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# CRITICAL AREA ORDINANCE REFERENCE GUIDE

## **Purpose**

The purpose of this reference guide is to help counties identify current Critical Area program requirements for appropriation into their local programs.

## **Intent**

In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The decline was, in part, the result of the cumulative effects of human activity that caused increased levels of pollutants, nutrients, and toxins; and from fewer protective land uses such as forest and agricultural land in the Bay region. In 2002, the Atlantic Coastal Bays were added to the Critical Area because they were experiencing a similar decline.

## **Instructions**

This model ordinance may be used as drafted, or as a reference guide to identify specific provisions that must be included within a Critical Area program. Please note the following:

- Where brackets [ ] are noted, be sure to adjust names or specific governing or approval bodies as appropriate.
- This model ordinance contains footnotes throughout to identify specific decision points for a jurisdiction to consider.

Per Natural Resources Article 8-1809(i), a local Critical Area program may not be amended without the approval of the Critical Area Commission. We highly encourage coordination with Critical Area Commission staff during a comprehensive review process. This model ordinance does not represent the entirety of potential options where local adjustments may be appropriate. Working with Commission staff will allow for discussion and consideration of those options.

## Part 1. Definitions.

The following words have the following meanings for the purposes of implementing the Critical Area Program and this ordinance, and the singular always include the plural, and vice versa, except where such construction would be unreasonable.

- (1) “Accessory structure” means a structure that is:
  - (a) Detached from the principal structure;
  - (b) Located on the same lot as the principal structure; and
  - (c) Customarily incidental and subordinate to a principal structure.
- (2) “Addition” means newly constructed area that increases the size of a structure.
- (3) “Afforestation” means the establishment of a tree cover on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.
- (4) Agricultural Best Management Practice.
  - (a) “Agricultural best management practice” means an agronomic, conservation, or pollution control practice, installation, or structure that manages soil loss, nutrients, animal wastes, or agricultural chemicals so as to minimize their movement into State waters.
  - (b) “Agricultural best management practice” includes strip cropping, terracing, cover crops, grass waterways, animal waste management, conservation tillage, riparian buffers, nutrient management, and stream protection practices such as fencing, stream crossings, and remote watering devices.
  - (c) “Agricultural best management practice” does not include a shoreline stabilization measure authorized by the Department of the Environment under COMAR 26.24.04.
- (5) Agriculture.
  - (a) “Agriculture” means an activity related to the production or management of livestock, crops, vegetation, or soil.
  - (b) “Agriculture” includes:
    - (i) Tillage, harvest, fertilization, pest management, cropping, pasturing, or production of an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, and fiber; and
    - (ii) An activity that directly contributes to the production, conversion, processing, storage, or sale of agricultural products primarily generated on-site.
- (6) Anadromous Fish.
  - (a) "Anadromous fish" means a species of fish that spawns in freshwaters by travelling upstream from its primary ocean habitat.
  - (b) “Anadromous fish” includes rockfish, yellow perch, white perch, shad, and river herring.

- (7) “Anadromous fish propagation waters” means a stream that is tributary to the Chesapeake Bay or Atlantic Coastal Bays that has been designated by the Department of Natural Resources where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred.
- (8) “Aquaculture” has the meaning stated in Natural Resources Article, §4-11A-01(b), Annotated Code of Maryland. .
- (9) “Bona fide intrafamily transfer” means a transfer to a member of the owner’s immediate family of a portion of the owner’s property for the purpose of establishing a residence for that family member.
- (10) Buffer.
- (a) Buffer" means an area that:
- (i) Based on conditions present at the time of development, is immediately landward from mean high water of tidal waters, the edge of each bank of a tributary stream, or the landward boundary of a tidal wetland; and
- (ii) Exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.
- (b) "Buffer" includes an area of:
- (i) At least 100 feet, even if that area was previously disturbed by human activity; and
- (ii) Expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.
- (11) Buffer Management Plan.
- (a) “Buffer Management Plan” means a narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will:
- (i) Affect a portion of the Buffer;
- (ii) Alter Buffer vegetation; or
- (iii) Require the establishment of a portion of the Buffer in vegetation.
- (b) “Buffer Management Plan” includes a major Buffer Management Plan, a minor Buffer Management Plan, or a Simplified Buffer Management Plan as described in this ordinance.
- (12) “Bufferyard” means an area at least 25 feet wide, located between development activity and tidal waters, tidal wetlands, or a tributary stream, planted with vegetation consisting of native canopy trees, understory trees, shrubs, and perennial herbaceous plants that is used in Modified Buffer Areas to provide water quality and habitat benefits. This area is to be managed and maintained in a manner that optimizes these benefits.

- (13) "Caliper" has the meaning stated in COMAR 08.13.03.01.
- (14) "Canopy tree" means a tree that, when mature, reaches a height of at least 35 feet.
- (15) "Clearing" means any activity that removes the vegetative ground cover.
- (16) "Cluster development" means a residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.
- (17) Colonial Nesting Water Bird.
- (a) "Colonial nesting water bird" means a species of bird that, for the purpose of nesting, congregates, or colonizes, in relatively few areas.
  - (b) "Colonial nesting water bird" includes egrets, glossy ibises, herons, and terns.
- (18) "COMAR" means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.
- (19) "Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (20) Community pier.
- (a) "Community pier" means a boat docking facility associated with a subdivision or similar residential area, or with condominiums, apartments or other multiple family dwelling units.
  - (b) "Community pier" does not include a private pier or a mooring.
- (21) Comprehensive Plan.
- (a) "Comprehensive plan" means a compilation of policy statements, goals, standards, maps, and pertinent data relative to the past, present, and future trends of the local jurisdiction including its population, housing, economics, social patterns, land use, water resources and their use, transportation facilities, and public facilities, that is prepared by or for the planning board, agency, or office.
  - (b) "Comprehensive plan" includes a general plan and a master plan.
- (22) Conforming.
- (a) "Conforming" means a parcel or lot that meets all Critical Area requirements.
  - (b) "Conforming" does not include a parcel or lot:
    - (i) For which a Critical Area variance is sought or has been issued; or
    - (ii) That is located in the Resource Conservation Area and is less than twenty acres.
- (23) "Conservation easement" means a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources



for future use.

(24) Consolidation.

- (a) "Consolidation" means a combination of any legal parcels of land or recorded, legally buildable lots into fewer parcels or lots.
- (b) "Consolidation" includes any term used by a local jurisdiction for a development application that proposes to combine legal parcels of land or recorded, legally buildable lots into fewer parcels or lots than the number that existed before the application, such as a subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot line adjustment.

(25) Critical Area.

- (a) "Critical Area" means the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d), Annotated Code of Maryland.
- (b) "Critical Area" includes:
  - (i) The initial planning area of the Chesapeake Bay Critical Area consisting of all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;
  - (ii) The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all waters of and lands under the coastal bays and their tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;
  - (iii) Except in accordance with (iv), all water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article;
  - (iv) All water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119, Acts of 2008, where the process of transition from reliance on the State wetlands maps to the Statewide base maps has occurred and these maps were approved by the Commission; and
  - (v) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.

(26) "Deduction" means the total number of growth allocation acres that are necessary for approval of a growth allocation project and, after approval by the Commission, are subtracted from the growth allocation reserves of the local jurisdiction in which the project is located.

(27) "Density" means the number of dwelling units per acre within a defined and measurable area.

- (28) "Developed woodlands" means an area of trees or of trees and understory vegetation that is interspersed with residential, commercial, industrial or recreational development.
- (29) "Developer" means a person who undertakes development activity as defined in this ordinance; or a person who undertakes development activity as defined in the Criteria of the Commission.
- (30) "Development" means any activity that materially affects the condition or use of dry land, land under water, or any structure. "Development" includes redevelopment.
- (31) "Disturbance" means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintenance of an existing grass lawn.
- (32) "Dwelling unit" means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.
- (33) "Energy generating system" has the meaning stated in the Land Use Article, §4-211, Annotated Code of Maryland.
- (34) "Endangered species" means a species of flora or fauna whose continued viability is determined to be in jeopardy, in accordance with the provisions of:
- (a) The federal Endangered Species Act of 1973, 16 U.S.C. §§1531—1544;
  - (b) Natural Resources Article, Title 4, Subtitle 2A or Title 10, Subtitle 2A, Annotated Code of Maryland; or
  - (c) COMAR 08.03.08.
- (35) "Establishment" means the planting or regeneration of native vegetation throughout the Buffer.
- (36) "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the County.
- (37) Fishery Activity.
- (a) "Fishery activity" means a commercial water-dependent fishery operation, including a structure for the packing, processing, canning, or freezing of finfish, crustaceans, or mollusks.
  - (b) "Fishery activity" includes a location where an activity related to a commercial water-dependent fishery operation occurs, such as wholesale and retail sale, product storage, crab shedding, off-loading, shellfish culture, or a shore-based facility necessary for an aquaculture operation.

- (38) "Forest" has the meaning stated in Natural Resources Article, §5-1601, Annotated Code of Maryland.
- (39) "Forest Interior Dwelling Birds" means species of birds that require relatively large forested tracts in order to breed successfully, such as various species of flycatchers, warblers, vireos, and woodpeckers.
- (40) "Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, including timber harvesting, water transpiration, and wildlife habitat.
- (41) "Fully established" means the Buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.
- (42) "Growth allocation" means the number of acres of land in the Critical Area that the County may use, or allocate to municipal jurisdictions to use, to create new Intensely Developed Areas and new Limited Development Areas.
- (43) "Growth allocation envelope" means all of the proposed components of a growth allocation that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.
- (44) Habitat Protection Area
- (a) "Habitat protection area" means an area that is designated for protection:
    - (i) Under Natural Resources Article, §8-1806, Annotated Code of Maryland, regulations adopted under that authority, or a local program; or
    - (ii) By the Secretary of Natural Resources.
  - (b) "Habitat protection area" includes:
    - (i) The buffer as described in COMAR 27.01.01.01B(8);
    - (ii) A nontidal wetland as defined in COMAR 26.24.01.02B;
    - (iii) A habitat of a threatened species as defined in COMAR 27.01.09.03A;
    - (iv) A habitat of an endangered species as defined in COMAR 27.01.09.03A;
    - (v) A habitat of a species in need of conservation as defined in COMAR 27.01.09.03A;
    - (vi) A plant habitat as defined in COMAR 27.01.09.04A;
    - (vii) A wildlife habitat as defined in COMAR 27.01.09.04A; and
    - (viii) Anadromous fish propagation waters as defined in COMAR 27.01.09.05A.
- (45) "Habitat Protection Plan" means a plan that provides for the protection and conservation of the species and habitats identified as Habitat Protection Areas in the

Critical Area. The plan shall be specific to the site or area where the species or its habitat is located and shall address all aspects of a proposed development activity that may affect the continued presence of the species. These include, but are not limited to, cutting, clearing, alterations of natural hydrology, and increases in lot coverage. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be effectively implemented on the specific site.

(46) Hazardous Tree.

(a) "Hazardous tree" means:

- (i) A tree with a structural defect, such as a crack, canker, weak branch union, decay, dead wood, root damage, or root disease, that decreases the structural integrity of the tree and which, because of its location, is likely to fall and cause personal injury or property damage, including acceleration of soil erosion; or
- (ii) Based on its location in the landscape, a healthy tree that, with continued normal growth, will damage an existing permanent structure or significantly increase the likelihood of soil erosion.

(b) "Hazardous tree" does not include a tree for which the likelihood of personal injury, property damage, or soil erosion can reasonably be eliminated or significantly diminished:

- (i) With routine and proper arboricultural practices, such as regular watering, application of fertilizer or mulch, and pruning; or
- (ii) By relocation of property that is likely to be damaged.

(47) "Highly erodible soils" means those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

(48) "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils.

(49) "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter or sibling.

(50) "In-kind replacement" means the removal of a structure and the construction of another structure that is smaller than or identical to the original structure in use, footprint area, width, and length.

(51) "Intensely Developed Area" means an area of at least 20 acres or the entire upland portion of the critical area within a municipal corporation, whichever is less, where: residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include: an area with a housing density of at least four dwelling units per acre; an area with public water and sewer systems with a housing density of more than three dwelling units per acre.

- (52) “Intrafamily transfer” means a transfer to a member of the owner’s immediate family of a portion of the owner’s property for the purpose of establishing a residence for that family member.
- (53) “Invasive species “means a type of plant that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.
- (54) “Land classification” means the designation of land in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance with the criteria adopted by the Commission as an Intensely Developed Area, Limited Development Area, or a Resource Conservation Area.
- (55) “Landward edge” means the limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary stream.
- (56) “Large shrub” means a shrub that, when mature, reaches a height of at least six feet.
- (57) “Legally developed” means all physical improvements to a property that existed before Critical Area Commission approval of a local Program, or were properly permitted in accordance with the provisions of the local Program in effect at the time of construction.
- (58) “Limit of disturbance” means the area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance.
- (59) Limited development area.
- (a) “Limited development area” means an area:
    - (i) That is developed in low or moderate intensity uses and contains areas of natural plant and animal habitat; and
    - (ii) Where the quantity of runoff has not been substantially altered or impaired.
  - (b) “Limited development area” includes an area:
    - (i) With a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
    - (ii) With a public water or sewer system;
    - (iii) That is not dominated by agricultural land, wetland, forest, barren land, surface water, or open space; or
    - (iv) That is less than 20 acres and otherwise qualifies as an intensely developed area under the definition in this Chapter.
- (60) “Living shoreline” means a suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal process, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures, breakwaters, or other natural components.
- (61) "Locally significant habitat" means a plant or wildlife habitat that may not be of

Statewide significance but, in a local jurisdiction's Critical Area program, is considered to be significant in a local or regional context because the habitat contains a species:

- (a) Uncommonly found or of limited occurrence in that area; or
- (b) With an unusually high concentration in that area.

(62) Lot coverage.

- (a) "Lot coverage" means the percentage of a total lot or parcel that is:
  - (i) Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
  - (ii) Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade material.
- (b) "Lot coverage" includes the ground area covered or occupied by a stairway or impermeable deck.
- (c) "Lot coverage" does not include:
  - (i) A fence or wall that is less than one foot in width that has not been constructed with a footer;
  - (ii) A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier;
  - (iii) A wood mulch pathway; or
  - (iv) A deck with gaps to allow water to pass freely.

(63) "Major Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under Part 9 of this Ordinance.

(64) "Major development" means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area Program of a local jurisdiction. This development includes, but is not limited to, airports, power plants, major solar energy generating systems, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities, and any development or project authorized by the Public Service Commission under a Certificate of Public Convenience and Necessity.

(65) "Major solar energy generating system" means an energy generating system that derives energy from the sun to produce more than two megawatts of electricity. Major solar energy generating system includes multiple minor solar energy generating systems that are located on the same parcel that collectively produce more than two megawatts of electricity.

(66) Marina.

- (a) "Marina" means a commercial facility for the mooring, berthing, storing, or securing of vessels.
- (b) "Marina" does not include a community pier, a private pier, or any other noncommercial facility for the docking or storage of vessels.

- (67) "Mean High Water Line" (MHWL) means the average level of high tides at a given location.
- (68) "Minerals" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.
- (69) "Minor Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under Part 9 of this Ordinance.
- (70) "Minor solar energy generating system" means an energy generating system that derives energy from the sun to produce two megawatts or less of electricity. Minor solar energy generating system does not include a small residential accessory solar energy generating system.
- (71) "Minor development" means development of a reduced scale that:
- (a) Causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which the development is located;
  - (b) Is consistent with the local Critical Area program;
  - (c) Does not substantially affect the Critical Area program of the local jurisdiction; and
  - (d) Is not considered by the Commission to be major development, as defined in COMAR 27.02.04.
- (72) "Mitigation" means an action taken to compensate for adverse impacts to the environment resulting from a development activity or a change in land use or intensity.
- (73) Modified Buffer Area.
- (a) "Modified buffer area" means an area of land:
    - (i) Where a pattern of residential, industrial, commercial, or recreational development existed in the first 100 feet of the buffer on December 1, 1985 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical Area; and
    - (ii) That, as part of a local program approved by the Commission, is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions.
  - (b) "Modified buffer area" includes an area referred to by a local jurisdiction as a buffer exemption area, buffer exempted area, buffer modification area, buffer management area, buffer management overlay, buffer modified area, special buffer management area, special buffer area, or any other similar term that has the same substantive meaning as modified buffer area.
- (74) "Native " means indigenous to the physiographic area in Maryland where the planting is proposed.
- (75) "Natural Heritage Area" means any communities of species designated in COMAR

08.02.08.10.

- (76) "Natural regeneration" has the meaning stated in COMAR .08.19.01.01.
- (77) "Natural vegetation" means a plant community that develops in the absence of human activity.
- (78) "Nontidal wetlands" means:
- (a) An area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation;
  - (b) Is determined according to the Federal Manual;
  - (c) Does not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- (79) Nonwater-dependent project.
- (a) "Nonwater-dependent project" means a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands.
  - (b) "Nonwater-dependent project" includes:
    - (i) A dwelling unit on a pier;
    - (ii) A restaurant, a shop, an office, or any other commercial building or use on a pier;
    - (iii) A temporary or permanent roof or covering on a pier;
    - (iv) A pier used to support a nonwater-dependent use; and
    - (v) A small-scale renewable energy system on a pier, including:
      - A. A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;
      - B. A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and
      - C. A wind energy system and its wind turbine, tower, base, or other necessary equipment.
  - (c) "Non-water dependent project" does not include:
    - (i) A fuel pump or other fuel-dispensing equipment on a pier;
    - (ii) A sanitary sewage pump or other wastewater removal equipment on a pier; or
    - (iii) An office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.
    - (iv) A water-dependent facility or activity covered under Part 19 of this ordinance.
- (80) "Offsets" means structures or actions that compensate for undesirable impacts.
- (81) "Open space" means land and water areas retained in an essentially undeveloped



state.

(82) Permanent Disturbance.

- (a) “Permanent disturbance” means a material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity.
- (b) “Permanent disturbance” includes:
  - (i) Construction or installation of any material that will result in lot coverage;
  - (ii) Construction of a deck;
  - (iii) Except under §B(18-2)(b)(iii) of this regulation, grading;
  - (iv) Except under §B(18-2)(b)(ii) of this regulation, clearing of a tree, forest, or developed woodland; and
  - (v) A septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required.
- (c) “Permanent disturbance” does not include a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required

(83) “Person” means an individual, partnership, corporation, contractor, property owner, or any other person or entity.

(84) Pier.

- (a) “Pier” means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure.
- (b) “Pier” does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

(85) “Plant habitat” means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.

(86) “Planting plan” means a narrative, graphic description or plan of an area when plating is required for mitigation, on-site or off-site plantings, or under solar panels.

(87) "Port" means a facility or area established or designated by the State or local jurisdiction for the purpose of waterborne commerce.

(88) “Principal structure” means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.

(89) “Program amendment” means any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a Program refinement.

(90) “Program refinement” means any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use

of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted Program, or that will not significantly affect the use of land or water in the Critical Area. Program refinement may include:

- (a) A change to an adopted Program that results from State law;
- (b) A change to an adopted Program that affects local processes and procedures;
- (c) A change to a local ordinance or code that clarifies an existing provision; and
- (d) A minor change to an element of an adopted Program that is clearly consistent with the provisions of State Critical Area law and all the Criteria of the Commission.

(91) "Project approvals" means the approval of development, other than development by the State or local government, in the Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

(92) "Project area" means the total area within the limits of disturbance inside the Critical Area. Project Area includes a parcel or portions of parcels within the limits of disturbance, whether or not those parcels are contiguous, the components of a solar energy generating system listed in definition #110, and any required roads, internal access ways, transmission infrastructure, fencing or improvements accessory to the solar energy generating system.

(93) "Property owner" means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.

(94) "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.

(95) Reconfiguration.

- (a) "Reconfiguration" means a change of the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lots.
- (b) "Reconfiguration" includes any term used by a local jurisdiction for a development application that proposes to change the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lot that existed before the application, such as a subdivision, lot line adjustment, boundary line adjustment, replatting request, or a revision of acreage to increase density.

(96) "Redevelopment" means the process of developing land which is or has been developed. For purposes of implementing specific provisions of this ordinance, redevelopment (as opposed to new development) means a development activity that takes place on property with pre-development imperviousness (in IDA) or lot coverage (in LDA and RCA) of 15 percent or greater.

- (97) "Reforestation" has the meaning stated in Natural Resources Article §5-1601, Annotated Code of Maryland.
- (98) "Reservation of resource conservation area density rights" means withholding a certain number of density rights that are attributable to a lot or parcel that prevents them from being used for development for a specified period of time.
- (99) "Reservation of Resource Conservation Area Density Rights Agreement" means a legal instrument recorded among the land records and approved by the local jurisdiction, restricting land development within a defined area in the resource conservation area for a specified period of time.
- (100) "Resource Conservation Area" means an area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource conservation areas include areas with a housing density of less than one dwelling per five acres.
- (101) "Resource utilization activities" means any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.
- (102) "Restoration" means the act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.
- (103) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.
- (104) "Road" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body. "Road" does not include a drive aisle or driveway.
- (105) "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.
- (106) "Shoreline stabilization measure" includes:
- (a) A nonstructural shoreline stabilization measure, as defined under COMAR 26.24.01.02; and
  - (b) A structural shoreline stabilization measure, as defined under COMAR 26.24.01.01.
- (107) "Simplified Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under Part 9 of this Ordinance.
- (108) "Small residential accessory solar energy generating system" means an energy generating system that derives energy from the sun to produce electricity to

support the principal use on a residential property on the same lot or parcel as the principal use. Includes an energy generating system that delivers electricity to a power grid and complies with the laws of the State of Maryland.

- (109) “Small shrub” means a shrub that, when mature, reaches a height of up to six feet.
- (110) “Soil conservation and water quality plan” means an agricultural plan approved by a local soil conservation district to minimize soil erosion and the movement of sediment, animal waste, nutrients, or agricultural chemicals into waters of the State.
- (111) Solar energy generating system.
- (a) “Solar energy generating system” means an energy generating system that derives energy from the sun to produce electricity.
  - (b) Solar energy generating system includes:
    - (i) A land use that uses solar collectors, panels, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment to produce electricity; and
    - (ii) Any term used by a local jurisdiction for a solar application that proposes to construct a solar energy generating system such as a solar energy system utility scale, solar energy system utility scale on farms, utility scale solar array, solar power plant, solar energy system large scale, solar energy system medium scale, solar array, power generating facilities, solar facilities, solar energy system grid connected, and solar energy generating facility commercial.
  - (c) Solar energy generating system does not include an energy storage device or facility where the device or facility operates independently of, is separate from, and the primary purpose of which does not include supporting the solar energy generating system within the Critical Area.
- (112) "Species in need of conservation" means a species of fauna determined by the Secretary of Natural Resources to be in need of conservation measures for its continued ability to sustain itself successfully, in accordance with the provisions of:
- (a) Natural Resources Article, Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or
  - (b) COMAR 08.03.08.
- (113) "Steep slopes" means slopes of 15 percent or greater incline.
- (114) Stormwater.
- (a) “Stormwater” has the meaning stated in COMAR 26.17.02.02.
  - (b) “Stormwater” includes runoff associated with:
    - (i) An increase in lot coverage onsite, including all additions to a building, road, or parking lot;
    - (ii) A change in permeability caused by compaction during construction or a modification in contour, including the filling or drainage of a small depression area;

- (iii) Alteration of a drainageway or the regrading of a slope;
- (iv) Destruction of forest; and
- (v) Installation of a collection system to intercept street flow or to replace a swale or other drainageway.

(115) Structure.

- (a) “Structure” means building or construction materials, or a combination of those materials, that are purposely assembled or joined together on or over land or water.
- (b) “Structure” includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, and shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.

(116) Subdivision.

- (a) “Subdivision” has the meaning stated in Land Use Article, §1-101, Annotated Code of Maryland.
- (b) “Subdivision” includes division of a parcel under Natural Resources Article, §8-1808.2, Annotated Code of Maryland, and the creation of a condominium regime under Real Property Article, Title 11, Annotated Code of Maryland.

(117) “Substantial alteration” means any repair, reconstruction, or improvement of a principal structure, with a proposed total footprint is at least 50 percent greater than that of the structure that is the subject of the application.

(118) Surface Mining.

- (a) “Surface mining” means:
  - (i) The breaking of surface soil located in the Critical Area in order to extract or remove a mineral;
  - (ii) An activity or process that is part of the method of extraction or removal of a mineral from its original location in the Critical Area; and
  - (iii) The extraction or removal of sand, gravel, rock, stone, earth, or fill from a borrow pit for the purpose of constructing a road or another public facility.
- (b) “Surface mining” includes:
  - (i) An activity related to the processing of a mineral at the site of extraction or removal;
  - (ii) Extraction or removal of overburden and mining of a limited amount of a mineral when done for the purpose of prospecting, to the extent necessary, for the purpose of determining the location, quantity, or quality of a natural deposit; and
  - (iii) A mining activity.
- (c) “Surface mining” does not include an activity or process that is excluded under the provisions of Environment Article, §15-807, Annotated Code of Maryland, or COMAR 26.21.01.08.

(119) Temporary Disturbance.

- (a) “Temporary disturbance” means a short-term change in the landscape that occurs as part of a development or redevelopment activity.
  - (b) “Temporary disturbance” includes:
    - (i) Storage of materials that are necessary for the completion of the development or redevelopment activity;
    - (ii) Construction of a road or other pathway that is necessary for access to the site of the development or redevelopment activity, if the road or pathway is removed immediately after completion of the development or redevelopment activity and the area is restored to its previous vegetative condition;
    - (iii) Grading of a development site, if the area is restored to its previous vegetative condition immediately after completion of the development or redevelopment activity; and
    - (iv) Locating a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required.
  - (c) “Temporary disturbance” does not include:
    - (i) A septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required; and
    - (ii) A violation.
- (120) "Threatened species" means a species of flora or fauna that appears likely within the foreseeable future to become endangered, including a species determined to be a threatened species in accordance with the provisions of:
- (a) The federal Endangered Species Act of 1973, 16 U.S.C. §§1531—1544;
  - (b) Natural Resources Article, Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or
  - (c) COMAR 08.03.08.
- (121) "Transportation facility” has the meaning stated in Transportation Article, §3-101, Annotated Code of Maryland.
- (122) “Tree” has the meaning stated in Natural Resources Article, §5-1601, Annotated Code of Maryland.
- (123) "Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection {or in accordance with local program procedures approved by the Critical Area Commission}.<sup>1</sup>
- (124) “Understory” means the layer of forest vegetation typically located underneath the forest canopy.
- (125) “Understory tree” means a tree that, when mature, reaches a height of 12 and 35 feet.

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<sup>1</sup> Include the text that appears in brackets if a local program procedure is adopted.

- (126) “Unwarranted hardship” means that without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.”
- (127) “Upland boundary” means the landward edge of a tidal wetland or nontidal wetland.
- (128) Utility Transmission Facility.
- (a) "Utility transmission facility" means a fixed structure that conveys or distributes resources, wastes, or both, including electrical lines, water conduits and sewer lines.
- (b) “Utility transmission facility” does not include a power plant.
- (129) “Vessel” has the meaning stated in Natural Resources Article, §8-701, Annotated Code of Maryland.
- (130) Wash Plant.
- (a) “Wash plant” means a facility where sand or gravel is washed during processing.
- (b) “Wash plant” includes a stockpile, a wash pond, and related washing equipment.
- (131) Water-dependent facility or activity.
- (a) "Water-dependent facility or activity" means a structure or activity that, by reason of its intrinsic nature or operation or because of its association with an industrial, maritime, recreational, educational, aquaculture, or fishery activity, is dependent on the water and requires location al or near the shoreline or in the buffer.
- (b) "Water-dependent facility or activity" includes:
- (i) A port;
- (ii) An intake or outfall structure;
- (iii) A marina, another boat-docking facility, or a structure or activity that is essential to the operation of the water-dependent facility, structure, or activity;
- (iv) A fuel pump or other fuel-dispensing equipment on a pier, a sanitary sewage pump or other wastewater removal equipment on a pier, and an office on a pier for managing marina operations, such as monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations;
- (v) A public beach and any other public water-oriented recreation area; and
- (vi) Any other water-dependent facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.
- (132) "Waterfowl" means a species of birds that frequents and often swims in water,

nests and raises its young near water, and derive at least part of its food from aquatic plants and animals.

- (133) “Waterfowl staging and concentration area” means an area of open water and adjacent marshes where, as documented by the Department of Natural Resources, waterfowl gather during migration and throughout the winter season.
- (134) “Wetland migration area” means an area that will likely be suitable for future wetland establishment in response to a change in sea level.
- (135) "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passageway for wildlife.
- (136) “Wildlife habitat” means a plant community and physiographic features that provide food, water, cover, nesting, and foraging or feeding condition necessary to maintain a population of animals in the Critical Area, as described in COMAR 27.01.09.04.

## **Part 2. Purpose and Goals.<sup>2</sup>**

### **A. Purpose**

The General Assembly enacted the Critical Area Act for the following purposes:

- (1) To establish a resource protection program for the Chesapeake Bay and Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and
- (2) To implement a resource protection program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State Criteria and oversight.

### **B. Goals.**

The goals of the [County] Critical Area Program are to accomplish the following:

- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- (2) Conserve fish, wildlife, and plant habitat; and
- (3) Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

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<sup>2</sup> The Purpose and Goals can be found in Natural Resources Article §8-1801, Annotated Code of Maryland. We recommend either including or referencing this section in your ordinance.



### **Part 3. Implementation of the Critical Area Provisions.**

#### **A. Critical area program.**

The County adopted its Critical Area Program on **[Insert Date]**. The **[County]** Critical Area Program consists of **[this Ordinance]** and the Official Critical Area map(s). Related provisions may be found in the **[County]** Zoning Ordinance and Subdivision Regulations.

- (1) Notwithstanding any provision in this ordinance, or the lack of a provision in this ordinance, all of the requirements of Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 shall apply to, and be applied by, **[County]** as minimum standards.
- (2) In the case of conflicting provisions, the stronger provision applies.

#### **B. Critical area overlay district map.**

- (1) The Official Critical Area Overlay District Map<sup>3</sup> is maintained as part of the Official Zoning Map for **[County]**. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:
  - (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide [as indicated on the State wetland maps]<sup>4</sup>, and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and
  - (b) All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- (2) Within the designated Critical Area Overlay District, all land is assigned one of the following land classifications, based on land uses and development in existence on December 1, 1985.
  - (a) Intensely Developed Area (IDA).
  - (b) Limited Development Area (LDA).
  - (c) Resource Conservation Area (RCA).
- (3) The Critical Area Overlay District Map may be amended by the **[County Commissioners or Council]** in compliance with amendment provisions in this

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<sup>3</sup> Wording for this section may be adjusted if the jurisdiction uses an integrated zoning map, as opposed to an overlay.

<sup>4</sup> If the County has updated their Critical Area Maps, the phrase in brackets should be removed.

[chapter or ordinance], the Maryland Critical Area Law, and COMAR Title 27.

- (4) The Critical Area Boundary line was updated on (insert date) and new mapping designations associated with any newly included Critical Area shall meet the standards of COMAR 27.01.11<sup>5</sup>.

**C. Regulated activities and applicability.**

The [Zoning Administrator] shall review a permit, license, or other authorization for a development or redevelopment activity<sup>6</sup> in the Critical Area for compliance with this Critical Area Ordinance prior to issuance of that permit or license.

**D. Notification of project approval.**

The County shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment.

- (1) The application shall be accompanied by a completed “Project Notification Application” form downloaded from the Commission’s website.
- (2) The County may not process an application that has been sent to the Commission for notification until it has received notice of receipt by the Commission or the close of the fifth business day, whichever come first. Any action by the County in violation of these procedures shall be void.

**E. Responsible agencies.**

The County’s Critical Area Program and all applicable provisions of this ordinance shall be implemented and enforced by the County [Department of Planning].

- (1) Should an infraction of the provisions contained in any law, regulation, or plan related to the County’s Critical Area Program be brought to the attention of any County official, said official shall contact the [Code Enforcement Officer].

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<sup>5</sup> This provision shall only be included if the boundary map update has been completed.

<sup>6</sup> Including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the *Zoning Administrator* after review and approval under the County’s Critical Area Program.

**Part 4. Enforcement.<sup>7</sup>**

**A. Consistency.**

The Critical Area provisions of this Ordinance, in accordance with the Critical Area Act and Criteria supersede any inconsistent Law, or Chapter of [County's] Code. In the case of conflicting provisions, the stricter provisions shall apply.

**B. Violations.**

- (1) No person shall violate any provision of this Ordinance. Each violation that occurs and each calendar day that a violation continues constitutes a separate offense subject to separate fines, orders, sanctions or other penalties.
- (2) Non-compliance with any permit or order issued by [County] related to the Critical Area shall be a violation of this Ordinance and shall be enforced as provided herein.

**C. Responsible persons.**

The following persons may each be held jointly or individually responsible for a violation: (1) any persons who apply for or obtain any permit or approval, (2) contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6) any person who has committed, assisted, authorized, or participated in the violation.

**D. Required enforcement action.**

When the County identifies a violation of this Ordinance, [County] shall take enforcement action including:

- (1) Citing the violation;
- (2) Issuing abatement, restoration, and mitigation orders as necessary to:
  - (a) Stop unauthorized activity; and
  - (b) Restore and stabilize the site to its condition prior to the violation, or to a condition that provides the same water quality and habitat benefits;
- (3) Requiring the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation; and
- (4) Assessing an administrative fine or pursuing a civil penalty in accordance with Part 4.G below.

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<sup>7</sup>The provisions listed here are minimum requirements for a local program. Jurisdictions should review closely to ensure this properly captures their own local procedures for enforcement.

**E. Restoration and mitigation**

- (1) A restoration or mitigation order shall specify the amount of appropriate restoration and mitigation as necessary to offset the adverse impacts to the Critical Area, resulting from the violation, consistent with all other requirements of this Ordinance.
- (2) For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000, the [County] shall collect a bond or other financial security.
- (3) If restoration or mitigation involves planting, a bond shall be held for at least 2 years after the date the plantings were installed to ensure plant survival.
- (4) A property owner may request [County] to schedule inspections as necessary to ensure compliance and the return of the bond or other financial security.

**F. Right to enter property.**

Except as otherwise authorized and in accordance with the procedures specified herein, the [County Commissioners/Council] or their designee may obtain access to and enter a property, in order to identify or verify a suspected violation, restrain a development activity, or issue a citation if [County] has probable cause to believe that a violation of this Ordinance has occurred, is occurring, or will occur. [County] shall make a reasonable effort to contact a property owner before obtaining access to or entering the property. If entry is denied, [County] may seek an injunction to enter the property to pursue an enforcement action.

**G. Administrative fines and civil penalties.**

In addition to any other penalty applicable under State or [County] law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or the Critical Area provisions of this Ordinance shall be punishable by a fine or penalty of up to \$10,000 per calendar day.<sup>8</sup>

- (1) Before imposing any fine or penalty, the person(s) believed to have violated this Ordinance shall receive: 1) written notice of the alleged violation(s), including which, if any, are continuing violations; and 2) an opportunity to be heard. The amount of the fine or penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the penalty shall be determined per day. In determining the amount of the penalty, [County] shall consider:
  - (a) The gravity of the violation;
  - (b) The presence or absence of good faith of the violator;
  - (c) Any willfulness or negligence involved in the violation including a history of prior violations;

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<sup>8</sup> This provision is a requirement of a local program. However, a jurisdiction could also include a schedule of fines for classes of violations, as long as the potential remains for the jurisdiction to use this provision.

- (d) The environmental impact of the violation; and
  - (e) The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to [County] for performing, supervising, or rendering assistance to the restoration and mitigation.
- (2) Administrative fines and civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
  - (3) The person responsible for any continuing violation shall promptly provide the [County] with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for [County] inspection to verify compliance. Fines and penalties for continuing violations continue to accrue as set forth herein until [County] receives such written notice and verifies compliance by inspection or otherwise.
  - (4) Assessment and payment of fines and penalties shall be in addition to and not in substitution for payment to [County] for all damages, costs, and other expenses caused by the violation; such as what is necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, reviewing mitigation plans, and ensuring compliance with these plans.
  - (5) Payment of all fines or penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Ordinance.

**H. Cumulative remedies.**

The remedies available to [County] under this Ordinance are cumulative and not alternative or exclusive, and the decision to pursue one remedy does not preclude pursuit of others.

**I. Variances pursuant to a violation.**

For any violation that requires a variance to this Ordinance, [County] shall follow the after-the-fact variance provisions in Part 16.E.

**J. Permits pursuant to a violation.**

[County] may not issue any permit, approval, variance, or special exception, to authorize the activity that is the subject of the violation, unless the person seeking the permit has:

- (1) Fully paid all penalties as set forth in Section G. above;
- (2) Prepared a restoration or mitigation plan, approved by [County], to abate impacts to water quality or natural resources due to the violation;

- (3) Performed the abatement measures in the approved plan in accordance with the [County] regulations; and
- (4) Unless an extension of time is approved by [County] because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

**K. Appeals.**

An appeal to the [County] Board of Appeals may be filed by any person aggrieved by any order, requirement, decision or determination by [County] in connection with the administration and enforcement of this Ordinance.

- (1) An appeal is made by filing a written notice of appeal with the Board of Appeals in accordance with the provisions in the [County] Zoning Ordinance and accompanied by the appropriate filing fee.
- (2) An appeal must be filed within thirty (30) days after the date of the decision or order being appealed; and
- (3) An appeal stays all actions by [County] seeking enforcement or compliance with the order or decisions being appealed, unless [County] certifies to the Board of Appeals that (because of facts stated in the certificate) such stay will cause imminent peril to life or property. In such a case, action by [County] shall not be stayed except by order of the Board of Appeals or a Court, upon application of the party seeking the stay.
- (4) Application for a variance pursuant to a violation constitutes a waiver of the right to appeal any order, requirement, decision or determination related to the violation and its final adjudication including the payment of any penalties and costs assessed.

**L. Additional enforcement authorities.**

- (1) The County is authorized to pursue violations in Circuit Court or District Court in accordance with Natural Resources Article §8-1815(a)(2).
- (2) [County] is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Ordinance, an administrative order, a permit, a decision, or other imposed condition. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent [County] from seeking injunctive relief to enforce an administrative order, permit, decisions, or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.

## **Part 5. Development in the Critical Area.**

### **A. Classifications.**

The following types of land classifications are recognized and identified by [COUNTY]:

- (1) Intensely Developed Areas;
- (2) Limited Development Areas; and
- (3) Resource Conservation Areas.

### **B. Policies.**

The following policies apply to development in the Critical Area:

- (1) Development in each land classification shall be subject to strict criteria in order to prevent adverse impacts on water quality or fish, wildlife, or plant habitat;
- (2) It is preferable to direct intense development activities outside the Critical Area;
- (3) If proposed in the Critical Area, an intense development activity is appropriately located in an intensely developed area;
- (4) Low intensity development may be authorized in a limited development area; and
- (5) Land uses in a resource conservation area are primarily designated for nature-dominated environments, such as wetlands, forests, and abandoned fields, and resource-utilization activities, such as agriculture, forestry, fishery activities, and aquaculture.
- (6) It is a priority to improve the quality of stormwater entering the Chesapeake or Atlantic Coastal Bays or their tributary streams.

### **C. Criteria.**

- (1) A local jurisdiction shall maintain areas of public access to the shoreline, and, if possible, encourage the establishment of additional areas of shoreline access for public use, such as foot paths, scenic drives, and other public recreational facilities.
- (2) Development shall comply with the following complementary State statutes and regulations, including:
  - (a) For soil erosion and sediment control, management measures shall be consistent with the requirements of Environment Article, §§4-101—4-116, Annotated Code of Maryland, and COMAR 26.17.01;

- (b) For stormwater runoff, stormwater management measures shall be consistent with the requirements of Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02;
- (c) For shore erosion, shoreline stabilization measures shall be consistent with the requirements of Environment Article, Title 16, Annotated Code of Maryland, and COMAR 26.24.04; and
- (d) Any other applicable State statute or regulation.

**D. Restricted activities<sup>9</sup>.**

- (1) A development activity or facility may not be authorized in the Critical Area if, by its intrinsic nature, the activity or facility has the potential to cause an adverse effect on water quality, wildlife, or fish habitat or plant habitat, unless:
  - (a) For an activity or facility such as nonmaritime heavy industry:
    - (i) It is located within an intensely developed area;
    - (ii) It fully complies with all requirements under Part 6 of this Ordinance of this chapter; and
    - (iii) The owner or operator of the activity or facility demonstrates to all applicable State and local agencies that there will be a net improvement in water quality to the adjacent body of water; or
  - (b) For an activity or facility such as a sanitary landfill or a solid or hazardous waste collection or disposal facility:
    - (i) There is no environmentally acceptable alternative outside the Critical Area; and
    - (ii) The activity or facility is necessary in order to correct a water quality or wastewater management problem.
- (2) A transportation facility or a utility transmission facility or activity may not be authorized in the Critical Area, unless it is:
  - (a) A facility that serves a use identified under this Critical Area program;
  - (b) A linear regional or interstate transportation facility that must cross tidal waters; or
  - (c) A linear regional or interstate utility transmission facility that must cross tidal waters.

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<sup>9</sup> A Local Jurisdiction may restrict other types of facilities or activities than those listed here, if they jurisdiction determines the facility or activity to be detrimental to water quality or habitat, see COMAR 27.01.02.02-2.



- (3) A permanent sludge handling, storage, or disposal activity or facility may not be authorized in the Critical Area, unless:
  - (a) The activity or facility is associated with a wastewater treatment facility; or
  - (b) In accordance with an approved nutrient management plan under Agriculture Article, Title 8, Subtitle 8, Annotated Code of Maryland, and COMAR 15.20.04 and COMAR 15.20.06 -- .08, sludge is applied on agricultural land that is not in the buffer.
- (4) Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
  - (a) Provides maximum erosion protection;
  - (b) Minimizes negative impact on wildlife, aquatic life, and their habitats; and
  - (c) Maintains hydrologic processes and water quality.
- (5) Development activities that cross or affect a stream are prohibited unless there is no feasible alternative. All development activities that must cross or affect streams shall be designed to:
  - (a) Reduce increases in flood frequency and severity that are attributable to development;
  - (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
  - (c) Provide a natural substrate for stream beds; and
  - (d) Minimize adverse water quality and quantity impacts of stormwater.

**E. Reasonable accommodations for the needs of disabled citizens.**

The Board of Appeals may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs.

- (1) An applicant shall have the burden of demonstrating by a preponderance of evidence that:
  - (a) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;

- (b) Literal enforcement of the requirements of this chapter would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;
  - (c) A reasonable accommodation would reduce or eliminate the discriminatory effect of the requirements or restore the disabled resident's or user's reasonable use or enjoyment of the property;
  - (d) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property; and
  - (e) The accommodation would:
    - (i) Be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or
    - (ii) Allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.
- (2) The Board of Appeals shall determine the nature and scope of accommodation under this section and may award different or other relief than requested after giving due regard to:
- (a) The standards given in this section;
  - (b) The purpose, intent, or effect of the requirements from which relief is requested; and
  - (c) The size, location, nature, and type of accommodation proposed and whether alternatives exist which could accommodate the need with less adverse effect.
- (3) The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the County's ability to restore the property should the applicant fail to do so.

## **Part 6. Intensely Developed Areas.**

### **A. Mapping standards.**

- (1) Intensely Developed Areas are those areas where residential, commercial, institutional, or industrial developed land uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these development

areas shall have had at least one of the following features:

- (a) Housing density is at least four dwelling units per acre;
  - (b) Industrial, institutional or commercial uses are concentrated in the area; or
  - (c) Public sewer and water collection and distribution systems are currently serving the area, and housing density is greater than three dwelling units per acre;
- (2) In addition, these features shall be concentrated in an area of at least 20 adjacent acres (*unless*<sup>10</sup>).

**B. General policies.**

- (1) [County] shall develop a strategy to reduce the impacts on water quality generated by existing development. This shall include an assessment of water quality and impacts to biological resources prompted by community redevelopment plans and programs and may further include a public education program, the implementation of urban best management practices, and the use of such techniques as urban forestry programs, street tree plantings, gardens, and open land buffer plantings.
- (2) [County] shall follow the policies below when addressing Intensely Developed Areas:
- (a) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or Atlantic Coastal Bays or their tributary streams;
  - (b) Accommodate additional development of the type and intensity designated by the County in this Program, if water quality is not impaired;
  - (c) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and as Resource Conservation Areas under this Program;
  - (d) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat Protection Area Chapters of this ordinance, to the extent possible within Intensely Developed Areas;
  - (e) Minimize the adverse water quality and quantity impact of stormwater and encourage the use of retrofitting measures to address existing stormwater management problems; and

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<sup>10</sup> A local jurisdiction may propose an alternative standard for approval by the Commission, for a new IDA less than 20 acres through a growth allocation. The alternative standard should be inserted here. To see some example language, see St. Mary's County Ordinance, Chapter 41.9, Talbot County Code, Chapter 190.15.3.I.3.b, or Town of Queenstown Zoning Ordinance, Section 33.C.3.

- (f) With assistance from the State, establish programs to enhance biological resources that provide positive effects on water quality and urban wildlife habitat within the Critical Areas, such as urban forestry, landscaping, gardens, wetlands, and aquatic habitat restoration elements.

**C. Development standards.**

All development in the Intensely Developed Area shall meet the following standards:

- (1) Development and redevelopment shall be subject to the habitat protection area criteria prescribed in COMAR 27.01.09 and Parts 9 through 11 of this Ordinance.
- (2) Stormwater shall be addressed in accordance with the following provisions:
  - (a) All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to development or redevelopment as provided in *Critical Area 10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.
  - (b) Stormwater management to meet 10% requirements shall be provided onsite to the maximum extent practicable.
  - (c) Where the 10% requirement cannot be met onsite, the following options are available:
    - (i) Fee-in-lieu for 10% requirements may be provided at \$35,000 per pound of phosphorus removed.
    - (ii) Other offsets as described in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003* and as may be subsequently amended. Offsets must remove a phosphorus load equal to or greater than the remaining 10% requirement.
  - (d) The County shall track and report annually to the Critical Area Commission all stormwater fees-in-lieu collected and expended, as well as any authorized stormwater offsets.
- (3) When the cutting or clearing of trees is associated with current or planned development activities, the County shall require:
  - (a) All development activities be designed and implemented to minimize destruction of forest and woodland vegetation;
  - (b) Protection of existing forests and developed woodlands identified as Habitat Protection Areas; and

- (c) Establishment of programs for the enhancement of forest and developed woodlands resources such as urban forestry programs.

## **Part 7. Limited Development Areas.**

### **A. Mapping standards.**

- (1) Limited Development Areas are those areas that are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats and the quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:
  - (a) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
  - (b) Areas not dominated by agricultural, wetland, forest, open water, or open space;
  - (c) Areas meeting the conditions of Intensely Developed Area but comprising less than 20 acres; or
  - (d) Areas having public sewer or public water, or both.

### **B. General policies.**

[County] shall follow the policies below when addressing Limited Development Areas:

- (1) Maintain, or, if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;
- (2) Maintain, to the extent practicable, existing areas of natural habitat; and
- (3) Accommodate additional low or moderate intensity development if:
  - (a) This development conforms to the water quality and habitat protection criteria in Section C. below; and
  - (b) The overall intensity of development within the Limited Development Area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.
- (4) Reduce the extent of lot coverage and maximize areas of natural vegetation through consideration of cluster development when planning for future development.

### **C. Development standards.**

All development in Limited Development Areas shall meet the following standards:

- (1) Development and redevelopment shall be subject to the habitat protection area criteria prescribed in COMAR 27.01.09 and Parts 9 through 11 of this Ordinance.
- (2) Except as otherwise provided in this subsection, lot coverage is limited to 15% of a lot or parcel, or that portion of a lot or parcel, that is designated LDA.
  - (a) If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
  - (b) If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
  - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
  - (d) Lot coverage limits provided in §(a) and §(b) above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
    - (i) The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements.
    - (ii) Lot coverage associated with new development activities on the property have been minimized;
    - (iii) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in §(a) by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
    - (iv) For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
    - (v) The following table summarizes the limits set forth in §(i) through §(iv) above:

**Table C.(2)(d). Lot Coverage Limits.**

<b>Lot/Parcel Size (Square Feet)</b>	<b>Lot Coverage Limit</b>
0 – 8,000	25% of parcel + 500 SF
8,001 – 21, 780	31.25% of parcel
21,781 – 36,300	5,445 SF
36,301 – 43,560	15% of parcel

- (e) If the Planning Commission or its designee makes the findings set forth in §(d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
  - (i) Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
  - (ii) Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.
  - (iii) If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to [Municipality] in lieu of performing the on-site mitigation.
  
- (3) If the Department of Natural Resources identifies a wildlife corridor system on or near a proposed development site, the developer shall:
  - (a) Incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site, and
  - (b) Record a conservation easement, restrictive covenant, or similar instrument to ensure maintenance of the wildlife corridor. A public or private group, including homeowners associations, nature trusts, or other organizations shall hold the easement or restriction.
  
- (4) Development on slopes 15 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
  
- (5) For the cutting or clearing of trees in forests and developed woodland areas that are associated with current or planned development activities in a Limited Development Area, the developer shall:
  - (a) Consider the recommendations of the Maryland Department of Natural

- Resources when planning development on forested land;
- (b) Design and implement development activities to minimize the destruction of woodland vegetation; and
  - (c) Provide protection for forests and developed woodlands identified as Habitat Protection Areas in this Program.
- (6) Clearing of forest and developed woodlands is restricted and shall be mitigated as follows:
- (a) The total acreage in forest and developed woodlands within the County in the Critical Area shall be maintained or preferably increased;
  - (b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
  - (c) If an applicant is authorized to clear more than 20 percent of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the entire areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared; and
  - (d) An applicant may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel, unless the [**Board of Appeals**] grants a variance and the applicant replaces forest or developed woodlands at a rate of 3 times the entire areal extent of the forest or developed woodlands cleared.<sup>11</sup>
  - (e) If an applicant is authorized to clear any percentage of forest or developed woodland the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by the [**County**].
- (7) In addition, all proposed development shall meet the following standards applicable to forest or developed woodland clearing:
- (a) Grading permits shall be issued before forest or developed woodland is cleared.
  - (b) Subject to the approval of the County, owners or developers shall provide

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<sup>11</sup> If the areal extent of the site restricts the application of the reforestation standards in this section, alternative provisions for reforestation may be permitted by the County if they are consistent with the intent of the Forest and Woodland Protection Chapter of this Program and approved by the Critical Area Commission as part of this Program. Alternative provisions must conserve, enhance, or increase the forest and developed woodland resources of the Critical Area. Alternative provisions may include fees-in-lieu provisions or use of a forest mitigation bank if the provisions are adequate to ensure the restoration or establishment of an equivalent forest area.



surety suitable to ensure that any plantings that die within twenty-four (24) months of installation shall be replaced.

- (c) Forest and developed woodlands which have been cleared before obtaining a permit is a violation and shall be replanted at three times the areal extent of the cleared forest or developed woodland;
  - (d) Clearing of forest or developed woodlands that exceed the maximum area allowed in (5) above shall be replanted at three times the areal extent of cleared forest or developed woodland;
- (8) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent;
- (a) The applicant shall designate, subject to the approval of the [County], a new forest area on a part of the site not forested; and
  - (b) The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by [County].
- (9) All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants or other protective instruments approved by [County].
- (10) [County] will allow for modifications in road standards to reduce potential impacts to the site and Critical Area resources, where the reduced standards do not significantly affect safety.
- (11) Development may be allowed on soils having development constraints if the development includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish or wildlife habitat.

## **Part 8. Resource Conservation Areas.**

### **A. Mapping standards.**

- (1) Resource conservation areas are those areas characterized by nature-dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features:
  - (a) Density is less than one dwelling unit per 5 acres; or
  - (b) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

**B. General policies.**

The following policies shall be applied when addressing resource conservation areas:

- (1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;
- (2) Provide adequate breeding, feeding, and wintering habitats for wildlife populations that require the Chesapeake and Atlantic Coastal Bays, their tributaries, or coastal habitats in order to sustain their species;
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture;
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide;
- (5) Promote agricultural and conservation easements in resource conservation areas;
- (6) Encourage tax incentives or other incentive or disincentive programs that promote the continuation of agriculture, forestry, and natural habitats in resource conservation areas;
- (7) Consider cluster development, transfer of development rights, maximum lot size provisions, and any other means likely to maintain the land area necessary to support the protective uses; and
- (8) Assure that the overall acreage of forest and woodland within the resource conservation areas does not decrease.

**C. Development standards.**

All development in Resource Conservation Areas shall meet all of the following standards:

- (1) Nothing in this Section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members, provided that no such conveyance will result in a density greater than one dwelling unit per 20 acres.
- (2) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area provisions, agriculture provisions, and forestry provisions of this Ordinance.
- (3) Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in this Ordinance.
- (4) Limitations on lot coverage on a parcel shall be in accordance with the following

maximums:

- (a) When a site is mapped entirely as a resource conservation area, 15 percent of the total site; and
- (b) When a portion of a lot or parcel is mapped as a resource conservation area, 15 percent of that portion of the lot or parcel.

**D. Density.**

- (1) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. In accordance with COMAR 27.01.02.05, a variance may not be granted to the maximum density of one dwelling unit per 20 acres.
- (2) In calculating the one per 20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, [County]:
  - (a) Shall count each dwelling unit;
  - (b) May permit the area of any private wetlands located on the property to be included under the following conditions:
    - (i) The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and
    - (ii) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by [County], the Commission, and Maryland Department of the Environment.
- (3) One additional dwelling unit (accessory dwelling unit) may be considered as part of a primary dwelling unit and may be permitted in the Resource Conservation Area without counting against the one per 20 acre density, provided
  - (a) The additional dwelling unit is served by the same sewage disposal system as the primary dwelling unit, and:
    - (i) Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed area; or
    - (ii) Is located within the primary dwelling unit and does not increase the amount of lot coverage already attributed to the primary dwelling unit;
  - (b) The additional dwelling unit meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling

unit; and

- (c) The provisions of this section may not be construed to authorize the granting of a variance, unless the variance is granted in accordance with the variance provisions contained herein.<sup>12</sup>

**E. RCA uses.<sup>13</sup>**

- (1) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the one per 20 acre density, shall be allowed in RCAs.
- (2) Expansion of existing industrial and commercial facilities and uses in the RCA shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 13 and may require growth allocation.<sup>14</sup>
- (3) New or additional industrial or commercial facilities may not be located in the Resource Conservation Area.
- (4) A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.14.
- (5) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the [County]'s growth allocation provisions or as listed below:<sup>15</sup>
  - (a) A home occupation as an accessory use on a residential property and as provided for in the [County]'s zoning ordinance;
  - (b) A golf course developed in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;
  - (c) A cemetery that is an accessory use to an existing church, provided lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;
  - (d) A bed and breakfast facility located in an existing residential structure, and where meals are prepared only for guests staying at the facility;

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<sup>12</sup> The provisions for an Accessory Dwelling Unit in the RCA are not a requirement of the Critical Area Law. These provisions are opt-in only.

<sup>13</sup> Jurisdictions should ensure consistency with the allowable uses of the underlying zoning.

<sup>14</sup> Jurisdictions are encouraged to provide greater specificity regarding expansion of nonconforming uses and growth allocation.

<sup>15</sup> These are examples of acceptable new uses in an RCA that have been approved by the Commission. A local jurisdiction may propose additional RCA uses for consideration by the Commission. All uses should be consistent with the jurisdictions Zoning Ordinance.

- (e) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc;
- (f) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children cared for at one time; or
- (g) A group home or assisted living facility with no more than eight residents.

**Part 9. The Buffer.**

**A. Applicability and delineation.**

An applicant for a development activity or a change in land use shall apply all the required standards as described below. The Buffer shall be delineated in the field and shall be shown on all applications as follows:

- (1) A Buffer of at least 100 feet is delineated, and expanded as described in A(3), based on existing field conditions landward from:
  - (a) The mean high water line of a tidal water;
  - (b) The edge of each bank of a tributary stream; and
  - (c) The upland boundary of a tidal wetland.
- (2) Applications for a subdivision or site plan approval located on land located within the RCA shall include a minimum Buffer of at least 200 feet from tidal waters or tidal wetlands, and 100 feet from a tributary stream.<sup>16</sup>
  - (a) The 200-foot Buffer may be reduced if strict application of the 200-foot Buffer would preclude the creation of a new lot either by subdivision at a density of one dwelling unit per 20 acres, or through an intrafamily transfer subdivision.
  - (b) The reduced Buffer shall be the minimum necessary to accommodate a dwelling and a sewage reserve area, as determined by the Planning Director, but no less than 100 feet.
- (3) The Buffer shall be expanded beyond 100 feet as described in §A(1) above, and beyond 200 feet as described in §A(2) above, to include the following contiguous land features:
  - (a) A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
  - (b) A nontidal wetland to the upland boundary of the nontidal wetland;

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<sup>16</sup> A local jurisdiction may propose procedures to maintain the minimum 100-foot Buffer on certain parent parcels.

- (c) The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
- (d) For an area of hydric soils or highly erodible soils, the lesser of:
  - (i) The landward edge of the hydric or highly erodible soils; or
  - (ii) Three hundred feet where the expansion area includes the minimum 100-foot Buffer.

**B. Development activities in the Buffer.**

[County] may authorize disturbance to the Buffer, provided mitigation is performed in accordance with Section D of this Part and an approved Buffer Management Plan is submitted as required per Section G of this Part, for the following activities:

- (1) A development activity associated with;
  - (a) A water-dependent facility or activity;
  - (b) Riparian access to the shoreline;
  - (c) An approved variance; or
  - (d) The placement of dredge material.
- (2) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
  - (a) The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil, and the expanded Buffer occupies at least 75% of the lot or parcel;
  - (b) The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
  - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- (3) In accordance with COMAR 26.24.02, a shoreline stabilization measure under COMAR 27.01.04.

**C. Buffer establishment.**

- (1) The requirements of this regulation are applicable to:
  - (a) A development or redevelopment activity that occurs on a lot or parcel that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream

if that development or redevelopment activity is located outside the Buffer; and

- (b) The approval of a subdivision that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream.
- (2) If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:
- (a) In accordance with local land recordation requirements, shall record an approved Buffer Management Plan under Section G of this Part; and
  - (b) If authorized by the local jurisdiction, may delay implementation of the buffer management plan until the use of the lot is converted to a nonagricultural purpose.
- (3) The requirements of this regulation are not applicable to an in-kind replacement of a structure.
- (4) An applicant shall establish the Buffer in vegetation in accordance with the table below and Section E of this Part; and to provide a Buffer Management Plan under Section G of this Part for the following types of applications:
- (a) A subdivision;
  - (b) Conversion from one land use to another land use on a lot or a parcel; or
  - (c) Development on a lot or a parcel created before January 1, 2010.
- (5) When the Buffer is not fully forested or is not fully established in existing, naturally occurring woody or wetland vegetation, an applicant shall establish the buffer to the extent required in the following table:

Table 9.C.(5). Buffer establishment requirements.

<b>Development Category</b>	<b>Lot Created Before [Insert Local Program Adoption Date]</b>	<b>Lot Created After [Insert Local Program Adoption Date]</b>
Development on a vacant lot	Establish the buffer based on total square footage of lot coverage outside the buffer	Fully establish the buffer
Subdivision	Fully establish the buffer	
New lot with an existing dwelling unit	Establish the buffer based on total square footage of lot coverage outside the buffer	
Conversion of a land use on a parcel or lot to another land use	Fully establish the buffer	
Addition, accessory structure, or redevelopment	Establish the buffer based on net square footage increase in lot coverage outside the buffer	
Substantial alteration	Establish the buffer based on total square footage of lot coverage outside the buffer	

- (6) Any lot coverage removed from the Buffer may be deducted from the total cumulative amount of establishment required if:
  - (a) The lot coverage existed before the date of local program adoption or was allowed by local procedures; and
  - (b) The total area is stabilized.

**D. Mitigation for impacts to the Buffer.**

An applicant for a development activity that includes disturbance to the Buffer shall mitigate for impacts to the Buffer and shall provide a Buffer Management Plan in accordance with the standards set forth in this Part.

- (1) All authorized development activities shall be mitigated based on the ratios noted in the table below, in addition to the area of canopy coverage removed for an individual tree, developed woodland or forest:



Table 9.D(1) Buffer Mitigation Ratios.

Activity	Mitigation Ratio
Septic on a lot created before local program approval if located in existing grass or if clearing is not required	Not applicable
Septic system in a forest or developed woodland on a lot created before local program approval if clearing is required	1:1
Shore erosion control	1:1
Riparian water access	2:1
Development of a water-dependent facility or activity under COMAR 27.01.03	2:1
Variance	3:1
Violation	4:1

- (2) For the removal of a dead tree, the affected area shall be stabilized with native groundcover or other native vegetation as necessary.
- (3) The removal of a diseased, dying, invasive, or hazardous tree shall be mitigated with one tree of at least ¾-inch caliper for each tree removed or the affected area shall be stabilized in native woody vegetation if a tree cannot be replanted due to space constraints.
- (4) Any lot coverage removed from the Buffer may be deducted from the total cumulative amount of mitigation required if:
  - (a) The lot coverage existed before the date of local program adoption or was allowed by local procedures; and
  - (b) The total area is stabilized.
- (5) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then [County] may allow planting in the following order of priority:
  - (a) On-site and adjacent to the Buffer; and
  - (b) On-site elsewhere in the Critical Area.
- (6) The installation or cultivation of new lawn or turf in the Buffer is prohibited.
- (7) As applicable to a site, an applicant shall restore any area in the Buffer that is temporarily disturbed by a development activity to pre-disturbance conditions.

**E. Buffer planting standards.**

An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall apply the following planting credits and standards:

- (1) If planting to meet a mitigation requirement, the following combination of plantings may be used:
  - (a) If required to plant less than 1 acre, the entire requirement must be met using landscape stock as noted in Table 9.F.(1).
  - (b) If required to plant 1 acre or more, at least 50% of the planting requirement may be met in landscape stock per Table 9.F.(1) and the remainder may be met in flexible stock per Table 9.F.(2).
- (2) If planting to meet an establishment requirement, the following combination of plantings may be used:
  - (a) If required to plant less than  $\frac{1}{4}$  acre, the entire requirement must be met using landscape stock per Table 9.F.(1).
  - (b) If required to plant at least  $\frac{1}{4}$  acre and up to 1 acre, at least 25% of the requirement must be met using landscape stock per Table 9.F.(1) and the remainder may be met in flexible stock per Table 9.F.(2).
  - (c) If required to plant more than 1 acre, at least 10% of the requirement must be met using landscape stock per Table 9.F.(1) and the remainder may be met in flexible stock per Table 9.F.(2).
- (3) Per COMAR 27.01.09.01-2, a variance to the planting and mitigation standards of this Ordinance is not permitted.

**F. Planting credits.**

- (1) If required to plant using landscape stock the following planting sizes and credit shall be used and shall be 100 percent guaranteed for at least 2 years after planting is completed:

Table 9.F.(1) Landscape Stock Credit.

Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percentage of Landscape Stock Credit
Canopy Tree	2-inch caliper	200	Not Applicable
Canopy Tree	¾-inch caliper	100	Not applicable
Understory Tree	¾-inch caliper	75	Not applicable
Large Shrub	3 feet high	50	30%
Small Shrub	18 inches high	25	20%
Herbaceous perennial	1 quart or based on the area covered by plugs or seed mix	2	10%
Planting Cluster A (For less than ½ acre of planting)	1 canopy tree; and 3 large shrubs or 6 small shrubs of size listed above	300	Not applicable
Planting Cluster B (For less than ½ acre of planting)	2 understory trees; and 3 large shrubs or 6 small shrubs of size listed above	350	Not applicable

- (2) **[The Planning Department]** may authorize an applicant to increase the percentage of large shrubs, small shrubs, or herbaceous perennials if:
- (a) The Buffer has existing canopy coverage of at least 50 percent; or
  - (b) There are verified site constraints that preclude canopy plantings, including severely eroding slopes, saltwater intrusion, predominately sandy soils, or unconsolidated fill.
- (3) The following flexible planting stock may be used if authorized under Section E(1) or (2) of this Part:

Table 9.F.(2) Flexible Planting Stock.

Stock Size of Trees Only	Required # of Stems/Acre	Survivability Requirement	Minimum Financial Assurance Period After Planting
Bare-root seedlings or whip	700	50 percent	5 years
½-inch to 1-inch container grown trees	450	75 percent	2 years
More than 1-inch container grown trees	350	90 percent	2 years

**G. Required Submittal of Buffer Management Plans.**

An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall submit a Buffer Management Plan in accordance with COMAR 27.01.09.01-3. The provisions of this Part do not apply to maintaining an existing grass

lawn or an existing garden in the Buffer.

- (1) Any permit for a development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by **[County]**.
- (2) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by **[County]**.
- (3) **[County]** may not approve a Buffer Management Plan unless:
  - (a) The plan clearly indicates that all planting standards under Section E of this Part will be met; and
  - (b) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
- (4) For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
  - (a) Completes the implementation of a Buffer Management Plan; or
  - (b) Provides financial assurance to cover the costs for:
    - (i) Materials and installation; and
    - (ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- (5) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
- (6) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance. A permit for any development activity will not be issued for a property that has the violation.
- (7) An applicant of a subdivision or of a site plan for a multifamily, commercial, industrial, or institutional use shall post permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
- (8) Buffer management plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

**H. Fee-in-lieu of Buffer mitigation.**

A fee in-lieu for mitigation will be collected if the planting requirements of Section D of this Part cannot be fully met onsite, in accordance with the following standards:

- (1) Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to the [County]'s general fund;
- (2) Fee-in-lieu shall be assessed at \$1.50 per square foot<sup>17</sup> of required Buffer mitigation;
- (3) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and
- (4) Fee-in-lieu monies shall be used for the following projects:
  - (a) To establish the Buffer on sites where planting is not a condition of development or redevelopment;
  - (b) For water quality and habitat enhancement projects as approved by the Critical Area Commission or by agreement between [County] and the Critical Area Commission.

#### **Part 10. Modified Buffer Area Provisions.**

##### **A. Applicability.**

- (1) Modified Buffer Areas (MBAs) are areas of the 100-foot Buffer that have been mapped by [County] and approved by the Critical Area Commission.
- (2) The purpose of MBAs is to accommodate limited use of the Buffer under the provisions of this Part, while protecting water quality and wildlife habitat to the greatest extent possible.

##### **B. Mapping standards.**

The following standards shall apply for the mapping of new Modified Buffer Areas:

- (1) Only lots of record as of December 1, 1985 are eligible for mapping as Modified Buffer Areas (MBAs).
- (2) The parcel or lot being considered for MBA status shall contain a Buffer that was significantly impacted by development at the time of program adoption and that prevent the Buffer from fulfilling its functions.
- (3) Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).
- (4) Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a MBA if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of

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<sup>17</sup> A local jurisdiction may propose for approval by the Commission a lesser fee-in-lieu if it meets the requirements of COMAR 27.01.09.01-5 C.

development.

- (5) If only part of a parcel or lot meets the criteria for designation as a Modified Buffer Area, then only portions of the parcel or lot shall be designated as a Modified Buffer Area. The portion of the parcel designated as a Modified Buffer Area will be subject to the Modified Buffer Area requirements. Portions of the property that are not designated as a Modified Buffer Area shall comply fully with the 100-foot Buffer restrictions.
- (6) Any proposal by the County for designation of an area as a MBA shall include, at a minimum, a written evaluation and supporting reasons which demonstrate the degree to which the proposed MBA does not perform each of the following Buffer functions:
  - (a) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
  - (b) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
  - (c) Maintain an area of transitional habitat between aquatic and upland communities;
  - (d) Maintain the natural environment of streams; and
  - (e) Protect riparian wildlife habitat.

**C. Development standards in all MBAs**

The following development standards apply to all applications for development activity in an MBA:

- (1) New development or redevelopment activities, including structures, roads, parking areas and other lot coverage or septic systems are not permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the [Planning Commission] finds that efforts have been made to minimize Buffer impacts.
- (2) Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
- (3) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
- (4) Convenience or expense are not factors to consider when evaluating the extent of allowable impacts to the Buffer.

- (5) Development may be located in the Buffer and shall meet the setback lines as described below. Structures on adjacent properties shall not be used to determine the setback line.
- (6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (7) Modified Buffer Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
- (8) No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- (9) Mitigation shall be provided as follows:
  - (a) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location, preferably on-site, approved by the Planning Commission.
  - (b) Applicants who cannot fully comply with the planting requirement in (a) above, may use offsets to meet the mitigation requirement. Offsets include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
  - (c) Applicants who cannot comply with either the planting or offset requirements in (a) or (b) above shall pay into a fee-in-lieu at a rate of \$1.50 per square foot.<sup>18</sup>
  - (d) Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the [County]'s Critical Area Program.
  - (e) Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the [County].

**D. Commercial, industrial, institutional, recreational, and multi-family residential development and redevelopment standards.**

In the case of commercial, industrial, institutional, recreational, and multi-family residential development or redevelopment, the following additional standards apply:

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<sup>18</sup> A county can set a different fee-in-lieu rate.

- (1) New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. The 50-foot setback shall be maintained for all subsequent development or redevelopment of the property.
- (2) Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater.
  - (a) Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or lot coverage.
  - (b) Opportunities to establish a 25-foot setback should be maximized.
- (3) In addition to any required mitigation, a forested or landscaped buffer yard, 25 feet wide, shall be established on the project site between the development and the distance to the water. This buffer yard shall be densely planted with trees and shrubs in accordance with Table 10.B(9).
- (4) In the case of redevelopment, the County may approve appropriate modifications to the width of the planted buffer yard on a case by case basis where existing structures or those rebuilt on an existing footprint limit the area available for planting.

Table 10.B(9) Required Bufferyard Planting

Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of buffer yard	5 Trees and	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar
	10 Understory Trees/Large Shrubs, and	Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry
	30 Small Shrubs and	Pepperbush, Chokeberry, Strawberry Bush, Sweetspire
	40 Herbaceous Plants, Grasses, Etc.	Wild Columbine, Butterflyweed, Common Milkweed, Asters

**E. Single family residential development and redevelopment standards.**

In the case of single-family residential development or redevelopment, the following additional standards apply:

- (1) New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. Except as described below, new development or redevelopment shall be located no less than 50 feet



from the water (or the edge of tidal wetlands).

- (2) Existing principal or accessory structures in the Buffer may be replaced in-kind in the same footprint. If a replacement structure is expanded, the development shall comply with the setback requirement.
- (3) New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:
  - (a) New accessory structures may be located closer to the water or edge of tidal wetlands than the principal dwelling only if it has been determined by the Planning Commission or their designee that there are no other locations for the accessory structures.
  - (b) The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.
  - (c) In no case shall new accessory structures be located less than 25 feet from the water (or edge of tidal wetlands).

## **Part 11. Other Habitat Protection Areas.**

### **A. Identification.**

An applicant for a development activity, redevelopment activity or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this Ordinance.

- (1) In addition to the Buffer, other Habitat Protection Areas include:
  - (a) Threatened and Endangered Species and Species in Need of Conservation;
  - (b) Plant and Wildlife Habitat Protection Areas; and
  - (c) Anadromous Fish Propagation Waters
- (2) Maps identifying these specific Habitat Protection Areas are maintained by the Department of Natural Resources Wildlife and Heritage Division. The most recent updated inventory was completed on INSERT DATE and recommendations contained INSERT REFERENCE TO THE REPORT are hereby incorporated into this Ordinance.

### **B. Process.**

The County shall provide protection for Habitat Protection Areas which occur in the Critical Area.

- (1) An applicant for a development activity proposed for a site within the Critical

Area that is in or near a Habitat Protection Area listed above; shall request review by the Department of Natural Resources Wildlife and Heritage Service (DNR WHS), and as necessary United States Fish and Wildlife Service (USFWS), for comment and technical advice.

- (2) If the presence of a Habitat Protection Area is confirmed, the County shall require that an applicant develop a Habitat Protection Plan that provides for the protection and conservation of the species and habitats identified. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be implemented on the specific site.
- (3) It is the policy of the County and the State to encourage cooperative management agreements with private landowners as the best way to preserve and protect critical habitats for threatened and endangered species and species in need of conservation. It is acknowledged that in the long term, easements or acquisition of the lands for preservation of these habitats should be sought. Management agreements, easements, and acquisition efforts shall be coordinated with the Maryland Department of Natural Resources and other appropriate public agencies, private organizations and affected landowners.

**C. Threatened and endangered species and species in need of conservation.**

- (1) If a threatened or endangered species, or species in need of conservation is identified on a development site, the Habitat Protection Plan shall include a designated protection area around the habitat occurring on site within which development and other disturbances shall be prohibited, unless the applicant can demonstrate development or disturbance will not have or cause adverse impacts on these habitats, as determined by the Department of Natural Resources.
- (2) LIST ANY APPLICABLE SPECIES OR HABITATS HERE.

**D. Plant and Wildlife Habitat Protection Areas.**

- (1) Based on COMAR 27.01.09, plant and wildlife habitats in the Critical Area include:
  - (a) Colonial nesting water bird sites;
  - (b) Waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;
  - (c) Existing riparian forests such as relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the shoreline of the Chesapeake Bay, the Atlantic Coastal Bays, or their tributaries;
  - (d) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species such as relatively mature forested areas within the

Critical Area of 100 acres or more, or forest connected with these breeding areas;

- (e) Other areas which may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat;
  - (f) Other plant and wildlife habitats determined to be of local significance; and
  - (g) Designated natural heritage areas.
- (2) The policies of the County regarding plant and wildlife habitat in the Critical Area shall be to:
- (a) Conserve plant and wildlife habitats in the Critical Area;
  - (b) Protect those plant and wildlife habitats that tend to be least abundant or which may become less abundant in the future if current landuse trends continue;
  - (c) Protect plant and wildlife habitats which are required to support the continued presence of species protected under the provisions of Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, and this title; and
  - (d) Protect plant and wildlife habitats which are determined by the County to be locally significant habitats; and
  - (e) Protect natural heritage areas.
- (3) If a Plant or Wildlife Habitat is identified on a development site, the Habitat Protection Plan shall include a designated protection area around the habitat occurring on site, unless the applicant can demonstrate development impacts have been minimized, as determined by the Department of Natural Resources.
- (4) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants shall utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development.
- (5) For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts which are located outside of the area of the property being developed or subdivided. The area left in forest cover (at least 70 percent of the tract in LDAs or RCAs as required by this ordinance) shall be adjacent to larger forest, not left

as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.

- (6) Buffer areas for nesting sites of colonial nesting water birds shall be established so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
- (7) New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as aquatic staging and concentration areas for waterfowl.
- (8) Protection measures, including a buffer where appropriate, shall be established where appropriate, for other plant and wildlife habitat sites identified in this ordinance.
- (9) Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees, shall be conducted so as to conserve riparian habitat, forest interior dwelling birds and their habitat. Management measures may include incorporating appropriate wildlife protection elements into forest stewardship plans, cluster zoning, or other site design criteria which provide for the conservation of plant and wildlife habitat. Measures may also include soil conservation plans which have plant and wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs which use the acquisition of easements and other similar techniques.
- (10) When development activities, or the cutting or clearing of trees, occurs in forest, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections among wildlife habitats.
- (11) The protection of plant and wildlife habitats considered locally significant habitats.
- (12) Natural heritage areas shall be protected from alterations resulting from development or from cutting or clearing so that the structure and species composition of the area are maintained.

**E. Anadromous fish propagation waters.**

- (1) The Department of Natural Resources has identified and mapped anadromous fish propagation waters as defined in this chapter, and these maps are available by contacting the Department.
- (2) The policies of the County with regard to anadromous fish propagation waters shall be to:

- (a) Protect the instream and streambank habitat of anadromous fish propagation waters;
  - (b) Promote land use policies and practices in the watershed of spawning streams within the Critical Area which will minimize the adverse impacts of development on the water quality of the streams; and
  - (c) Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.
- (3) Within anadromous fish propagation watersheds, the following measures are required:
- (a) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
  - (b) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
  - (c) The County shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
    - (i) Minimize development activities or land disturbances within the watershed;
    - (ii) Maintain, or if practicable, improve water quality in streams;
    - (iii) Minimize, to the extent possible, the discharge of sediments into streams; and
    - (iv) Maintain, or if practicable, increase the natural vegetation of the watershed.
- (4) The County shall ensure coordination and compliance with complementary State laws and regulations:
- (a) Prohibit the construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams. If practical, the removal of existing barriers shall be effected (COMAR 08.05.03.05); and
  - (b) Ensure that the construction, repair, or maintenance activities associated with bridges, or other stream crossing or with utilities and roads, which involve disturbance within the buffer or which occur instream, as

described in COMAR 08.05.03.11B(5), shall be prohibited during the time of year prescribed by the Department of Natural Resources.

## **Part 12. Growth Allocation.**

### **A. Definitions.**

- (1) “300-foot setback” means an area that is at least 300 feet in width, as measured from the landward boundary of tidal waters or wetlands, that is provided on a growth allocation site in order to provide habitat and stormwater benefits to supplement benefits required in accordance with COMAR 27.01.09.
- (2) “Consistent with”
  - (a) For a growth allocation that is to be located in a priority funding area, “Consistent with” means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan:
    - (i) Policies;
    - (ii) Timing of the implementation of the plan, of development, and of rezoning; and
    - (iii) Development patterns.
  - (b) For a growth allocation that is not located in a priority funding area, “Consistent with” means a standard or factor will further, and not be contrary to, all of the items under A.(2) above, as well as:
    - (i) Land uses; and
    - (ii) Densities or intensities.

### **B. Description.**

Growth allocation is the number of acres of land available to the County for new LDAs or IDAs and is equal to 5% of the original acreage of RCA.

- (1) At the time of Program adoption, the original growth allocation acreage was [**X**].
- (2) To date, [**X**] acres of growth allocation have been dedicated to the following municipalities:<sup>19</sup>
- (3) At the time of this Ordinance update, the available growth allocation acreage is [**X**].

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<sup>19</sup> **County** should list all town municipalities within the Critical Area and growth allocation acreage given to them.

**C. Purpose.**

Growth Allocation is available for use in a Resource Conservation Area (RCA) or in a Limited Development Area (LDA) in the [County] Critical Area Overlay District. The purpose is to authorize a change in the Critical Area classification to develop at either a higher density or intensity than what the current classification allows, or authorize a use than would be otherwise prohibited by the current classification.

**D. Process and Submittal Requirements.**

- (1) An applicant shall submit to the [County] a complete application for growth allocation that complies with the submittal requirements below.
- (2) A growth allocation request shall be reviewed and approved according to the local process for a Zoning Map Amendment.
- (3) The [County Commissioners]<sup>20</sup> may establish conditions of approval that are consistent with the intent of the [County]'s Critical Area Program, which may include a Buffer Management Plan or Habitat Protection Plan.
- (4) Upon approval of the growth allocation request by the [County Commissioners], the [County] shall send a request to the Critical Area Commission to utilize a portion of their growth allocation.
- (5) The request shall be accompanied by pertinent findings, plans, environmental reports, and studies as described below:
  - (a) A finding that ensures the growth allocation is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Commission.
  - (b) All information and documentation relevant to the local jurisdiction's determination that the project meets the standards listed under Natural Resources Article, §8-1808.1(c)(2), Annotated Code of Maryland and Part 9, Section E of this Ordinance;
  - (c) All information and documentation that addresses the factors to be considered by the Commission under Natural Resources Article, §8-1808.1(c)(4), Annotated Code of Maryland and Part 9, Section F of this Ordinance;
  - (d) A conceptual site development plan and environmental features map in accordance with COMAR 27.01.02.06-1.B<sup>21</sup>;
  - (e) An environmental report in accordance with COMAR 27.01.02.06-2, including the following:<sup>22</sup>

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<sup>20</sup> Or other County approving authority, here and throughout this Ordinance.

<sup>21</sup> A County may choose to list the requirements of a conceptual site development plan and environmental features map within the Ordinance, rather than referencing COMAR.

- (i) If applicable, a Buffer Management Plan and/or Habitat Protection Plan in accordance with COMAR 27.01.02.06-2.B and C;
  - (ii) If applicable, the preliminary stormwater management plan for compliance with the 10% pollutant reduction rule, including all worksheets and supporting documentation;
- (f) For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Maryland Department of the Environment, Maryland Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:
- (i) Threatened, and endangered species and species in need of conservation;
  - (ii) Forest interior dwelling birds and colonial nesting water birds;
  - (iii) Anadromous fish and their propagation waters and any other aquatic species located onsite;
  - (iv) Plant and wildlife habitat and waterfowl staging and concentration areas;
  - (v) Submerged aquatic vegetation;
  - (vi) Riparian forests and tidal and nontidal wetlands; and
  - (vii) Natural heritage areas and other historical and cultural resources;
- (g) A map that shows the land area for which the local jurisdiction proposes a change of Critical Area land classification; and
- (h) Verification that the amount of proposed growth allocation indicated on the map submitted under subsection C(5)(g) of this regulation is accurate and equal to the amount of growth allocation to be deducted from the local jurisdiction's existing total allotment of growth allocation.
- (6) If the growth allocation is approved by the Critical Area Commission with one or more conditions:
- (a) The [County] has 60 days to notify the Commission of its intent to adopt the conditions; and
  - (b) The [County] shall enforce the Buffer Management Plan, Habitat Protection Plan and other conditions of approval.

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<sup>22</sup> A County may choose to list the requirements of the environmental report within the Ordinance, rather than referencing COMAR.



- (7) Prior to approving the final site plan or subdivision plat, the [County] shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.<sup>23</sup>
- (8) The [County]'s official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission within 120 days of the Commission's approval.

**E. Requirements for the use of growth allocation.**

When locating new Intensely Developed or Limited Development Areas, the following requirements apply:

- (1) A new Intensely Developed Area shall be at least 20 acres, *(unless)*.<sup>24</sup>
- (2) No more than one-half of the [County's] growth allocation may be located in Resource Conservation Areas (RCAs).<sup>25</sup>

**F. Standards.**

When locating new Intensely Developed or Limited Development Areas the following standards shall apply.

- (1) A new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area.<sup>26</sup>
- (2) A new Limited Development Area shall only be located adjacent to an existing

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<sup>23</sup> A County may also opt to include a sunset clause on the growth allocation application.

<sup>24</sup> A new IDA may be less than 20 acres if, as part of a local program, the Commission has approved an alternative standard for designation of an IDA; and the area is part of a growth allocation approved by the Commission. Examples include provisions that allow for grandfathered industrial or commercial uses located on a parcel that is less than 20 acres.

<sup>25</sup> A local jurisdiction may use a standard that varies from using 50% of its growth allocation within the RCA and the local jurisdiction is a municipal corporation, or is in::

- |              |                  |                    |
|--------------|------------------|--------------------|
| (1) Calvert  | (5) Dorchester   | (9) Somerset       |
| (2) Caroline | (6) Kent         | (10) Talbot        |
| (3) Cecil    | (7) Queen Anne's | (11) Wicomico      |
| (4) Charles  | (8) St. Mary's   | (12) Worcester if: |

The county is unable to utilize up to ½ of its total allotted growth allocation area;  
 The alternative standard is consistent with the county's adopted comprehensive plan;  
 The Commission has approved the alternative standard as part of the county's program; and  
 The county requires an applicant for growth allocation to cluster development in the growth allocation area.

That portion of the growth allocation which cannot be so located may be located in the Resource Conservation Areas if it is consistent with [County's] adopted comprehensive plan; and development is clustered in the growth allocation area.

<sup>26</sup> A County may adopt an alternative standard for adjacency as long as the alternative standard is consistent with the County's Comprehensive Plan and the Commission has approved the alternative standard as a part of the program.

Limited Development Area or an Intensely Developed Area.<sup>27</sup>

- (3) A new Limited Development Area or Intensely Developed Area shall be located in a manner that minimizes impacts to Habitat Protection Area as defined herein and in COMAR 27.01.09; optimizes benefits to water quality; and minimizes impacts to the defined land uses of the Resource Conservation Area (RCA).
- (4) A new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, unless the [County] proposes, and the Commission approves, alternative measures for the enhancement of water quality and habitat that provide greater benefits to the resources.
- (5) For a growth allocation for a residential subdivision, comply with the requirements and procedures under Environment Article, §9-206, Annotated Code of Maryland, and Land Use Article, Title 1, Subtitle 5, and §5-104, Annotated Code of Maryland.
- (6) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of [County] for such areas, and shall be so designated on the [County] Critical Area Maps.

**G. Factors.**

In reviewing map amendments or refinements involving the use of growth allocation, [County] shall provide to the Commission all information and documentation that addresses consider the following factors:

- (1) Consistency with [County]'s adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.
- (2) For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:
  - (a) To be served by a public wastewater system;
  - (b) Have an allowed average density of at least 3.5 units per acre as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland;
  - (c) If greater than 20 acres, be located in a priority funding area; and
  - (d) Have a demonstrable economic benefit to the area.
- (3) For a map amendment or refinement involving a new Limited Development Area, whether the development is:

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<sup>27</sup> See footnote 24 above.

- (a) To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
  - (b) A completion of an existing subdivision;
  - (c) An expansion of an existing business; or
  - (d) To be clustered.
- (4) The use of existing public infrastructure, where practical;
  - (5) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
  - (6) Impacts on a priority preservation area, as defined under § 2-518 of the Agriculture Article;
  - (7) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
  - (8) Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

**H. Deduction.**

- (1) The [County] shall deduct acreage from its growth allocation reserves using the following methodology consistent with COMAR 27.01.02.06-4:
  - (a) For the entire acreage of the parcel if, as of December 1, 1985 in the Chesapeake Bay Critical Area<sup>28</sup>:
    - (i) The parcel was less than 20 acres in the RCA; or
    - (ii) The RCA parcel was at least 20 acres but the application does not qualify for use of a growth allocation envelope under (b) below; or
  - (b) For the number of acres approved within a growth allocation envelope, if:
    - (i) Areas that support the proposed development are included within the growth allocation envelope as defined in this Ordinance.
    - (ii) When converting:
      - A. A resource conservation area the remaining resource conservation area on the parcel outside the growth

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<sup>28</sup> Or June 1, 2002 in the Atlantic Coastal Bays Critical Area

- allocation envelope is at least 20 acres; or
  - B. A limited development area to a new intensely developed area, the new intensely developed area is at least 20 acres unless a lesser amount is approved in accordance with Part 12.D(1).
- (2) The [County] may not approve a growth allocation development envelope in the RCA, unless the [County] determines, based on subdivision and development history, that given the existing dwelling units and the development potential on the parcel outside the growth allocation envelope, there remains sufficient resource conservation area acreage outside the envelope to support a minimum density of one dwelling per 20 acres.
- (3) The [County] may exclude the following from a growth allocation deduction:
  - (a) The remaining RCA outside the growth allocation envelope if it is at least 20 acres;
  - (b) The remaining RCA outside the growth allocation if it is less than 20 acres, and is adjacent and contiguous to a permanently protected RCA on another parcel and the sum of the combined area is at least 20 acres;
  - (c) The acreage of a 300-foot setback, even when it is less than 20 acres;
  - (d) The acreage within the Buffer, when it is within a 300-foot setback; and
  - (e) The acreage of tidal wetlands on the parcel.
- (4) The [County] shall authorize a maximum of one growth allocation envelope per parcel, unless;
  - (a) Deduction of more than one growth allocation envelope will provide a water quality or habitat benefit; and
  - (b) The Commission approves more than one growth allocation envelope.
- (5) When a 300-foot setback is not provided, the [County] shall require deduction of the area of the Buffer.
- (6) The acreage of the area deducted shall match the acreage of the area shown on the official Critical Area map as amended by the [County] and Critical Area Commission.

**Part 13. Grandfathering.**

**A. Continuation of existing uses.**

- (1) The continuation, but not necessarily the intensification or expansion, of any use

in existence on (Date of Program Approval) may be allowed, unless the use has been abandoned for more than one year or is otherwise restricted by existing ordinances.

- (2) If any existing use does not conform with the provisions of this Ordinance, its intensification or expansion shall be authorized only in accordance with the variance procedures in Part 16.<sup>29</sup>

## **B. Residential density.**

Except as otherwise provided, the following types of land may be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this Ordinance.

- (1) Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members;
- (2) A legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985;
- (3) Land that received a building permit subsequent to December 1, 1985, but prior to **(Date of Program Approval)**;
- (4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; and
- (5) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.

## **C. Implementation.**

- (1) For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in this chapter.
- (2) Nothing in this Section may be interpreted as altering any requirements of this Ordinance related to water-dependent facilities or Habitat Protection Areas.

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<sup>29</sup> Reference should also be provided to any existing non-conforming use expansion criteria that are specified elsewhere in the local jurisdiction's Zoning Ordinance.

## **Part 14. Lot Consolidation and Reconfiguration.**

### **A. Applicability.**

The provisions of this part apply to a consolidation or a reconfiguration of any nonconforming legal grandfathered parcel or lot. These provisions do not apply to the reconfiguration or consolidation of parcels or lots which are conforming or meet all Critical Area requirements. Nonconforming parcels or lots include:

- (1) Those for which a Critical Area variance is sought or has been issued; and
- (2) Those located in the Resource Conservation Area and are less than 20 acres in size.

### **B. Procedure.**

- (1) An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the required information in Section C below to the [County]<sup>30</sup>.
- (2) The [County] may not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with Section D below and COMAR 27.01.02.08.F.
- (3) The [County] shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
- (4) After a final written decision or order is issued, the [County] shall send a copy of the decision or order and a copy of any approved development plan to the Commission within 10 business days.
- (5) The [County] may not issue a building permit until the appeal time has expired.

### **C. Application.**

An application for the consolidation or reconfiguration of any nonconforming legal parcel of land or recorded legally buildable lot shall contain at least the following information:

- (1) The date of recordation of each legal parcel of land or legally buildable lot to be consolidated or reconfigured;
- (2) A plan drawn to scale that shows all existing and proposed lot or parcel boundaries;<sup>31</sup>
- (3) Information sufficient for [County] to make the findings set forth in Section D

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<sup>30</sup> The County may want to provide reference in this part to the required subdivision process within the County subdivision code.

<sup>31</sup> A reference should be provided here to local procedures for processing an application.

below; and

- (4) A table that lists the number of all legal parcels of land or recorded, legally buildable lots and the number of proposed lots or parcels or dwelling units to be derived.

**D. Standards.**

The **[Planning Commission]** shall review a proposed lot consolidation or reconfiguration and will make written findings that each one of the following standards has been met:

- (1) The proposed consolidation or reconfiguration will result in no greater number of lots, parcels, or dwelling units in the Critical Area than the existing configuration would allow;
- (2) In the Limited Development Area or Resource Conservation Area, the proposed lot consolidation or reconfiguration:
  - (a) Will result in no greater lot coverage than the existing configuration would allow; and
  - (b) Will result in no greater impact to a steep slope than the existing configuration would allow, if that steep slope is located outside the buffer or expanded buffer.
- (3) The proposed consolidation or reconfiguration does not:
  - (a) Create an additional riparian lot or parcel, waterfront lot, or any other lot or parcel deeded with water access; or
  - (b) Intensify or increase impacts associated with riparian access;
- (4) The proposed consolidation or reconfiguration does not create:
  - (a) A lot or parcel or portion of a lot or parcel that will serve development activities outside the Critical Area; or
  - (b) A Resource Conservation Area lot or parcel that serves development activities in the Intensely Developed Area or Limited Development Area;
- (5) The proposed consolidation or reconfiguration identifies each Habitat Protection Area and if impacts to a Habitat Protection Area are proposed, the proposal demonstrates that:
  - (a) No greater impact to a Habitat Protection Area would result than the impact that would have resulted from the existing lot configuration;
  - (b) Adverse impacts to an Habitat Protection Area are minimized; and

- (c) Protective measures and restoration measures are included that provide for the least possible impact;
- (6) The proposed consolidation or reconfiguration provides:
  - (a) Stormwater management for all proposed development activities; and
  - (b) Benefits to fish, wildlife, and plant habitat that are clearly identified.
- (7) The proposed consolidation or reconfiguration fully complies with the afforestation and reforestation requirements in COMAR 27.01.05 and 27.01.09, unless clearing is necessary to avoid a habitat protection area.

**Part 15. Intrafamily Transfers.<sup>32</sup>**

**A. Applicability.**

[County] shall permit bona fide intrafamily transfers to be made only from parcels of land that:

- (1) Were of record on (*March 1, 1986 in the Chesapeake Bay Critical Area*) or (*on June 1, 2002 in the Atlantic Coastal Bays Critical Area*); and
- (2) Are seven acres or more and less than 60 acres in size.

**B. Required subdivision.**

A bona fide intrafamily transfer from a parcel of land shall be a subdivision of the parcel of land that is subject to approval under the Subdivision Regulations<sup>33</sup> of the [County].

**C. Approval of subdivision of parcels.**

The [County] may approve the subdivision of a parcel of land into the number of lots indicated in this section by means of a bona fide intrafamily transfer and may not approve any greater subdivision of the parcel of land or any portion of it as follows:

- (1) A parcel that is 7 acres or more and less than 12 acres in size may be subdivided into two lots.
- (2) A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into three lots. The lots may be created at different times.

**D. Conditions of approval.**

As a condition of approval the [County] shall require that:

- (1) Any deed for a lot that is created by a bona fide intrafamily transfer shall contain a covenant approved by the [County] Attorney stating that the lot is created subject to the provisions of Natural Resources Article Chapter 8-1808.2,

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<sup>32</sup> This section is optional – a jurisdiction is not required to permit intrafamily transfer in the RCA.

<sup>33</sup> Provide citation to appropriate code section



Annotated Code of Maryland, and

- (2) A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family, except under procedures set forth in Part E below.
- (3) This chapter does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.

**E. Circumstances for subsequent conveyance of lots.**

The [County] may approve any subsequent conveyance of lots to persons other than immediate family members only under the under the following conditions:

- (1) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and
- (2) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this subtitle and that warrants an exception; or
- (3) Other circumstances that are consistent with this subtitle and with the Critical Area Criteria to maintain land areas necessary to support the protective uses of agriculture, forestry, open space and natural habitats in Resource Conservation Areas and thus warrant an exception.

**Part 16. Variances.<sup>34</sup>**

**A. Applicability.**

[County] has established provisions where, owing to special features of a site or other circumstances, implementation of this Ordinance or a literal enforcement of provisions within this Ordinance would result in unwarranted hardship to an applicant; a Critical Area variance may be obtained.

- (1) In considering an application for a variance, [County] shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of this Ordinance.
- (2) Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

**B. Standing.**

In accordance with Natural Resources Article, §8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the

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<sup>34</sup> A local jurisdiction is authorized under the Critical Area law to propose administrative variance procedures.

person shall have standing to participate as a party in a local administrative proceeding.

**C. Standards.**

The provisions for granting a variance shall include written findings based on competent and substantial evidence that the applicant has overcome the presumption established under section 16.A and that each of the following standards are met:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the land or structure involved, a literal enforcement of provisions and requirements of this Critical Area Ordinance would result in an unwarranted hardship;
- (2) A literal interpretation of the provisions of the local Critical Area program will deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of this local Critical Area Ordinance;
- (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the local Critical Area Ordinance to other lands or structures in accordance with the provisions of the local Critical Area Ordinance;
- (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant;
- (5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- (6) The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area; and
- (7) The granting of the variance would be in harmony with the general spirit and intent of the State Critical Area Law, the regulations in COMAR Title 27, Subtitle .01 and this Critical Area Ordinance;

**D. Process.**

Applications for a variance will be made in writing to the [County] Board of Appeals<sup>35</sup> with a copy provided to the Critical Area Commission. [County] shall follow its established procedures for advertising and notification of affected landowners.

- (1) After hearing an application for a Critical Area Program variance, the Board of Appeals shall make written findings reflecting analysis of each standard. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
  - (a) The applicant;

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<sup>35</sup> Or other local appeals authority.

- (b) [County] or any other government agency; or
  - (c) Any other person deemed appropriate by [County].
- (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, [County] shall consider that fact, and whether the application has met the requirements of Section E below.
  - (3) The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Section A above.
  - (4) [County] shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

**E. After-the-fact requests.**

- (1) A local jurisdiction may not accept an application of a variance to legalize a violation, including an unpermitted or otherwise authorized structure or other development activity until the local jurisdiction:
  - (a) Issues a notice of violation; and
  - (b) Assesses an administrative or civil penalty for the violation.
- (2) The [County] may not issue a permit, approval, variance, or special exception to legalize a violation of this subtitle unless an applicant has:
  - (a) Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article, §8-1808(c)(1), Annotated Code of Maryland;
  - (b) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and
  - (c) Performed the abatement measures in the approved plan in accordance with the local Critical Area program.
- (3) If the Board denies the requested after-the-fact variance, then the [County] shall:
  - (a) Order removal or relocation of any structure; and
  - (b) Order restoration of the affected resources.

**F. Appeals.**

- (1) Appeals from decision concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the [County] for variances.

- (2) Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure.
- (3) Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Ordinance or any person with standing as described in Section 16.B above.
- (4) The [County] may not issue a permit, or any other type of authorization, until the applicable 30-day appeal period has expired.

**G. Conditions and mitigation.**

The [Board of Appeals] shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of this Ordinance is maintained including, but not limited to the following:

- (1) Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the [Local Planning Authority], but not less than by planting on the site per square foot of the variance granted at no less than a three to one basis.
- (2) New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

**H. Commission notification.**

Within ten (10) working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission.

**Part 17. Local Development Projects**

**A. Definitions.**

- (1) Major Development.
  - (a) “Major development” means development on a scale that may cause:
    - (i) Statewide, regional, or interjurisdictional environmental or economic effects in the Critical Area; or
    - (ii) Substantial impact on the Critical Area program of a local jurisdiction.
  - (b) “Major development” includes:
    - (i) An airport, power plant, major solar energy generating system, wastewater treatment plant, highway, regional utility transmission

facility, prison, hospital, public housing project, public beach, and an intensely developed park and recreation facility; and

- (ii) A development or project authorized by the Public Service Commission under a Certificate of Public Convenience and Necessity.

(2) “Minor development” means development of a reduced scale that:

- (a) Causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which the development is located;
- (b) Does not substantially affect the Critical Area program of the local jurisdiction; and
- (c) Is not considered by the Commission to be major development.

**B. Applicability.**

For all development in the Critical Area resulting from any [County] agency, the [County] shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

**C. Procedures.**

The sponsoring agency of any development project within the [County’s] Critical Area shall work with the [Planning Department] to identify the appropriate procedures for determining compliance with this Ordinance.

- (1) If the project meets the provisions of this Ordinance and is minor development, the [Planning Department] shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the Critical Area Commission per the requirements of COMAR 27.02.02.
- (2) If the project does not meet the provisions of this Ordinance, the [Planning Department] shall seek a conditional approval by the Critical Area Commission per the requirements of COMAR 27.02.06.
- (3) The [County] shall submit information as required in the Critical Area Commission’s *Local Project Submittal Instructions and Application Checklist*.
- (4) New major development by a [County] agency shall, to the extent practical be located outside the Critical Area. If the siting of the development in the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area, the [Planning Department] shall request approval from the Critical Area Commission per the Commission’s *Local Project Submittal Instructions and Application Checklist* and provide the following information:

- (a) Findings and supporting documentation showing the extent to which the project or development is consistent with the provisions and requirements of this Ordinance and COMAR 27.02.04.02; and
- (b) An evaluation of the effects of the project on the [County's] Critical Area Program.

**D. Notice requirements for projects reviewed and approved by the Critical Area Commission.**

Public notice is required for all development projects that qualify under COMAR 27.03.01.03. Public notice shall be the responsibility of the [County] agency proposing the project and the agency shall as part of its submittal to the Critical Area Commission, provide evidence that:

- (1) Public notice was published for one business day in a newspaper of general circulation in the geographic area where the proposed development would occur, including the following information:
  - (a) The identity of the sponsoring local agency;
  - (b) A description of the proposed development;
  - (c) The street address of the affected land and a statement that its location is in the Critical Area; and
  - (d) The name and contact information of the person within the sponsoring State agency or local agency designated to receive public comment, including a fax number and email address, and the deadline for receipt of public comment.
- (2) At least 14 days were provided for public comment; and
- (3) The property proposed for development was posted in accordance with the provisions for posting in Section D.
- (4) In addition to the public notice required in Section C(1), the [County] may provide for public notice by electronic posting on its website, on the website of a newspaper of general circulation in the geographic area where the proposed development would occur, or by notification to a neighborhood association or residents of a particular geographic area.
- (5) Evidence of public notice to be submitted to the Commission shall include the following documentation:
  - (a) The name of the newspaper and the date on which the notice was published;
  - (b) A copy of the public notice as it was published in the newspaper; and

- (c) A copy of each written comment received in response to the public notice.

**E. Posting requirements for projects reviewed and approved by the Critical Area Commission.**

For projects that qualify for public notice, the sponsoring agency shall ensure that a sign is posted on the property. Posting shall meet the following requirements:

- (1) Shall consist of at least one sign that is a minimum of 30 inches by 40 inches in size;
- (2) The sign clearly:
  - (a) Identifies the sponsoring agency;
  - (b) Describes the proposed development;
  - (c) Provides the street address of the affected land and states that it is located in the Critical Area; and
  - (d) States the name and contact information of the person within the sponsoring agency designated to receive public comment, including a fax number and email address, and the deadline for receipt of public comment;
- (3) On a date not later than the date on which the notice is published in the newspaper, the sign shall be posted in a conspicuous location on the development site and remain there until after the Critical Area Commission has voted on the development; and
- (4) For development that extends more than 1,000 linear feet in road frontage, at least one sign shall be posted at each end of the affected land on which the development is proposed.

**Part 18. Program Changes.**

**A. Program changes.<sup>36</sup>**

The [County Commissioners] may from time to time, but not more than 4 times per calendar year, amend the County Critical Area Program. Critical Area Program changes include, but are not limited to, amendments, revisions, and modifications to this Ordinance, zoning regulations, subdivision regulations, Critical Area Maps, implementation procedures, and local policies that affect the County's Program.

- (1) All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in § 8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be

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<sup>36</sup> A County may want to insert a third standard identifying the local review process for County approval. All program changes must first be approved locally, prior to submission to the Critical Area Commission.

implemented without approval of the Critical Area Commission.

- (2) Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law § 8-1809(i) and § 8-1809(d), respectively.

**B. Comprehensive reviews.**

[The County] shall review its entire Program and propose any necessary amendments to its entire Program, including this Ordinance, at least every six years in accordance with Natural Resources Article, §8-1809 (g). The anniversary of the date that the Program became effective shall be used to determine when the review shall be completed. Within 60 days after the completion of the review, the County shall send the following information in writing to the Commission:

- (1) A statement certifying that the required review has been accomplished;
- (2) All necessary requests for program amendments, program refinements, or other matters that the County wishes the Commission to consider;
- (3) An updated resource inventory; and
- (4) A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.

**C. Zoning map amendments.**

Except for program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by the [County Commissioners] upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:

- (1) Are wholly consistent with the land classifications in the adopted Program; or
- (2) Propose the use of a part of the remaining growth allocation in accordance with the growth allocation provisions of this ordinance.

**D. Adoption of a program amendment or refinement.**

If approved by the Critical Area Commission, [the County] shall incorporate a program amendment or refinement into its adopted Critical Area Program, including any conditions of approval, within 120 days of receiving notice from the Chairman of the Commission.

**Part 19. Water Dependent Facilities.**

**A. Applicability.**

- (1) The provisions of this chapter apply to those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer.



- (2) The provisions of this chapter are not applicable to:
  - (a) A private pier that:
    - (i) Is installed or maintained by a riparian landowner; and
    - (ii) Is not part of a residential project that provides a community pier or other community boat-docking or storage facility under Regulation .07 of this chapter; or
  - (b) A nonwater-dependent project covered under COMAR 27.01.13.
- (3) The requirements of COMAR 27.01.02 apply to this chapter.

**B. General Criteria.**

The following standards shall apply to all new or expanded development activities associated with water-dependent facilities:

- (1) In accordance with Natural Resources Article §8-1808.3, Annotated Code of Maryland, permitted development in the Buffer is limited to the minimum lot coverage necessary to accommodate each water dependent facility or activity.
- (2) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:
  - (a) That the facility or activity are water-dependent;
  - (b) That the facility or activity meets a recognized private right or public need;
  - (c) That adverse effects on water quality, fish, plant and wildlife habitat are first avoided, or if unavoidable, minimized;
  - (d) That, insofar as possible, a non-water-dependent project associated with the water-dependent facility or activity is located outside the Buffer;
  - (e) Impacts to fish, wildlife, or plant habitat are avoided, or if unavoidable, minimized; and
  - (f) Mitigation is provided at a minimum ratio of 1:1 based on the square footage of canopy coverage removed.
- (3) Except as otherwise authorized in this section, a water-dependent facility or activity is prohibited in the Buffer of the Resource Conservation Area.
- (4) The placement of dredged material in the Buffer or a portion of the Critical Area

that has been designated as a habitat protection area is prohibited, except as necessary for:

- (a) A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:
  - (i) Backfill for a shoreline stabilization measure;
  - (ii) Use in a nonstructural shoreline stabilization measure, including a living shoreline;
  - (iii) Beach nourishment;
  - (iv) Restoration of an island;
  - (v) The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or
  - (vi) Any other approved beneficial use; or
- (b) Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988.

**C. General requirements for the location of water-dependent facilities or activities.**

- (1) **[The County]** shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. **[The County]** shall work with as applicable, the Departments of Agriculture, the Environment, and Natural Resources and any other appropriate federal or State agency to develop a plan for the approval of an area suitable for the location of a new or expanded water-dependent facility or activity.
- (2) **[County]** shall document each of the following siting factors is accorded due consideration when evaluating proposals for new or expanded water dependent facilities:
  - (a) The impact on the water body upon which the water-dependent facility or activity is proposed that would likely result from the approval of that location, including:
    - (i) Alteration of an existing water circulation pattern or salinity regime;
    - (ii) Adequacy of area flushing characteristics;
    - (iii) Necessity of, and proximity to, a dredging operation; and

- (iv) Interference with the natural transport of sand;
- (b) Disturbance to:
  - (i) An oyster harvest area, as defined in COMAR 08.02.04.11;
  - (ii) An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
  - (iii) A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
  - (iv) An oyster sanctuary, as established in COMAR 08.02.04.15A; and
  - (v) Any other shellfish located in a shellfish area regulated by the Department of Natural Resources;
- (c) Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
- (d) The avoidance or, if unavoidable, the minimization of:
  - (i) Disturbance to:
    - A. A wetland;
    - B. Submerged aquatic vegetation;
    - C. A habitat of threatened or endangered species or species in need of conservation;
    - D. In accordance with COMAR 26.08.02.04-1, a water body identified by the Department of the Environment as a Tier II, high quality water body and its watershed; and
    - E. A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and .04 and COMAR 26.23.06.01; and
  - (ii) Adverse impacts on water quality that would likely result from the facility or activity, such as nonpoint source runoff, sewage discharge, or other pollution related to vessel maintenance.

**D. Industrial and port-related facilities.**

In addition to meeting the requirements of Parts 19.B and 19.C, new, expanded or redeveloped industrial or port-related facilities or activities and the replacement of these facilities or activities may be permitted only in those portions of Intensely Developed

Areas that have been designated as Modified Buffer Areas as described in this ordinance and are subject to the provisions set forth in that Chapter.<sup>37</sup>

**E. Commercial marinas and other water-dependent commercial maritime facilities and activities.**

- (1) In addition to meeting the requirements of Parts 19.B and 19.C:
  - (a) A new or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an IDA or LDA;
  - (b) A redeveloped or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of a RCA; or
  - (c) A new commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an RCA, only if it is publicly owned and meets all the requirements of Section G of this Part.
- (2) The County shall require that the operation of each commercial marina and each related commercial maritime facility or activity complies with:
  - (a) The requirements of COMAR 26.08.04.09 and, as applicable, COMAR 26.24.04.03; and
  - (b) The stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of the Department of the Environment.

**F. Community piers and other community boat-docking and storage facilities.**

- (1) In addition to meeting the requirements of Parts 19.B and 19.C, a new or expanded community pier or other community boat-docking and storage facilities may be permitted in the Buffer of an IDA, LDA, or RCA if:
  - (a) The owner or operator of the pier or facility:
    - (i) Does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and
    - (ii) As applicable, complies with the requirements of COMAR 26.24.04.03;
  - (b) The pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
  - (c) The pier or facility is associated with a residential project approved by the County for the Critical Area and consistent with all State requirements and

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<sup>37</sup> A local jurisdiction may also allow an approved use in accordance with the local Critical Area program.

program requirements for the Critical Area;

- (d) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the pier or facility; and
  - (e) If community piers are provided as part of a new residential project, private piers in the development are not allowed.
- (2) The number of slips authorized at a pier or facility shall be the lesser of (a) or (b) below:
- (a) One slip for each 50 feet of shoreline in a residential project in the Intensely Developed and Limited Development Areas, and one slip for each 300 feet of shoreline in a residential project in the Resource Conservation Area; or
  - (b) A density of slips to platted lots or dwellings within a residential project in the Critical Area according to the following schedule:

**Table 19.F(2) Number of Slips Permitted**

Platted Lots or Dwellings in the Critical Area	Slips
up to 15	1 for each lot
16 - 40	15 or 75% whichever is greater
41 - 100	30 or 50% whichever is greater
101 - 300	50 or 25% whichever is greater
over 300	75 or 15% whichever is greater

**G. Public beaches and other public water-oriented recreation or education areas or activities.**

- (1) In addition to meeting the requirements of Parts 19.B and 19.C, public beaches or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:
  - (a) An Intensely Developed Area; or
  - (b) A Limited Development Area or a Resource Conservation Area provided that:
    - (i) Adequate sanitary facilities exist;
    - (ii) Sanitary and service facilities are, to the extent possible, located outside the Buffer;
    - (iii) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would likely result; and

- (iv) Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.
- (2) Areas for public passive outdoor recreation, such as nature study, and hiking, hunting and trapping, and for education, may be permitted in the Buffer within a Limited Development Area or a Resource Conservation Area if sanitary and service facilities for these uses are located outside of the Buffer.

**H. Research-associated and education-associated water-dependent facilities or activities.**

In addition to meeting the requirements of Parts 19.B and 19.C, a research-associated water-dependent facility or activity or of an education-associated water-dependent facility or activity may be permitted in the Buffer of an IDA, LDA, or RCA, if any associated nonwater-dependent project or activity is located outside the Buffer.

**I. Aquaculture and fishery facilities and activities: water quality restoration.**

In addition to meeting the requirements of Parts 19.B and 19.C, the following types of facilities and activities may be permitted in the Buffer of an IDA, LDA or RCA:

- (1) A shore-based facility or activity necessary for a commercial aquaculture operation;
- (2) A commercial water-dependent fishery facility or activity, including a structure for crab shedding, a fish off-loading dock, and a shellfish culture operation; and
- (3) A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

**Part 20. Nonwater-dependent structures on piers.<sup>38</sup>**

- (1) Except as provided in paragraphs (2) and (3) of this Part and notwithstanding any other provisions of the law, [County] may not issue a building permit or any other approval to authorize a non-water dependent project constructed or established on State or private wetlands within the Critical Area.
- (2) [County] may issue a building permit or any other approval to authorize a non-water dependent project on State or private wetlands within the Critical Area if the project:
  - (a) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
  - (b) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;

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<sup>38</sup> This is an opt-in Section. A local jurisdiction may choose to adopt the commercial structures on piers language, the renewable energy structures on piers language, or both, or neither.

- (c) Is located in:
    - (i) An Intensely Developed Area; or
    - (ii) An area that has been excluded from a local Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
  - (d) Is approved by the Planning Commission and the Zoning Board after the **[County]** program amendment under Subparagraph (c)(i) above, if applicable, has been approved;
  - (e) Allows or enhances public access to State wetlands;
  - (f) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;
  - (g) Has a height of up to 18 feet unless the project is located at a marina; and
  - (h) Is up to 1,000 square feet in total area; or
    - (i) Is located on a pier that was in existence on or before December 31, 2012;
    - (ii) Satisfies all of the requirements under Section (2)(a)-(g) of this paragraph; and
    - (iii) If applicable, has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total area.
- (3) **[County]** may issue a building permit or other approval to authorize a non-water dependent project for a small scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:
- (a) Is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article;
  - (b) Is approved by the **[County's Planning and Zoning authority]**;
  - (c) Involves the installation or placement of:
    - (i) A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than:
      - A. Four (4) feet above or 18 inches below the deck of the pier; or
      - B. One (1) foot beyond the length or width of the pier;

- (ii) A solar energy system attached to a piling if there is only one solar panel per boat slip;
- (iii) A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;
- (iv) A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:
  - A. Extend beyond the length, width, or channelward encroachment of the pier;
  - B. Deleteriously alter longshore drift; or
  - C. Cause significant individual or cumulative thermal impacts to aquatic resources; or
- (v) A wind energy system attached to a pier if there is only one wind energy system per pier for which:
  - A. The height from the deck of the pier to the blade extended at its highest point is up to 12 feet;
  - B. The rotor diameter of the wind turbine is up to four (4) feet; and
  - C. The setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

**Part 21. Shore Erosion Protection.**

**A. Policies.**

All shore erosion control activities or projects shall meet the requirements of COMAR 26.24.02 and COMAR 26.24.04.

**B. Process.**

- (1) The [County] shall require any authorized shore erosion control project to submit a Buffer Management Plan.
- (2) The Buffer Management Plan shall meet the requirements of Part 9 of this



Ordinance and COMAR 27.01.09.<sup>39</sup>

- (3) A copy of the approved Buffer Management Plan shall be forwarded to the Critical Area Commission.

## **Part 22. Forest and Woodland Protection.**

### **A. General policies.**

The following policies for forest and woodland protection recognize the value of forested land for its water quality benefits and for habitat protection while accommodating the utilization of forest resources:

- (1) Maintain and increase the forested and developed woodland vegetation in the Critical Area;
- (2) Conserve forests and developed woodlands and provide for expansion of forested areas;
- (3) Provide that the removal of trees associated with development activities is minimized and, where appropriate, mitigated; and
- (4) Recognize that forests are a protective land use to be managed so that maximum values for wildlife, water quality, timber, recreation, and other resources are maintained, even when they are mutually exclusive.

### **B. Standards.**

- (1) If a forest is to be developed or to be harvested, a site-specific field investigation shall be conducted to determine if important sensitive species are present and to make sure that appropriate protection measures are incorporated into the development plan or Timber Harvest Plan. Applications shall be forwarded to the Department of Natural Resources Wildlife and Heritage Service (WHS) for environmental review. In addition to below, any recommendations made by WHS shall be incorporated in to the development plan or Timber Harvest Plan:
  - (a) The replacement or establishment of forest or developed woodlands should ensure a diversified plant community and should include canopy trees, understory trees, shrubs and herbaceous plants.
  - (b) Native species should be used for all reforestation and afforestation.
- (2) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants shall utilize the guidance found in the Critical Area Commission publication entitled, *A Guide*

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<sup>39</sup> Alternatively, a local jurisdiction could reference the Buffer Management Plan forms (Offshore, Bulkhead, Revetment, and Living Shoreline) for shore erosion control developed by the Critical Area Commission and available on the internet. The mitigation requirements outlined in these forms provides flexibility based on on-site conditions.

*to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended.

- (3) The Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development, including:
  - (a) Minimize forest and woodlands disturbance from off-road vehicles, public use or logging from May through August of each year;
  - (b) Focus all development on the periphery of the forest or woodlands;
  - (c) Retain the forest canopy as well as shrub understory;
  - (d) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
  - (e) Discourage the creation of small clearings and expansion of forest edge habitats;
  - (f) Encourage re-establishment of native forests and woodlands; and
  - (g) Adopt harvest techniques to maintain or improve habitat.

**C. Commercial timber harvesting.**

- (1) Landowners proposing to harvest timber within any one-year interval and affecting one or more acres in the Critical Area shall follow a "Timber Harvest Plan" This plan shall be prepared by a registered professional forester. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources and the District Forestry Board. The approved plan shall be filed with the County Soil Conservation District and the approved plan shall be sent to the [County Planning and Zoning] prior to beginning timbering operations. The office shall review the plan to assure its consistency with this program.
- (2) Any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more, including harvesting on agricultural lands, shall follow a Sediment Control Plan in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the County.
- (3) Timber harvests are permitted in the Buffer in accordance with the provisions of COMAR 27.01.09.01-7.

**D. Enforcement.**

Unauthorized clearing, cutting, or removal of vegetation; unauthorized clearing, cutting, or removal of vegetation in the Buffer; and clearing, cutting or removal of vegetation in excess of the area permitted to be cleared by this ordinance is considered a violation of

this ordinance and shall result in enforcement action as specified in Part 4 of this Ordinance.

**Part 23. Agriculture.**

**A. General policies.**

The [County] shall follow all of the following policies with regard to agriculture in the Critical Area:

- (1) Assure that agricultural lands are identified and that programs are established for the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the greatest extent possible; and
- (2) Recognize that agriculture is a protective land use that should be properly managed so that it minimizes its contribution to pollutant loadings to the Chesapeake Bay and Atlantic coastal bays and its tributaries.

**B. Criteria.**

- (1) [County] shall develop an agricultural protection plan in cooperation with the County Soil Conservation District, the County agricultural land preservation advisory board, and any other appropriate agency.
- (2) Each agricultural protection plan developed under §B of this regulation shall:
  - (a) Consist of:
    - (i) An identification, inventory, and mapping of agricultural land within the Critical Area;
    - (ii) An identification of agricultural land that includes a habitat protection area covered in COMAR 27.01.09; and
    - (iii) A program to maintain agricultural land in agricultural use and to protect water quality and plant and wildlife habitat, which shall at least include:
      - A. Measures to encourage the preservation of agricultural land;
      - B. In accordance with the provisions of COMAR 27.01.09, protection of a habitat protection area located within agricultural land; and
      - C. In order to conform to harvest practice requirements in COMAR 27.01.05 and 27.01.09.01-7, a timber harvest plan; and

- (b) Assure that:
  - (i) Each agricultural operation as in place and is implementing a current:
    - A. Soil conservation and water quality plan; and
    - B. Nutrient management plan prepared by a certified nutrient management consultant or certified farm operator in accordance with COMAR 15.20.04.07 and .08;
  - (ii) Agricultural activities authorized in the buffer are in accordance with COMAR 27.01.09.01-6; and
  - (iii) The creation of new agricultural land is not accomplished:
    - A. By diking, draining or filling of any class or subclass of palustrine wetlands, as described in this program which have a seasonally flooded or wetter water regime, unless mitigation is accomplished in accordance with as applicable State and County regulations;
    - B. By clearing of forests or woodlands on soils with a slope greater than 15 percent; or on soils with a "K" value greater than .35 and slope greater than 5 percent;
    - C. If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in this ordinance; or
    - D. By the clearing of existing natural vegetation within the Buffer as defined in this ordinance.

**Part 24. Surface Mining in the Critical Area.<sup>1</sup>**

**A. Applicability.**

- (1) The provisions of this chapter are applicable:
  - (a) To each local jurisdiction in the Critical Area that is required to include a mineral resources element in its comprehensive plan in accordance with Land Use Article, §3-102, Annotated Code of Maryland;
  - (b) To each surface mining activity for which a license, permit, or other approval was issued on or after the date of local program approval; and
  - (c) To any other statutory or regulatory requirement applicable under federal or State law.

- (2) Notwithstanding any other provision of law, the provisions of this chapter may not be construed to prohibit the location or use of a water-dependent facility, in accordance with COMAR 27.01.03 or Part 19 of this ordinance, for the transport of a surface mining product or by-product.

**B. General policies.**

In developing and updating its Critical Area program, [County] has accorded due consideration to the following policies:

- (1) When locating a surface mining activity, avoidance or, in the alternative, minimization of the substantial loss of renewable resource land and the degradation of water quality; and
- (2) When conducting a surface mining activity:
  - (a) Utilization of all available measures to protect the Critical Area from all sources of pollution resulting from that activity, including sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of waste, dust, or spoil; and
  - (b) Facilitation of site reclamation, including renewable resource land, as soon as possible and to the maximum extent possible.

**C. Criteria.**

In reviewing and approving surface mining activities in the Critical Area, [County] shall:

- (1) In conjunction with, as applicable, the Departments of Agriculture, Environment, and Natural Resources, and any other appropriate federal or State agency, develop a mineral resources plan and management program that is included in its comprehensive plan and consists of:
  - (a) In accordance with Land Use Article, §§1-411 and 3-107, Annotated Code of Maryland, the identification and mapping of the undeveloped land in the Critical Area that is best kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals;
  - (b) Each surface mining area that includes a habitat protection area under COMAR 27.01.09; and
  - (c) In accordance with COMAR 27.01.02, at each location where surface mining is, or has been, conducted, the identification of:
    - (i) Post-reclamation land uses that, where applicable, prioritize the establishment or re-establishment of renewable resource products, such as agriculture and forestry, and other land uses that benefit

water quality and habitat, such as wetlands, habitat restoration, and open space; and

- (ii) Any other appropriate post-reclamation land use, such as recreation and development;
- (2) Designate each portion of the Critical Area that is unsuitable for surface mining and prohibit surface mining in those locations, including:
- (a) In accordance with the provisions of COMAR 27.01.09, a habitat protection area;
  - (b) An area where highly erodible soil exists; and
  - (c) An area that is within 100 feet immediately landward from mean high water of tidal waters or from the edge of a bank of a tributary stream, unless:
    - (i) A license, permit, or other approval to conduct a specific aspect of surface mining was issued before the date of local program approval; and
    - (ii) If expansion of the scope or size of the surface mining activity has occurred since the date of local program approval, the expansion complies with State law and local program requirements.
- (3) Require the reclamation of a wash pond in accordance with State law and local program requirements; and
- (4) Prohibit the location of a wash plant within the buffer in accordance with COMAR 27.01.09.

## **Part 25. Renewable Energy Generating Systems.**

### **A. Applicability.**

- (1) The requirements of this Part are applicable to major, minor, and small renewable energy generating systems located in the Critical Area.
- (2) In accordance with COMAR 27.01.14.02, these provisions may not be construed to limit the authority of the Public Service Commission under Public Utilities Article §7-207, Annotated Code of Maryland.

### **B. Application requirements.**

- (1) An applicant for a major solar energy generating system in a Resource Conservation Area, shall provide [County] a site plan that addresses the requirements of COMAR 27.02.07 and includes the following:

- (a) Calculations of any required reservation of resource conservation area density development rights; and
  - (b) The identification and location of property restrictions including the boundary and area of a conservation easement, restrictive covenant, or other protective instrument.
- (2) The [County] may require a site plan for a minor solar energy generating system<sup>40</sup>.

**C. General provisions.**

- (1) On or after April 1, 2021, the [County] may authorize:
- (a) A major or minor solar energy generating system within the Critical Area in accordance with Part 25.C;
  - (b) A major solar energy generating system in the resource conservation area without growth allocation in accordance with Part 25.D; and
  - (c) A small residential accessory solar energy generating system in the Buffer or in a Modified Buffer Area if:
    - (i) There is not an alternative location outside the Buffer;
    - (ii) The lot is 1/4 acre or less in size and created before local program approval; and
    - (iii) Mitigation is required at a 1:1 ratio.
- (2) A major and minor solar energy generating system may be authorized in a modified buffer area provided the project is located over existing legally developed lot coverage.
- (3) In addition to meeting the requirements of this Part, [County] may not authorize a growth allocation to accommodate a major or a minor solar energy generating system in the limited development area or the resource conservation area.
- (4) Except for a regulated activity that is authorized by the Maryland Department of the Environment in accordance with COMAR 26.23.02, [County] may not authorize a major or minor solar energy generating system:
- (a) In a habitat protection area designated under COMAR 27.01.09; or
  - (b) On a steep slope or a highly erodible soil.

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<sup>40</sup> This standard is optional and should be either specified or deleted.

- (5) In accordance with COMAR 27.01.14, a variance, modification, waiver, or other approval that alters the requirements of this Part may not be granted.

**D. Criteria for a solar energy generating system.**

Except for a small residential accessory solar energy generating system, the provisions of this section are applicable to a major and minor solar energy generating system in an intensely developed area, a limited development area, and a resource conservation area:

- (1) The area of a solar panel shall not count as lot coverage and:
  - (a) For a minor solar energy generating system, the solar panel shall be:
    - (i) Located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland; or
    - (ii) Elevated above the ground and the area under the solar panel is maintained as an area of existing grass, established grass, or other natural vegetation, or as an agricultural use; and
  - (b) For a major solar energy generating system, the solar panel shall be:
    - (i) Located over existing, legally developed lot coverage; or
    - (ii) Elevated above the ground and the area under the solar panel is maintained in accordance with the planting plan requirements of Part 25.E as:
      - A. Pollinator habitat;
      - B. Native vegetation other than pollinator habitat; or
      - C. An agricultural use.
- (2) The Buffer shall be measured and delineated in accordance with COMAR 27.01.09.01.E(3)-(7) and Part 9.A of this Ordinance and:
  - (a) Unless there is no feasible alternative, access through the Buffer to the project area is prohibited;
  - (b) When there is no feasible alternative to access through the buffer, no point of access through the buffer to the project area, may be authorized. Where a project includes noncontiguous parcels, the number of access points through the buffer shall be minimized;
  - (c) Mitigation for disturbance to the Buffer is required at a 2.5:1 ratio; and



- (d) A buffer management plan shall be provided in accordance with COMAR 27.01.09.01-3.
- (3) Except when a project area is in an IDA, clearing of forest and developed woodlands shall be minimized and not exceed the following:
  - (a) In a LDA, clearing of forest and developed woodlands is limited to 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located; and
  - (b) In a RCA, clearing of forest is limited to 10 acres or 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located, whichever is less.
- (4) In an IDA, LDA, and RCA, mitigation for cleared forest and developed woodlands shall be provided on at least an equal area basis.
- (5) For a major solar energy generating system, on-site or off-site planting in shall be in accordance with the following:
  - (a) 15 percent of the total project area in a limited development area; and
  - (b) 20 percent of the total project area in a resource conservation area.
- (6) A planting plan shall be provided in accordance with Section E below.
- (7) Stormwater management shall be provided in accordance with Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02.
- (8) A decommissioning plan shall be required if one is not otherwise required as a result of obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission.

**E. Criteria for a major solar energy generating system in the resource conservation area.**

These provisions apply to a major solar energy generating system in the RCA in addition to the requirements under Part 25.C above:

- (1) Except for access allowed in accordance with Part C(3) and in accordance with the provisions in COMAR 27.01.06, forest clearing shall be restricted within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream.
- (2) In addition to any applicable local land recordation requirements, a Reservation of Resource Conservation Area Density Rights Agreement shall be recorded in the

County land records that reserves RCA density rights associated with the project as follows:<sup>41</sup>

- (a) The number of density rights reserved is equal to:
  - (i) The permitted RCA density associated with the project area of each parcel as calculated under Natural Resources Article, §8-1808.1(e), Annotated Code of Maryland, and COMAR 27.01.02.05C(4); and
  - (ii) The number of density rights that are attributable to the project area, with a minimum of one density right reserved.
- (3) The Reservation of Resource Conservation Area Density Rights Agreement shall remain in effect until:
  - (a) The decommissioning plan, as required in Section C, has been implemented and completed; and
  - (b) The termination of the Reservation of Resource Conservation Area Density Rights Agreement is reflected in the land records.
- (6) The remaining land unencumbered by the solar energy generating system or lands not otherwise restricted by the Reservation of Resource Conservation Area Density Rights Agreement may be developed in accordance with Natural Resources Article, §8-1808.1, Annotated Code of Maryland, and COMAR 27.01.02.05C(4).
- (7) A lot, a parcel, or a portion of a lot or parcel is not eligible for a major solar energy generating system if the density rights associated with that lot, parcel, or portion of a lot or parcel have been:
  - (a) Utilized for an intrafamily transfer;
  - (b) Transferred through a transfer of development rights program;
  - (c) Preserved or conserved through an easement; or
  - (d) Otherwise reserved in association with an area of land to be utilized for the solar energy generating system.

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<sup>41</sup> A local jurisdiction may propose alternatives to a Reservation of Resource Conservation Area Density Rights Agreement in the resource conservation area if the local jurisdiction submits those standards to the Commission and they are approved as part of a local Critical Area program. The standards may include:

- (a) A transfer of development rights program; or
- (b) A permanent restriction of development rights of other lands that proffer water quality and habitat benefits such as wetland migration areas.

**F. Planting plan requirements.**

- (1) [County] shall require a planting plan for:
  - (a) The area to be vegetated under the solar panels; or
  - (b) Replanting required in Section C (4) and (5).
  
- (2) [County] may consider the constraints and opportunities presented by a project area and authorize planting or other mitigation to address the requirements of Sections C(4) and (5) from any of the following options:
  - (a) Planting on-site in one of the following planting areas:
    - (i) The area within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream;
    - (ii) Contiguous to or within a designated forest interior dwelling bird habitat; or
    - (iii) A wildlife corridor; or
  - (b) Based on a signed agreement with the Critical Area Commission:
    - (i) Planting off-site in accordance with the options specified in 1(a) above;
    - (ii) Create a wetland migration area, nonstructural shoreline erosion control project, or other nature-based practice that naturally adjusts to changing environmental conditions through the lifespan of the practice and is designed to address future sea level rise, precipitation-induced flooding, or other climate change impacts;
    - (iii) Create, restore, or enhance a nontidal wetland that results in habitat and water quality benefits provided it is authorized by the Maryland Department of the Environment; or
    - (iv) Other alternative mitigation options that include provisions for Commission review; or
  - (c) Collect a fee in lieu in accordance with Section F below.
  
- (3) Any general landscape screening requirements for an energy generating system shall not be included as part of the mitigation planting required in Section C.

- (4) Long-term maintenance of the plantings through financial assurance measures shall be provided.
- (5) All planting shall be in accordance with this ordinance's reforestation and planting plan requirements, including protecting all planted areas through conservation easements, restrictive covenants, or other protective instruments.

**G. Fee-in-lieu.**

[County] may elect to collect a fee-in-lieu based on the following standards:

- (1) The fee shall be set at a \$1.50<sup>42</sup> per square foot of mitigation as required in Part E;
- (2) The fee shall cover the cost associated with administration, acquisition, planting, monitoring, and maintenance for the required mitigation or required planting requirements of Section C (4) and (5).
- (3) The fee shall be held in separate account independent of other Critical Area funds, which may not revert to a the general fund;
- (4) The fee shall not be used to meet other landscaping requirements; and
- (5) [County] shall use the fees to accomplish:
  - (a) Off-site plantings in accordance with the options provided in Section E (2) (a); or
  - (b) Other water quality and habitat enhancement projects provided in Section E (2) (b), and as described in a local Critical Area program approved by the Commission or in an agreement between the local jurisdiction and the Commission.

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<sup>42</sup> This is the minimum fee-in-lieu. A County may select a higher FIL rate depending on the factors noted in (2).