

26.17.04.11

.11 Criteria for Evaluating Applications.

A. The criteria described herein are presented to assist persons in preparing their permit applications and to provide a consistent basis for the Administration's decisions. The Administration shall follow the criteria, unless the Administration determines that the overall public interest requires a variance. In that case, written documentation justifying the variance shall have been submitted by the applicant and will be approved in writing by the Administration, for inclusion in the record. As the basis for approval, denial, or modification of a permit, the Administration shall weigh all public advantages and disadvantages. The administration shall grant the permit, if approval of the project is in the best public interest and the plans for the project provide for the greatest feasible utilization of the waters of the State, adequately preserve the public safety, and promote the general public welfare. The criteria described in § B of this regulation shall apply to all applications. Depending on the purpose of the proposed project, additional specific criteria, as described in subsequent sections, shall also apply.

B. General Criteria.

(1) In all cases where the proposed project is on a stream in the State Scenic and Wild Rivers Program and, in the case of other streams, when necessary, the Administration shall advise the applicant of the outstanding scenic, fish, wildlife, and other recreation values to the citizens of the State. In these cases, the applicant shall consider alternatives less harmful to the stream's value as a scenic and wild resource. Construction of an impoundment upon a scenic or wild river is contrary to the public interest, if that project floods an area of unusual beauty, blocks the access to the public of a view previously enjoyed, or alters the stream's wild qualities.

(2) A dam or other structure impeding the natural flow of a scenic and wild river may not be constructed, operated, or maintained in a scenic and wild river, and channelization may not be undertaken unless specifically approved. The Secretary's approval authority under Natural Article, §8-406, is delegated to the Director of the Water Resources Administration or the Director's designee. The Director or the designee shall consider the comments received from the Department of Natural Resources as well as the standards established in §B(1) of this regulation to protect the river's scenic and wild qualities.

(3) In the evaluation of permit applications, the Administration shall consider the blockage of free passage of fish to be contrary to the public interest, except as provided in Natural Resources Article, §4-502(d), Annotated Code of Maryland.

(4) Category II, III, or IV dams may not be built or allowed to impound water in any location where a failure is likely to result in the loss of human life or severe damage to streets, major roads, public utilities, or other high value property.

(5) Proposed projects that eliminate or significantly and adversely affect aquatic or terrestrial habitat and their related flora and fauna are not in the public interest. At a minimum, all in-stream construction shall be prohibited from October through April, inclusive, for natural trout waters and from March through May, inclusive, for recreational trout waters. In addition, the construction of proposed projects, which may adversely affect anadromous fish spawning areas, shall be prohibited from March 15 through June 15, inclusive. For projects when there is no reasonable alternative to the adverse effects on nontidal wetlands or other aquatic or terrestrial habitat, the applicant shall be required to provide measures to mitigate, replace, or minimize the loss of habitat.

(6) Proposed projects which increase the risk of flooding to other property owners are prohibited, unless that area subject to additional risk of flooding is purchased, placed in designated flood easement, or addressed by other means acceptable to the Administration.

(7) The construction or substantial improvement of any residential, commercial, or industrial structure in the 100-year frequency floodplain and below the water surface elevation of the 100-year frequency flood may not be permitted. Minor maintenance and repair may be permitted. In addition, the modifications of existing structures for flood-proofing purposes may be permitted. Flood-proofing modifications shall be designed and constructed in accordance with specifications approved by the Administration.

C. Flood Control Criteria.

(1) Multiple purpose use shall be preferred over single purpose use.

(2) The proposed project shall achieve the purposes intended.

(3) At a minimum, the proposed project shall provide for a 50 percent reduction of the average annual flood damages.

(4) Flood Control Techniques.

(a) Flood control techniques that shall be considered include:

(i) Relocation;

(ii) Evaluation;

(iii) Flood-proofing;

(iv) Flood control dams;

(v) Levees and dikes;

(vi) Stormwater detention or retention structures;

(vii) Flood warning systems;

(viii) Public acquisition;

(ix) Storm drain and stream maintenance;

(x) Tax adjustment policies;

(xi) Subdivision, zoning, and related ordinances; and

(xii) Other practical methods.

(b) Channelization shall be the least favored flood control technique.

(5) The applicant shall provide a written analysis and financial statement detailing the benefits and costs of the project and identifying the project's beneficiaries. This information shall be made a part of the public record.

D. Agricultural Drainage Criteria.

(1) The Administration shall permit agricultural drainage only to the extent that it provides substantial agricultural benefits.

(2) The design of the proposed channel shall prevent direct over bank flow into the ditch. This may be accomplished with reverse slopes, vegetated buffers, and controlled inlets.

(3) The downstream end of the proposed system shall be truncated as far upstream as possible.

(4) Approved soil conservation district conservation plans shall be properly implemented and maintained.

(5) Measures shall be incorporated in the project to minimize adverse environmental impacts.

E. Variances. If the Administration determines, from the information submitted in conjunction with the application, that the overall public interest requires a variance, the Administration may grant relief from the strict application of the criteria, upon request. All requests for variances shall be considered by the Administration in accordance with the following:

(1) A variance may not be granted for any construction, development, use, or activity that would cause any increase in the 100-year frequency flood elevation unless the Administration finds the variance to be in the best public interest;

(2) If granted, a variance shall involve only the least modification necessary to protect the public interest;

(3) If a variance is granted, the Administration shall notify the applicant in writing that:

(a) The granting of the variance may result in increased premium rates for flood insurance,

(b) These variances may increase the risks to life and property;

(4) Structures, including those involving variances, shall be designed and constructed so as to have the capability of resisting the hydrostatic and hydrodynamic loads and pressures, effects of buoyancy, and other forces associated with at least the 100-year frequency flood event.