Critical Area Commission

STAFF REPORT
August 08, 2025

APPLICANT:	Town of Secretary
PROPOSAL:	Refinement - Comprehensive Review of Critical Area Program
JURISDICTION:	Town of Secretary
COMMISSION ACTION:	Concurrence with Chair's Determination of Refinement
STAFF RECOMMENDATION:	Approval with Conditions
STAFF:	Jonathan Coplin
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article 8-1809(g) and Natural Resources Article 8-1809(p)

DISCUSSION:

The Town of Secretary (Town) recently approved Ordinance 2025-04 which updated the Town's Critical Area program in compliance with Natural Resource Article, 8-1809 (g). The updated ordinance was approved by the Town's Council on June 17, 2025.

Update to Town of Secretary Critical Area Program

Per Natural Resources Article §8-1809(g), each local jurisdiction is required to comprehensively review and update their local Critical Area program every ten years and ensure conformance with the requirements of the Critical Area law, criteria, and regulations. The Town last updated their Critical Area program in 2012.

With this comprehensive review, the Town adopted the Commission's model ordinance; however, there are several minor administrative changes that staff recommend as a condition of approval.

Recommendation

The comprehensive update of the Town's Critical Area program meets the goals of the Critical Area law and standards for comprehensive review; therefore, Commission staff recommend that the Commission concur with the Chair's determination that this comprehensive review be processed as a refinement.

Further, staff recommends the Chair approve this comprehensive review with the recommended changes in Attachment 1 to this staff report.

Attachments

1. Town of Secretary Approved Ordinance 2025-04
2. Attachment 1

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Critical Area Overlay District

Part 1. Implementation of the Critical Area Ordinance Purpose and Goals.

(A) Goals.

The goals of the Secretary Critical Area Ordinance 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

(4) Reduce vulnerability to the impacts of climate change and incorporate measures to improve the climate resiliency of the Chesapeake and Atlantic Coastal Bays and its tributaries; and

(5) Ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation and adaptation to climate change with the Critical Area

(B) The Secretary Critical Area Ordinance

(1) The Secretary Critical Area Ordinance consists of the Secretary Critical Area Ordinance text and the Official Critical Area Map(s). Related provisions may be found in the Secretary Subdivision Regulations and the Secretary Zoning Ordinance

(2) 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, **the Town of Secretary** as minimum standards.

(3) In the case of conflicting provisions, the stronger provision applies.

(C) Regulated activities and applicability.

The Town's Critical Area Program and all applicable provisions of this Ordinance shall be implemented and enforced by the Town Zoning Administrator.

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(1) The **Zoning Administrator** shall review a permit, license, or other authorization for a development or redevelopment activity in the Critical Area for compliance with this Critical Area Ordinance prior to issuance of that permit or license

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

(3) Any applicant for a permit or license to pursue activities within the Critical Area, 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 duly appointed local approving authority after review to determine compliance with the Secretary Critical Area Ordinance.

(D) Critical Area Overlay District Map.

(1) The Official Critical Area Overlay District Map is maintained in force as part of the Official Zoning Map for Secretary. The Official Critical Area Map delineates the extent of the Critical Arca 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, 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 and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Marylan(D)

(2) Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:

(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 Mayor and Town Commissioners in compliance with amendment provisions in this

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Ordinance, the Maryland Critical Area Law, and COMAR Title 27.

(E) Notification of project approval

The **Town of Secretary** shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in COMAR 27.03.0(1)04 to the Critical Area Commission for review and comment. The **Town of Secretary** may not process an application, which 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 comes first. Any action by the **Town of Secretary** in violation of these procedures shall be void.

Part 2. Development Standards in the Critical Area

(A) General requirements in all Critical Overlay Zones.

(1) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this Ordinance

(2) Development and redevelopment shall be subject to the water-dependent facilities requirements of this Ordinance;

(3) The Town 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.

(4) 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.

(5) 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

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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.

(6) 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.

(7) 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.

(8) 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) Provide maximum erosion protection;

(b) Minimize negative impacts on wildlife, aquatic life and their habitats; and

(c) Maintain hydrologic processes and water quality.

(9) 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;

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(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.

(10) Reasonable accommodations for the needs of disabled citizens.

(a) An applicant seeking relief from the Critical Area standards contained in this Ordinance in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating by a preponderance of evidence the following:

(i) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;

(ii) Literal enforcement of the provisions of this Ordinance 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;

(iii) A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this Ordinance or restore the disabled resident's or user's reasonable use or enjoyment of the property;

(iv) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and

(v) The accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.

(b) The Planning Commission shall determine the nature and scope of any accommodation under this Ordinance and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Ordinance. The Planning Commission may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.

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(c) The Planning Commission 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 Secretary's ability to restore the property should the applicant fail to do so.

(11) Non-Water Dependent Structures on Piers

(a) Except as provided in paragraphs (b)-(d) of this subsection and notwithstanding any other provisions of the law, **the Town of Secretary** may not issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Are(A)

(b) **The Town of Secretary** may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:

(i) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;

(ii) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;

(iii) Is located in an Intensely Developed Area (IDA) or 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;

(iv) Is approved by the Planning Commission and the Zoning Board after **[Date of Non-water dependent opt-in]**;

(v) Allows or enhances public access to State wetlands;

(vi) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;

(vii) Has a height of up to 18 feet unless the project is located at a marina; and

(viii) Is up to 1,000 square feet in total area;

(c)**The Town of Secretary** may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:

(i) Is located on a pier that was in existence on or before December 31,

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2012;

(ii) Satisfies all of the requirements under Section (b)(i)-(vii) 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 are(A)

(d) **The Town of Secretary** 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:

(i) Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article;

(ii) Is approved by **the Town of Secretary's** Planning Commission and Zoning Board after **[Date of Non water dependent opt-in]**;

(iii) A building permit or other approval may include the installation or placement of:

(A) A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than four (4) feet above or 18 inches below the deck of the pier; or one (1) foot beyond the length or width of the pier;

(B) A solar energy system attached to a piling if there is only one solar panel per boat slip;

(C) 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;

(D) A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not extend beyond the length, width, or channelward encroachment of the pier, deleteriously alter longshore drift; or cause significant individual or cumulative thermal impacts to aquatic resources; or

(E) A wind energy system attached to a pier if there is only one wind energy system per pier for which the height from the deck of the pier to the blade extended at its highest point is up to 12 feet; the rotor diameter of the wind turbine is up to four (4) feet; and 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

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its base to the blade extended at its highest point.

(12) Shore Erosion Protection.

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

(b) The Town of Secretary shall require any authorized shore erosion control project to submit a Buffer Management Plan.

(c) The Buffer Management Plan shall meet the requirements of Part 3 of this Ordinance and COMAR 27.01.09.

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

(B) Intensely Developed Areas.

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

(1) Intensely Developed Areas (IDA) include areas where residential, commercial, institutional, and/or industrial development uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features:

(a) Housing density equal to or greater than 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, IDAs shall be located in an area of at least 20 adjacent acres unless it is the entirety of the upland area of the Town or it is a growth allocation that is consistent with Part 3;

(3) Land use activities within the IDA will be managed in accordance with the land use policies of COMAR 27.01.02.03;

(4) The Town of Secretary 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;

(5) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and

(6) 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

(C)Limited Development Areas.

(1) Limited Development Areas (LDA) are those areas that are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. 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 five acres up to four dwelling units per acre;

(b) Areas not dominated by agricultural, wetland, forest, barren land, open water, or open space;

(c) Areas meeting the conditions of Intensely Developed Area but compromising less than 20 acres; or

(d) Areas having public sewer or public water, or both.

(2) Land use activities within the LDA will be managed in accordance with the land use policies of COMAR 27.0(1)0(2)04.

(3) If there is a wildlife corridor system identified by the Wildlife Heritage Service on or near the site which can be enhanced by additional plantings, the applicant shall incorporate a wildlife corridor system that connects the undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Ordinance. Secretary shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town Attorney through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations, if present.

(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) Except as otherwise provided in his subsection, for stormwater runoff, lot coverage is limited to 15% of a lot or parcel or any portions of a lot or parcel that are designated Limited Development Area

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(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 (A)6.(D)(5) Lot Coverage Limits

Lot/Parcel Size (Square Feet)	Lot Coverage Limit
0- 8,000	25% of parcel+ 500 SF
8,001 - 21, 780	3(1)25% of parcel
21,780- 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

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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 Secretary in lieu of performing the on-site mitigation. The amount of the fee shall be $1.50 per square foot of the required mitigation.

(f) For the purposes of calculating limitations on lot coverage, is as follows:

(i) When a site is mapped entirely as LDA, lot coverage is based on the entire site area; and

(ii) When a portion of a lot or parcel is mapped as LDA, lot coverage is based on the area of the LD(A)

(g) The Planning Commission may allow an applicant to exceed the limits established in §(d) above by 500 square feet for development that uses the following pervious materials:

(i) Permeable pavers; or

(ii) Pervious Concrete

(6) The alteration of forest and developed woodlands shall be restricted and shall be mitigated as follows:

(a) The total acreage in forest and developed woodlands within Secretary 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 areal extent of the forest or developed woodlands cleared, including the

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first 20 percent of the forest or developed woodlands cleared

(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 areal extent of the forest or developed woodlands cleared.

(e) If an applicant is authorized to clear any percentage of forest or developed woodlands associated with a subdivision or a site plan approval the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by Secretary.

(7) The following are required for forest or developed woodlands clearing as required in §6. above:

(a) The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by Secretary shall be posted to assure satisfactory replacement as required in §(6) above and plant survival;

(b) A permit issued by Secretary before forest or developed woodlands is cleared. Clearing forests and developed woodlands before obtaining a Secretary permit is a violation; any forests and developed woodlands cleared before obtaining a Secretary permit shall be replanted at three times the areal extent of the cleared forest or developed woodlands;

(c) Clearing of forest or developed woodlands that exceed the maximum allowed in §(6) above shall be replanted at three times the areal extent of the cleared forest or developed woodlands;

(d) If the areal extent of the site limits the application of the reforestation standards in this section the applicant may be allowed to plant offsite at

the required ratio or pay a fee in lieu of planting at a rate of $1.50 per square foot.

(8) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodlands cover of at least 15 percent.

(a) The applicant shall designate, subject to the approval of the Town of Secretary, 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

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approved by the Secretary Town Attorney.

(9) New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if such a use is permitted in the underlying zoning district and provided such facilities meet all requirements for development in the LDA

(D)Resource Conservation Areas.

(1) RCAs are those areas characterized by nature dominated environments (wetlands, forests, abandoned fields) and resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features: (1) Density is less than one dwelling unit per 5 acres; or (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space

(2) Land use activities within the RCA will be managed in accordance with the land use policies of COMAR 27.01.02.05.

(3) Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in COMAR 27.01.02.04 and this Ordinance

(a) For the purposes of calculating limitations on lot coverage, is as follows:

(i) When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and

(ii) When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RC(A)

(4) Density

(a) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. A local jurisdiction may not authorize a variance to the maximum density of one dwelling unit per 20 acres. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, the Town of Secretary:

(i) Shall count each dwelling unit;

(ii) May only permit the area of any private wetlands located on the property to be included when using transfer of development rights and the area of private wetlands shall be field delineated when certifying development rights for transfer.

(b) One additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the Resource Conservation Area provided the additional dwelling unit does not require a variance to any Critical Area development standards; 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

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feet in total enclosed areas; or

(ii) Is located within the primary dwelling unit and by its construction, does not increase the amount of lot coverage already attributed to the primary dwelling unit by greater than 900 square feet.

(c) An additional dwelling unit meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling unit; and

(d) An additional dwelling unit that exceeds 900 square feet shall count towards the density calculations.

(5) 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 and will result in a density greater than one dwelling unit per 20 acres.

(6) RCA Uses

(a) Permitted uses in the Critical Area shall be limited to those uses allowed by the underlying zoning classification as modified by Table (A)(1) and the supplemental use standards provided such uses meet all standards established by the Critical Area Overlay Zone.

Table (A)l. Permitted Uses

	LEGEND: P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP= Not permitted			
		Land Use Management Designation		
Item	**Use Description**	**IDA**	**LDA**	**RCA**
1.00	**RESIDENTIAL**			
1.10	Accessory Dwelling Unit	p	p	PC
2.00	**INSTITUTIONAL**			
2.10	Existing institutional uses	p	p	PC
2.20	New institutional uses	p	p	NP
2.30	Cemetery	p	p	PC
2.40	Group Home	p	p	PC
2.50	Day Care	p	p	PC
3.00	**COMMERCIAL**			
3.10	Existing commercial uses	p	p	PC
3.20	New commercial uses	p	p	NP
3.30	Home occupation	p	p	PC
3.40	Bed and breakfast facility	p	p	PC
4.00	**MARITIME/WATER DEPENDENT**			
4. IO	Expansion of existing commercial marinas	p	p	PC

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4.20	New marina, commercial	p	p	NP
4.30	Community piers and noncommercial boat docking and storage	p	p	PC
4.40	Public beaches and public water-oriented recreational and educational areas	p	p	PC
4.50	Research Areas	p	p	PC
4.60	Fisheries activities	p	p	p
4.70	Structures on Piers	PC	PC	PC
4.80	Private pier	p	p	p
5.00	**RECREATION**			
5.10	Golf course	p	p	PC
6.00	**INDUSTRIAL**			
6.10	Existing industrial uses	p	p	PC
6.20	New industrial uses	PC	PC	NP
6.30	Non-maritime heavy industry	PC	NP	NP
7.00	**TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES**			
7.10	Utility transmission facilities	PC	PC	PC
8.00	**PUBLIC/QUASI-PUBLIC**			

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	LEGEND: P = Permitted if allowed in the underlying zoning district PC= Permitted with conditions if allowed in the underlying zoning district NP= Not permitted			
		Land Use Management Desi2nation		
Item	**Use Description**	**IDA**	**LDA**	**RCA**
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	PC
8.30	Sludge Facilities	PC	PC	PC
9.00	**OTHER (reserved)**			

(b)Maximum permitted density.

(i) The maximum permitted density in the Secretary Critical Area shall be as shown in Table (B)l.

Table (B)(1)
Maximum Residential Density (Dwelling Units Per Acre)

Land Use Mana2ement Desi2nation		
IDA	**LDA**	**RCA**
Density permitted by Underlying Zoning	Density permitted by Underlying Zoning	**1** dwelling unit per 20 acres

(ii) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the 1 per 20 acre density, shall be allowed in RCAs.

(iii) Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 4 and may require growth allocation.

(iv) Additional industrial or commercial facilities may not be located in the RC(A)

(v) Institutional facilities may not be located in the resource conservation are(a)

(vi) A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.14.

(vii) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the Town's growth allocation provisions or as

listed below.

(A) A home occupation as an accessory use on a residential property and as provided for in the Town'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 are 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;

(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; or

(G) A group home or assisted living facility with no more than eight residents.

(viii) Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the Town's growth allocation provisions.

(E)Supplemental Use Standards.

The following supplemental use standards apply to the permitted uses listed in Table (A)(II) above and shall apply when the permitted use is allowed in the underlying zoning district.

(1) Existing institutional uses.

(a) Existing institutional facilities, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in Resource Conservation Areas.

(b) Expansion of existing institutional facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 4 and may require growth allocation.

(2) New institutional uses.

(a) New institutional facilities and uses, except those specifically listed in Table A (II)shall not be permitted in Resource Conservation Areas.

(b) Certain institutional uses may be permitted in the Resource Conservation Area if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in the Secretary Zoning Ordinance. These institutional uses are limited to:

(c) A cemetery that is an accessory use to an existing church; provided manmade lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;

(d) A day care facility in a dwelling where the operators live on the premises and there are no more than eight (8) children;

(e) A group home or assisted living facility with no more than eight (8) residents; and

(f) Other similar uses determined by the Municipality and approved by the Critical Area Commission to be similar to those listed above

(3) Existing commercial uses.

(a) Existing commercial facilities and uses, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in Resource Conservation Areas.

(b) Expansion of existing commercial facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.

(4) New commercial uses.

(a) New commercial uses, except those specifically listed in Table (A)(I), shall not be permitted in Resource Conservation Areas.

(b) Certain commercial uses may be permitted in the Resource Conservation Area if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in the Secretary Zoning Ordinance. These commercial uses are limited to:

(i) A home occupation as an accessory use on a residential property and as provided for in Secretary's Zoning Ordinance;

(ii) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility; and

(iii) Other uses determined by the Municipality and approved by the Critical Area Commission to be similar to those listed above

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(5) Golf course

(1) A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, et(C), may be permitted in Resource Conservation Areas provided:

(a) Such use is permitted in the underlying zoning; and

(b) Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

(6) Existing industrial uses.

(a) Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in Resource Conservation Areas.

(b) Expansion of existing industrial facilities and uses in the Resource Conservation Areas shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.

(7) New industrial uses.

(a) New industrial uses shall not be permitted in Resource Conservation Areas.

(b) New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas and Intensely Developed Areas if permitted uses in the underlying zoning district and provided such facilities meet all requirements for development in the Limited Development Area and Intensely Developed Areas.

(c) New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of

Intensely Developed Areas that have been designated as Modified Buffer Areas

(8) Non-maritime heavy industry.

(a) Non-maritime heavy industry may be permitted if:

(b) The site is located in an Intensely Developed Area; and

(c) The activity or facility has demonstrated to all appropriate local and State permitting

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agencies that there will be a net improvement in water quality to the adjacent body of water.

(9) Utility transmission facilities.

(a) Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:

(i)The facilities are located in Intensely Developed Areas; and

(ii) Only after the activity or facility has demonstrated to all appropriate local and State pe1mitting agencies that there will be a net improvement in water quality to the adjacent body of water.

(b) These provisions do not include power plants.

(10) Sanitary landfill; rubble fill.

(a) Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.

(b) Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

(11) Solid or hazardous waste collection or disposal facilities.

(a) Solid or hazardous waste collection or disposal facilities, including transfer stations may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.

(b) Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

(12) Sludge facilities.

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(a) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities may be permitted in the Critical Area provided:

(i) The facility or activity is located in an Intensely Developed Area; and

(ii) Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

(b) Agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.

Part 3. Growth Allocation.

(A) Growth Allocation acreage

Growth Allocation available to Secretary includes:

(1) An area equal to five (5) percent of the RCA acreage located within Secretary and/or;

(2) Growth allocation available to Secretary as provided for by Dorchester County.

(B) Purpose

Growth Allocation is available for use in a Resource Conservation Area (RCA) or in a Limited Development Area (LDA) in the Town of Secretary Critical Area Overlay District. The purpose is to authorize a change in the Critical Area classification to develop at a higher density or use than the current classification allows.

(C) Process.

An applicant shall submit to the Town of Secretary a complete application for growth allocation that complies with the submittal and environmental report requirements of COMAR 27.01.02.06-1—.06-2. A Growth Allocation request shall be approved by [Local Approving Authority] prior to submission to the Commission.

(D) Requirements.

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

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(1) New Intensely Developed Areas shall be at least 20 acres in size unless:

(a) They are contiguous to an existing Intensely Developed Area or located in a Limited Development Area; or

(b) They are a grandfathered commercial or industrial use, which existed as of October 6, 1988. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.

(2) An application for a new IDA or LDA shall be:

(a) In conformance with the requirements of COMAR Title 27 Subtitle 01; and

(b) Designated on the approved Critical Area map that is submitted as part of its application to the Commission for growth allocation approval.

(3) As part of a growth allocation approved by the Commission, the following shall be enforced:

(a) A buffer management plan

(b) A habitat protection plan; and

(c) Other applicable conditions of approval as determined by the Commission at the time of project approval.

E. 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;

(2) A new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area:

(3) A new Limited Development Area or Intensely Developed Area shall be located in a manner that it minimizes impacts to Habitat Protection Areas as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;

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(4) A new Intensely Developed Area shall only be located where it minimizes impacts to the defined land uses of the Resource Conservation Area;

(5) 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 Town of Secretary proposes and the Commission approves alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources; and;

(6) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of this Ordinance for such areas, shall be so designated on the Secretary Critical Area Maps and shall constitute an amendment to this Ordinance subject to review and recommendation by the Planning Commission, and the approval of the Mayor and Town Commissioners and the Critical Area Commission, as provided herein.

(7) Locate new intensely developed areas and limited development areas outside of areas vulnerable to climate change as identified by the Town of Secretary, unless **the Town of Secretary** proposes and the Commission approves measures that assess climate resiliency and vulnerability and incorporate siting, design, construction and other natural features to significantly enhance climate resiliency and reduce vulnerability.

(F) Additional factors.

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

(1) Consistency with Secretary'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 Limited Development Area, whether the development is:

(i) To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;

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(ii) A completion of an existing subdivision;

(iii) An expansion of an existing business; or

(iv) To be clustered

(3) 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) If greater than 20 acres, to be located in a designated Priority Funding Area; and

(c) To have a demonstrable economic benefit.

(d) 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

(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;

(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.

(9) Environmental impacts on underserved or overburdened communities.

Part 4. Grandfathering.

(A) Continuation of existing uses.

(1) The continuation, but not necessarily the intensification or expansion, of any use in existence on October 6, 1988 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal ordinances.

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(2) If any existing use does not conform with the provisions of this Ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures in Part 5.

(B) Residential density on Grandfathered lots.

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

(a) A legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;

(b) Land that received a building permit subsequent to December 1, 1985, but prior to October 6, 1988;

(c) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985;or

(d) 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 Intensely Developed Area, Limited Development Area, or Resource Conservation Area requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance

(e) Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members;

(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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Part 5. Variances.

(A) Applicability.

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

(C) Standards.

The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:

(1) Due to special feature of the site or special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of this Ordinance would result in unwarranted hardship;

(2) A literal interpretation of the provisions of this Ordinance will deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Ordinance;

(3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Critical Area Ordinance to other lands or structures in accordance with the

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provisions of this Critical Area Ordinance;

(4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or non- conforming on any neighboring property; and

(5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will 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 Board of Appeals with a copy provided to the Critical Area Commission. Secretary shall follow its established procedures for advertising and notification of affected landowners.

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

(a) The applicant;

(b) the Town of Secretary or any other government agency; or

(c) Any other person deemed appropriate by the Town of Secretary.

(2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, Secretary shall consider that fact, and whether the application has met the After-the-Fact Request requirements below.

(3) The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in §A above

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(4) Secretary shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request in accordance with §G below.

(E) After-the-Fact Requests

(1) A local jurisdiction may not accept an application of a variance to legalize a violation of this subtitle, including an unpermitted 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 Town of Secretary may not issue a permit, approval, variance, or special exception to legalize a violation of this Ordinance unless an applicant has:

(a) Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article, §8-1808(c)(l), 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 Ordinance

(3) If the Board denies the requested after-the-fact variance, then the Town of Secretary shall:

(a) Order removal or relocation of any structure; and

(b) Order restoration of the affected resources.

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(F) Appeals.

Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of Secretary for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. 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 B above

(G) Conditions and mitigation.

(a) 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:

(i) Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the appropriate local body or approving 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.

(ii) 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, non-tidal 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. Secretary may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed.

Part 6. 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.

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the required information required in COMAR 27.01.02.08.E to Secretary.

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(1) The Town of Secretary may not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with COMAR 27.01.02.08.F.

(2) The Town of Secretary shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.

(a) After a final written decision or order is issued, Secretary shall send a copy of the decision or order and a copy of any approved development plan within 10 business days by U.S. mail to the Critical Area Commission's business address.

Part 7. Local Development Projects

(A) Applicability.
For all development in the Critical Area resulting from any action by **the Town of Secretary** on local or privately owned lands, the Town of Secretary shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

(B) Procedures.

(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 Town of Secretary shall submit information as required in the Critical Area Commission's *Project Subcommittee Application and Checklist*.

(C) Notice and posting 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 Town of Secretary** and evidence that those requirements have been met shall be included as part of the submittal to the Critical Area Commission.

Part 8. Program Changes.

A. Program Changes.

The Secretary Mayor and Town Commissioners may from time to time amend the Critical Area provisions of this Ordinance. Changes may include, but are not limited to amendments, revisions, and modifications to the Critical Area regulations, Critical Area Maps, implementation procedures, and local policies that affect the Secretary's Critical Are(a)All such amendments, revisions, and modifications shall also be approved by the

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Critical Area Commission as established in § 8-1809 of the Natural Resources Article of the Annotated Code of Marylan(d)No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law § 8-l 809(i) and § 8-1809(d), respectively.

(B) Comprehensive Review

(1) The Town of Secretary will review its entire Program and propose any necessary amendments to its entire Program, including this Ordinance, at least every ten (10) years in accordance with Natural Resources Article, §8-1809(g).

(2) The Town of Secretary shall notify the Commission in writing if it requires a one (1) year extension to the ten year deadline **of [insert date]**

(3) Shall notify the Commission in writing, within 60 days after the completion of its review, in accordance with all requirements established in Natural Resources Article, §8-1809(g).

(C) Zoning map amendments.

(1) The Town of Secretary may grant a zoning map amendment in the Critical Area if the map amendment:

(a) Is wholly consistent with the Critical Area land classification; or

(b) If not consistent with the Critical Area land classification:

(i) Proposes the use of a part of the remaining growth allocation; or

(ii) Proposes to change the Critical Area land classification from either an IDA to an LDA or an RCA, or from an LDA to an RC(A)

(2) The Town of Secretary may grant a change to the Critical Area land classification on proof of mistake if the proposed Critical Area classification:

(a) Conforms to the State Critical Area mapping criteria based on land uses in existence either;

(i) As of December 1, 1985 if part of the originally mapped Critical Area; or

(ii) As of the date the land was included in the Critical Area due to a Critical Area boundary remapping effort;

(b) Follows the Town of Secretary's documented mapping methodology for Critical Area classification at the time of mapping; and

(c) Is consistent with the purposes, policies, and goals of the Critical Area law and regulations.

(D) Process.

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(1) When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and recommendation. Upon completing Findings of Fact, these documents shall be forwarded to the Secretary Mayor and Town Commissioners.

a. The Secretary Mayor and Town Commissioners shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fourteen (14) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in Secretary.

b. After the Mayor and Town Commissioners approve an amendment, they shall forward their decision and applicable resolutions along with the amendment request to the Critical Area Commission for final approval.

c. If approved by the Critical Area Commission, the Town of Secretary 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 9. Enforcement.

(A) Consistency.

The Critical Area provisions of this Ordinance, in accordance with the Critical Area Act and Criteria supersede any inconsistent law, Chapter or plan of the Town of Secretary. In the case of conflicting provisions, the stricter provisions shall apply.

(B) Violations.

(1) No person shall violate any provision of this Ordinane. Each violation that occurs and each calendar day that a violation continues shall be a separate offense subject to separate fines, orders, sanctions or other penalties.

(2) Each person who violates a provision of this Ordinance shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense

(3) Non compliance with any permit or order issued by Secretary 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 severally responsible for a violation: (1) 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, or participated in the violation.

(D) Required Enforcement Action

In the case of violations of this Ordinance, Secretary shall take enforcement action including:

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(1) Assess administrative civil penalties as necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, and reviewing mitigation plans and ensuring compliance with these plans;

(2) Issue abatement, restoration, and mitigation orders as necessary to:

(a) Stop unauthorized activity;

(b) Restore and stabilize the site, as appropriate, to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits; and

(3) Require 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.

(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 Town of Secretary 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 the Town of Secretary 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 Secretary Mayor and Town Commissioners 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 Secretary has probable cause to believe that a violation of this Ordinance has occurred, is occurring, or will occur. Secretary shall make a reasonable effort to contact a property owner before obtaining access to or enter the property. If entry is denied, Secretary may seek an injunction to enter the property to pursue an enforcement action.

(G) Administrative civil penalties.

In addition to any other penalty applicable under State or Secretary law, every violation of a provision of Natural Resources Article, Title 8, Subtitle 18, and/or the Critical Area provisions of this Ordinance shall be punishable by a civil penalty of up to $10,000 per calendar day.

(1) Before imposing any civil penalty, the person(s) believed to have violated this Ordinance shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing

violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, Secretary 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;

(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 Secretary for performing, supervising, or rendering assistance to the restoration and mitigation.

(2) Administrative 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 Secretary with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Secretary's inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until Secretary receives such written notice and verifies compliance by inspection or otherwise.

(4) Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by Secretary of all damages, costs, and other expenses caused by the violation.

(5) Payment of all administrative civil 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 Secretary 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, the Town of Secretary shall follow the after-the-fact variance provisions of this Ordinance.

Secretary may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an order, permit, plan, or this Ordinance in accordance with the variance provisions of this Ordinance. However, the

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application shall not be reviewed, nor shall a final decision be made until all abatement, restoration, and mitigation measures have been implemented and inspected by the Town of Secretary.

J. Permits pursuant to a violation.

Secretary may not issue any permit, approval, variance, or special exception, that is subject to the violation, unless the person seeking the permit has:

(1) Fully paid all administrative, civil, or criminal penalties as set forth in Section (F) above;

(2) Prepared a restoration or mitigation plan, approved by Secretary, to abate impacts to water quality or natural resources as a result of the violation;

(3) Performed the abatement measures in the approved plan in accordance with the Secretary regulations; and

(4) Unless an extension of time is approved by Secretary 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 Board of Appeals may be filed by any person aggrieved by any order, requirement, decision or determination by Secretary in connection with the administration and enforcement of this Ordinance.

(1) An appeal is taken by filing a written notice of appeal with the Board of Appeals in accordance with the provisions in the Secretary Zoning Ordinance and accompanied by the appropriate filing

(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 Secretary seeking enforcement or compliance with the order or decisions being appealed, unless Secretary certifies to the Board of Appe1s that (because of facts stated in the certification) such stay will cause imminent peril to life or property. In such a case, action by Secretary shall not be stayed except by order of the Board of Appeals or a court on 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 assesse(D)

L. Additional Enforcement Authorities.

(1) The **Town of Secretary** is authorized to pursue violations in Circuit Court or District Court in accordance with Natural Resources Article §8-1815(a)(2).

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(2) **The Town of Secretary** 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 **the Town of Secretary** 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 10. The Buffer.

(A) Applicability and delineation.

An applicant for a development activity or a change in land use shall apply all of the required standards for a minimum 100-foot Buffer as described in this part. The minimum 100-foot Buffer shall be delineated in the field and shall be shown on all applications as follows:

(1) The minimum 100-foot Buffer is delineated landward from:

(a) The mean high water line of tidal water;

(b) The edge of each bank of a tributary stream; and

(c) The upland boundary of a tidal wetland.

(2) The Buffer shall be expanded beyond the minimum 100-foot Buffer as described in §(A)(1) above and the minimum 200-foot Buffer as described in §(A)3. below, 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 non-tidal wetland to the upland boundary of the non-tidal wetland;

(c) The 100-foot Buffer that is associated with a Non-tidal 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.

(3) Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include a minimum Buffer of at least 200 feet from a tidal waterway or tidal wetlands, and 100 feet from a tributary stream:

(a) An expanded Buffer in accordance with §(A)(2) above; or

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(b) A Buffer of at least 200 feet from a tidal waterway or tidal wetlands; and Buffer of at least 100-feet from a tributary stream, whichever is greater.

(4) The provisions of §(A)3. above do not apply if:

(a) The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans), by July 1, 2010;

(b) The application involves the use of growth allocation.

(B) Permitted activities.

If approved by Secretary, disturbance to the Buffer is permitted for the following activities, provided mitigation is performed in accordance with an approved Buffer Management Plan as required per Section F of this Part:

(1) A new development or redevelopment activity associated with a water-dependent facility or located in an approved Modified Buffer Area;

(2) A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Ordinance;

(3) A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance;

(4) 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.

(5) A new or replacement septic system on a lot created before October 6, 1988, where:

(a) The Dorchester County Health Department has determined the Buffer is the only available location for the septic system; and

(b) Mitigation is provided at a 1 :1 ratio for area of canopy cleared of any forest or developed woodland.

(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

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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 F 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) A local jurisdiction shall require an applicant to establish the buffer in vegetation in accordance with the table below and Part E of this chapter and to provide a buffer management plan under Part F of this chapter when an applicant applies for:

(a) Approval of 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 in accordance with COMAR 27.01.09.01-1.C

(6) A local jurisdiction may authorize an applicant to deduct from the total establishment requirement an area of lot coverage removed from the buffer 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) Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, septic system approved by the Dorchester County Health Department on a lot created before October 6, 1988 and special exception.

(2) All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2

(3) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the limit of disturbance in the Buffer.

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(4) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then Secretary may permit planting in the following order of priority:

(a) On-site and adjacent to the Buffer; and

(b) On-site elsewhere in the Critical Area.

(c) A fee in lieu as referenced in §G below.

(5) For the removal of a dead tree, the affected area shall be stabilized with native groundcover or other native vegetation as necessary.

(6) 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.

(7) The installation or cultivation of new lawn or turf in the Buffer is prohibited.

(8) As applicable to a site, the Town of Secretary shall require that an area in the buffer that is temporarily disturbed by a development activity be restored to pre-disturbance conditions.

(E) Buffer planting standards.

(1) An applicant that is required to plant the Buffer for Buffer establishment or Buffer mitigation shall apply the planting standards set forth in COMAR 27.01.09.01-2 and 01-4;

(2) A variance to the planting and mitigation standards of this Ordinance is not permitted.

(F) 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 as provided in COMAR 27.01.09.01-3 with the application for the specific activity. The provisions of this part do not apply to maintaining an existing grass lawn or an existing garden in the Buffer.

(1) A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials, clearly specify the area to be planted and state if the applicant is:

(a) Fully establishing the Buffer;

(b) Partially establishing an area of the Buffer equal to the net increase in lot coverage, or

(c) Partially establishing an area of the Buffer equal to the total lot coverage.

(2) Any permit for development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by

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Secretary.

(3) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by Secretary.

(4) Secretary may not approve a Buffer Management Plan unless

(a) The plan clearly indicates that all planting standards under §E of this Ordinance will be met; and

(b) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.

(5) 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 estc1hlishment requirement is at least 5,000 square feet, long-term survivability re4uireme11ls as set forth in COMAR 27.01.09.01-2

(6) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.

(7) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance.

(a) A permit for development activity will not be issued for a property that has the violation.

(8) An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.

(9) Buffer management plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

(10) An applicant may submit a "Shoreline Stabilization Measure Buffer Management Plan" as provided on the Commission's website for any shore erosion activity authorized by Maryland Department of Environment in accordance with COMAR 26.24.04

(G) Fees-In-Lieu of Buffer mitigation.

A fee in-lieu of mitigation will be collected if the planting requirements of the Buffer Management Plan 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 Secretary's general fund;

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(2) Fee-in-lieu shall be assessed at $1.50 per square foot 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 Secretary and the Critical Area Commission.

(H) Shore erosion control projects.

Shore erosion control measures are permitted activities within the Buffer in accordance with the following requirements:

(1) An applicant for a shore erosion control project that affects the Buffer in any way, including, but not limited to access, vegetation removal and pruning, or backfilling shall submit a Buffer Management Plan in accordance with the requirements of this section; and

(2) Comply fully with all of the policies and criteria for a shore erosion control project stated in COMAR 27.01.04 and COMAR 26.24.

(A) Part 11.)Modified Buffer Area (MBA) ProvisionsApplicability

The following provisions apply to areas designated and mapped by **the Town of Secretary** as Modified Buffer Areas (MBA) and shown on maps available to the public held by the Town of Secretary. All MBA maps and provisions must be approved by the Critical Area Commission.

(B) Development and redevelopment standards.

New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces, lot coverage, or septic systems will not be permitted in the Buffer in a designated Modified Buffer Area unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission or other local approving authority finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:

(1) Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.

(2) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.

(3) Commercial, industrial, institutional, recreational and multi-family residential development and redevelopment shall meet the following standards:

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(a) New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the minimum required setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.

(b) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. 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. Structures on adjacent properties shall not be used to determine the setback line. A new structure may be constructed on the footprint of an existing structure.

(4) Single family residential development and redevelopment shall meet the following standards:

(a) New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principle structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development be located less than 50 feet or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).

(b) Existing principal or accessory structures may be replaced in the same footprint.

(c) New accessory structures may be located closer to the water than the setback if the Town of Secretary has determined there are no other locations for the structures. The area of new accessory structures shall not exceed 500 square feet within 25 feet of the water and 1,000 square feet total in the Buffer.

(5) Variances to other local setback requirements shall be considered before additional intrusion into the Buffer is permitted.

(6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including non-tidal 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 for development or redevelopment in the in the Modified Buffer Area approved under the provisions of this subsection shall be implemented 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 approved by the Planning Commission.

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(b) Applicants who cannot fully comply with the planting requirement in §a above, may offset by removing an equivalent area of existing lot coverage in the Buffer.

(c) Applicants who cannot comply with either the planting or offset requirements in §(a)or §(b)above shall pay $1.50/sq.ft. into a fee-in-lieu program.

(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 Secretary's Critical Area Ordinance. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported to the Critical Area Commission on an annual basis.

(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.

Part 12. 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 Part. In addition to the Buffer, other Habitat Protection Areas includes:

(1) Threatened or endangered species or species in need of conservation;

(2) Colonial waterbird nesting sites;

(3) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;

(4) Existing riparian forests;

(5) Forest areas utilized as breeding areas by future interior dwelling birds and other wildlife species;

(6) Other plant and wildlife habitats determined to be of local significance;

(7) Natural Heritage Areas; and

(8) Anadromous fish propagation waters.

(i) 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 in [INSERT REFERENCE TO THE REPORT] are hereby incorporated into this Ordinance.

(B) Standards.

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(1) An applicant proposing a subdivision or a site plan 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. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a sit(E)

(2) If the presence of a Habitat Protection Area s is confirmed by the Department of Natural Resources, the applicant shall follow the requirements of COMAR 27.01.09.02 through 27.01.09.05, all recommendations from DNR WHS, and as necessary all recommendations from USFWS.

(a) If potential FIDS habitat is identified, the proposed development shall conform to the Critical Area Commission's FIDS Guidance Manual, dated June 2000 and as updated.

(b) If potential anadromous fish propagation waters are identified, the proposed development shall conform to the policies and criteria listed in COMAR 27.01.09.05.

(3) The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission. The specific protection and conservation measures recommended by DNR WHS and USFWS shall be included in the Plan and shall be considered conditions of approval of the project.

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Part 13. 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 (F) 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 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

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(b) Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988; and

(5) Shall ensure:

(a) The avoidance or, if unavoidable, the minimization of impacts to fish, wildlife, or plant habitat; and

(b) Mitigation at a ratio of 1:1 based on the square footage of the area of the canopy coverage removed

(C) General Requirements for the Location of Water-Dependent Facilities or Activities.

(1) The Town of Secretary shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The Town of Secretary shall work with appropriate State and federal agencies 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) The following siting factors shall be considered 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

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(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 impact 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.

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.

(E) Commercial Marinas and Other Water-Dependent Commercial Maritime Facilities and Activities.

(1) In addition to meeting the requirements of Part 13.B and 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 Town of Secretary** 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.

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F. Community Piers and Other Community Boat-Docking and Storage Facilities.

(1) In addition to meeting the requirements of Part 13.B and 13.C, new or expanded community piers or other community boat-docking and storage facilities may be permitted in the Buffer 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 Town for the Critical Area and consistent with all State requirements and 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 6.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 Part 13.B and 13.C, public beaches or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:

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(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 Part 13.B and 13.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.

The following types of aquaculture and fishery 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 14. Definitions.

The following words have the following meanings for the purposes of implementing the Critical Area Ordinance and the Secretary Zoning Ordinance, and the singular always include the plural, and vice versa, except where such construction would be unreasonable:

(1) "Abatement" means the act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.

(2) "Accessory structure" means a structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to a principal structure, or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.

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(3) "Addition" means newly constructed area that increases the size of a structure.

(4) "Afforestation" means the establishment of a tree crop 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.

(5) 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 erosion control measure authorized by the Department of the Environment under COMAR 26.24.04.

(6) "Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

(7) "Agricultural easement" means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.

(8) "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

(9) "Anadromous fish propagation waters" means those streams that are tributary to the Chesapeake Bay and Atlantic Coastal Bays in which the spawning of anadromous species of fish ((E)g., rockfish, striped bass, yellow perch, white perch, shad, and river herring) occurs. The streams are identified by the Department of Natural Resources.

(10) "Aquaculture" means: (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

(11) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

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(12) "Buffer" means area that based on conditions at the time of development is immediately landward from mean high water of tidal waterways, the edge of bank of a tributary stream, or the edge of a tidal wetland; and the area exists in, or is established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. The Buffer includes an area of at least 100-feet even if that area was previously disturbed by human activity or is currently developed and also includes any expansion for contiguous sensitive areas, such as a steep slope, hydric soil, highly erodible soil, non-tidal wetland, or a Non-tidal Wetland of Special State Concern as defined in the COMAR 26.23.0(1)0(1)

(13) "Buffer Management Plan" includes a major Buffer management plan, a minor Buffer management plan, and a simplified Buffer management plan.

(14) "Canopy tree" means a tree that when mature commonly reaches a height of at least 35 feet.

(15) Clearcutting" means the removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut, from advanced regeneration or stump sprouts, or from planting of seeds or seedlings by man.

(16) Climate resiliency" means the capacity of a natural system to maintain function in the face of stresses imposed by climate change. climate resiliency includes adapting a natural system to be better prepared for future climate impacts including sea level rise, saltwater intrusion, wetland migration, storm surge, precipitation–induced flooding, and other extreme weather events.

(17) "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.

(18) "Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

(19) "COMAR" means the Code of Maryland Regulations, as from tirne to time amended, including any successor provisions.

(20) "Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

(21) "Community piers" means boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.

(22) "Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps and pe11inent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.

(23) Conforming.

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(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.

(24) "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 us(E)

(25) "Consistent with" means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan:

- Policies;
- Timing of the implementation of the plan, of development, and of rezoning;
- Development patterns;
- Land uses; and
- Densities or intensities.

(26) "Consolidation" means a combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. An application for consolidation may include a subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot line adjustment.

(27) "Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

(b) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide as indicated on State wetland maps;

(c) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;

(d) 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, Annotated Code of Maryland; and

(e) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.

(28) 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

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

(30) "Developed woodlands" means an area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial or recreational development

(31) "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.

(32) Development" means any activity that materially affects the condition or use of dry land,

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land under water, or any structure "Development" includes redevelopment.

(33) "Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.

(34) "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 maintaining an existing grass lawn.

(35) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

(36) "Dwelling unit" means a single unit providing complete, independent living facilities for at least one person, including 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.

(37) "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.

(38) "Endangered species" means any species of fish, wildlife, or plants that have been designated as endangered by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, 16 U.S.(C)§et seq., as amended, Natural Resources Article, Title 4, Subtitle 2A or Title 10, Subtitle 2A, Annotated Code of Maryland; or COMAR 08.03.08.

(39) "Establishment" means the planting or regeneration of native vegetation throughout the Buffer.

(40) "Excess stormwater run-off' means all increases in stormwater resulting from:

a. An increase in the imperviousness or lot coverage of the site, including all additions to buildings, roads, and parking lots;
b. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
c. Alteration of drainageways, or regrading of slopes;
d. Destruction of forest; or
e. Installation of collection systems to intercept street flows or to replace swales or other drainageways.

(41) "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the Town of Secretary.

(42) "Fisheries activities" means commercial water dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks,

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shellfish culture operations, and shore-based facilities necessary for aquacultural operations.

(43) "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre with at least 50% of those trees having two-inch or greater diameter at 4.5 feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.

(44) "Forest Interior Dwelling Birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

(45) "Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.

(46) "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.

(47) "Grandfathered parcel" or "Grandfathered lot" means a parcel of land that was created or a lot created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.

(48) "Growth allocation" means the number of acres of land in the Critical Area that the Town of Secretary may use, or has been allocated to use, to create new Intensely Developed Areas and new Limited Development Areas. The Growth Allocation is five percent of the total Resource Conservation Area acreage in Secretary at the time the Critical Area Commission approved Secretary's original Critical Area Program, not including tidal wetlands or land owned by the federal government.

(49) 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

(50) 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

(51) "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 Are(a)The plan shall be specific to the site or area where the species or its habitat is located and shall address

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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.

(52) 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

(53) "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.

(54) "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are historic in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

(55) Home improvement" means the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building; or an improvement to land adjacent to the building. Home improvement includes construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool; a shore erosion control project, as defined under § 8-1001 of the Natural Resources Article, for a residential property; connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines; installation in the building or structure, of an awning, fire alarm, or storm window; and work done on individual condominium units.

(56) "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.

(57) "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, (F)et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

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

(59) "In-kind replacement" means the replacement of a structure with another structure that is smaller than or identical to the original structure in footprint area, width, length, and us(E)

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(60) "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 land uses predominate; and a relatively small amount of natural habitat occurs. These areas include: a housing unit with a housing density of at least four dwelling units per acre; and/or an area with public water and sewer systems with a housing density of more than three dwelling units per acre

(61) "Invasive species "means a species that is non-native or alien to the ecosystem under consideration whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(62) "K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value, that is experimentally determine(D)

(63) Land-based aquaculture" means the raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.

(64) Land clearing" means any activity that removes the vegetative ground cover.

(65) “Landward edge” means the limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary stream.

(66) "Large shrub" means a shrub that, when mature, reaches a height of at least six feet.

(67) "Legally developed" means all physical improvements to a property that existed before Critical Area Commission approval of a local Ordinance or were properly permitted in accordance with the provisions of the local Ordinance in effect at the time of construction.

(68) Limit of disturbance” means the area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance

(69) "Limited Development Area" means an area: with a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre; with a public water or sewer system; that is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space; or that is less than 20 acres and otherwise qualifies as an Intensely Developed Area under the definition in this Ordinance.

(70) "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.

(71) "Local significance" means development of a minor scale, which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Ordinance of the Town of Secretary; and is not considered to be major development as defined in this Ordinance.

(72) "Lot coverage" means the percentage of a total lot or parcel that is: occupied by a structure,

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accessory structure, parking area, driveway, walkway, or roadway; or covered with a paver, walkway gravel, stone, shell, permeable decking, a paver, permeable pavement, or other any manmade material. Lot coverage includes the ground area covered or occupied by a stairway or impermeable deck, but does not include: a fence or wall that is less than one foot in width that has not been constructed with a footer; a walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; a wood mulch pathway; or a permeable deck with gaps to allow water to pass freely.

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

(74) "Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

(75) "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 to the Critical Area of a local jurisdiction. This development includes, but is not limited to, airports, powerplants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.

(76) "Mean High Water Line" (MHWL) means the average level of high tides at a given location.

(77) "Mitigation" means an action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity.

(78) Modified Buffer Are(A)

(a) "Modified buffer area" means an area of land:

(i) Where a pattern of residential, industrial, commercial, or recreational development existed in the 100-foot 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, Modified Buffer Area, buffer management overlay, buffer modified area, special Modified Buffer Area, special buffer area, or any other similar term that has the same substantive meaning as modified buffer area

72. **"**Natural features" means components and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife

73. "Natural forest vegetation" means vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in the State of Maryland Areas of natural forest vegetation planted to meet the mitigation requirements in this ordinance shall resemble the structure and species composition of natural forests.

74. "Native plant" means a species that is indigenous to the physiographic area in Maryland where the planting is proposed

(75) "Natural Heritage Area" means any communities of plants or animals which are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

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(76) "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

(77) "Natural vegetation" means those plant communities that develop in the absence of human activities.

Nature-dominated" means a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.

(78) "New development" means that for purposes of implementing specific provisions of this Ordinance, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in IDA) or lot coverage (LDA and RCA) of less than 15 percent as of December 1, 1985.

(79) "Non-point source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.

(80) "Non-tidal wetlands" means those areas regulated under Subtitle 9 of the Environment Article that are inundated or saturated by surface water or groundwater *at a* frequency and duration sufficient to support, and that under nom1al circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether an area is a non-tidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended. Non-tidal wetlands do not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Marylan(D)

(81) 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:

(aa)A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;

(bb) A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and

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(cc)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.

(82) "Offsets" means structures or actions that compensate for undesirable impacts.

(83) "Open space" means land and water areas retained in an essentially undeveloped stat(E)

(84) "Person" means an individual, partnership, corporation, contractor, property owner, or any other person or entity.

(85) "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

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

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

(88) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.

(89) "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.

(90) Private harvesting" means the cutting and removal of trees for personal use

(91) "Program amendment" means any change or proposed change to an adopted Ordinance that is not determined by the Chairman of the Critical Area Commission to be a Ordinance refinement.

(92) "Program refinement" means any change or proposed change to an adopted Ordinance 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 Ordinance, or that will not significantly affect the use of land or water in the Critical Are(a)Ordinance refinement may include:

a. A change to an adopted Ordinance that results from State law;
b. A change to an adopted Ordinance 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 Ordinance that is clearly consistent with the provisions of State Critical Area law and all the Criteria of the Commission.

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(93) 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 preliminary and final 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.

(94) "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.

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

(96) "Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.

(97) "Reconfiguration" means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. An application for reconfiguration may include a subdivision, a lot line adjustment, a boundary line adjustment, a replatting request, or a revision of acreage to increase density.

(98) "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.

(99) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.

(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"

a. "Road" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body.

b. "Road" does not include a drive aisle or driveway.

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(105) "Seasonally flooded water regime" means a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface

(106) "Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

(107) "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area

(108) "Significantly eroding areas" means areas that erode two feet or more per year.

(109) Simplified Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under this Ordinance.

(110) Small shrub" means a shrub that, when mature, reaches a height no greater than six feet.

(111) 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

(112) "Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland

(113) "Steep slopes" means slopes of 15 percent or greater incline

(114) "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. Structure includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.

(115) "Substantial alteration" means any repair, reconstruction, or improvement of a principal structure, where the proposed footprint equals or exceeds 50 percent of the existing principal structure

(116) Supplemental planting plan" means a description and landscape schedule that shows the proposed species type, quantity, and size of plants to be located within a buffer if natural regeneration does not meet the required stem density.

(117) 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

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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 require(D)

(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.

(118) "Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time

(119) "Threatened species" means any species of fish, wildlife, or plants designated as such by regulation by the Department of Natural Resources that appear likely,' within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.(C)§ 1431 et seq., as amended, Natural Resources Article, Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or COMAR 08.03.08.

(120) "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.

(121) "Transitional habitat" means a plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

(122) "Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.

(123) Tree" means a large, woody plant having 1 or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

(124) "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 Ordinance procedures approved by the Critical Area Commission.

(125) "Understory" means the layer of forest vegetation typically located underneath the forest canopy.

(126) "Understory tree" means a tree that, when mature, reaches a height between 12 and 35 feet.

(127) "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."

(128) "Upland boundary" me ns the landward edge of a tidal wetland or non-tidal wetland

(129) "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.

(130) Vessel" means every description of watercraft, including an ice boat but not including a seaplane, that it used or capable of being used as a means of transportation on water or ic(e) Vessel includes the motor, spars, sails, and accessories of a vessel.

(131) "Water-based aquaculture" means the raising of fish and shellfish in any natural, open, free-flowing water body.

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(132) "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. Such activities including but not are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.

(133) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

(134) "Waterfowl" means birds that frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

(135) 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.

(136) "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passage for wildlife

(137) "Wildlife habitat" means those plant communities and physiographic features that provide food, water, cover, and nesting areas, as well as foraging and feeding conditions necessary to maintain populations of animals in the Critical Area

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ATTACHMENT 1

Commission staff's recommended revisions to the Town of Secretary (Town) ordinance are listed below. These changes are required to bring the Town's Critical Area program into compliance with current Critical Area law and regulations. All text in **underline** should be added; all text in ~~**strikethrough**~~ should be deleted.

Please have the Town update the following general comments:
1) Remove the draft watermark from the document.
2) Accept all track changes from the document.
3) Remove all highlighting.

Part 1. Implementation of the Critical Area Ordinance Purpose and Goals

(C) Regulated activities and applicability

(2) "Should an infraction of the provisions contained in any law, regulation, or plan related to the Town's Critical Area Program be brought to the attention of any Town official, said official shall contact the ~~[Code Enforcement Officer]~~ Code Enforcement Officer"

Part 2. Development Standards in the Critical Area

(A) General requirements in all Critical Overlay Zones

(11) Non-Water Dependent Structures on Piers

(a) "Except as provided in paragraphs (b)-(d) of this subsection and notwithstanding any other provisions of the law, the Town of Secretary may not issue a building permit or any other approval to authorize a non-water dependent project located on state or private wetlands within the Critical ~~Are(A)~~ to Area"

(b)(iv) "Is approved by the Planning and Zoning Commission ~~and the Zoning Board~~ after ~~[Date of Non-water dependent opt-in]~~ June 17, 2025"

(c)(iii) "If applicable, has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total ~~Area(A)~~ to Area"

(d)(ii) "Is approved by the Town of Secretary's Planning and Zoning Commission ~~and Zoning Board~~ after ~~[Date of Non-water dependent opt-in]~~ June 17, 2025"

(d)(iii)(E) "A wind energy system attached to a pier if there is only one wind energy system per pier for which the height from the deck of the pier to the blade extended at its highest point is up to 12 feet; the rotor diameter of the wind turbine is up to four (4) feet; and 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~~ 15 times the total height of the system from its blade extended at its highest point"

(C) Limited Development Areas

(2) "Land use activities within the LDA will be managed in accordance with the land use policies of ~~COMAR 27.0(1)0(2)04~~ COMAR 27.01.02.04.

(5)(f)(ii) "When a portion of a lot or parcel is mapped as LDA, lot coverage is based on the area of the ~~LD(A)~~ LDA"

(D) Resource Conservation Areas

(3)(a)(ii) "When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the ~~RC(A)~~ RCA"

(6) RCA Uses

(b)(iv) "Additional industrial or commercial facilities may not be located in the ~~RC(A)~~ RCA"

(b)(v) "Institutional facilities may not be located in the resource conservation ~~are(a)~~ area"

(E) Supplemental Use Standards

(5) Golf Course

(1) "A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, ~~et(C)~~ etc, may be permitted in the Resource Conservation Areas provided;"

Part 3. Growth Allocation

(C) "An applicant shall submit to the Town of Secretary a complete application for growth allocation that complies with the submittal and environmental report requirements of COMAR 27.01.02.06-1—.06-2. A Growth Allocation request shall be approved by ~~[Local Approving Authority]~~ the Planning and Zoning Commission prior to submission to the Commission.

Part 7. Local Development Projects

(B) Procedures

(2) "If the project does not meet the provisions of this Ordinance, the ~~[Planning Department]~~ Town shall seek a conditional approval by the Critical Area Commission per the requirements of COMAR 27.02.06.

Part 8. Program Changes

(A) "The Secretary Mayor and Town Commissioners may from time to time amend the Critical Area provisions of this Ordinance. Changes may include, but are not limited to amendments, revisions, and modifications to the Critical Area regulations, Critical Area Maps, implementation procedures, and local policies that affect ~~the~~ Secretary's Critical ~~Are(a)~~ Area. 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 ~~Marylan(d)~~ Maryland. No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law § 8-l 809(i) and § 8-1809(d), respectively"

(B) Comprehensive Review

(2) "The Town of Secretary shall notify the Commission in writing if it requires a one (1) year extension to the ten year deadline of ~~[insert date]~~ August 20, 2035."

(C) Zoning map amendments

(1) (b)(ii) "Proposes to change the Critical Area land classification from either an IDA to an LDA or an RCA, or from LDA to an ~~RC(A)~~ RCA."

Part 9. Enforcement

(B) Violations

(1) "No person shall violate any provisions of this ~~Ordinane~~ Ordinance."

(K) Appeals

(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 cost ~~assess(D)~~ assessed."

Part 10. The Buffer

(F) Required submittal of Buffer Management Plans

(5)(b)(ii) "If the mitigation or ~~estc1hishment~~ establishment requirement is at least 5,000 square feet, long-term survivability ~~re4uireme111ls~~ requirement as set forth in COMAR 27.01.09.01-2."

Part 12. Other Habitat Protection Areas

(A) Identification

(8)(i) "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]~~ April 7, 2025 ~~and recommendations contained in [INSERT REFERENCE TO THE REPORT]~~ and no changes were recommended. ~~are hereby incorporated into this Ordinance~~"

Part 14. Definitions

Add the following definitions and subsequent renumbering as required:

(39) Environmental Justice has the meaning stated in 1-701 of the Environmental Article

(85) Overburdened community has the meaning stated in 1-701 of the Environmental Article

(127) Underserved community has the meaning stated in 1-701 of the Environmental Article