associated measurements like rights-of-way and easements.⁶⁸⁰ The final plat must also demonstrate compliance with all local, state, and federal regulations.⁶⁸¹ In addition to having the same requirements as the preliminary plat,⁶⁸² the final plat must also show any revisions.⁶⁸³ The extensive supporting documentation includes any deed restrictions or agreements, and evidence of approved stormwater management plans.⁶⁸⁴ While not required with the final plat, before the subdivision may be recorded, utility agreements and proof of required permits must be submitted as well.⁶⁸⁵

Once final plats are approved, there are additional requirements for the recording of the approved final plat (the “record plat”) with the Clerk of Circuit Court.⁶⁸⁶ The record plat itself has format requirements similar to those of the final plat.⁶⁸⁷

d. Infrastructure Improvements Guarantees

To ensure that necessary or promised utility improvements (such as water lines and roads) associated with proposed subdivisions are completed, the County requires developers to guarantee infrastructure improvements, generally in the form of a bond or letter of credit (a

⁶⁷⁹ § 159.056(F).

⁶⁸⁰ § 159.069.

⁶⁸¹ *Id.*

⁶⁸² § 159.072(A)(5).

⁶⁸³ § 159.072(C)(1).

⁶⁸⁴ § 159.072(C).

⁶⁸⁵ § 159.072(D).

⁶⁸⁶ Article 9.

⁶⁸⁷ *Id.*

“Bond”).⁶⁸⁸ The Planning Commission is granted authority to condition plat approval on receipt of a bond that assures the developer will either install all required infrastructure improvements before any lot is sold, or guarantees the improvements will be made once lots are sold.⁶⁸⁹ Such Bonds may also be staged, across successive phases of development.⁶⁹⁰

Bonds may also be required for public water or sewer systems to which the developer plans to connect.⁶⁹¹ Any Bond or other financial guarantee made by a developer must be secured as specified by the County.⁶⁹² Any such Bond can be released only after a required inspection and approval process.⁶⁹³

Remedies are provided in the event that guaranteed improvements are not installed or the developer goes bankrupt.⁶⁹⁴ The Ordinance grants the County Commission power to enforce any Bond posted as an improvement guarantee.⁶⁹⁵ These powers include seizing lots or escrow funds, and non-release of performance Bonds.⁶⁹⁶

e. Design Standards and Required Improvements

The Subdivision Ordinance sets minimum design standards for a subdivision approval⁶⁹⁷ and provides the Planning Commission with authority, in its discretion, to increase the standard if

⁶⁸⁸ Article 8, “Improvements Guarantees.”

⁶⁸⁹ § 159.090(B).

⁶⁹⁰ § 159.090(C).

⁶⁹¹ § 159.090(H).

⁶⁹² § 159.090(I).

⁶⁹³ § 159.091.

⁶⁹⁴ § 159.092.

⁶⁹⁵ § 159.092.

⁶⁹⁶ § 159.092(1)(a).

⁶⁹⁷ Article 10.

it deems it necessary for the public welfare.⁶⁹⁸ Specific design standards are set for roads, driveways, sewage, water supply, utilities, sidewalks, trees, and rear lots abutting major roads.⁶⁹⁹

f. Subdivision Road Planning

All new subdivision lots have road design standards that assure safe and permanent access to public or approved private roads⁷⁰⁰ and there are additional design, legal, and maintenance burdens if subdivisions are to be accessed from private roads.⁷⁰¹ Long-term road planning must be addressed in new subdivisions by including “stub roads” for potential future extension, as well as additional width for future utility rights-of-way.⁷⁰² The Planning Commission may require certain traffic layouts, if it deems doing so would improve traffic congestion and safety.⁷⁰³

Road intersections have specific design requirements: roads must intersect at right angles whenever possible, no more than two roads may intersect at one point, and proposed roads must be aligned with roads located across pre-existing roads when feasible.⁷⁰⁴ All new subdivision roads must have final design features to provide drainage,⁷⁰⁵ have minimum intersection sight distances, as well as required cul-de-sac or turnaround requirements.⁷⁰⁶

⁶⁹⁸ § 159.110(A).

⁶⁹⁹ *See generally* § 159.111- §159.123.

⁷⁰⁰ § 159.111(A).

⁷⁰¹ § 159.111(A)(3) & (B).

⁷⁰² § 159.111(C).

⁷⁰³ § 159.111(E).

⁷⁰⁴ § 159.111(D).

⁷⁰⁵ § 159.111(H)

⁷⁰⁶ § 159.111(I)-(J).

New roads intended to be turned over to the County or to the State must meet those receiving entities' road standards. If the road is intended to remain private it must, nonetheless, meet certain designs and technical requirements, as well.⁷⁰⁷ These private road requirements include minimum rights-of-way widths, minimum cartway widths, road pavement construction standards, maximum road slopes, and minimum sight distances.⁷⁰⁸

The Planning Commission is authorized to require traffic impact studies at the recommendation of the Planning Director or County Engineer for large subdivisions or for smaller subdivisions that might have a particular traffic impact.⁷⁰⁹ Any required study must be conducted by a professional,⁷¹⁰ and the applicant is responsible for any required improvements dictated by that study.⁷¹¹

g. Subdivision Driveways

Driveways must have a minimum width of 10 feet, and require a permit for access onto a State or County road. Slopes are generally limited to a maximum of 10% for the first 20 feet of driveway. Driveway entrances must be designed to maximize sight distances of oncoming traffic.⁷¹²

⁷⁰⁷ § 159.111(F).

⁷⁰⁸ § 159.111(G)(1)-(7).

⁷⁰⁹ § 159.112(A).

⁷¹⁰ § 159.112(D).

⁷¹¹ § 159.112(H).

⁷¹² § 159.113.

h. Subdivision Sewage

County and State sewage requirements also apply to all sewage systems, whether central or on-site,⁷¹³ and located within a subdivision. The Sanitary District is given oversight of subdivision central sewage systems that connect to their sewage service area.⁷¹⁴

i. Subdivision Water Supply

On-lot or central water must serve all subdivision lots, and must meet all County and State regulations.⁷¹⁵ The Planning Commission has the authority to require any subdivision to be connected to a central water supply system if it deems it feasible and desirable to do so, and any such extension must meet the criteria of the larger system.⁷¹⁶ Installation of fire hydrants may be mandated by the Planning Commission in a subdivision served by a public water system, to ensure a minimum 600 feet proximity to all buildings.⁷¹⁷

j. Subdivision Utilities and Easements

All electric and telephone lines must be extended by the developer to each lot prior to that lot's sale, and all such extensions must meet the current standards of the utility.⁷¹⁸ Utility easements must be acquired according to the County's requirements, adhering to minimum separation distances, and be located along the sides of lots, when practical.⁷¹⁹

⁷¹³ § 159.115(A) & (C).

⁷¹⁴ § 159.115(B).

⁷¹⁵ § 159.116(A).

⁷¹⁶ § 159.116(B).

⁷¹⁷ § 159.116(D).

⁷¹⁸ § 159.117(A).

⁷¹⁹ § 159.117(B).

k. Subdivision Sidewalks

The Planning Commission or Director has the right to require sidewalks along road frontages abutting or within a subdivision.⁷²⁰ Installation is the responsibility of the applicant, and must meet AASHTO design standards.⁷²¹

l. Subdivision Tree Guidelines

While not strictly mandatory, the County Code encourages the maximum protection of trees during construction. The Subdivision Ordinance recommends measures that avoid damage of tree trunks, minimize tree cutting, avoid root compaction, and keep grade level around trees within 6 inches of its original state.⁷²²

m. Subdivision Buffers in Rear Lots

If the rear yard of a lot of less than two acres that directly abuts an arterial road or expressway, the rear yard must include a 10 foot wide planting strip along the back, with no access across it permitted. The strip must include evergreen plantings and shade trees, with any fencing placed on the inside of the plantings.⁷²³

n. Subdivisions Along Scenic Byways

Protecting the viewshed of the State's "Mountain Maryland Scenic Byway,"⁷²⁴ which travels through the DCW, along portions of 219, 495, State Park Road, Glendale Road, Mayhew

⁷²⁰ § 159.118(A).

⁷²¹ § 159.118(B)-(C).

⁷²² § 159.120.

⁷²³ § 159.121.

⁷²⁴ See generally [Maryland Scenic Byways](#), at 19.

Inn Road, Swallow Falls Road, and Herrington Manor Road,⁷²⁵ is the focus of the Subdivision Ordinance’s “Development Abutting Scenic Byways” section.⁷²⁶ Subdivisions along scenic byways shall, ‘to the greatest extent possible’ locate lots near existing tree lines or forests, or behind natural topographic features.⁷²⁷ Subdivisions must also limit the removal of existing hedgerows, walls, and trees next to roadways, and are required to plant trees to screen new development, unless to do so would block scenic views.⁷²⁸ The county works with the developer to implement these practices when possible.

4. Garrett County Sensitive Areas Ordinance

While Garrett County does not have county-wide zoning, the Sensitive Areas Ordinance⁷²⁹ has certain provisions that seek to engage in long-term land use planning⁷³⁰ by protecting the environment⁷³¹ and preserving natural features that make Garrett County unique.⁷³² While the Ordinance may not necessarily affect every, or even most, land uses in the County, every subdivision and building permit application is subject to scrutiny under the Ordinance.⁷³³ The County has adopted Generalized Sensitive Area Maps in compliance with the Ordinance and to assist in applying its requirements.⁷³⁴

⁷²⁵ *Id.* and § 159.123(A).

⁷²⁶ § 159.123.

⁷²⁷ § 159.123(B)(1).

⁷²⁸ § 159.123(B)(2).

⁷²⁹ Chapter 156, *see generally* [Sensitive Areas Map](#).

⁷³⁰ *See* § 156.01(B)(1) & (5)

⁷³¹ *See* § 156.01(B)(2) & (4).

⁷³² *See* § 156.01(B)(3).

⁷³³ § 156.02.

⁷³⁴ § 156.10(E); *see* [Map 1](#) and [Map 2](#).

The primary realm of development to which the Ordinance applies are:

1. development on steep slopes;⁷³⁵
2. stream buffer areas;⁷³⁶
3. areas with known rare, endangered, or threatened species;⁷³⁷
4. source water protection areas;⁷³⁸ and
5. land along roads.⁷³⁹

The Ordinance also incorporates regulations relating to floodplain management, sediment and erosion control, and wetlands.⁷⁴⁰

a. Steep Slopes

If a steep slope over 30% might be affected by grading or construction, a site plan must be submitted that designates the total area that will be graded.⁷⁴¹ New buildings and/or parking areas, with a few exceptions in steep slopes,⁷⁴² will be permitted only if requirements of the Ordinance are met, including professionally prepared grading plans.⁷⁴³ Regrading land is not permitted to evade the Ordinance.⁷⁴⁴

⁷³⁵ § 156.04.

⁷³⁶ § 156.05.

⁷³⁷ § 156.06.

⁷³⁸ § 156.09.

⁷³⁹ § 156.12.

⁷⁴⁰ § 156.07-08.

⁷⁴¹ § 156.04(A).

⁷⁴² § 156.04(C) & (D).

⁷⁴³ § 156.04(B).

⁷⁴⁴ § 156.04(F).

b. *Stream Buffers*

A stream buffer generally extends to the area 25 feet from the top of the bank of the stream.⁷⁴⁵ In the areas designated as “growth areas,”⁷⁴⁶ no new building or paving or stone surface may be placed in a stream buffer.⁷⁴⁷ In areas not designated as a growth area, the stream buffer is extended to 50 feet.⁷⁴⁸ There are certain exceptions for the expansion of buildings⁷⁴⁹ and for certain paved or stone surfaces.⁷⁵⁰ To minimize grading within the stream buffer the Ordinance requires a professional grading plan.⁷⁵¹

c. *Rare, Endangered, and Threatened Species*

No subdivision plat or building permit may be approved if the development would adversely affect the known habitat of a federally-designated rare, threatened, or endangered species, until federal approval of such development and all related documents have been provided.⁷⁵² If the affected species is designated by the State of Maryland, the Department of Planning and Land Development will initiate a referral process between the applicant and the DNR.⁷⁵³

⁷⁴⁵ § 156.

⁷⁴⁶ See http://garrettcountry.org/resources/planning-land-development/pdf/Sensitive%20Areas/Sensitive_Areas1_002.pdf.

⁷⁴⁷ § 156.05(A), (B), & (D).

⁷⁴⁸ § 156.05(A).

⁷⁴⁹ § 156.05(C).

⁷⁵⁰ § 156.05(D)(1)-(4).

⁷⁵¹ § 156.05(E).

⁷⁵² § 156.06(B).

⁷⁵³ § 156.06(C).

d. Source Water Protection Areas

Building permits, zoning permits, site plans, or subdivision plats cannot be approved in County-designated source water protection areas (SWPA)⁷⁵⁴ without first meeting certain requirements.⁷⁵⁵ The maximum impervious surface area of any lot within a SWPA is 50%.⁷⁵⁶ No hazardous substance storage tank may be located within 500 feet of the water supply system well.⁷⁵⁷ If the property cannot accommodate the 500 foot restriction, a storage tank must be placed above ground with additional protections.⁷⁵⁸

Certain uses are prohibited within SWPAs, such as junk yards, livestock pens, and bulk storage or mixing of fertilizers or pesticides.⁷⁵⁹ Pesticide use beyond normal household use must be applied in strict conformity with their labels and any relevant law.⁷⁶⁰

Subdivision plats must delineate the SWPA, situate open space in the SWPA if feasible, and ensure that every lot's eventual development can comply with the 50% impervious surface limit.⁷⁶¹

⁷⁵⁴ See http://garrettcountry.org/resources/planning-land-development/pdf/Sensitive%20Areas/Sensitive_Areas1_002.pdf

⁷⁵⁵ § 156.09(C).

⁷⁵⁶ § 156.09(C)(1).

⁷⁵⁷ § 156.09(C)(2).

⁷⁵⁸ § 156.09(C)(3).

⁷⁵⁹ § 156.09(C)(4).

⁷⁶⁰ § 156.09(D).

⁷⁶¹ § 156.09(F); see 156.09(C)(1).

e. Building Prohibition Near Roads

No new building in the County may be built or expanded within 20 feet of the right-of-way of a non-alley public road or within 20 feet of the cartway⁷⁶² of a non-alley private road.⁷⁶³

5. Sewage Regulations

DCL Wastewater Treatment Plant, owned and operated by the Garrett County Sanitary District, Inc.,⁷⁶⁴ serves most of the areas comprising the upper two-thirds of DCL, and plans to expand its service area to the bottom one-third of the lake by 2030.⁷⁶⁵ This proposed expansion, if completed, would address marginal and failing septic systems in Turkey Neck, Sky Valley, Green Glade, and Hazelhurst.⁷⁶⁶ The discharge from the treatment plant, into Deep Creek stream just west of the dam, is regulated under NPDES MD0054348.⁷⁶⁷ The plant meets Biological Nutrient Removal (BNR) standards, which is often considered some of the best technology for reducing nutrient pollution discharges found in the treated water.⁷⁶⁸

On-site sewage needs within the watershed are met through sewage disposal systems, regulated under Subchapter 53 of the County Code and by State law⁷⁶⁹ (which also addresses

⁷⁶² Cartway is “the portion of a road designed for vehicle traffic and any areas intended for on road parking.” See § 159.016(A).

⁷⁶³ § 156.12.

⁷⁶⁴ See Section 5-1.

⁷⁶⁵ 4-9-10.

⁷⁶⁶ 5-19

⁷⁶⁷ See [EPA NPDES permit database](#).

⁷⁶⁸ 5-21

⁷⁶⁹ § 53.01 *et seq.* [http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettc0_md/garrettc0countymarylandcodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:garrettc0_md](http://www.amlegal.com/nxt/gateway.dll/Maryland/garrettc0_md/garrettc0countymarylandcodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:garrettc0_md)

disposal of sewage sludge⁷⁷⁰). The County requires a written “Sewage Disposal Permit” from the County Health Department’s Environmental Health Services⁷⁷¹ (*Despite the name, the Garrett County Health Department is, in fact, a State agency.*) before any construction may begin on any facility that will produce sewage,⁷⁷² or before any alteration may be made that will change the amount of sewage produced.⁷⁷³ An application for the required permit must include complete plans and specifications for the disposal system.⁷⁷⁴

There are several requirements for subsurface disposal systems.⁷⁷⁵ A single-family dwelling unit must have a disposal area of at least 60,000 square feet,⁷⁷⁶ and other dwelling units have minimum requirements of 10,000 square feet for every 100 gallons of estimated sewage generated per day.⁷⁷⁷ For future sewage disposal, a “reserve area” must be set aside of at least twice the area required for the proposed sewage system.⁷⁷⁸ The “reserve area” may not be used or built upon in any way that would impede future sewage system installation.⁷⁷⁹ The Environmental Health Services provide a variety of additional specifications, such as separation requirements and fee totals.⁷⁸⁰

⁷⁷⁰ § 52.01 *et seq.*52

⁷⁷¹ <http://garretthealth.org/departments/Environmental/sewage.htm>

⁷⁷² § 53.01(A)(1).

⁷⁷³ § 53.01(A)(2).

⁷⁷⁴ § 53.01(B).

⁷⁷⁵ § 53.02

⁷⁷⁶ § 53.02(A).

⁷⁷⁷ § 53.02(B).

⁷⁷⁸ § 53.02(C).

⁷⁷⁹ § 53.02(C).

⁷⁸⁰ *See infra* Note 804.

Larger sewage flows, those producing estimated flows of 10,000 gallons or more per day, require secondary treatment prior to discharge.⁷⁸¹ The level of secondary treatment required is based on meeting 5-day biochemical oxygen demand limits and total suspended solids limits.⁷⁸²

On-site disposal systems are prohibited on any property served by the public DCL community sewerage system.⁷⁸³ No disposal area of any on-site system may be closer than 100 feet, measured horizontally, to the 2,462 foot high water elevation of DCL.⁷⁸⁴ Also prohibited is the discharge of any sewage, or treated sewage effluent, into DCL or into any tributary to DCL.⁷⁸⁵

6. Drinking Water Regulations

Most areas in the DCW obtain drinking water from private wells or springs,⁷⁸⁶ which are regulated by the Maryland Department of the Environment (MDE) regulations.⁷⁸⁷ (Springs, however, may not supply water to newly constructed homes.⁷⁸⁸) Well design regulations are designed to avoid pollution from septic systems by addressing parcel size and system design.⁷⁸⁹

The only public drinking water service in the watershed is the McHenry Water Service Area, owned and operated by the Garrett County Sanitary District, Inc. (the “District”).⁷⁹⁰ The

⁷⁸¹ § 53.03.

⁷⁸² § 53.03(A) & (B).

⁷⁸³ § 53.01(A)(3).

⁷⁸⁴ § 53.02(D).

⁷⁸⁵ § 53.04(A).

⁷⁸⁶ Comp Plan 5-1

⁷⁸⁷ COMAR 26.04.04.

⁷⁸⁸ COMAR 26.04.02.02(G)(2).

⁷⁸⁹ COMAR 26.04.04.

⁷⁹⁰ Comp Plan 5.2.1.

District is permitted to draw groundwater well water at 150,000 to 215,000 gallons per day under a MDE water appropriation permit.⁷⁹¹ The McHenry Water Service Area supplies water for properties on the west side of U.S. Route 219 in McHenry, along Marsh Hill Road, and for the Wisp Resort.⁷⁹² Water service areas are designated by the County, and the Comprehensive Plan recommends an additional water service district in Thayerville.⁷⁹³ As of 2014 the Thayerville system has been completed.

In 2007, the Garrett County Source Water Protection Plan (SWPP) delineated a Source Water Protection Area for the public water system in McHenry and other areas of the County.⁷⁹⁴

7. Soil Erosion and Sediment Control

Pursuant to State law,⁷⁹⁵ a grading permit must be obtained from the County Commissioners before any grading or any earth moving that may result in any sedimentation in any drainageway, will move more than 100 cubic yards of earth, or will disturb more than 5,000 square feet of surface area.⁷⁹⁶ There are exceptions for certain agricultural activities and single-family residences on lots of at least two acres.⁷⁹⁷ The grading permit is a prerequisite for a building permit.⁷⁹⁸

⁷⁹¹ *Id.*

⁷⁹² Comp Plan at 4-22.

⁷⁹³ Comp Plan 4.7.1.

⁷⁹⁴ Comp Plan at 5.2.7.

⁷⁹⁵ See above section X.

⁷⁹⁶ § 154.01.

⁷⁹⁷ § 154.01(B).

⁷⁹⁸ § 154.02.

While disturbance of a small area does not require a permit, larger developments have additional requirements, including that a plan be designed by a professional⁷⁹⁹ and be approved by the Garrett Soil Conservation District.⁸⁰⁰ The standards for erosion and sediment control are specified by the Garrett Soil Conservation District.⁸⁰¹

8. Floodplain Regulation

Floodplains receive extensive regulatory attention through the County's Floodplain Management Ordinance.⁸⁰² The floodplain includes the entire shoreline of Deep Creek Lake.⁸⁰³ Because floodplains are typically low-lying areas subject to periodic flooding, the County has determined that it is important to manage floodwaters and groundwater and, therefore, development on and disturbance of the floodplain is limited by County regulation. Generally, on the 100-year floodplain:⁸⁰⁴

1. occupied areas of residential structures are prohibited⁸⁰⁵ (with limited exceptions for non-occupied accessory structures totaling no more than 600 square feet),⁸⁰⁶
2. non-residential structures must be flood-proofed,⁸⁰⁷ and

⁷⁹⁹ *Id.*

⁸⁰⁰ § 154.05.

⁸⁰¹ *Id.*; see <http://garrettscd.org/>

⁸⁰² Article 151.

⁸⁰³ Comp Plan at 4-23.

⁸⁰⁴ An area with a one percent chance of being flooded in any particular year, or which will flood at least once every one-hundred years.

⁸⁰⁵ § 151.056(A).

⁸⁰⁶ § 151.024.

⁸⁰⁷ § 151.056(B).

3. no more than 600 yards of fill material may be placed on the floodplain,⁸⁰⁸ which is permitted only when no other alternative exists.⁸⁰⁹

Because of these floodplain restrictions, any development within the floodplain zone requires a permit.⁸¹⁰ New residences are prohibited in “floodways,”⁸¹¹ and development may not occur in the floodplain where alternate sites exist.⁸¹² The floodplain permitting process has several requirements, including certification that the lowest floor of a structure will be elevated to or above the flood protection level.⁸¹³

The County has some latitude in granting permits within the floodplain. While the Ordinance provides that all buildings “should” be located outside of the floodplain,⁸¹⁴ there are provisions for variances.⁸¹⁵ In the event that any floodplain construction is permitted, there are specific requirements that must be met.⁸¹⁶ Elevated buildings that have enclosed lower areas must have water-equalizing vents and these areas may only be used as a garage, access, or storage area.⁸¹⁷ No existing structure within a floodplain may be substantially improved without elevating the lowest occupied level.⁸¹⁸ All structures must be anchored, and certain items below

⁸⁰⁸ § 151.057(A).

⁸⁰⁹ § 151.092.

⁸¹⁰ § 151.003.

⁸¹¹ § 151.070.

⁸¹² § 151.055

⁸¹³ § 151.003 & § 151.020-024.

⁸¹⁴ § 151.085.

⁸¹⁵ § 151.100-102.

⁸¹⁶ § 151.085-092.

⁸¹⁷ § 151.086(A) & (B).

⁸¹⁸ § 151.072.

the “Flood Protection Level” must be anchored as well.⁸¹⁹ Electric, plumbing, gas, water supply, and sewage facilities have specific floodplain requirements.⁸²⁰ New manufactured homes are prohibited on the floodplain, unless it is replacing an old one, is one foot above the elevation of a 100-year flood⁸²¹ and is anchored according to County regulation.⁸²²

Accessory structures, which are not generally permitted in the floodplain, have grade, design, and anchoring requirements.⁸²³

There are special requirements in the floodplain ordinance relating to subdivisions. For example, developers of subdivisions must demonstrate that the building site and sewage disposal of each lot is outside the 100-year floodplain.⁸²⁴ In any floodplain area, lots may be subdivided only if new lots have buildable sites outside the 100-year floodplain.⁸²⁵

9. Stormwater Regulations

As required by State law,⁸²⁶ the County has extensive requirements and procedures for mitigating stormwater runoff and its adverse effects.⁸²⁷

⁸¹⁹ § 151.088.

⁸²⁰ § 151.089.

⁸²¹ § 151.072(B) & 151.087(A).

⁸²² § 151.087(B).

⁸²³ § 151.090.

⁸²⁴ § 151.022.

⁸²⁵ § 151.058(A).

⁸²⁶ See section X above.

⁸²⁷ Chapter 155.

The Garrett County Stormwater Management Ordinance incorporates the 2000 Maryland Stormwater Design Manual, Volumes I & II, as amended and follows the Stormwater Management Act of 2007 as the official guide for stormwater runoff management. (the Design Manual).⁸²⁸ The County also encourages innovative stormwater management techniques such as tree conservation areas, buffer strips, and rain gardens.⁸²⁹

As mandated by State law, no land may be developed or redeveloped (with a few exceptions⁸³⁰) without submitting⁸³¹ a stormwater management plan to the County Stormwater Management Office for approval.⁸³² The contents of the submission are tightly prescribed by the Design Manual⁸³³ and the ordinance.⁸³⁴ The management plan requires control standards, which emphasize Environmental Site Design before less advanced Best Management Practices may be used.⁸³⁵ Grading and building permits may not be granted until the plan is approved or waived,⁸³⁶ and a performance bond is posted.⁸³⁷

⁸²⁸ § 155.002 and [2000 Maryland Stormwater Design Manual](#).

⁸²⁹ See http://garrettcountry.org/resources/permits-inspections/pdf/2010_Stormwater_Ordinance.pdf

⁸³⁰ § 155.007.

⁸³¹ § 155.040.

⁸³² § 155.005 & 155.009; *see generally* [Garrett County Office of Stormwater Management](#).

⁸³³ *See supra* reference 830,

⁸³⁴ § 155.040(A) & 155.041.

⁸³⁵ § 155.025 & 155.026.

⁸³⁶ § 155.055.

⁸³⁷ § 155.059.

10. County Roads

Garrett County maintains specifications for entrances and culverts built on public roads⁸³⁸ requiring development to comply with the “Guidelines for Residential Entrances and Procedure for Commercial Subdivision, Industrial Access to County Roads.”⁸³⁹

Owners or occupiers of land adjacent to county roads may not leave any debris upon the adjacent road or road ditch or road drain, if the debris, including earth or spoil, has come from that person’s land.⁸⁴⁰

11. Endangered species

Endangered species laws are strict “roadblock” regulations that prohibit the killing of any species listed by the State or the Federal Government as being in danger of becoming extinct. The Federal⁸⁴¹ and State⁸⁴² Governments maintain separate lists and maps of the habitats of Rare, Threatened, and Endangered (RTE) species, including plants and animals.⁸⁴³ Any development, construction, or land use that might harm any of these species is required to be preceded by a thorough consultation with, either the Maryland DNR, the U.S. FWS, or both.

⁸³⁸ Garrett Code, Chapter 90.

⁸³⁹ § 90.02; *see generally* [Guidelines for Residential Entrances to State Highways](#).

⁸⁴⁰ § 90.22.

⁸⁴¹ [U.S. FWS Endangered Species listing](#).

⁸⁴² COMAR 08.03.08.

⁸⁴³ *See generally* [Summary of Maryland Endangered Species](#).

12. Vacation Rental Units Ordinance

Given the popularity of Deep Creek Lake and its environs as a tourist destination, the County subjects vacation rental units⁸⁴⁴ to specific regulation.⁸⁴⁵ Owners of rental units must register the property with the Licensing and Enforcement Officer,⁸⁴⁶ and each unit must obtain a biennially renew and a rental license.⁸⁴⁷ Approval of the Health Department must also be obtained and proper water samples taken.⁸⁴⁸ The Licensing and Enforcement Officer as well as the Health Department are authorized to enter the unit for inspections.⁸⁴⁹

The units themselves must comply with the International Residential Building Code, and be equipped with egress from each bedroom, an emergency exit plan, must be equipped with a fire extinguisher in the kitchen, and smoke alarms in each bedroom and on each floor.⁸⁵⁰ Pools and hot tubs must be maintained by a State-certified operator.⁸⁵¹ Subsequent biennial relicensing is subject to additional, ongoing requirements,⁸⁵² including:

1. prohibitions on commercial use of the rental unit;
2. parking requirements;
3. appropriate noise levels; and

⁸⁴⁴ Defined as a complete living facility under one roof with a maximum of 8 bedrooms, with a maximum occupancy of 2 persons per bedroom, plus 4 persons, and rented for 14 days or less to guests.

⁸⁴⁵ Garrett Code, Chapter 160.

⁸⁴⁶ § 160.03.

⁸⁴⁷ § 160.02(D) & 160.05(A).

⁸⁴⁸ § 160.04(A).

⁸⁴⁹ § 160.03(C).

⁸⁵⁰ § 160.04(C).

⁸⁵¹ § 160.04(A)(4).

⁸⁵² § 160.06.

4. bear proof trash enclosures.

13. Farm Use

In order to protect the viability of land in the County as an agricultural resource, landowners may apply to protect their farmland by easement as an Agricultural Land Preservation District,⁸⁵³ according to State law⁸⁵⁴ and regulation.⁸⁵⁵ If approved as a District, the land may be used for any farm use,⁸⁵⁶ including the operation of farming equipment at any time.⁸⁵⁷ Noise and odors associated with normal farming operations are permitted, as is the sale of farm products produced there.⁸⁵⁸

⁸⁵³ Chapter 153.

⁸⁵⁴ *See generally*, Md. Code Annot., Ag 2-501 to 2-517

⁸⁵⁵ COMAR 15.15.01. to 15.15.03 *and see* http://mda.maryland.gov/about_mda/Pages/md-land-preservation.aspx

⁸⁵⁶ § 153.05(A).

⁸⁵⁷ § 153.05(B).

⁸⁵⁸ § 153.05(C)-(D).