

Critical Area Commission

STAFF REPORT

October 28, 2026

APPLICANT:	Wicomico County
PROPOSAL:	Refinement - Comprehensive Review of Critical Area Program
JURISDICTION:	Wicomico County
COMMISSION ACTION:	Concurrence with Chair's Determination of Refinement
STAFF RECOMMENDATION:	Approval with Conditions
STAFF:	Michael Macon
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article 8-1809(g) and Natural Resources Article 8-1809(r)

DISCUSSION:

Wicomico County Council recently approved Legislative Bill 2026-02, which repealed and replaced the County's entire Critical Area Program. Chapter 125 of the Wicomico County Code contains the revised Critical Area program. The updated Chapter was approved by the County Council on March 17, 2026.

Wicomico County Critical Area Overview

Wicomico County's Critical Area totals 35,385 acres, with 31,339 acres designated as Resource Conservation Area (RCA), 3,590 acres designated as Limited Development Area (LDA), and 296 acres designated as Intensely Developed Area (IDA). The total growth allocation remaining for the County to date is 639.45 acres.

Comprehensive Review and Update to Calvert County 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. Wicomico County last updated their Critical Area program in 2001.

With this comprehensive review, the County updated Chapter 125 of the Wicomico County Code to include previously approved text amendments that are specific to Wicomico County, along

with updates consistent with the Critical Area Commission's County Model Ordinance. Below are two sections that deviate from the County Model:

Section 125-55. Administrative Variance

Per Natural Resources Article 8-1808.(c)(1)(ii), a local jurisdiction may include an administrative variance process in its Critical Area program. Wicomico County's is incorporating new language that allows the Planning Director to grant administrative variances for the replacement, expansion, or relocation of a legally existing, nonconforming structure, the construction of a new accessory structure, the construction of a new primary structure, or the construction or relocation of a driveway, sidewalk, patio or other similar lot coverage within the Critical Area Buffer, subject to specific conditions. Section 125-55 reflects a nearly identical administrative process that was adopted by Dorchester County in 2017.

For the construction of a new primary structure, the administrative variance process is subject to the following conditions:

1. The new primary structure and associated development must be located within the expanded portion of the Buffer and outside of the 100-ft Buffer; and
2. The total lot coverage within the expanded buffer shall not exceed 2,500 square feet; and
3. The width of a proposed driveway shall not exceed 12 feet; and
4. The property will comply with all applicable lot coverage restrictions.

Such a request must still meet all variance standards as required under COMAR 27.01.12 and receive review and comments from MDE and Critical Area Commission staff. Mitigation will be required in accordance with COMAR 27.01.09.01-2. The Planning Director also retains the right to send the variance request to the Board of Appeals.

Section 125-58. Eligibility Criteria

The updated ordinance includes new eligibility criterion within the County's existing transfer of development rights (TDR) program for properties vulnerable to climate change. Under Natural Resources Article §8-1808(b)(4), a TDR program adopted by a local jurisdiction is required to reduce the vulnerability to the impacts of climate change and incorporate measures to improve resilience. Section 125-58 of the County Code outlines site assessment criteria for climate-related hazards to determine sending and receiving areas and restricts receiving areas to locations which satisfy the climate resilience criteria. The assessment criteria include the following elements: sea level rise inundation, flood risk, shoreline erosion, resilient design and future planning in site design.

Natural Resources Inventory

Natural Resource Article 8-1809 (g) requires a jurisdiction during its comprehensive review to update the jurisdiction's natural resource inventory. This includes habitat protection areas including threatened and endangered species habitats and species in need of conservation, anadromous fish propagation waters, plant and wildlife habitats, and locally significant habitats. The Commission coordinates with the Maryland Department of Natural Resources Wildlife and

Heritage Service (DNR WHS) to provide a Natural Resources Inventory (NRI) that includes updated narratives and maps to meet this requirement.

In March of 2026, DNR WHS provided updated Habitat Protection Area (HPA) maps. The updated HPA maps are incorporated into the Comprehensive Review under *Article V. Other Habitat Protection Areas* and are publicly available upon request.

Recommendation

The comprehensive update of the Wicomico County Critical Area program meets the goals of the Critical Area law and standards for comprehensive review. It affects existing local processes and procedures and updates existing elements of the County Critical Area program as required under Critical Area law; therefore, Commission staff recommends that the Program Committee concur with the Chair's determination that this comprehensive review be processed as a refinement.

In order to ensure that all provisions are entirely consistent with Critical Area law and regulations, minor revisions to the Zoning Ordinance are necessary. Therefore, Commission staff recommends that the Chair approve this refinement with the following condition:

1. Within 120 days of the date of Commission approval, Wicomico County will update the approved Zoning Ordinance to meet the provisions outlined in Attachment 1 of this staff report.

Attachments

1. Proposed Revisions
2. Wicomico County Legislative Bill 2026-02

ATTACHMENT 1

Commission staff's recommended revisions to the Wicomico County Chapter 125 are listed below. These changes are required to bring the Calvert County Critical Area program into compliance with current Critical Area law as of October 1, 2024 (updates to Chapter 424 of the Natural Resource Article under House Bill 233) and current regulations as of December 11, 2025. All text in underline should be added; all text in ~~strike through~~ should be deleted.

□ Table 1. Summary of Notification Requirements to the Critical Area Commission

Type of Application	Requires Notification to the Critical Area Commission Yes/No		
	IDA	LDA	RCA
1. Disturbance to a Habitat Protection Area	Y	Y	Y
2. Physical disturbance to the Buffer (see Note 1)	Y	Y	Y
3. Variance from Critical Area provisions	Y	Y	Y
4. Development resulting in less than 5,000 square feet of disturbance, unless 1, 2, 3 above	N	N	N
5. Development resulting in between 5,000 and 15,000 square feet of disturbance, unless 1, 2, 3 above	N	N	Y
6. Development resulting in greater than 15,000 square feet of disturbance, unless 1, 2, 3 above	~~Y~~ N	~~Y~~ N	Y
7. Subdivision of 3 lots or fewer, unless 1, 2, 3 above	N	N	Y
8. Subdivision of 4 to 10 lots, unless 1, 2, 3 above	N	Y	Y
9. Subdivision of greater than 10 lots, unless 1, 2, 3 above	~~Y~~ N	~~Y~~ N	Y
10. Subdivision affecting growth allocation	N/A Y	Y	~~Y~~ N/A
<u>11. Subdivision affecting habitat protection areas</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
~~11-12.~~ Intrafamily transfer	N/A	N/A	Y
~~12-13.~~ Rezoning that would occur wholly or partially within the Critical Area	Y	Y	Y
~~13-14.~~ Special exception or conditional use for industrial, commercial, institutional, non-residential, or multi-family	N	Y	Y
~~14-15.~~ Substantial alteration to applications previously submitted to the Critical Area Commission	Y	Y	Y
Note 1: Shore stabilization measures and private piers that do not involve disturbance to the Buffer and are not permitted by MDE do not require Commission notification.			

2. ~~Is approved by the Planning Commission and the Zoning Board after [date of Chapter 125 adoption]; November 4, 2026;~~
 - a. ~~Is approved by the Planning Commission and the Zoning Board after [date of Chapter 125 adoption]; November 4, 2026;~~
3. Update § 125-76.D.(2) with the date of Chapter 125 adoption.
 - a. ~~Is approved by the Planning Commission and the Zoning Board after [date of Chapter 125 adoption]; November 4, 2026;~~

ENROLLED

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2026 Legislative Session

Legislative Day No. 04

Legislative Bill 2026-02

Introduced: February 17, 2026

Introduced by: The Council President at the request of the Wicomico County Planning Commission

AN ACT TO AMEND CHAPTER 125 OF THE WICOMICO COUNTY CODE, TITLED "CRITICAL AREA RESOURCE PROTECTION," BY REPEALING ALL ARTICLES AND SECTIONS THEREIN AND ADOPTING 22 NEW ARTICLES CONSISTING OF 99 NEW SECTIONS.

WHEREAS, in 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries; and

WHEREAS, Wicomico County adopted its Critical Area Program on October 13, 1989. The Wicomico County Critical Area Program consists of Chapter 125 and the Official Critical Area map(s); and

WHEREAS, The goals of the Wicomico County Critical Area Program are to accomplish the following: (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or runoff from surrounding lands; (2) Conserve fish, wildlife, and plant habitat; (3) Establish land use policies for development in the Critical Area that 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 their tributaries, and (5) Ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation, and adaptation to climate change within the Critical Area.; and

WHEREAS, the Maryland Annotated Code, Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 applies to Wicomico County as minimum standards and the Wicomico County Critical Area Program Chapter shall be amended from time to time to ensure compliance with State law; and

WHEREAS, the amendments to Wicomico County Critical Area Program are so extensive that a complete repeal of the articles and sections of Chapter 125 is necessary.

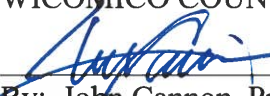
Section I. BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION, that the articles and sections of Chapter 125 of the Wicomico County Code, Titled "Critical Area Resource Protection." are hereby

repealed in their entirety. Exhibit A, attached hereto and made part hereof, enumerates the repealed provisions of Chapter 125 as if it is written out in full below. Further, Exhibit B, attached hereto and made part hereof, shall constitute the new and adopted provisions of Chapter 125 as if it is written out in full below.

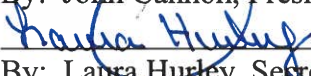
SECTION II: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION THAT this bill shall be known as Legislative Bill No. 2026-02 and shall take effect sixty (60) days after its enactment, unless a proper Petition for Referendum thereof shall be filed prior to said date; in which event, the Bill shall not take effect until the expiration of thirty (30) days following the approval of this Bill by a majority of the qualified voters of the County voting in any such referendum.

Certified correct as passed and adopted by the County Council of Wicomico County, Maryland this 17th day of March, 2026.

WICOMICO COUNTY, MARYLAND

 (SEAL)

By: John Cannon, President

 (SEAL)

By: Laura Hurley, Secretary

I HEREBY CERTIFY that copies of the above Bill are available to the public, the press and other news media at the time of its introduction.

 (SEAL)

By: Laura Hurley, Secretary

Explanation:

~~Strike Out indicates matters deleted from existing law.~~

CAPITALS INDICATE MATTERS ADDED TO EXISTING LAW.

~~CAPITAL STRIKE OUT~~ indicates matter stricken from Bill by Amendment.

Underlining indicates Amendments to Bill

COUNTY COUNCIL
OF
WICOMICO COUNTY, MARYLAND

2026 Legislative Session

Legislative Day No. 04

LEGISLATIVE BILL NO. 2026-02

INTRODUCED BY: The Council President at the request of the Planning Commission

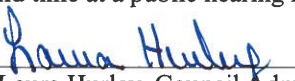
LEGISLATIVE BILL NO. 2026-02: AN ACT to amend Chapter 125 of the Wicomico County Code, Titled, "Critical Area Resource Protection," by Repealing all Articles and Sections Therein and adopting 22 New Articles Consisting of 99 New Sections.

Introduced and read first time on February 17, 2026. Ordered posted and public hearing scheduled for March 17, 2026 at 10:00 a.m.



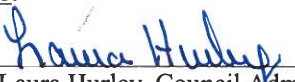
Laura Hurley, Council Administrator

PUBLIC HEARING: Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing held on March 17, 2026.



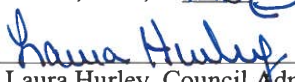
Laura Hurley, Council Administrator

CERTIFICATION: The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 17th day of March, 2026.



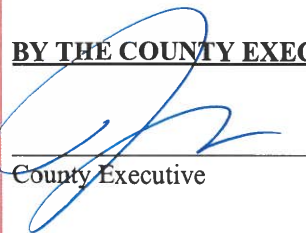
Laura Hurley, Council Administrator

Presented to the County Executive for approval this 18th day of March, 2026, at 9:45 a.m./p.m. (5 days §411)



Laura Hurley, Council Administrator

BY THE COUNTY EXECUTIVE:



County Executive

APPROVED
Date: 3/18/2026
(21 days §411)

VETOED

Date: _____

BY THE COUNCIL:

Option One: This Bill, having been approved by the County Executive and returned to the Council, becomes law on March 18, 2026 and effective on: May 17, 2026.
(60 days §311)

Option Two: This Bill, having received neither the approval nor the disapproval of the County Executive with 21 days of its presentation, stands enacted on _____ and becomes effective on _____.
(60 days §311)

Option Three: This Bill, being exempt from the Executive Veto stands enacted on _____ and becomes effective on _____. (Charter Section 305)

ENROLLMENT: Legislative Bill No. 2026-02 is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.



Laura Hurley, Council Administrator

Chapter 125. Critical Area Resource Protection

Article I. General Provisions

§ 125-1. Purpose; authority.

~~A. The purpose of the Critical Area Resource Protection Chapter is to establish the Critical Area District and to provide special regulatory protection for the land and water resources located within the Chesapeake Bay Critical Area in Wicomico County. Land use development standards and requirements established herein are intended to foster more sensitive development activity for shoreline areas and to minimize the adverse impacts of development activities on water quality and natural habitats. This chapter implements the Wicomico County Critical Area Program and the requirements of the Maryland Critical Area Law and the critical area criteria and is adopted pursuant to the Natural Resources Article, Title 8, Subtitle 18, and COMAR 27.01, the critical area criteria.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~B.~~

~~The requirements of this chapter supplement the County's land development codes, including existing zoning and subdivision provisions.[1] It imposes specific regulations for the development and other land use within the Wicomico County Critical Area. In the event of inconsistency between the provisions of this chapter and the provisions established in other applicable ordinances, the more restrictive or stringent provisions shall apply.~~

~~{1}~~

~~Editor's Note: See Ch. 225, Zoning, and Ch. 200, Subdivision of Land.~~

~~C.~~

~~This chapter has been drafted to conform to and to implement the provisions of the Wicomico County Critical Area Program and criteria as approved by the Chesapeake Bay Critical Area Commission on September 6, 1989. Great care has been taken to follow carefully the goals of the program and to ensure that the development rules, regulations and restrictions set forth herein will achieve the goals and objectives of the program.~~

~~D.~~

~~This chapter will provide for reasonable accommodations in policies or procedures when the accommodations are necessary to avoid discrimination on the basis of physical disability, including removal of a structure that was installed or built to accommodate a physical disability~~

~~and require restoration when the accommodation permitted by this subsection is no longer necessary.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~§ 125-2. Interpretations.~~

~~This chapter shall be interpreted, whenever an administrator, the Wicomico County Planning and Zoning Commission or the judiciary is called upon to do so, in conformance with the purposes intended to be served by its enactment. The intent of the regulations and supporting definitions is to protect both individual property owners and the general public from adverse impacts which might otherwise be the result of a proposed development or activity within the critical area. To this end, those called upon to interpret this chapter shall proceed as follows:~~

~~A.~~

~~Determine the public purpose(s) of the standard(s) with respect to which an interpretation is required.~~

~~B.~~

~~Determine the actual impact of various proposed interpretations, permitting flexibility in design but prohibiting any interpretation that lowers the protection afforded to the public and would be inconsistent with goals and objectives of the program and the requirements of § 8-1801 et seq. of the Natural Resources Article of the Annotated Code of Maryland.~~

~~C.~~

~~Determine that the proposed interpretation will ensure a just balance between the rights of the landowner and all others who will be affected by that person's land use proposal.~~

~~D.~~

~~This chapter has been carefully designed by the County Council of Wicomico County to avoid regulations that either sacrifice legitimate public goals, including the protection of adjoining property owners, or require undue limitations on the ability of property owners to use their land in manners consistent with the goals of the program.~~

~~§ 125-3. Applicability.~~

~~A.~~

~~No person shall develop, alter or use any land for residential, commercial, industrial or institutional uses nor conduct agricultural, fishery or forestry activities in the Wicomico County Critical Area except in compliance with the Wicomico County Critical Area Program and the~~

~~applicable provisions contained herein. To ensure this end, no development or resource utilization activity shall be permitted until the applicable approving authority shall make findings that the proposed development or activity is consistent with the goals and objectives of the Wicomico County Critical Area Program.~~

~~B.~~

~~This chapter shall only apply to the Wicomico County Critical Area, hereafter referred to as the "Critical Area District." The Critical Area District shall include:~~

~~{Amended 6-26-2001 by Bill No. 2001-11; 8-2-2011 by Bill No. 2011-07}~~

~~(1)~~

~~All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide, and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and~~

~~(2)~~

~~All lands and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.~~

~~§ 125-4. Official maps.~~

~~{Amended 10-23-2001 by Bill No. 2001-13}~~

~~A.~~

~~District Maps. The Wicomico County Critical Area shall be delineated on Official Critical Area District Maps prepared as part of the Wicomico County Critical Area Program. The Critical Area District Maps shall be maintained in force as official maps of the county. The Critical Area District Maps shall delineate the extent of the Critical Area District in Wicomico County which is as defined in § 125-3B.~~

~~B.~~

~~Special Buffer Area Maps. Those areas which have been mapped by the County and approved by the Critical Area Commission as special Buffer areas shall be delineated on official Critical Area Special Buffer Area Maps and maintained in force as official maps of the County. These maps shall delineate the extent of special Buffer areas as defined in § 125-11.~~

~~§ 125-5. Land use management classifications.~~

~~A.~~

~~All land within the Wicomico County Critical Area District shall be assigned one of the following land use management classifications as determined in the Wicomico County Critical Area Program, which shall be shown on the Critical Area District Maps:~~

~~(1)~~

~~Intensely developed area (IDA);~~

~~(2)~~

~~Limited development area (LDA); or~~

~~(3)~~

~~Resource conservation area (RCA).~~

~~B.~~

~~The land use management classification shall be based on the actual land use as of December 1985 and mapped according to rules for making such determination as established in the Wicomico County Critical Area Program except as provided in Articles V and VII.~~

~~§ 125-6. Certificate of compliance.~~

~~A.~~

~~No land may be used nor may any building or structure be constructed, extended, altered, repaired, changed or converted to another use until the Planning Director or the Wicomico County Planning and Zoning Commission has issued a final Chesapeake Bay Critical Area compliance certificate.~~

~~B.~~

~~No zoning authorization may be issued nor may any land be subdivided for the purpose of sale or exchange until the Planning Director or the Wicomico County Planning and Zoning Commission has issued a final Chesapeake Bay Critical Area compliance certificate.~~

~~C.~~

~~A preliminary Chesapeake Bay Critical Area compliance certificate may be issued by the Planning Director or the Wicomico County Planning and Zoning Commission. The preliminary Chesapeake Bay Critical Area compliance certificate indicates general acceptance by the Wicomico County Planning and Zoning Commission of the development activity subject to meeting all conditions of approval and/or obtaining other required permits and/or approvals from other agencies. A preliminary Chesapeake Bay Critical Area compliance certificate does not confer the right to begin construction, sales of lots or land disturbance, nor does it signify that final approval of the~~

~~application is approved, until all conditions of approval are met and all local, state and federal approvals or permits required are secured.~~

~~D.~~

~~The approving authority shall only issue a final Chesapeake Bay Critical Area compliance certificate upon finding that the proposed development or activity will be done consistent with the requirements of the Wicomico County Critical Area Program.~~

~~E.~~

~~The Planning Director may waive the requirement for an environmental impact assessment as part of the Chesapeake Bay Critical Area compliance certificate for building permits, minor subdivisions or minor site plans.~~

~~§ 125-7. Definitions and word usage.~~

~~[Amended 6-26-2001 by Bill No. 2001-11]~~

~~For the purpose of this chapter, the following definitions describe the meanings of the terms used in the chapter. Definitions applicable to terms used in the Critical Area District not already contained herein shall be the same as those contained in the Chesapeake Bay Critical Area criteria, COMAR 27.01.01.~~

~~AFFORESTATION~~

~~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 that are not presently in forest cover.~~

~~AGRICULTURAL EASEMENT~~

~~A nonpossessory interest in land which restricts the conversion of use of the land, preventing nonagricultural uses.~~

~~AGRICULTURE~~

~~The bona fide use of a parcel of land for cultivation, raising of poultry and livestock and similar agrarian activity, including the producing of crops; breeding, boarding or training of animals; horticulture; apiaries; hydroponics; viniculture; forestry; aquaculture; and the related buildings, structures and appurtenances necessary to carry out the aforementioned activities as approved by the Advisory Board.~~

~~ANADROMOUS FISH~~

~~Fish that travel upstream (from their primary habitat in the ocean) to fresh water in order to spawn.~~

AQUACULTURE

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.

BARREN LAND

Unmanaged land having sparse vegetation.

BEST MANAGEMENT PRACTICE (BMP)

Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxic substances 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.

BUFFER

An existing, naturally vegetated area or an area established in natural vegetation in order to protect streams, tidal wetlands, tidal waters, shoreline and terrestrial environments from man-made disturbances. In the Critical Area District, the minimum Buffer is a continuous area located immediately landward from the mean high water of tidal waters, the edge of the bank of tributary streams in the critical area, or the edge of a tidal wetlands and has a minimum width of 100 feet. The Buffer shall be expanded beyond the minimum depth to include certain sensitive areas as per requirements established in this chapter.

[Amended 8-2-2011 by Bill No. 2011-07]

~~CLEAR-CUTTING~~

~~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.~~

~~CLUSTER DEVELOPMENT~~

~~A residential development to 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.~~

~~COLONIAL NESTING WATER BIRDS~~

~~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.~~

~~COMMERCIAL HARVESTING~~

~~A commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.~~

~~COMMUNITY PIERS~~

~~Boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.~~

~~COMPREHENSIVE OR MASTER PLAN~~

~~A compilation of policy statements, goals, standards, maps and pertinent 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 Commission.~~

~~CONSERVATION EASEMENT~~

~~A nonpossessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.~~

~~CRITICAL AREA~~

~~All lands and waters defined in § 8-1807 of the Natural Resources Article. They include:~~

~~A.~~

~~All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~B.~~

~~All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~C.~~

~~Modification to these areas through inclusions or exclusions proposed by Wicomico County and approved by the Commission as specified in § 8-1807 of the Natural Resources Article of the Annotated Code of Maryland.~~

~~CRITICAL AREA COMMISSION~~

~~The Maryland Chesapeake Bay Critical Area Commission.~~

~~CRITICAL AREA DISTRICT~~

~~The Wicomico County portions of the critical area, as defined in the definition of "critical area" above.~~

~~CRITICAL AREA PROGRAM~~

~~The Wicomico County Chesapeake Bay Critical Area Program, as amended, as approved by the Chesapeake Bay Critical Area Commission on September 6, 1989.~~

~~DENSITY~~

~~The number of dwelling units per acre of gross area of a development tract, unless otherwise specified.~~

~~DEVELOPED WOODLANDS~~

~~An area of trees and natural vegetation interspersed with institutional or recreational development.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~DEVELOPER~~

~~A person who undertakes development activity as defined in this chapter or who undertakes development as defined in the criteria of the Critical Area Commission.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~DEVELOPMENT ACTIVITY~~

~~A human activity that results in disturbance to land, natural vegetation, or a structure, including but not limited to, the following:~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~A.~~

~~An activity shown on a subdivision plat, revised plat, site plan, building/zoning permit or forest preservation plan; and/or~~

~~B.~~

~~An activity that results in the construction or substantial alteration of any residential, commercial, industrial, institutional, recreational (including golf courses), or transportation facilities or structures.~~

~~DEVELOPMENT PAD~~

~~The area of a lot within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed, the remaining area of the lot must be maintained in natural vegetation.~~

~~DISTURBANCE~~

~~Any alteration or change to the land. This includes any amount of clearing, grading or construction activity. This does not include gardening or maintenance of an existing grass lawn.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~DOCUMENTED BREEDING BIRD AREAS~~

~~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.~~

~~DRAINAGEWAYS~~

~~Minor watercourses that are defined either by soil type or by the presence of intermittent or perennial streams or topography that indicates a swale where surface sheet flows join, including~~

~~the land, except where areas are designated as floodplain, on either side of and within 50 feet of the center line of any intermittent or perennial stream shown on the United States Geological Service's seven and one-half minute quadrangle sheets covering the unincorporated areas of Wicomico County.~~

~~DWELLING UNIT~~

~~A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. This includes a living quarters for a domestic employee or other tenant, an in-law or accessory apartment, a guest house or a caretaker residence.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~ECOSYSTEM~~

~~A more or less self-contained biological community, together with the physical environment in which the community's organisms occur.~~

~~ENVIRONMENTAL ASSESSMENT~~

~~A comprehensive report that describes the natural features and characteristics of a proposed development site, the changes that will occur as the result of proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development and mitigation measures to be taken to minimize undesirable impacts to the environment.~~

~~EXCESS STORMWATER RUNOFF~~

~~All increases in stormwater resulting from:~~

~~A.~~

~~An increase in the imperviousness 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.~~

~~FISHERIES ACTIVITIES~~

~~Commercial water-dependent fisheries facilities, including structures for the packing, 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, shellfish culture operations and shore-based facilities necessary for aquaculture operations.~~

~~FOREST~~

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

~~[Amended 8-2-2011 by Bill No. 2011-07]~~

~~FOREST INTERIOR DWELLING BIRDS~~

~~Species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).~~

~~FOREST MANAGEMENT~~

~~The protection, manipulation and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.~~

~~FOREST PRACTICE~~

~~The alteration of the forest, either through tree removal or replacement, in order to improve the timber, wildlife, recreational or water quality values.~~

~~GRANDFATHERED~~

~~Describes the status accorded certain properties and development activities that are of record prior to the date of adoption of this chapter.~~

~~GROWTH ALLOCATION~~

~~A.~~

~~An area of land calculated as 5% of the total resource conservation area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; also~~

~~B.~~

~~A resolution of the County Council, i.e., approving the growth allocation, which provides for conversion of a property or properties located in a resource conservation area (RCA) and/or the limited development area (LDA) in the Critical Area District to another land management classification which allows an increase in the permitted density.~~

~~HABITAT PROTECTION AREAS~~

~~Include Palustrine Nontidal wetlands, threatened and endangered species habitat, plant and wildlife habitats, anadromous fish spawning propagation waters and species in need of conservation habitat, as defined in the Wicomico County Critical Area Program. When not otherwise indicated by the text, habitat protection areas also include the critical area buffer.~~

~~HIGHLY ERODIBLE SOILS~~

~~Soils with a slope greater than 15% or those soils with a K value greater than 0.35 with slopes greater than 5%.~~

~~HISTORIC WATERFOWL STAGING AND CONCENTRATION AREA~~

~~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.~~

~~HYDRIC SOILS~~

~~Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.~~

~~HYDROPHYTIC VEGETATION~~

~~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).~~

~~IMMEDIATE FAMILY~~

~~Father, mother, son, daughter, grandfather, grandmother, grandson or granddaughter.~~

~~IMPERVIOUS SURFACE~~

~~Any man-made surface that is resistant to the penetration of water.~~

~~INTENSELY DEVELOPED AREA (IDA)~~

~~An area of at least 20 acres or the entire upland portion of the critical area within a municipal corporation, whichever is less, where residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs.~~

~~"IDA" includes:~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~A.~~

~~An area with a housing density of at least four dwelling units per acre; or~~

~~B.~~

~~An area with public water and sewer systems with a housing density of more than three dwelling units per acre.~~

~~K-VALUE~~

~~The soil erodibility factor in the universal soil loss equation. It is a quantitative value that is experimentally determined.~~

~~LAND-BASED AQUACULTURE~~

~~The raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.~~

~~LAND-CLEARING~~

~~Any activity that removes the vegetative ground cover.~~

~~LANDFORMS~~

~~Feature of the earth's surface created by natural causes.~~

~~LIMITED DEVELOPMENT AREA (LDA)~~

~~An area that is developed in low or moderate intensity uses and contains areas of natural plant and animal habitats and where the quality of runoff has not been substantially altered or impaired. "LDA" includes an area with a housing density ranging from one dwelling 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.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~LOT COVERAGE~~

~~Percentage of a total lot or parcel that is:~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~A.~~

~~Occupied by a structure, accessory structure, parking area, driveway, walkway or roadway; or~~

~~B.~~

~~Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement or any man-made 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 deck with gaps to allow water to pass freely.~~

~~MARINA~~

~~Any facility for the mooring, berthing, storing or securing of watercraft, but not including community piers and other noncommercial boat docking and storage facilities.~~

~~MEAN HIGH WATER LINE~~

~~The average level of high tides at a given location.~~

~~MINOR SITE PLAN~~

~~Site plans for less than three duplexes, an accessory building and/or addition to a commercial or industrial use structure in those cases where a field inspection and review of the critical area habitat maps indicates that the scope of the proposed accessory building and/or addition is of such a nature that the provisions for handling of natural and stormwater, sediment control, off-street parking, setbacks, water and sewerage, habitat protection and other requirements can be adequately addressed with a simplified site plan and environmental assessment process.~~

~~MINOR SUBDIVISION~~

~~Any subdivision containing five or fewer lots, plats, sites or other division of land.~~

~~NATURAL FEATURES~~

~~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, floodplains, aquatic life and wildlife.~~

~~NATURAL HERITAGE AREA~~

~~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.~~

~~NATURAL VEGETATION~~

~~Plant communities that develop in the absence of human activities.~~

~~NATURE DOMINATED~~

~~A condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.~~

~~NONPOINT SOURCE POLLUTION~~

~~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. Nonpoint source pollution is not generally corrected by end-of-pipe treatment, but rather by changes in land management practices.~~

~~NONRENEWABLE RESOURCES~~

~~Resources that are not naturally regenerated or renewed.~~

~~NONTIDAL WETLANDS~~

~~Those areas where the water table is usually at or near the surface or where the soil or substrate is covered by shallow water at some time during the growing season and which are usually characterized by one of the following:~~

~~A.~~

~~At least periodically, the land supports predominantly hydrophytic vegetation. "Land periodically supporting predominantly hydrophytic vegetation" is defined to mean areas of natural vegetation where the water table is at the surface of the land for at least two weeks during the growing season.~~

~~B.~~

~~The substrate is predominantly undrained hydric soils (i.e., does not have tile drains or drainage ditches).~~

~~OFFSETS~~

~~Structures or actions that compensate for undesirable impacts.~~

~~OPEN SPACE~~

~~Undeveloped land used primarily for resource protection or recreational purposes; land and water areas retained for use as active or passive recreation areas in an essentially underdeveloped state or land areas retained in natural cover, agricultural or commercial forestry use.~~

~~OPEN WATER~~

~~Tidal waters of the state that do not contain tidal wetlands and/or submerged aquatic vegetation.~~

~~OVERBURDEN~~

~~The strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.~~

~~PAD DEVELOPMENT~~

~~The area of a lot within a larger overall lot area that is devoted to structures and septic systems. In general, where a development pad is prescribed, the remaining area of the lot must be maintained in natural vegetation.~~

~~PALUSTRINE~~

~~All nontidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below 1/2 part per 1,000 parts of water.~~

~~PERSON~~

~~An individual, firm, partnership, association, corporation, company, organization, contractor, property owner or any other entity.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~PHYSIOGRAPHIC FEATURES~~

~~The soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.~~

PORT

~~A facility or area established or designated by the state or local jurisdictions for purposes of waterborne commerce.~~

PRIVATE HARVESTING

~~The cutting and removal of trees for personal use.~~

PROGRAM AMENDMENT

~~Any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a program refinement.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

PROGRAM REFINEMENT

~~Any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program or that will not significantly affect the use of land or water in the critical area. Program refinement may include:~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~A.~~

~~A change to an adopted program that results from state law;~~

~~B.~~

~~A change to an adopted program that affects local processes and procedures;~~

~~C.~~

~~A change to a local code that clarifies an existing provision; or~~

~~D.~~

~~A minor change to an element of an adopted program that is clearly consistent with the provisions of state critical area law and all the criteria of the Commission.~~

PROJECT APPROVALS

~~The approval of development, other than development by the state or local government, in the Chesapeake Bay critical area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of~~

~~variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.~~

PROPERTY OWNER

~~Any person, group of persons, family, firm or firms, corporation or corporations, partnership or any other legal entity having legal title to or substantial proprietary interest in the land at issue under this chapter.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

PUBLIC WATER-ORIENTED RECREATION

~~Shore dependent recreation facilities or activities provided by public agencies which are available to the general public.~~

RECLAMATION

~~The reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.~~

REDEVELOPMENT

~~The process of developing land that is or has been developed.~~

REFORESTATION

~~The establishment of a forest through artificial reproduction or natural regeneration.~~

RENEWABLE RESOURCE

~~A resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.~~

RESOURCE CONSERVATION AREA

~~An area that is a nature-dominated environment, such as wetlands, surface water, forests, and open space and prime land for resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. This includes an area with a housing density of less than one dwelling per five acres.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

RIPARIAN HABITAT

~~A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.~~

SEASONALLY FLOODED WATER REGIME

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.

SELECTION

The removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

SHORE EROSION CONTROL MEASURES

Any of number of structural and nonstructural methods or techniques for controlling the erosion of shoreline areas. More specifically, the term refers to:

A.

NONSTRUCTURAL

Creation of an intertidal marsh fringe, channelward of the existing bank, by one of the following methods:

(1)

Vegetation: planting an existing shore with a wide band of vegetation.

(2)

Bank sloping/vegetation: sloping and planting a nonwooded bank to manage tidal water contact, using structures to contain sloped materials, if necessary.

(3)

Contained beach: filling along the shore with sandy materials, grading and containing the new beach to eliminate tidal water contact with the bank.

B.

STRUCTURAL

(1)

REVETMENT

Facing laid on a sloping shore to reduce wave energy and contain shore materials.

(2)

BULKHEAD

~~Are excluded due to adverse impacts to the near shore marine environment, except in the following special cases:~~

~~(a)~~

~~Replacement of existing bulkheads;~~

~~(b)~~

~~Repair, maintenance or rehabilitation of existing bulkheads; and~~

~~(c)~~

~~As approved by the Maryland Department of the Environment and the U.S. Army Corps of Engineers.~~

~~SIGNIFICANT SHORELINE EROSION~~

~~An annual rate of erosion of two feet or greater.~~

~~SOIL CONSERVATION AND WATER QUALITY PLANS~~

~~Land use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:~~

~~A.~~

~~How the landowner plans to treat a farm unit.~~

~~B.~~

~~Which best management practices the landowner plans to install to treat undesirable conditions.~~

~~C.~~

~~The schedule for applying best management practices.~~

~~SPECIAL BUFFER AREA~~

~~An area officially mapped by the County and approved by the Critical Area Commission as a special Buffer area where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the critical area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.~~

~~SPECIES IN NEED OF CONSERVATION~~

~~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 Secretary 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.~~

SPOIL PILE

~~The overburden and reject materials as piled or deposited during surface mining.~~

STEEP SLOPES

~~Slopes of fifteen-percent or greater incline.~~

THINNING

~~A forest practice used to accelerate tree growth of quality trees in the shortest interval of time.~~

TIDAL WETLANDS

~~State wetlands, defined as any land under the navigable waters of the state below the mean high water line affected by the regular rise and fall of tide, and private wetlands, defined as any land not considered state wetlands bordering or lying beneath tidal waters that are subject to regular or periodic tidal action and support aquatic growth. Private wetlands include wetlands transferred by the state by a valid grant, lease, patent or grant confirmed by Article 5 of the Declaration of Rights of the Constitution to the extent of the interest transferred. The term "regular or periodic tidal action" means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by the wind or any other circumstance.~~

TOPOGRAPHY

~~The existing configuration of the earth's surface, including the relative relief, elevations and position of land features.~~

TRANSITIONAL HABITAT

~~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.~~

TRANSPORTATION FACILITIES

~~Anything that is built, installed, or established to provide a means of transport from one place to another.~~

TREE

~~A woody perennial plant having a single, usually elongated, main stem generally with few or no branches on its lower part; a perennial shrub or herb of arborescent form.~~

~~TRIBUTARY STREAMS~~

~~A perennial and intermittent stream in the critical area that has been identified by site inspection or in accordance with local procedures described in this chapter.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~UNWARRANTED HARDSHIP~~

~~Without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~UTILITY TRANSMISSION FACILITIES~~

~~Fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.~~

~~WASH PLANT~~

~~A facility where sand and gravel is washed during processing.~~

~~WATER-BASED AQUACULTURE~~

~~The raising of fish and shellfish in any natural, open, free-flowing water body.~~

~~WATER-DEPENDENT FACILITIES~~

~~Structures or works associated with industrial, maritime, recreational, educational or fisheries activities which Wicomico County has determined require location at or near the shoreline within the Buffer.~~

~~WATER-USE INDUSTRY~~

~~An industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.~~

~~WATERFOWL~~

~~Birds which 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.~~

~~WILDLIFE CORRIDOR~~

~~A strip of land having vegetation that provides habitat and a safe passageway for wildlife.~~

~~§ 125-8. Lots of record; grandfather provisions.~~

~~A.~~

~~A single lot or parcel of land that was legally of record on October 13, 1989, may be developed with a single family dwelling, if the dwelling was not already placed there, notwithstanding that such development may be inconsistent with the density provisions of § 125-14.~~

~~B.~~

~~Except as otherwise provided, the following types of land may be developed in accordance with density requirements in effect prior to the adoption of this chapter, notwithstanding the density provisions of § 125-14:~~

~~(1)~~

~~Any lot on which development activity has legally progressed to the point of pouring foundation footing or installation of structural members.~~

~~(2)~~

~~Any legal parcel of land not being part of a recorded subdivision which received final approval of development by the appropriate approving authority prior to June 1, 1984.~~

~~(3)~~

~~Any legal parcel of land not being part of a recorded subdivision that was recorded as of December 1, 1985. Development on lots created after June 1, 1984, and prior to October 13, 1989, shall comply with the conditions imposed under interim findings made by the Wicomico County Planning and Zoning Commission.~~

~~(4)~~

~~Land that was subdivided into recorded, legally buildable lots or where the subdivision received final approval prior to June 1, 1984, provided that the development of these lands conforms to the Wicomico County Critical Area Program insofar as possible, as determined by the Wicomico County Planning and Zoning Commission. At a minimum, development on lots created prior to June 1, 1984, shall comply with the provisions of §§ 125-11 and 125-12 contained herein. Where consolidation or reconfiguration of lots not individually owned is required, the provisions of this chapter shall apply to the consolidated or reconfigured lot insofar as possible.~~

~~(5)~~

~~Land that was subdivided into recorded, legally buildable lots where the subdivision received final approval after December 1, 1985, provided that interim findings, as per § 8-1813 of the Critical Areas Law, have been made by the Wicomico County Planning and Zoning Commission and that the development complies with the conditions of the interim findings approval or the area of the land is counted against the growth increment permitted under COMAR 27.01.02.06.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~C.~~

~~Any existing legal building or use of land as of October 13, 1989, that does not fully comply with this chapter or the Wicomico County Critical Area Program is a legal nonconforming use. Expansion of such existing buildings or uses shall not be permitted until a determination has been made by the Wicomico County Planning and Zoning Commission that such expansion complies with the provisions of this chapter and a final Chesapeake Bay Critical Area compliance certificate is issued. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 27.01.11.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~D.~~

~~Nothing in this chapter may be interpreted as altering any requirements for development activities set out in COMAR 27.01.03 and 27.01.09.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~Article II. Buffer Requirements~~

~~§ 125-9. Prohibitions; exceptions.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~Except as provided for in § 125-18, new development activities, including clearing of existing natural vegetation, erection of structures, construction of new roads, parking areas or other impervious surfaces and the placement of sewage disposal systems, are not permitted in the Buffer, except as provided for in § 125-11.~~

~~§ 125-10. Expansion.~~

~~A.~~

~~The Buffer shall be expanded to include contiguous sensitive areas on the parcel whose development or disturbance the Wicomico County Planning and Zoning Commission determines~~

~~may impact streams, wetlands or other aquatic environments. This expansion will occur whenever development, forestry, agriculture or other land-disturbing activities are proposed. Sensitive areas have the following features:~~

~~(1)~~

~~Hydric soils and soils with hydric properties as designated by the Soil Conservation Service;~~

~~(2)~~

~~Highly erodible soils with a X value greater than 0.35; and~~

~~(3)~~

~~Steep slopes greater than 15%.~~

~~B.~~

~~The expanded Buffer must be shown on plans required for such development or land disturbance.~~

~~C.~~

~~The Buffer shall be expanded according to the following rules:~~

~~(1)~~

~~The Buffer shall be expanded four feet for every percent of slope or to the top of the slope, whichever is greater; and~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~(2)~~

~~The Buffer shall be expanded to the upland limit of adjacent hydric soils, soils with hydric properties and erodible soils whose development or disturbance the Wicomico County Planning and Zoning Commission determines may impact the critical area.~~

~~§ 125-11. Special Buffer areas.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~A.~~

~~Special Buffer area—residential.~~

~~(1)~~

~~Definition. "Special Buffer area" means an area officially mapped by the County and approved by the Critical Area Commission as a special Buffer area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the critical area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation as specified in COMAR 27.01.09.01.B.~~

~~(2)~~

~~General policy. The provisions herein are intended to accommodate limited use of shoreline areas for single-family detached residential development while protecting water quality and wildlife habitat to the greatest extent possible.~~

~~(3)~~

~~Applicability. The following criteria applies to new development or redevelopment on single-family detached residential properties located in mapped special Buffer areas as defined herein. This policy only applies to lots of record at the time of original program approval.~~

~~(4)~~

~~Standards.~~

~~(a)~~

~~New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative.~~

~~(b)~~

~~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 principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).~~

~~(c)~~

~~Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this policy.~~

~~(d)~~

~~New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:~~

~~{1}~~

~~New accessory structures may be located closer to the water or edge of tidal wetlands than the dwelling only if there are no other locations for the accessory structures.~~

~~{2}~~

~~The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.~~

~~{3}~~

~~In no case shall new accessory structures be located less than 25 feet from the water (or edge of tidal wetlands).~~

~~(e)~~

~~Variances to local setback requirements should be considered before additional intrusion into the Buffer.~~

~~(f)~~

~~Development may not impact any HPAs other than the Buffer, including nontidal wetlands, other state or federal permits notwithstanding.~~

~~(g)~~

~~No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.~~

~~(h)~~

~~BEA designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.~~

~~(i)~~

~~Any development or redevelopment in the special Buffer area requires mitigation, in the form of plantings, offsets, or fees in lieu.~~

~~(j)~~

Any required reforestation/mitigation/offset areas must be designated under a development agreement or other instrument and recorded among the land records of the County.

(5)

Mitigation. Mitigation measures shall be implemented in the following order of preference:

(a)

Natural vegetation of any area twice the extent of the footprint of the development activity within the one hundred foot Buffer shall be planted on site in the Buffer or other location as may be determined by the County. If it is not possible to carry out offsets or other mitigation within the critical area, any plantings or other habitat/water quality improvements should occur within the affected watershed.

(b)

Applicants who cannot comply with the planting requirement may use offsets to meet the mitigation requirement. Offsets may include the removal of an equivalent area or existing impervious surfaces in the Buffer, the construction of best management practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.

(c)

Applicants who cannot comply with either the planting or offset requirements in Subsection A(5)(a) or (b) above are required to pay into a fee in lieu program administered by the local jurisdiction. A jurisdiction shall establish rates that will generate adequate funds to carry out planting or offset programs. Any fee in lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the critical area for the benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the jurisdiction's quarterly reports.

(d)

Alternative provisions for meeting the mitigation requirements may be proposed by a local jurisdiction and approved by the Critical Area Commission.

(6)

Notification requirements.

(a)

The Planning Director, or his designee, will document that all the criteria in this section are met, including that the disturbance to the Buffer is the least intrusion necessary. That documentation will be available to the Commission upon request.

(b)

The reporting of development activity carried out under this provision must be included in the jurisdiction's quarterly reports.

(7)

Requirements for mapping new special Buffer areas:

(a)

Only grandfathered lots are eligible for mapping as a special Buffer area.

(b)

For each special Buffer area, the lots that comprise the special Buffer area shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program adoption and that prevent the Buffer from fulfilling its functions. Development parcels or lots shall contain a Buffer intrusion, at the time of proposal, caused by the principal structures (excluding utilities or septic systems). Undeveloped or vacant residential parcels or lots (i.e., infill) may be designated as a special Buffer area if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.

(c)

Any proposal by the jurisdiction for designation of an area as a special Buffer area shall include, at a minimum, the jurisdiction's written findings of and supporting reasons which demonstrate the degree to which the proposed special Buffer area does not perform each of the following Buffer functions (1) through (5):

{1}

Provide for the removal or reduction of sediments, nutrients, and potentially harmful toxic substances in runoff entering the bay and its tributaries;

{2}

Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;

{3}

Maintain an area of transitional habitat between aquatic and upland communities;

{4}

Maintain the natural environment of streams; and

{5}

Protect riparian wildlife habitat.

{8}

~~Definitions. For the purpose of implementing this section, the following words have the following meanings. (In the case of conflicts with other definitions, the stricter provisions shall apply.)~~

~~ACCESSORY STRUCTURE~~

~~A structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.~~

~~DEVELOPMENT ACTIVITY~~

~~The construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.~~

~~GRANDFATHERED PARCEL/LOT~~

~~A parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.~~

~~NATURAL FOREST VEGETATION~~

~~Vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests.~~

~~NEW DEVELOPMENT~~

~~A development activity that takes place on a property with pre-development imperviousness less than 15% as of December 1, 1985.~~

PRINCIPAL STRUCTURE

~~For the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.~~

REDEVELOPMENT

~~A development activity that takes place on a property with pre-development imperviousness greater than 15% as of December 1, 1985.~~

SPECIAL BUFFER AREA

~~An area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a special Buffer area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the critical area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.~~

~~B.~~

~~Special Buffer area—commercial, industrial, institutional, recreational and multifamily residential.~~

~~(1)~~

~~Definition. "Special Buffer area" means an area officially mapped by the Planning Commission and approved by the Critical Area Commission as a special Buffer area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the critical area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation (as specified in COMAR 27.01.09.01.B).~~

~~(2)~~

~~General policy. The provisions herein are intended to accommodate limited use of shoreline areas for commercial, industrial, institutional, recreational and multifamily development while protecting water quality and wildlife habitat to the greatest extent possible.~~

~~(3)~~

~~Applicability. The following criteria applies to new commercial, institutional, recreational, and multifamily residential development or redevelopment within 100 feet of tidal waters, tidal wetlands, and tributary streams and only applies to lots of record at the time of original program approval.~~

(4)

Standards.

(a)

~~New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, and the County finds that efforts have been made to minimize Buffer impacts based on the following guidelines:~~

~~{1}~~

~~Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands or the edge of tributary streams.~~

~~{2}~~

~~Variances to other local setback requirements shall be considered before additional intrusion into the Buffer.~~

~~{3}~~

~~Convenience or expense shall not be factors considered when evaluating the extent of allowable impacts to the Buffer.~~

(b)

~~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 County setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The fifty foot setback shall be maintained for all subsequent development or redevelopment of the property.~~

(c)

~~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. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a twenty five foot setback should be maximized.~~

(d)

Development and redevelopment may not impact any HPAs other than the Buffer, including nontidal wetlands, other state or federal permits notwithstanding.

(e)

No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.

(f)

Special 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.

(g)

Any development or redevelopment in the special Buffer area requires mitigation, in the form of plantings, offsets, or fees in lieu.

(h)

Any required reforestation / mitigation / offset areas must be designated under a development agreement or other instrument and recorded among the land records of Wicomico County.

(5)

Mitigation.

(a)

The following mitigation measure shall be implemented for all development and redevelopment projects:

{1}

A forested or landscaped buffer yard, 25 feet wide, shall be established on the project site between the development and the water. This buffer yard shall be densely planted with trees and shrubs in accordance with Table 1, below.

{2}

On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted buffer yard may be made on a case-by-case basis.

Table 1

~~Required Buffer Yard Planting~~

~~Area~~

~~Quantity and Stocking~~

~~Suggested Species~~

~~For every 100~~

~~5 trees; and~~

~~White or Red Oak, Pin linear feet of Oak, Willow Oak, Red buffer yard Maple, American Holly,
Eastern Red Cedar~~

~~10 understory trees/ large shrubs; and~~

~~Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry~~

~~30 small shrubs; and~~

~~Pepperbush, Chokeberry, Strawberry Bush, Sweetspire~~

~~40 herbaceous plants, grasses, etc.~~

~~Wild Columbine, Butterflyweed, Common Milkweed, Asters~~

~~(b)~~

~~In addition to establishing a twenty five foot buffer yard on site as described above, one of the
following mitigation measures shall be implemented based on the following order of
preference:~~

~~{1}~~

~~Natural forest vegetation of an area twice the extent of the footprint of the development
activity within the one hundred foot Buffer shall be planted on site in the Buffer or at another
location, preferably on site, as may be determined by the County.~~

~~{2}~~

~~Applicants who cannot fully comply with the planting requirement in Subsection B(5)(b){1}
above, may use offsets to meet the mitigation requirement. Offsets may include the removal of
an equivalent area of existing impervious surfaces in the Buffer, the construction of best
management practices for stormwater, wetland creation or restoration, or other measures that
improve water quality or habitat.~~

~~{3}~~

~~Applicants who cannot comply with either planting or offset requirements in Subsection B(5)(b)[1] or [2] above, are required to pay into a fee in lieu program administered by Wicomico County. The County shall establish rates that will generate adequate funds to carry out planting or offset programs and that provide a sufficient deterrent to location in the Buffer. 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 for benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the County's quarterly reports.~~

~~{4}~~

~~Any required mitigation/offset areas must be protected from future development through an easement development agreement, plat notes or other instrument and recorded among the land records of Wicomico County.~~

~~{6}~~

~~Notification requirements.~~

~~{a}~~

~~Within special Buffer areas, all new commercial, industrial, institutional, recreational, multifamily residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.~~

~~{b}~~

~~The Planning Director shall document that all the criteria in this section are met, including that the disturbance to the Buffer is the least intrusion necessary. This documentation shall be available to the Commission upon request.~~

~~{c}~~

~~The reporting of development activity carried out under this provision must be included in the County's quarterly reports.~~

~~{7}~~

~~Requirements for mapping new special Buffer areas.~~

~~{a}~~

~~Only grandfathered lots are eligible for mapping as a special Buffer area by the County.~~

~~{b}~~

~~For each special Buffer area, the lots that comprise the special Buffer area shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program adoption and that prevent the Buffer from fulfilling its functions. Developed parcels or lots shall contain a Buffer intrusion, at the time of proposal, caused by the existing principal structures (excluding utilities or septic systems). Undeveloped or vacant residential parcels or lots (i.e., infill) may be designated as a special Buffer area if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.~~

~~(c)~~

~~If only part of a parcel or lot meets the criteria for designation as a special Buffer area, then only those portions of a parcel or lot shall be designated as a special Buffer area. The portion of the parcel designated as a special Buffer area will be subject to the special Buffer area development restrictions. Portions of the property that are not designated as a special Buffer area shall comply fully with the one hundred foot Buffer restrictions.~~

~~(d)~~

~~Any proposal by the jurisdiction for designation of an area as a special Buffer area shall include, at a minimum, the jurisdiction's written findings of and supporting reasons which demonstrate the degree to which the proposed special Buffer area does not perform each of the following Buffer functions (1) through (5):~~

~~{1}~~

~~Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the bay and its tributaries;~~

~~{2}~~

~~Minimize the adverse effects of human activities on wetlands,~~

~~{3}~~

~~Maintain an area of transitional habitat between aquatic and upland communities;~~

~~{4}~~

~~Maintain the natural environment of streams; and~~

~~{5}~~

~~Protect riparian wildlife habitat.~~

~~(8)~~

~~Definitions. For the purpose of implementing this policy, the following words have the following meanings. (In the case of conflicts with other definitions, the stricter provisions shall apply.)~~

~~ACCESSORY STRUCTURE~~

~~A structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.~~

~~BUFFER YARD~~

~~An area, at least 25 feet wide, located between development activity and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for the purposes of wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these purposes such as by mowing or the application of herbicides.~~

~~DEVELOPMENT ACTIVITY~~

~~The construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.~~

~~GRANDFATHERED PARCEL/LOT~~

~~A parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.~~

~~NATURAL FOREST VEGETATION~~

~~Vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests.~~

~~NEW DEVELOPMENT~~

~~A development activity that takes place on a property with pre-development imperviousness less than 15% as of December 1, 1985.~~

~~PRINCIPAL STRUCTURE~~

~~For the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.~~

~~REDEVELOPMENT~~

~~A development activity that takes place on a property with pre-development imperviousness greater than 15% as of December 1, 1985.~~

~~SPECIAL BUFFER AREA~~

~~An area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a special Buffer area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the critical area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.~~

~~§ 125-12. Buffer alterations.~~

~~[Amended 6-26-2001 by Bill No. 2001-11]~~

~~A.~~

~~No natural vegetation shall be removed nor shall the slope of the land surface be altered in the Buffer, including clearing of existing natural vegetation to create new agriculture lands.~~

~~B.~~

~~Commercial harvesting of trees is permitted, under an approved forest management plan, to the edge of intermittent streams and to within fifty feet of the mean high water line or tidal wetlands when harvesting involves clear cutting of loblolly pine and tulip polar and selective cutting of other species.~~

~~C.~~

~~Limited cutting or clearing of trees shall be permitted for the following purposes under an approved woodland management plan:~~

~~(1)~~

~~For personal use, provided that Buffer functions are not impaired and trees cut are replanted.~~

~~(2)~~

~~To prevent trees from falling and blocking streams, causing damage to dwellings or other structures or resulting in accelerated erosion of the shore or streambank;~~

~~(3)~~

~~In conjunction with horticultural practices used to maintain the health of individual trees;~~

~~(4)~~

~~To provide access to private piers;~~

~~(5)~~

~~To install or construct an approved shore erosion protection device or measure; or~~

~~(6)~~

~~To protect forests from extensive pest or disease infestation or threat from fires, if approved by the Department of Agriculture or the Bay Watershed Forester.~~

~~Article III. Development Standards~~

~~§ 125-13. Applicability to all activities.~~

~~The following standards shall apply to all development activities in the Critical Area District.~~

~~§ 125-14. Density.~~

~~A.~~

~~Intensely developed area (IDA). Density in the intensely developed area (IDA) shall be as established in the underlying base zone.~~

~~B.~~

~~Limited development area (LDA). The density of development and minimum lot sizes permitted within a limited development area (LDA) shall be governed by prescriptive densities within the applicable underlying base zoning districts. However, in underlying base zoning districts that permit residential use, density may not exceed 3.99 units per acre.~~

~~C.~~

~~Resource conservation areas (RCA).~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~(1)~~

~~Residential densities in resource conservation areas (RCAs) shall be limited to no more than one dwelling unit per 20 acres, except as provided for in §§ 125-15 and 125-17 and Article V. In~~

~~calculating the 1 in 20 area density of development that is permitted on a parcel located within the resource conservation area, the County:~~

~~(a)~~

~~Shall count each dwelling unit; and~~

~~(b)~~

~~May permit the area of any private wetlands located on the property to be included, under the following conditions:~~

~~{1}~~

~~The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and~~

~~{2}~~

~~The area of private wetlands shall be estimated on the basis of vegetative information as designated on the state wetlands maps or state verified field analysis.~~

~~(c)~~

~~Within a resource conservation area, one additional dwelling unit per lot or parcel may be considered as part of a primary dwelling unit for the purpose of the density calculation under this subsection if the additional dwelling unit:~~

~~{1}~~

~~Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit; does not exceed 900 square feet in total enclosed area; and is served by the same sewage disposal system as the primary dwelling unit; or~~

~~{2}~~

~~Is located within the primary dwelling unit; by its construction, does not increase the amount of lot coverage already attributed to the primary dwelling unit; and is served by the same sewage disposal system as the primary dwelling unit.~~

~~(2)~~

~~An additional dwelling unit meeting all the criteria of this section that is separate from the primary dwelling unit may not be subdivided or conveyed separately from the primary dwelling unit.~~

~~(3)~~

~~The provisions of this section:~~

~~(a)~~

~~Apply to density calculations only; and~~

~~(b)~~

~~May not be construed to authorize the County to grant a variance, unless the variance is granted in accordance with the requirements and standards in this chapter.~~

~~(4)~~

~~The County shall maintain records of all building permits issued under this section for additional dwelling units considered part of a primary dwelling unit, and shall provide this information on a quarterly basis to the Critical Area Commission.~~

~~D.~~

~~Determining density.~~

~~(1)~~

~~Determination of density shall be based on the gross site area of the parcel, excluding tidal wetlands, except that in determining residential densities for a site in the RCA, private wetlands may be included in the calculation of one unit per 20 acres' density, provided that the development density on the upland portion of the site does not exceed one dwelling unit per eight acres.~~

~~(2)~~

~~Nothing in this regulation shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members, provided that no such conveyance shall result in a density of greater than one dwelling unit per 20 acres, except as provided in § 125-15 below.~~

~~§ 125-15. Intrafamily transfers.~~

~~The one-unit per twenty-acre density limitation shall not prevent a bona fide intrafamily transfer to members of the owner's immediate family, subject to the following limitations:~~

~~A.~~

~~Intrafamily transfers will be permitted on parcels of land in the Critical Area District where it is shown that the parcel was recorded on or before March 1, 1986, and such parcel is at least seven acres and not more than 60 acres in size.~~

B.

A bona fide intrafamily transfer shall be subject to all requirements of the Wicomico County Subdivision Regulations,[1] and a notation shall be placed on the final subdivision plat denoting the lot(s) that are created under these provisions.

{1}

Editor's Note: See Ch. 200, Subdivision of Land.

C.

~~Subdivision of land under the bona fide intrafamily transfer provisions contained herein shall be subject to the following limitations:~~

(1)

~~Parcels seven acres to less than 12 acres cannot be subdivided into more than a total of two lots.~~

(2)

~~Parcels 12 acres to less than 60 acres cannot be subdivided into more than three lots.~~

D.

~~Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. A lot created pursuant to these provisions may not be subsequently conveyed to any person, except as provided herein:~~

(1)

~~Where the conveyance is to a member of the owner's immediate family; or~~

(2)

~~Where the conveyance of the lot is as part of a default on a mortgage or deed of trust.~~

E.

~~Any lot created under this section may not be transferred or sold to a third party who is not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property unless and until the Wicomico County Planning and Zoning Commission has determined that the following conditions apply:~~

(1)

~~A change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer, when such circumstances are consistent with the warrants and exceptions contained herein; or~~

~~(2)~~

~~Other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space and natural habitats in RCA warrant an exception.~~

~~F.~~

~~Deeds of transfer shall include a covenant stating that the lot is subject to the provisions of this section, as amended. These covenants shall restrict the subsequent transfer or sale of a lot or lots created pursuant to the intrafamily transfer provisions contained herein to a third party who is not a member of the owner's immediate family or a holder of a mortgage or deed of trust on the property, except as provided in Subsection E above.~~

~~§ 125-16. Special guidelines for resource conservation areas:~~

~~It is the intent of the County to place all residential lot owners in developments in the resource conservation areas on notice that Wicomico County promotes the preservation of the County's valuable and irreplaceable farmland and commercial forests. Further, it is the intent of the County to discourage intense development in resource conservation areas that are not adjacent to existing growth centers. In these areas, the County wants, to the extent possible, to preserve, encourage and protect farm and forest resources and their productivity to ensure that agriculture and forestry enterprises will continue to have the necessary flexibility to adjust as economic conditions change. Therefore, the County will give priority to agriculture and forestry activities in these areas. Furthermore, there will be no basis, under County chapters, for recourse against the effects of normal farming and forestry operations as permitted, including but not limited to noise, odor, vibration, fumes, dust or glare. To accomplish this end, the following guidelines shall apply in resource conservation areas that are not adjacent to existing development centers:~~

~~A.~~

~~Minimum open space requirements for all residential development on parcels of land located in resource conservation areas that are not immediately adjacent to designated growth area as of October 13, 1989, or as subsequently amended, including development through the use of the growth allocation bonus density, should be as set forth in the following table of minimum open space area guidelines:~~

~~Table of Minimum Open Space Guidelines~~

~~Acres in the Critical Area District~~

~~Recommended Minimum Open Space~~

~~Area as a Percentage of Acres~~

~~in Critical Area District~~

~~Fewer than 16~~

~~0~~

~~16 to fewer than 21~~

~~25~~

~~21 to fewer than 26~~

~~40~~

~~26 or more~~

~~50~~

~~B.~~

~~Permitted uses in required open space areas on parcels of land located in resource conservation areas that are not immediately adjacent to a LDA or IDA shall be limited to agriculture, forestry, wildlife management or natural cover, except that individual wells, septic drain fields or shared facilities may be located in the open space area.~~

~~C.~~

~~A minimum one hundred foot buffer should be established and maintained between all developed areas and adjacent farm and forest land. This buffer may be reduced to 50 feet if it is planted or retained in forest cover.~~

~~§ 125-17. General regulations and prohibitions.~~

~~A.~~

~~Except as provided below, permitted uses, accessory uses and special exception uses in the Critical Area District shall be limited to those permitted within the existing applicable underlying base zoning district, as shown on the Official Wicomico County Zoning Maps.~~

~~B.~~

~~Existing industrial and commercial facilities, including those directive supporting agriculture, forestry and aquaculture, shall be allowed in the RCA. New commercial, industrial, and institutional uses shall not be permitted in resource conservation areas, except as provided for in the County's growth allocation provisions. Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the County's growth allocation provisions. Nonindustrial activities which support surface mining, agriculture and forestry may be established or expanded, provided they conform with the other requirements of this chapter.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~C.~~

~~The following uses are prohibited in the Critical Area District due to their high potential for adverse impact on plant and wildlife habitats and water quality, unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.~~

~~(1)~~

~~Nonmaritime heavy industry; and~~

~~(2)~~

~~Transportation facilities.~~

~~D.~~

~~The following uses are prohibited in the Critical Area District:~~

~~(1)~~

~~New solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles.~~

~~(2)~~

~~New sanitary landfills.~~

~~(3)~~

~~New sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities.~~

~~(4)~~

~~New commercial and industrial maritime or related facilities in the Buffer within resource conservation areas (RCA's).~~

~~(5)~~

~~The application of sludge in the Buffer.~~

~~(6)~~

~~New wash plants for surface mining and mineral extraction uses in the Buffer.~~

~~(7)~~

~~New sand and gravel mining and related uses in the Buffer.~~

~~E.~~

~~Land use in the RCA. In addition to the uses specified above, certain nonresidential uses may be permitted in resource conservation areas if it is determined by the Department of Planning, Zoning and Community Development that the proposed use is one of the following:~~

~~{Added 6-26-2001 by Bill No. 2001-11}~~

~~(1)~~

~~A home occupation as an accessory use on a residential property and as provided for in the County's Zoning Ordinance;~~

~~(2)~~

~~A golf course, excluding main buildings and/or structures, such as the clubhouse, pro shop, parking lot, etc.~~

~~(3)~~

~~A cemetery that is an accessory use to an existing church, provided impervious surfaces are limited to 15% of the site or 20,000 square feet, whichever is less.~~

~~(4)~~

~~A bed and breakfast facility located in an existing, grandfathered residential structure and where meals are prepared only for guests staying at the facility.~~

~~(5)~~

~~A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.~~

~~{6}~~

~~A day-care facility in a dwelling where the operators live on the premises and there are no more than eight children.~~

~~{7}~~

~~A group home or assisted living facility with no more than eight residents.~~

~~{8}~~

~~Other uses determined by the County and the Critical Area Commission to be similar to those listed above.~~

~~§ 125-18. Water-dependent facilities.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~A.~~

~~New water-dependent facilities must comply with the provisions for such facilities contained in the Wicomico County Critical Area Program. Insofar as possible, new buildings, structures, activities and facilities that are not water-dependent and that are permitted in the underlying zoning district shall be located outside of the Buffer, except as follows:~~

~~{1}~~

~~Boathouses, community piers, individual private piers, docks and launching ramps are permitted in the Buffer as follows:~~

~~{a}~~

~~For community piers, only the following uses shall be permitted to locate in the Buffer:~~

~~{1}~~

~~Slips.~~

~~{2}~~

~~Docks, piers, launching ramps, access roads and paths.~~

~~{3}~~

~~Loading/unloading areas.~~

~~{b}~~

~~Where community slips or community piers are to be provided in a subdivision that is approved after October 13, 1989, the number of slips and piers shall be the lesser of Subsection A(1)(b)[1] or [2] below:~~

~~{1}~~

~~Up to one slip for every 50 feet of shoreline in subdivisions in the limited development areas (LDA) and intensely developed area (IDA), and one slip per 300 feet of shoreline in the subdivision in the resource conservation area (RCA); or~~

~~{2}~~

~~A density of slips or piers to platted lots or dwellings in the subdivision according to the following schedule:~~

~~Platted Lots or Dwellings in the Critical Area~~

~~Slips~~

~~Up to 15~~

~~1 for each lot~~

~~16 to 40~~

~~15 or 75%, whichever is greater~~

~~41 to 100~~

~~30 or 50%, whichever is greater~~

~~101 to 300~~

~~50 or 25%, whichever is greater~~

~~Over 300~~

~~75 or 15%, whichever is greater~~

~~(2)~~

~~New commercial marinas are permitted in LDA and IDA, provided that, insofar as possible, non-water-dependent uses and activities are not located in the Buffer.~~

~~(3)~~

~~Expansion of existing commercial marinas is permitted in the RCA, provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina.~~

~~(4)~~

~~New or expanded water dependent maritime industrial uses may only be located in an intensely developed area where a buffer exemption has been granted.~~

~~(5)~~

~~Special conditions for the location of public beaches and recreation areas in limited development areas and resource conservation areas. (See COMAR 27.01.03.08(B).) Public beaches and other public water oriented recreation and education facilities, uses and related structures shall be permitted, provided that, insofar as possible, non-water dependent uses and activities are not located in the Buffer.~~

~~(6)~~

~~Fisheries and related commercial water dependent facilities shall be permitted, provided that, insofar as possible, non-water dependent uses and activities are not to be located in the Buffer.~~

~~(7)~~

~~Research facilities operated by County, state or federal government agencies or educational institutions conducting marine related studies shall be permitted.~~

~~§ 125-19. Intensely developed areas.~~

~~All development and redevelopment in IDA's shall be subject to the following development standards and/or conditions, in addition to those established elsewhere in this chapter, except that development on lots qualifying under § 125-8 must only comply with these provisions insofar as possible as determined by the Wicomico County Planning and Zoning Commission.~~

~~A.~~

~~All sites for which development activities are proposed shall identify environmental or natural features on that portion of the site within the critical area and shall obtain a Chesapeake Bay Critical Area compliance certificate.~~

~~B.~~

~~Except as is provided for water dependent facilities, no structure or uses associated with development in an intensely developed area shall be permitted within the Buffer, except as provided for in §§ 125-11 and 125-12.~~

~~C.~~

~~Development and redevelopment shall be subject to the habitat protection requirements of the Wicomico County Critical Area Program.~~

~~D.~~

~~Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve the following standards:~~

~~(1)~~

~~Redevelopment proposals shall demonstrate that the best management practices for stormwater assure a ten-percent reduction of predevelopment pollutant loadings.~~

~~(2)~~

~~New development shall demonstrate that practices for stormwater management will reduce predevelopment pollutant loadings by 10%.~~

~~(3)~~

~~Redevelopment or development which cannot demonstrate it meets the requirements of Subsection D(1) or (2) above may be approved only if it can be demonstrated that mitigation measures or offsets will be provided to achieve equivalent water quality benefits elsewhere in the same watershed.~~

~~(4)~~

~~Determination of compliance with the ten-percent pollutant reduction requirement shall be consistent with methodologies as those outlined in current Critical Area Commission policies and guidance documents. Methods of determining mitigation measures necessary to achieve ten-percent reductions outlined in Subsection D(1) and (2) above or in determining alternative offsets required in Subsection D(3) above shall be consistent with methodologies such as that outlined in the Critical Area Commission's Guidance Paper Number 5.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~E.~~

~~Development and redevelopment projects shall delineate those site areas not covered by impervious surfaces that are to be maintained or established in vegetation. Where vegetation is not proposed, the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in § 125-21.~~

~~F.~~

~~A minimum twenty five foot buffer shall be established around all nontidal wetlands as identified and defined in the Wicomico County Critical Area Program in compliance with the nontidal wetlands Buffer requirements in Section 9.2 of the Wicomico County Critical Area Program.~~

~~G.~~

~~Proposed development and redevelopment activities shall include measures for stabilizing significantly eroding shoreline reaches on the proposed development site or otherwise protecting property as established in the shore erosion protection provisions (Section 4) of the Wicomico County Critical Area Program. Nonstructural shoreline erosion control measures shall be used unless it can be conclusively demonstrated that such measures would be impractical or ineffective.~~

~~H.~~

~~Development on grandfathered lots must fully comply with the critical area provisions or a variance shall be required.~~

~~{Added 6-26-2001 by Bill No. 2001-11}~~

~~§ 125-20. Limited development areas and resource conservation areas.~~

~~All development and redevelopment in LDA's and RCA's shall be subject to the following development standards and/or conditions, in addition to those established elsewhere in this chapter, except that development on lots qualifying under § 125-8 must only comply with these provisions insofar as possible as determined by the Wicomico County Planning and Zoning Commission.~~

~~A.~~

~~All sites for which development activities are proposed shall identify environmental or natural features on that portion of the site within the critical area and shall obtain a Chesapeake Bay Critical Area compliance certificate.~~

~~B.~~

~~Site development shall be designed to assure that those features or resources identified as habitat protection areas in Section 9 of the Wicomico County Critical Area Program are afforded protection.~~

~~C.~~

~~Roads, bridges and utilities serving development shall be so located as to avoid disturbances to habitat protection areas. When no alternative exists and such infrastructure must cross or be located in habitat protection areas, the developer shall show that impacts to habitats have been minimized and that no feasible alternative location for such infrastructure exists.~~

~~D.~~

~~All development activities that must cross or affect streams in the critical area shall:~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~(1)~~

~~Be located outside of the Buffer and shall be designed in a manner to reduce increases in flood, frequency and severity.~~

~~(2)~~

~~Provide for the retention of natural streambed substrate.~~

~~(3)~~

~~Minimize adverse impacts to water quality and stormwater runoff.~~

~~(4)~~

~~Retain the existing tree canopy so as to maintain stream water temperature within normal variation.~~

~~E.~~

~~Development activities shall be located and designed to provide for the maintenance of the existing wildlife and plant habitats on the site and to maintain continuity with those on adjacent sites. When wildlife corridors exist or are proposed, they shall include any existing habitat protection areas and connect large forested areas on or adjacent to the site. Maintenance of wildlife corridors shall be ensured through the establishment of conservation easements, restrictive covenants or similar instruments through which the corridor is preserved by public or private groups, including homeowners' associations, nature trusts or other organizations approved by the County.~~

~~F.~~

~~That the total acreage in forest cover shall be maintained or, preferably increased. Forest and developed woodlands, as defined by the Wicomico County Critical Area Program, shall be created or protected in accordance with the following:~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~(1)~~

~~When less than fifteen percent forest exists on the site, at least fifteen percent of the gross site area shall be afforested. The location of the afforested area should be designed to reinforce protection to habitats on the site or to provide connections between forested areas when they are present on adjacent sites.~~

~~(2)~~

~~When forests or developed woodland exists on the site and proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified on the proposed development plan.~~

~~(3)~~

~~The developer shall submit proposed plans for development showing areas to be cleared, reforested and/or afforested to the Maryland Forest, Park and Wildlife Service for comments and recommendations and shall transmit the comments to the Department of Planning, Zoning and Community Development.~~

~~(4)~~

~~A grading permit shall be obtained prior to any clearing or cutting associated with proposed development. No grading permit shall be approved until the proposed development activity has been reviewed and received a final Chesapeake Bay Critical Areas compliance certificate.~~

~~(5)~~

~~Cutting or clearing which is associated with development shall be subject to the following limits and replacement conditions:~~

~~(a)~~

~~Removal of forest or developed woodland cover in the Buffer is prohibited.~~

~~(b)~~

~~All forests cleared or developed shall be replaced on not less than an equal area basis on the site or on an alternative site in the critical area approved by the Planning and Zoning Commission.~~

~~(c)~~

~~No more than 20% of the forested or developed woodland within the site proposed for development may be removed (except as provided for below), and the remaining 80% shall be maintained as forest cover through the use of appropriate instruments (e.g., easements or recorded restrictive covenants) as approved by the County.~~

~~(d)~~

~~The clearing of forest or developed woodlands of up to 20% shall be replaced on an area basis of 1:1. A developer may propose clearing up to 30% of the forest or developed woodland on a site, provided that the reforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland.~~

~~(e)~~

~~If more than 30% of the forest on a site is cleared, the forest is required to be replanted at three times the total area of the cleared forest.~~

~~(f)~~

~~If the cutting of forests occurs before a grading permit is obtained, the forest is required to be replanted according to the requirement in Subsection F(5)(e) above.~~

~~(6)~~

~~Surety in the form of a performance bond or other means acceptable to the County shall be provided in an amount suitable to assure forest replacement as required.~~

~~(7)~~

~~The forests and developed woodlands required to be retained or created through afforestation or reforestation shall be maintained through restrictive covenants, easements or similar instruments in a form approved by the County.~~

~~G.~~

~~Development on slopes of 15% or greater shall be prohibited unless such development is demonstrated to be the only effective way to maintain or improve slope stability.~~

~~[Amended 6-26-2001 by Bill No. 2001-11]~~

~~H.~~

~~Except as otherwise provided in this subsection for stormwater runoff, man-made impervious surfaces are limited to 15% of the gross site area except as follows:~~

~~[Amended 6-13-1991 by Bill No. 1991-2; 6-26-2001 by Bill No. 2001-11]~~

(1)

~~If a parcel or lot 1/2 acre or less in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to 25% of the parcel or lot. Impervious surfaces on such parcels or lots may cover up to 31.25% of the parcel or lot or 500 square feet more than 25% of the parcel or lot, whichever is greater, provided the conditions as stated in Subsection H(4) below are met.~~

(2)

~~If a parcel or lot greater than 1/4 acre and less than one acre in size existed on or before December 1, 1985, then man-made impervious surfaces associated with that development are limited to 15% of the parcel or lot or 5,445 square feet, whichever is greater, provided the conditions as stated below are met.~~

(3)

~~If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed 25% of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed 15%.~~

(4)

~~If impervious surfaces are expanded beyond 25% in accordance with Subsection H(1) above or 15% in accordance with Subsection H(2) above, the following conditions must be met:~~

(a)

~~Water quality impacts associated with runoff from the new impervious surfaces have been minimized through site design considerations; and~~

(b)

~~The property owner performs on-site mitigation to offset potential adverse water quality impacts from the new impervious surfaces.~~

I.

~~[1] Proposed development and redevelopment activities shall include measures for stabilizing significantly eroding shoreline reaches on the proposed development site or otherwise protecting property as established in the shore erosion protection provisions (Section 4) of the Wicomico County Critical Area Program. Nonstructural shoreline erosion control measures shall be used unless it can be conclusively demonstrated that such measures would be impractical or ineffective.~~

[1]

Editor's Note: Former Subsection I, which required establishment of a minimum twenty-five-foot buffer, was repealed 6-26-2001 by Bill No. 2001-11. Said bill also redesignated former Subsection J as Subsection I.

J.

Development on grandfathered lots must fully comply with the critical area program provisions or a variance shall be required.

[Added 6-26-2001 by Bill No. 2001-11]

K.

All development of critical area programs shall be subject to the following complementary existing state laws and regulations:

[Added 6-26-2001 by Bill No. 2001-11]

(1)

For soil erosion and sediment control (COMAR 26.09.01):

(a)

In order to prevent soil erosion and sedimentation, a soil erosion and sedimentation control plan shall be required whenever a development within the critical area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the requirements of Natural Resources Article § 8-1101 through 8-1108, the Environment Article § 4-103 through 4-108 and 4-116, Annotated Code of Maryland, and local ordinances. Sediment control practices shall be appropriately designed to reduce adverse water quality impact.

(b)

Jurisdictions shall require erosion control as the basis of sediment control plans within the critical area.

(2)

For stormwater runoff (COMAR 26.09.02):

(a)

~~Limitation on stormwater runoff. Development may not cause downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a ten-year storm were the land in its predevelopment state.~~

~~(b)~~

~~Storage capacity. All stormwater storage facilities shall be designed with sufficient capacity to achieve water quality goals of this chapter and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.~~

~~(c)~~

~~Stormwater management measures shall be consistent with the requirements of Environment Article § 4-201 ET seq., Annotated Code of Maryland.~~

~~§ 125-20.1. Transfer of development rights.~~

~~{Added 6-26-2001 by Bill No. 2001-11}~~

~~A.~~

~~Transfer of development rights is the conveyance of development rights by deed, easement or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Wicomico County, Maryland.~~

~~B.~~

~~Definitions. As used in this section, the following terms shall have the meanings indicated:~~

~~INSTRUMENT OF TRANSFER~~

~~An instrument, in the form required by this section, by which one or more development rights are transferred.~~

~~NONRESIDENTIAL DEVELOPMENT RIGHT~~

~~The use of a residential development right to increase nonresidential floor area of impervious surfaces beyond what is otherwise allowed under this chapter.~~

~~ORIGINAL INSTRUMENT OF TRANSFER~~

~~An instrument of transfer by which development rights are initially transferred from a transferor parcel by the original transferor.~~

~~ORIGINAL TRANSFEROR~~

(1)

A transferor who is the owner of the transferor parcel from which the rights are transferred; and

(2)

All persons who have any mortgage, deed of trust, or other lien or encumbrance on the transferor parcel

RECEIVING PARCELS

The parcel that is eligible to receive development rights from a transferor parcel. These include any parcel in a RCA District located within the Chesapeake Bay Critical Area.

RESIDENTIAL DEVELOPMENT RIGHT

The right to erect a dwelling unit on property, as such is inherent in fee simple ownership of land.

TRANSFER

A relocation of development rights from a transferor parcel to a receiving parcel by an instrument of transfer. "Transfer" includes any intermediate transfers to or among transferees.

TRANSFeree

(1)

A person to whom development rights are transferred; and

(2)

All persons who have any lien, security interest, or other interest with respect to development rights held by a transferee.

TRANSFEROR

(1)

A person who transfers development rights; and

(2)

All persons who have any lien, security interest, or other interest with respect to development rights held by a transferor.

TRANSFEROR PARCEL

~~The parcel from which development rights can be transferred. A transferor parcel may be less than all of a lot owned by an original transferor; however, a transferor parcel must be at least 20 acres or 1/2 of the size of the transferor parcel, whichever is less. A transferor parcel within the Chesapeake Bay Critical Area shall be at least 20 acres in size.~~

~~C.~~

~~Right of transfer.~~

~~(1)~~

~~In general, TDR allows a property owner to sell his/her development rights thus separating such rights from the bundle of rights associated with land ownership. A development right of a transferor parcel may be transferred and used to increase residential or nonresidential development on a receiving parcel in accordance with the provisions of this section.~~

~~(2)~~

~~The TDR option allows the landowner to potentially double the density of a cluster subdivision by transferring additional development rights to the subdivision from another RCA District property.~~

~~(3)~~

~~Limitations.~~

~~(a)~~

~~A development right may not be used in any manner inconsistent with the provisions set forth in this section.~~

~~(b)~~

~~A development right may not be used to increase density for receiving parcels located within the critical area resource conservation area beyond the density allowed within the parcel's zoning district.~~

~~(c)~~

~~The property from which the additional development rights are transferred must place a reservation of development rights on 20 acres for every one development right which is transferred from the RCA in accordance with the RCA density limitations.~~

~~(4)~~

~~Intermediate transfer. Subject to the provisions of Subsection D below, a development right may be transferred to a transferee prior to the time when its use for a specific receiving parcel has been finally approved in accordance with this chapter.~~

~~D.~~

~~Effect of transfer. After development rights have been transferred by an original instrument of transfer:~~

~~(1)~~

~~The transferor parcel:~~

~~(a)~~

~~May not be subdivided or reconfigured;~~

~~(b)~~

~~Shall be used only for agricultural uses, other than farm residences; and~~

~~(c)~~

~~May not be used in connection with any determination of site area or site capacity, except as may be necessary in determining the number of development rights involved in the transfer; and~~

~~(2)~~

~~All development rights that are the subject of the transfer, and the value of such rights, shall be deemed for all other purposes, including assessment and taxation, to be appurtenant to the transferor parcel, until such rights have been finally approved for use on a specific receiving parcel and transferred to the County Council.~~

~~E.~~

~~Certificate of Planning Director.~~

~~(1)~~

~~General requirement. A transfer may not be recognized under this chapter unless the original instrument of transfer:~~

~~(a)~~

~~Contains a certificate of the Planning Director that the number of development rights that are the subject of the transfer represent the number of development rights applicable to the transferor parcel; and~~

~~(b)~~

~~Is recorded by the Planning Director as provided in this chapter.~~

~~(2)~~

~~Responsibility. The transferor and the transferee named in an original instrument of transfer shall have sole responsibility to:~~

~~(a)~~

~~Supply all information required by this section;~~

~~(b)~~

~~To provide a proper original instrument of transfer; and~~

~~(c)~~

~~To pay, in addition to any other fees required by this section, all costs of its recordation among the land records of the County.~~

~~(3)~~

~~Application for certificate. An application for a certificate shall:~~

~~(a)~~

~~Contain information prescribed by the Planning Director, as may be necessary to determine the number of development rights involved in the proposed transfer;~~

~~(b)~~

~~Include five copies of a plat of the proposed transferor parcel, prepared by a registered land surveyor on the basis of an actual on-site survey; and~~

~~(c)~~

~~Be accompanied by such fee(s) as may be prescribed by the County Council.~~

~~(4)~~

~~On the basis of the information submitted, the Planning Director shall affix a certificate of the Planning Director's findings to the original instrument of transfer. The certificate shall contain a~~

~~specific statement of the number of development rights that are derived from the transfer parcel.~~

~~(5)~~

~~Effect of determination. The determination of the Planning Director may not be construed to enlarge or otherwise affect in any manner the nature, character, and effect of a transfer, as set forth in Subsection D of this subsection.~~

~~F.~~

~~Instruments of transfer.~~

~~(1)~~

~~In general. An instrument of transfer shall conform to the requirements of this section.~~

~~(2)~~

~~An instrument of transfer, other than an original instrument of transfer, need not contain a metes and bounds description or plat of the transferor parcel.~~

~~(3)~~

~~Contents. In addition to any necessary covenants, an instrument of transfer shall contain:~~

~~(a)~~

~~The names of the transferor and the transferee;~~

~~(b)~~

~~A covenant that the transferor grants and assigns to the transferee and the transferee's heirs, personal representatives, successors, and assigns a specified number of development rights from the transferor parcel;~~

~~(c)~~

~~If the instrument is not an original instrument of transfer, a statement that the transfer is an intermediate transfer of rights derived from a transferor parcel described in an original instrument of transfer (which original instrument shall be identified by its date, the names of the original transferor and transferee, and the liber and folio where it is recorded among the land records of the county);~~

~~(d)~~

~~A specific statement of the number of development rights included within the transfer;~~

~~(e)~~

~~A covenant by which the transferor acknowledges that the transferor has no further use or right of use with respect to the development rights being transferred;~~

~~(f)~~

~~Except when development rights are being transferred to the county in accordance with this section, a statement of the rights of the transferee prior to final approval of the use of those development rights on a specific receiving parcel, as provided in Subsection D of this section; and~~

~~[Amended 10-17-2006 by Bill No. 2006-11]~~

~~(g)~~

~~County covenants.~~

~~[Amended 10-17-2006 by Bill No. 2006-11]~~

~~{1}~~

~~A covenant that at the time when any development rights involved in the transfer are finally approved for use on a specific receiving parcel, the rights shall be transferred to the County for no consideration; or~~

~~{2}~~

~~In cases when development rights are being transferred to the County after approval, a covenant that the rights are being transferred to the County for no consideration.~~

~~G.~~

~~Original instruments of transfer.~~

~~(1)~~

~~Contents of original instruments of transfer. In addition to fulfilling the requirements of Subsection F of this section, an original instrument of transfer shall also contain:~~

~~(a)~~

~~A metes and bounds description of the transferor parcel, prepared by a licensed surveyor named in the instrument.~~

~~(b)~~

~~A covenant that the development rights being transferred represent all development rights with respect to the transferor parcel under the existing or any future zoning or similar ordinance regulating the use of land in the county;~~

~~(c)~~

~~A covenant that the transferor parcel may not be subdivided or be reconfigured;~~

~~(d)~~

~~A covenant by which use of the transferor parcel is restricted to, and may be used only for, open spaces uses other than farm residences;~~

~~(e)~~

~~A covenant that all provisions of the instrument of transfer shall run with and bind the transferor parcel and may be enforced by the County Executive or his designee; and~~

~~[Amended 10-17-2006 by Bill No. 2006-11]~~

~~(f)~~

~~The certificate of the Planning Director required by this section.~~

~~(2)~~

~~Recordation of original transfer.~~

~~(a)~~

~~After it is properly executed, an original instrument of transfer shall be delivered to the Planning Director.~~

~~(b)~~

~~The Planning Director shall:~~

~~{1}~~

~~Deliver the original instrument of transfer to the Clerk of the Circuit Court for Wicomico County, together with the required fees for recording furnished by the original transferor and transferee; and~~

~~{2}~~

~~Immediately notify the original transferor and transferee in writing of the recording.~~

~~H.~~

~~Application for use on receiving parcel.~~

~~(1)~~

~~Application. The owner of a proposed receiving parcel shall file with the Planning Director an application to use transferred development rights with respect to the development of the proposed receiving parcel.~~

~~(2)~~

~~Contents. The application shall:~~

~~(a)~~

~~Contain information as may be prescribed by the Planning Director;~~

~~(b)~~

~~Include five copies of a plat of the proposed receiving parcel, prepared by a registered land surveyor on the basis of an actual on-site survey;~~

~~(c)~~

~~Be accompanied by such fee as may be prescribed by the County Council; and~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(d)~~

~~Be accompanied by:~~

~~{1}~~

~~Original or certified copies of a recorded original instrument of transfer involving the development rights proposed to be used and any intervening instruments of transfer through which the applicant became a transferee of those rights; or~~

~~{2}~~

~~A signed, written agreement between the applicant and a proposed original transferor that contains the plat of a proposed transferor parcel and other information required by Subsection E of this section and in which the proposed transferor agrees to execute an original instrument of transfer from the proposed transferor parcel to the applicant at the time when the use of such rights on the proposed receiving parcel is finally approved.~~

~~f.~~

~~Consideration of application for use.~~

~~(1)~~

~~Review of application. The Planning Director shall review the instruments of transfer or agreement submitted with the application and determine their sufficiency to fulfill the requirements of this chapter.~~

~~(2)~~

~~Determination. The Planning Director shall:~~

~~(a)~~

~~Determine the number of development rights that are available for use under the terms of the instruments submitted with the application.~~

~~(b)~~

~~Determine the number of development rights that this section allows to be used on the proposed receiving parcel; and~~

~~(c)~~

~~Report the preliminary determination of the Planning Director in writing to the applicant within 30 days after all information necessary to make the determinations has been received.~~

~~(3)~~

~~The Planning Commission must approve a request to utilize development rights if the request:~~

~~(a)~~

~~Does not exceed the limitation on the density or number of dwelling units permitted in the zone and in the applicable comprehensive plan;~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(b)~~

~~Is in accordance with the provisions of this chapter;~~

~~(c)~~

~~Is in accordance with Chapter 200, Titled "Subdivision of Land";~~

~~(d)~~

~~Is consistent with other recommendations of the comprehensive plan; and~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(e)~~

~~Achieves a desirable development compatible with both site conditions and surrounding existing and future development.~~

~~(4)~~

~~Effect. Any determination by the Planning Director under this section:~~

~~(a)~~

~~Is not final; and~~

~~(b)~~

~~Shall be subject to amendment, modification, or rescission until the time when the transfer is final in accordance with Subsection J of this section.~~

~~J.~~

~~Final approval of use.~~

~~(1)~~

~~When final. Transfer from a transferor parcel to a receiving parcel is final at the time when:~~

~~(a)~~

~~Final subdivision approval or final site plan approval with respect to the receiving parcel, based upon use of development rights, has been given; and~~

~~(b)~~

~~All development rights upon which such approval was based have been transferred to the county as provided in Subsection J(2) of this section. Council~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(2)~~

~~Required instruments. Final approval may not be given to any site plan or subdivision plan that involves the use of development rights transferred under the provisions of this section until satisfactory evidence is presented that such of the following instruments as may be required to effect transfer of those rights to the county have been approved as to form and legal sufficiency by the County Attorney and recorded among the land records of the county:~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(a)~~

~~An original instrument of transfer to a transferee, other than the county;~~

~~(b)~~

~~An instrument of transfer to the owner of the receiving parcel;~~

~~(c)~~

~~Instrument(s) of transfer between any intervening transferees; and~~

~~(d)~~

~~An instrument of transfer from the owner of the receiving parcel to the county.~~

~~§ 125-21. Reforestation and afforestation.~~

~~Where reforestation or afforestation is required, the following minimum standards within the Critical Area District shall be used:~~

~~A.~~

~~The replacement or establishment of forest or developed woodlands shall assure a diversified plant community, but may include other types of tree plantings where necessary to correct an existing soil stabilization problem. Diverse forest plantings shall include a canopy layer, an understory layer and a shrub layer.~~

~~B.~~

~~For each acre of land where woodlands must be replaced or established, plantings shall consist of trees and/or wildlife shrub species spaced approximately at eight-foot intervals in rows eight feet apart, or other suitable spacing as determined by the Bay Watershed Forester on a site-by-site basis, which result in a minimum of 400 stems per acre after the first growing season.~~

~~C.~~

~~Planting plans, bonds and inspections. Required planting plans shall be prepared and submitted with the site plan or preliminary and final subdivision plat. A planting plan shall be included as a required public improvement with site plans or subdivisions plats. The planting plan must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a professional registered forester, landscape architect or an experienced landscape designer. The planting plan shall show:~~

~~(1)~~

~~The site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights of way, easements and the general location of structures and uses of abutting properties.~~

~~(2)~~

~~Existing and proposed grades.~~

~~(3)~~

~~Existing vegetative cover and existing vegetation to be retained, and the location, general size and type of such vegetation.~~

~~(4)~~

~~The methods for protecting plant materials after construction.~~

~~(5)~~

~~A plant schedule and plan listing plants to be used, giving their botanical and common names, size at time of planting and quality of each.~~

~~(6)~~

~~An indication of whether plants are balled and burlapped, container grown or bare root.~~

~~(7)~~

~~An indication of the spacing and location of all proposed trees, shrubs and ground covers.~~

~~D.~~

~~Plant materials and planting schedule.~~

~~(1)~~

~~Tree or shrub species for afforestation or reforestation shall be screened by the Bay Watershed Forester for suitability.~~

~~(2)~~

~~All planting should be completed between the month of November and the month of May. For the first two years, steps should be taken to control competing vegetation. Technical assistance from the state's Bay Watershed Forester is highly recommended.~~

~~E.~~

~~The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and the cost estimate, the developer or owner shall enter into an agreement with the county to provide plantings as may be required. The agreement shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of 120% of the proposed plant materials, labor and maintenance costs. The following provisions shall apply to the planting plan agreement:~~

~~(1)~~

~~If all afforestation and reforestation is not completed within two years after the first spring planting date following recordation or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited (or if a bond or surety has been posted, payment in full to the county shall be ordered). The funds so received shall be used by the county to defray the cost of providing the approved Buffer afforestation or reforestation for the site.~~

~~(2)~~

~~If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be a continuing obligation of the property owner.~~

~~(3)~~

~~All bonds or other forms of surety shall be in a form acceptable to and approved by the County Attorney.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(4)~~

~~All security posted will be held for a period of two years after installation of the planting to assure the proper maintenance and growth. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted for the amount necessary to replace the dead plant materials.~~

~~(5)~~

~~As appropriate, the County Attorney or his designated representative may release portions of the surety.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~(6)~~

~~Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.~~

~~(7)~~

~~All plantings shall be inspected by the Department of Planning, Zoning and Community Development or the Bay Watershed Forester upon notification by the developer or owner and shall be approved if they substantially accomplish the results shown in the planting plan.~~

~~Article IV. Site Plans~~

~~§ 125-22. Purpose.~~

~~The purpose of the site plan is to assure detailed compliance with applicable provisions of this chapter and to prescribe standards for the design and construction of site improvements. Development requiring site plan approval shall be permitted only in accordance with all the specifications contained on an approved site plan and shall not be undertaken until the site plan is approved and all the required construction permits have been obtained subsequent to such approval.~~

~~§ 125-23. Approving authority.~~

~~A.~~

~~Site plans for development activities required in this chapter shall be prepared and submitted as described below and approved by the Wicomico County Planning and Zoning Commission.~~

~~B.~~

~~Site plans for all multifamily dwellings, industrial and commercial buildings and developments and mobile home parks shall be prepared and approved as set forth in the Wicomico County Zoning Chapter and Subdivision Chapter, as amended, [1] in addition to the requirements of this chapter.~~

~~[1]~~

~~Editor's Note: See Ch. 225, Zoning, and Ch. 200, Subdivision of Land.~~

~~C.~~

~~Site plans accompanying individual building permit applications shall be approved by the Planning Director. The Planning Director may waive some or all of the site plan information~~

~~requirements of § 125-24 below and may permit an applicant for an individual building permit to submit an abbreviated or minor site plan and environmental assessment.~~

~~§ 125-24. Contents.~~

~~The following shall be included in the site plan:~~

~~A.~~

~~An area or vicinity map showing such information as the names and numbers of adjoining roads, streams, bodies of water, railroads, subdivisions, election districts or other landmarks sufficient to clearly identify the location of the property.~~

~~[Amended 6-26-2001 by Bill No. 2001-11]~~

~~B.~~

~~A boundary survey plat of the entire site at a scale not smaller than one inch equals 50 feet, unless otherwise specified or approved by the Planning Director, showing the following:~~

~~(1)~~

~~Existing topography at two or five foot contour intervals. The datum shall be stated in all cases and a reference or bench mark described on the plat, together with the elevation. The source of contours shall be stated on the plat, such as field run or aerial topography, etc. Interpolation of contours from United States Geological Survey quadrangle maps will not be accepted.~~

~~(2)~~

~~Slopes in excess of 10%, and the specific identification of all soils with a slope of 15% or greater.~~

~~(3)~~

~~Existing and proposed regraded surface of the land.~~

~~(4)~~

~~The location of natural features, such as streams, major ravines and drainage patterns on the parcel to be developed.~~

~~[Amended 6-26-2001 by Bill No. 2001-11]~~

~~(5)~~

~~An existing conditions map, including natural and man-made features.~~

~~(6)~~

~~The floodplain boundaries (one hundred year).~~

~~(7)~~

~~The location and areal extent of all soils with septic limitations, wet soils, hydric soils and soils with hydric properties as shown on the Wicomico County Soil Survey.~~

~~C.~~

~~A detailed drawing showing:~~

~~(1)~~

~~The location, proposed use and height of all buildings (delineate all existing buildings and structures).~~

~~(2)~~

~~The location of all parking and loading areas with ingress and egress drives thereto.~~

~~(3)~~

~~The location of outdoor storage, if any.~~

~~(4)~~

~~The location and type of recreational facilities, if any.~~

~~(5)~~

~~The location of all existing or proposed site improvements, including roads, bulkheads, bridges, storm drains, culverts, retaining walls, fences and stormwater management facilities, as well as any sediment and erosion control structures. (Information on shore erosion shall include the existing shoreline management designation as shown on the Wicomico County Critical Area Program Maps, existing structures, their condition and areas for proposed structural and nonstructural controls, shown on the boundary survey plat, at a scale of at least one inch equals 100 feet.)~~

~~(6)~~

~~A description, method and location of water supply and sewage disposal facilities.~~

~~(7)~~

~~The location, size and type of all signs.~~

~~(8)~~

~~The location, size and type of vehicular entrances to the site.~~

~~(9)~~

~~The location of the Critical Area District boundary, the Buffer and other buffer areas, open space areas and forested areas.~~

~~(10)~~

~~The location of all habitat protection areas, as described in the Wicomico County Critical Area Program, on or near the site.~~

~~(11)~~

~~The location of all contiguous forested areas adjacent to the site that are linked to forested areas on the development site, i.e., hedgerows, forest patches or other wildlife corridors.~~

~~(12)~~

~~The location of agriculture fields, barren lands, pasture, etc.~~

~~(13)~~

~~The location of tidal and nontidal wetlands on the site.~~

~~(14)~~

~~The location of existing water dependent facilities on and adjacent to the site, including the number of existing slips and moorings on the site.~~

~~(15)~~

~~The location and extent of existing and/or proposed erosion abatement approaches.~~

~~(16)~~

~~A detailed drawing locating shore erosion abatement techniques to be included with the site plan.~~

~~D.~~

~~Computations of:~~

~~(1)~~

~~Total lot area.~~

~~(2)~~

~~Building floor area for each type of proposed use.~~

~~(3)~~

~~Building ground coverage (percentage).~~

~~(4)~~

~~Road area.~~

~~(5)~~

~~The number and area of off-street parking and loading spaces.~~

~~(6)~~

~~The total site area in the Critical Area District.~~

~~(7)~~

~~The total man-caused impervious surfaces areas, and the percentage of the site these occupy.~~

~~(8)~~

~~Separate computations of the total acres of existing forest cover in the Buffer and in the critical area.~~

~~(9)~~

~~Proposed agriculture open space areas.~~

~~(10)~~

~~Proposed forest open space areas.~~

~~(11)~~

~~The total area of the site that will be temporarily disturbed during development, and the total area that will be permanently disturbed. "Disturbed" is defined as any activity occurring on an area which may result in the permanent loss of or damage to existing natural vegetation.~~

~~E.~~

~~Commercial or industrial uses must include:~~

~~(1)~~

~~The specific uses proposed.~~

~~(2)~~

~~The maximum number of employees for which buildings are designed.~~

~~(3)~~

~~The type of energy to be used for any manufacturing processes.~~

~~(4)~~

~~The type of wastes or by-products to be produced by any manufacturing process.~~

~~(5)~~

~~Proposed method of disposal of such wastes or by-products.~~

~~(6)~~

~~The location, size and capacity of all fuel or chemical storage facilities and any other storage facilities for hazardous wastes.~~

~~(7)~~

~~The areas proposed for bulk storage of fertilizers, aggregate and other such materials.~~

~~(8)~~

~~The location of outdoor lighting facilities.~~

~~(9)~~

~~Other information as may be specified in the regulations for industrial or commercial uses in the Chapter 225, Zoning.~~

~~F.~~

~~In addition to the information above, site plans shall be accompanied by the following.~~

~~(1)~~

~~A woodland management plan, including the comments of the Bay Watershed Forester.~~

~~(2)~~

~~A habitat protection plan, including the comments of the Maryland Forest, Park and Wildlife Service, the Water Resources Administration and other appropriate state and federal agencies.~~

~~(3)~~

~~An executed cooperators agreement with the Wicomico County Soil Conservation District or farm plan, as applicable.~~

~~(4)~~

~~A stormwater management plan.~~

~~(5)~~

~~A sediment and erosion control plan.~~

~~(6)~~

~~A planting plan, as required.~~

~~(7)~~

~~An environmental assessment report which provides a coherent statement of how the proposed development addresses the goals and objectives of the Wicomico County Critical Area Program.~~

~~At a minimum, the environmental assessment shall include:~~

~~(a)~~

~~A statement of existing conditions, e.g., the amount and types of forest cover, the amount and type of wetlands, a discussion of existing agriculture activities on the site, the soil types, the topography, etc.~~

~~(b)~~

~~A discussion of the proposed development project, including number and type of residential units, amount of impervious surfaces, proposed sewer treatment and water supply, acreage devoted to development, proposed open space and habitat protection areas.~~

~~(c)~~

~~A discussion of the proposed development's impacts on water quality and habitat protection areas.~~

~~(d)~~

~~Documentation of all correspondence and findings.~~

~~§ 125-25. Water dependent facilities.~~

~~A.~~

~~All applications for development of commercial marinas, maritime commercial or industrial uses or other water related uses, except private piers, in the critical area shall prepare a site plan as above and shall also include the following information:~~

~~(1)~~

~~Water depth contours shown at two-foot intervals at mean low water taken by sounding, unless otherwise specified.~~

~~(2)~~

~~Existing and proposed regraded surface of the land.~~

~~(3)~~

~~The location of natural features and the drainage area of all nontidal wetlands.~~

~~(4)~~

~~The location of all existing and proposed water-dependent structures.~~

~~(5)~~

~~The location of all existing or proposed site improvements, including storm drains, culverts, retaining walls and fences.~~

~~(6)~~

~~Description, method and location of water supply and sewage disposal facilities.~~

~~(7)~~

~~The mean high and low water line.~~

~~(8)~~

~~All existing and proposed piers, buoys, launching ramps and shore protection structures.~~

~~(9)~~

~~The location and dimensions of all areas to be dredged, including present and proposed depths.~~

~~(10)~~

~~The volume of dredge spoil to be removed, the type of material, the location and dimensions of disposal area(s), including dikes.~~

~~(11)~~

~~The location of all existing and proposed land-based buildings and structures on the site, proposed maintenance and repair activities and a description of uses and activities to be conducted in each.~~

~~(12)~~

~~The location and dimensions of all boat launching ramps.~~

~~(13)~~

~~The location and dimensions of all boat slips and mooring buoys.~~

~~(14)~~

~~The location of fuel dock and gasoline storage tanks.~~

~~(15)~~

~~The location of all required buffer/yards/building restriction lines.~~

~~B.~~

~~Applications for water dependent use shall be accompanied by an environmental assessment report which indicates how the proposed project achieves the following criteria:~~

~~(1)~~

~~That the activities will not significantly alter existing water circulation patterns or salinity regimes.~~

~~(2)~~

~~That the water body upon which these activities are proposed has adequate flushing characteristics at the site.~~

~~(3)~~

~~That disturbance to wetlands, submerged aquatic plant beds or other areas of important aquatic habitats will be minimized.~~

~~(4)~~

~~That adverse impacts to water quality that may occur as a result of these activities, such as non-point source runoff, sewage discharge from land activities or vessels or from boat cleaning and maintenance operations is minimized.~~

~~(5)~~

~~That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting.~~

~~(6)~~

~~That dredging shall be conducted in a manner and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area.~~

~~(7)~~

~~That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the critical area which has been designated as a habitat protection area.~~

~~(8)~~

~~That interference with the natural transport of sand will be minimized.~~

~~(9)~~

~~That no disturbances will occur to aquatic areas of historic waterfowl staging and concentration areas.~~

~~§ 125-26. Preparation and processing.~~

~~A.~~

~~Procedure for preparation.~~

~~(1)~~

~~Site plans shall be prepared and certified by an engineer, architect, landscape architect or land surveyor duly registered to practice in the State of Maryland.~~

~~(2)~~

~~All site plans shall clearly show the information required by this article.~~

~~(3)~~

~~If such plans are prepared in more than one sheet, match lines shall clearly indicate where the several sheets join, and an index sheet shall be required.~~

~~(4)~~

~~Every site plan shall show the name and address of the owner and developer, the election district, North point, date, scale of the drawing and the number of sheets. Five clearly legible copies of all site plans shall be submitted to the Planning Director (who may require that additional copies be provided when necessary).~~

~~B.~~

Procedure for processing.

(1)

~~Upon receipt of the site plan, the Planning Director shall conduct a review soliciting technical comments from other departments, agencies and officials as the Department of Planning, Zoning and Community Development may deem appropriate.~~

(2)

~~The site plan shall be preliminarily approved, subject to final approval of a Chesapeake Bay Critical Areas compliance certificate, if it meets the requirements of this article, the other requirements of this chapter and all other federal, state and County regulations and all necessary permits and approvals have been obtained.~~

(3)

~~The Planning Director shall review all applications within 60 days from filing to determine compliance with the application requirements of this chapter for developments within the critical area. Any application not in compliance shall be rejected.~~

(4)

~~Notice of such action shall be given in writing to the applicant.~~

~~§ 125-27. Required improvements.~~

~~A.~~

~~Upon final approval of a site plan and receipt of final Chesapeake Bay Critical Areas compliance certificate, the applicant shall then secure the necessary construction permits from appropriate agencies before commencing work. The applicant may construct only such improvements as have been certified by the Planning Director as being in compliance with a final Chesapeake Bay Critical Areas compliance certificate.~~

~~B.~~

~~After construction has been completed, inspection of site improvements shall be made by those departments specified by the applicable requirements.~~

~~C.~~

~~For residential developments, mobile home parks and campgrounds, the approved site plan shall be recorded in the office of the Clerk of the Court. Prior to recording, an agreement guaranteeing the construction of all required improvements shall be executed between the developer and the County.~~

D.

The installation of improvements shall not bind the County to accept such improvements or the maintenance, repair and operation thereof; requirements for said improvements shall be in addition to (and not in lieu of) any other legal requirements.

~~§ 125-28. Expiration; extensions.~~

~~Approval of site plans shall be for a one-year period and shall expire at the end of that period unless building construction has begun. Upon written request by the applicant, within 90 days of the expiration of said approval, a one-year extension may be given by the Planning Director. Such request shall be acknowledged, and a decision rendered thereupon, not more than 30 days after filing of said request.~~

~~Article V. Growth Allocation; Classification Changes~~

~~§ 125-29. Purpose and intent.~~

~~The provisions contained herein are intended to implement the growth allocation provisions of the Wicomico County Critical Area Program. The County's growth allocation will be used to amend the land use management classification on the Official Critical Area Maps on a project-by-project basis. The provisions contained herein establish the growth allocation process, minimum design standards and the process whereby projects may be awarded growth allocation. A land use management classification change is required to receive growth allocation, and application for growth allocation must also receive approval from the County Council and the Critical Area Commission for a land use management classification change. The following procedures will be followed in determining if a site qualifies for growth allocation.~~

~~§ 125-30. Location criteria.~~

~~{Amended 6-26-2001 by Bill No. 2001-11; 8-2-2011 by Bill No. 2011-07}~~

~~The granting of growth allocation shall be consistent with the Wicomico County Critical Area Program.~~

A.

~~When approving growth allocation, the Wicomico County Planning and Zoning Commission, in its review, and the County Council shall use these standards:~~

~~(1)~~

~~Locate a new IDA in an existing LDA or adjacent to an existing IDA;~~

~~(2)~~

Locate a new LDA adjacent to an existing LDA or IDA;

(3)

No more than 1/2 of the growth allocated may be located in the RCA, except as provided in Subsection A(4) below;

(4)

If the County is unable to utilize any portion of the growth allocation within or adjacent to existing IDAs or LDAs, that portion of the growth allocation which cannot be used may be located in the RCA. The developer will be required to cluster. The developer shall cluster the development 300 feet from tidal waters or tidal wetlands;

(5)

The location of development projects which use growth allocation shall minimize impacts to habitat protection areas as defined in COMAR 27.01.09 and optimize benefits to water quality. The design of development projects which use the growth allocation shall minimize impacts to habitat protection areas as defined in COMAR 27.01.09 and optimize benefits to water quality;

(6)

Projects using growth allocation in the RCA shall conform to all criteria of the Wicomico County Critical Area Program for such areas. The growth allocation used shall be designated on the County Critical Area Maps and shall constitute an amendment to this program subject to review and approval by the County Planning Commission, the County governing body and the Critical Area Commission;

(7)

Locate a new intensely developed area or a limited development area in a resource conservation area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters; and

(8)

Locate a new intensely developed area where it will minimize impacts to the defined land uses of the resource conservation area.

B.

In reviewing map amendments or refinements involving the use of growth allocation, the Critical Area Commission shall consider the following factors:

(1)

Consistency with the County's adopted Comprehensive Plan and whether the growth allocation would implement the goals and objectives of the adopted plan. "Consistency with" means that a standard or factor will further, and not be contrary to the following items in the Comprehensive Plan:

(a)

Policies;

(b)

Timing of the implementation of the plan, development, and of rezoning;

(c)

Development patterns;

(d)

Land uses; and

(e)

Densities or intensities.

(2)

For a map amendment or refinement involving a new limited development area, whether the development is:

(a)

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

(b)

A completion of an existing subdivision;

(c)

An expansion of an existing business; or

(d)

To be clustered.

(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 or septic system that uses the best available nitrogen removal technology;~~

~~(b)~~

~~A completion of an existing subdivision;~~

~~(c)~~

~~An expansion of an existing business; or~~

~~(d)~~

~~To be clustered.~~

~~(4)~~

~~The use of existing public infrastructure;~~

~~(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 offsite;~~

~~(6)~~

~~Impacts on a priority preservation area, as defined under § 2-518 of the Agriculture Article;~~

~~(7)~~

~~Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams;
and~~

~~(8)~~

~~Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.~~

~~§ 125-31. Maximum density.~~

~~Maximum permitted densities will be computed based on the total site area less the area occupied by tidal wetlands. The maximum density that will be permitted using growth allocation shall be limited as follows, depending on which is the more restrictive:~~

~~A.~~

~~The total number of approved individual septic systems or total number of units approved for shared sewage disposal facilities or community facilities by the Wicomico County Health Department, Maryland Department of the Environment or the Wicomico County Urban Services Commission; or~~

~~B.~~

~~The maximum number of residential lots or units permitted under the provisions of the Wicomico County Zoning Chapter.[1]~~

~~{1}~~

~~Editor's Note: See Ch. 225, Zoning.~~

~~§ 125-32. Conditions of approval.~~

~~A.~~

~~Only those phases or portions of projects proposed to be completed within one year shall receive growth allocation. In any case, a project approved for the growth allocation shall be substantially completed within three years of the date of final approval, i.e., recordation of final subdivision plats or final site plan approval. If, after three years, the project is not completed, the growth allocation shall be withdrawn.~~

~~B.~~

~~After site inspection and final approval of all required improvements, the Wicomico County Planning and Zoning Commission shall determine whether a project is substantially completed. "Substantially completed projects" are defined as projects in which all public improvements, such as roads, community or shared sewer and/or water facilities, etc., have been built, as required by the County or state, and all required bonds or other guaranties released by the County.~~

~~C.~~

~~Proposed developments on parcels or tracts located in RCA's that are not immediately adjacent to an existing IDA or LDA as of October 13, 1989, shall cluster development and shall meet all of the special provisions specified in § 125-16 and the design standards and guidelines established in the Wicomico County Critical Area Program.~~

~~D.~~

~~The maximum individual lot size shall not exceed the minimum individual lot size permitted by the Wicomico County Health Department.~~

~~E.~~

~~The following design standards shall apply to all major subdivisions and other development projects approved for growth allocation in order to be approved:~~

~~(1)~~

~~All applicable requirements of the Wicomico County Critical Area Program, Chapter 225, Zoning, Chapter 200, Subdivision of Land, and this chapter.~~

~~(2)~~

~~The maximum lot size corresponds to the minimum lot size permitted by the Wicomico County Health Department, except that no lot shall be less than the minimum lot required by the provisions of the Chapter 225, Zoning.~~

~~(3)~~

~~If not already in forest cover, at least 50% of the Buffer will be forested.~~

~~(4)~~

~~To the extent possible, lots should be located so that the balance of the lot area in excess of 20,000 square feet that is maintained in natural vegetation or afforested is contiguous to forested areas preserved as open space or acts as a wildlife corridor connecting forested areas on or adjacent to the site.~~

~~(5)~~

~~At a minimum, 50% of the area of each building lot in excess of 20,000 square feet in size is forested.~~

~~(6)~~

~~The area of disturbance for nonresidential development should be no more than 40% of the total site area.~~

~~(7)~~

~~A minimum one hundred foot buffer or fifty foot forested buffer is provided between any development site and any adjacent farmland or forestland in the critical area.~~

~~(8)~~

~~The design of the development must enhance the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the Buffer or implementation of best management practices on portions of the site to be retained in agriculture use.~~

~~(9)~~

~~The development incorporates the comments and recommendations of County agencies and addresses the comments of the Maryland Forest, Park and Wildlife Service in the project design.~~

~~(10)~~

~~The developer executes easements or restrictive covenants that guarantee maintenance of the required common open space areas and the open space area of individual lots outside of the development pad.~~

~~F.~~

~~Major developments in the RCA utilizing growth allocation shall also meet the following development standards:~~

~~(1)~~

~~Permitted uses in required open space areas shall be limited to agriculture, forestry or natural cover.~~

~~(2)~~

~~A minimum one hundred foot Buffer shall be established and maintained between all developed areas and adjacent farm and forest land, except that this Buffer may be reduced to 50 feet if retained or planted in forest cover.~~

~~(3)~~

~~A woodland management plan shall be prepared for all forested areas, and best management practices must be implemented on portions of the site to be retained in agriculture use.~~

~~(4)~~

~~Applicants shall demonstrate that practices for stormwater management maintain pollutant loadings at or below predevelopment loadings.~~

~~G.~~

~~The following design standards shall apply to all minor subdivisions approved for growth allocation in order to be approved:~~

~~(1)~~

~~The total number of lots permitted in the critical area portion shall not exceed five lots.~~

~~(2)~~

~~The total acreage within the critical area portion of the proposed development lot or parcel of record as of the date of adoption of this chapter shall not exceed 30 acres.~~

~~(3)~~

~~To the extent possible, the maximum lot size should not exceed the minimum individual lot size required by the Wicomico County Health Department.~~

~~(4)~~

~~The applicant shall demonstrate that, prior to December 1990, a soil conservation and water quality plan will be prepared and implemented on all portions of the site which remain in agricultural use, insofar as possible; at a minimum, a cooperators' agreement shall be entered into by the landowner.~~

~~(5)~~

~~The applicant shall prepare a woodland management plan for those portions of the site which remain in forest cover.~~

~~(6)~~

~~The subdivision shall comply with all the requirements of the Wicomico County Critical Area Program and this chapter, as well as other applicable ordinances and regulations of Wicomico County.~~

~~§ 125-33. Computation of growth allocation.~~

~~The manner in which growth allocation for a proposed project will be subtracted from the total County growth allocation will be determined on a project by project basis, subject to Critical Area Commission approval. In making his determination, the Planning Director will subtract all disturbed areas and areas not restricted from further development through restrictive covenants and not maintained in natural vegetation, or other acceptable provisions as are approved by the County. In determining the area to be subtracted, the Planning Director will use the following guidelines:~~

~~A.~~

~~On parcels on which a change in land management classification is requested in order to permit use of the growth allocation, a development envelope will be determined by the County, the acreage of which will be counted against the County's growth allocation.~~

~~B.~~

~~The Critical Area Commission has developed guidelines for computing the use of growth allocation. However, the County reserves the right, on a case-by-case basis, to submit information to justify not subtracting all areas referred to in the Commission's guidelines.~~

~~C.~~

~~The development envelope concept may only be used when there is a minimum of 20 acres outside of the development envelope that will maintain its resource conservation area character.~~

~~{Added 6-26-2001 by Bill No. 2001-11}~~

~~§ 125-34. Process.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~Applicants for growth allocation shall submit a request for growth allocation accompanied by appropriate plans and environmental assessments in accordance with the following process:~~

~~A.~~

~~All applications for growth allocation shall meet the requirements of COMAR 27.01.02.05-1 and 27.01.02.05-2 and be submitted to the Wicomico County Department of Planning, Zoning and Community Development. Requests shall also be accompanied by a concept plan, environmental assessment and/or studies so as to provide sufficient information to permit the Planning Commission to review the application for consistency with the County's critical area regulations.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

~~B.~~

~~All applications for growth allocation shall be forwarded to the Planning Commission for review and shall include comments and recommendations from the County planning staff. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation to the County Council.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~C.~~

~~The applicant shall address the Planning Commission's comments and recommendations. The Planning Commission may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the County Council with a recommendation for approval or denial from the Planning Commission.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~D.~~

~~The County Council shall hold a public hearing on the growth allocation request.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~E.~~

~~The County Council may establish conditions of approval that are consistent with the intent of the county's critical area program.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~F.~~

~~Upon approval of the growth allocation request by the County Council, the County critical area staff shall send the request to the Chesapeake Bay Critical Area Commission for review, comment and approval. When the County submits a request for the Commission to review, the request shall state how the County has applied the location criteria in § 125-30A and contain sufficient information to address the factors in § 125-30B. The request shall be accompanied by pertinent plans and environmental assessment and/or studies. Upon receipt of the request from the County, the Critical Area Commission shall notify the County regarding the processing of the request as an amendment or refinement to the County's critical area program. Refinements shall be acted on within 30 days of the Commission's notification to the County of a complete submission. Amendments shall be acted on within 130 days of the Commission's notification to the County of a complete submission. When reviewing the request, the Commission shall ensure that the location criteria in § 125-30 have been applied in a manner consistent with the purpose, policies, goals and provisions of the state critical area law and all criteria of the Critical Area Commission.~~

~~{Amended 10-17-2006 by Bill No. 2006-11; 8-2-2011 by Bill No. 2011-07}~~

~~G.~~

~~Following approval of the growth allocation request by the Critical Area Commission, the County Council may choose to hold a public hearing to approve or deny a final award of growth allocation and map amendment. If the conditions of growth allocation approval by the Critical~~

~~Area Commission do not substantially alter the design or increase the amount of growth allocation acreage deduction, the County Council may waive the final public hearing.~~

~~{Amended 10-17-2006 by Bill No. 2006-11}~~

~~H.~~

~~Prior to approving the final site plan or subdivision plat, the Planning Commission shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.~~

~~I.~~

~~Final subdivision plats and site plans shall be processed in accordance with the requirements of this chapter and the county subdivision regulations.~~

~~J.~~

~~The county's official critical area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.~~

~~K.~~

~~A condition of approval shall be that growth allocation shall be awarded to a specific project and the projects approved for growth allocation be substantially completed within three years of the date of approval. Substantially completed shall be determined by the County Council and is defined as projects in which all public improvements, such as roads, water and sewer facilities, forest conservation, stormwater management, etc. have been built as required by the county and state.~~

~~Article VI. Variances~~

~~§ 125-35. Authorization.~~

~~{Amended 6-29-1999 by Bill No. 1999-5; 7-6-2004 by Bill No. 2004-6}~~

~~The Wicomico County Board of Appeals is hereby empowered to grant variances to the provisions of this chapter where, owing to special features of a site or other circumstances, a literal enforcement of provisions would result in unwarranted hardship.~~

~~§ 125-36. Bases for grants.~~

~~{Amended 7-6-2004 by Bill No. 2004-6; 8-2-2011 by Bill No. 2011-07}~~

~~The Board of Appeals shall examine all facts of the case and render a decision. Variance requests in the Critical Area District shall not be granted unless the applicant has satisfied each of the following standards:~~

~~A.~~

~~That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this chapter would result in unwarranted hardship which is not generally shared by owners of property in the same land use management areas (i.e., IDA, LDA or RCA) of the Critical Area District. Unwarranted hardship means 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.~~

~~That strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in the same management area within the Critical Area District.~~

~~C.~~

~~That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.~~

~~D.~~

~~That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming which are related to adjacent parcels.~~

~~E.~~

~~That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the critical area program and associated chapters.~~

~~F.~~

~~That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.~~

~~G.~~

~~That the proposed variance is consistent with the Wicomico County Comprehensive Plan and Chapter 225, Zoning.~~

H.

~~That "after the fact" variances, permits, and special exceptions are prohibited, unless there is full compliance with this chapter. This includes, but is not limited to, paying all fines and costs, preparing a planting plan which is then approved by the County and performing all mitigation required for the violation. The County cannot accept an application for a variance to legalize a violation unless the County has first issued a notice of violation and assessed a penalty. Satisfaction of all fines and penalties is a condition precedent to the issuance of any permit, approval, variance, or special exception on the affected property.~~

I.

~~That an applicant has the burden of proof and the burden of persuasion to overcome the standards established under this section.~~

J.

~~That based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the standards established under this section.~~

K.

~~The written findings may be based on evidence introduced and testimony presented by:~~

~~(1)~~

~~The applicant;~~

~~(2)~~

~~The County or any other government agency; or~~

~~(3)~~

~~Any other person deemed appropriate by the County.~~

~~§ 125-37. (Reserved)~~

~~{1}~~

~~Editor's Note: Former § 125-37, Site-specific Buffer variances, was repealed 6-29-1999 by Bill No. 1999-5.~~

~~§ 125-38. Conditions.~~

~~{Amended 6-29-1999 by Bill No. 1999-5; 7-6-2004 by Bill No. 2004-6}~~

~~A variance will not be granted by the Board of Appeals unless and until:~~

~~A.~~

~~A completed application form for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area District shall not be heard unless the state's Critical Area Commission has received a copy of the variance application at least two weeks prior to the scheduled public hearing.~~

~~B.~~

~~The Board of Appeals shall find that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structures. In making this determination for variance requests in the Critical Area District, the Board of Appeals shall consider the following guidelines:~~

~~(1)~~

~~That the granting of a variance results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands or tributary streams in the critical area as is feasible.~~

~~(2)~~

~~That the applicant takes steps to mitigate impacts, insofar as possible, including:~~

~~(a)~~

~~Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis.~~

~~(b)~~

~~Afforestation of areas of the site so that at least 15% of the gross site is forested.~~

~~(c)~~

~~Implementation of any mitigation measures which relate to habitat protection areas, as delineated in the Wicomico County Critical Area Program, recommended by state and/or County agencies are included as conditions of approval.~~

~~(3)~~

~~The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this chapter, shall not result in a use not permitted in the zone in which the property subject to variance is located and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.~~

~~(4)~~

~~For variances in the Critical Area District, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this chapter and the Wicomico County Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.~~

~~(5)~~

~~In addition, and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by certified mail and furnished a copy of said application.~~

~~(6)~~

~~In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate which comply with the intent of this chapter and the Wicomico County Critical Area Program. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under Article IX.~~

~~C.~~

~~This section does not apply to County projects requiring building permits or activities that comply with a Buffer exemption plan or Buffer management plan, which has been approved by the Critical Area Commission.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~Article VII. Amendments~~

~~§ 125-39. Amendment regulations generally.~~

~~A.~~

~~The County Council may, from time to time, amend the provisions of this chapter, the approved Wicomico County Critical Areas Program and the land use management classification of properties in the Critical Area District. In addition, the County Council shall review and propose any necessary amendments, as required, either to the program or to the land use management classifications in the Critical Area District at least every six years.~~

~~{Amended 8-2-2011 by Bill No. 2011-07}~~

B.

~~All such amendments shall be approved by the Maryland Chesapeake Bay Critical Area Commission pursuant to § 8-1809(g) of the Critical Area Law, Subtitle 18. Standards for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, § 8-1809(h) and (i). The Critical Area Commission process for approval of proposed amendments is as set forth in the Critical Area Law, Subtitle 18, § 8-1809(d).~~

C.

~~When the County submits a request for review and approval of changes to any element of the County's Critical Area Program including, but not limited to, the Zoning Ordinance, Subdivision Regulations or Critical Area Maps, the request for review shall include all relevant information necessary for the Chairman of the Critical Area Commission and, as appropriate, the Commission, to evaluate the proposed changes. The Chairman and, as appropriate, the Commission, shall determine if the request for program changes is consistent with the purposes, policies, goals and provisions of the Critical Area Law and all criteria of the Commission. In accordance with this determination of consistency, the Chairman or, as appropriate, the Commission shall:~~

~~[Added 8-2-2011 by Bill No. 2011-07]~~

~~(1)~~

~~Approve the proposed program refinement or amendment and notify the County;~~

~~(2)~~

~~Deny the proposed program refinement or amendment and notify the County;~~

~~(3)~~

~~Approve the proposed refinement or amendment subject to one or more conditions; or~~

~~(4)~~

~~Return the proposed program refinement or amendment to the County with a list of changes to be made.~~

~~§ 125-40. Amendments to district maps.~~

A.

~~The County Council may, from time to time, elect to amend the Critical Area District boundary to delete areas of the County from the Critical Area District when it can be demonstrated that the critical area, as mapped on the Official Critical Area District Maps, is incorrectly drawn. The~~

~~amended Critical Area District boundary shall, at a minimum, encompass all areas as set forth in § 125-3 above. Evidence sufficient to warrant a determination of a mistakenly drawn critical area boundary line shall be based on, and substantiated by either:~~

~~(1)~~

~~The Official State Wetland Maps;~~

~~(2)~~

~~The amended Official State Wetland Maps adopted by the State of Maryland after a formal public hearing; or~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~(3)~~

~~The written concurrence by the State of Maryland that the Official State Wetland Map is incorrect.[1]~~

~~{1}~~

~~Editor's Note: Former Subsection A(3), which required a survey by a registered land surveyor, was repealed 6-26-2001 by Bill No. 2001-11. Said bill also redesignated former Subsection A(4) as Subsection A(3).~~

~~B.~~

~~The County Council may also elect to add areas to the Critical Area District at any time. Addition or deletion of areas from the Critical Area District shall be processed as amendments to the Critical Area District as per this article.~~

~~§ 125-41. Special Buffer areas amendments.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~The Wicomico County Council may exempt an area proposed for development from the Buffer provisions of this chapter only by program amendment, where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial or recreational development in the critical area portion of the site prevents the Buffer from performing its function. All such amendments shall require a public hearing by the Planning Commission and the County Council and approval by the Critical Area Commission. In order to approve a Buffer exemption amendment, the County Council shall find and require, at a minimum, that other measures for achieving the habitat and water quality protection objectives of the adopted critical area criteria have been met.~~

~~§ 125-42. Amendment procedures.~~

~~A.~~

~~Proposed amendments to the text provisions of the adopted program or this chapter may only be initiated by the Wicomico County Planning Commission or the Wicomico County Council.~~

~~B.~~

~~All program amendments and any map amendments involving specific properties requested by the property owner shall be submitted to the Department of Planning, Zoning and Community Development.~~

~~C.~~

~~For all proposed amendments, the Wicomico County Planning and Zoning Commission shall first hold a public hearing related thereto, at which parties of interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. For amendments involving only one specific property, the Wicomico County Planning and Zoning Commission shall post notice of its public hearing on property(ies) for which amendments are requested and, to the extent possible based on the best available information, notify all property owners immediately contiguous to the applicant of the hearing date, time and place. The Wicomico County Planning and Zoning Commission shall also furnish these property owners with a copy of said application.~~

~~D.~~

~~The Wicomico County Planning and Zoning Commission shall then forward proposed amendments to the Wicomico County Council. The Council shall hold a public hearing on the amendments and, if approved, shall submit said amendment(s) to the Chesapeake Bay Critical Areas Commission.~~

~~E.~~

~~After receiving the approval of the Critical Area Commission, the County Council may, in its discretion, hold a second public hearing on the ordinance enacting the proposed amendment, at which time parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such public hearing shall be published in a newspaper of general circulation in the County once each week for two consecutive weeks.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~F.~~

~~Requirements for amendments.~~

(1)

~~Land use management classification. When proposing a change of land use management classification, i.e., intensely developed area (IDA), limited development area (LDA) or resource conservation area (RCA), other than by changing a land use management classification through granting of the growth allocation bonus density, the County Council shall not approve amendments unless it is found that there was a mistake in the original classification based on the application of the method for delineating land use management classifications contained in Section 1 of the Wicomico County Critical Area Program and that the amendment is approved by the Critical Area Commission. Changes to the land use management classification using growth allocation shall be as prescribed in Article V.~~

~~Article VIII. Special Subdivision Provisions~~

~~§ 125-43. Applicability.~~

~~Any subdivision of land, as defined in the Wicomico County Subdivision Chapter, [1] shall be subject to the following special provisions when such subdivision occurs in the Critical Area District.~~

(1)

~~Editor's Note: See Ch. 200, Subdivision of Land.~~

~~§ 125-44. Submission requirements.~~

~~A.~~

~~Concept plans.~~

(1)

~~Concept sketch plans shall be prepared and submitted to the Wicomico County Planning and Zoning Office prior to submission of any proposed subdivision for approval by the Wicomico County Planning and Zoning Commission. Concept plans shall include all information required in § 200-6 of the Wicomico County Subdivision Chapter.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

(2)

~~In addition, the following information shall also be shown:~~

(a)

~~Tidal and nontidal wetlands.~~

(b)

~~Streams.~~

(c)

~~Areas of steep slopes and highly erodible and other soils, with development constraints.~~

(d)

~~Shore and stream Buffer (100 feet minimum).~~

(e)

~~Natural resource protection areas, including wildlife habitats and habitat protection areas, and forests and developed woodlands on or in the vicinity of the proposed subdivision.~~

(f)

~~The Critical Area District boundary and the applicable land management classification(s), i.e., intensely developed area (IDA), limited development area (LDA) or resource conservation area (RCA).~~

(g)

~~Computation of the amount of acres in the Critical Area District.~~

(h)

~~The location and extent of existing and/or proposed shore erosion abatement approaches.~~

~~B.~~

~~Preliminary plats.~~

(1)

~~In addition to the required exhibits for preliminary plat submission required in Chapter 200, Subdivision of Land, for proposed subdivisions located in the Critical Area District, the following additional information will be shown on the preliminary plat, as applicable:~~

(a)

~~A computation of the total area within the Critical Area District, area within each of the land management classifications (i.e., IDA, LDA and RCA) and number of lots in the critical area.~~

(b)

~~Slopes of 15% or greater.~~

~~(c)~~

~~The location and areal extent of all soils with:~~

~~{1}~~

~~Septic limitations.~~

~~{2}~~

~~Wet soils.~~

~~{3}~~

~~Hydric soils.~~

~~{4}~~

~~Soils with hydric properties as shown on the Wicomico County Soil Survey.~~

~~(d)~~

~~The location of all existing or proposed site improvements, including storm drains, culverts, retaining walls, fences, stormwater management facilities, as well as any sediment and erosion control structures.~~

~~(e)~~

~~The location of required open space areas, the Buffer and other buffer areas, forested areas and landscaping. (The plan shall show all areas to be maintained as landscaping, and the means by which such landscaping will be permanently maintained shall be specified.)~~

~~(f)~~

~~The location of all habitat protection areas on the site.~~

~~(g)~~

~~The location of tidal and nontidal wetlands on and adjacent to the site and delineation of the watershed thereof.~~

~~(h)~~

~~The location of eroding shoreline reaches, the rates of erosion, areas where shore erosion measures are in place and areas to be protected by installation of proposed erosion abatement approaches.~~

~~(i)~~

~~The location of anadromous fish spawning stream(s) on or adjacent to the site, and a delineation of the watershed area of the stream on the site.~~

~~(j)~~

~~Areas to be retained in agriculture and/or forestry use.~~

~~(k)~~

~~Areas proposed for reforestation and afforestation.~~

~~(l)~~

~~The total area of the site that will be temporarily disturbed during development, and the area that will be permanently disturbed. ("Disturbed" is defined as any activity occurring on an area which may result in the loss of or damage to existing natural vegetation.)~~

~~(m)~~

~~Proposed natural park areas, as appropriate.~~

~~(n)~~

~~The location of the Critical Area District boundary, the mean high water line and the landward edge of tidal wetlands.~~

~~(o)~~

~~Proposed covenants on required open space areas.~~

~~(2)~~

~~In addition to the information above, the preliminary subdivision plat shall be accompanied by the following, when the subdivision or development is proposed in the critical area, as required:~~

~~(a)~~

~~A planting plan for reforested and afforested areas and a woodland conservation plan with the comments of the Bay Forester.~~

~~(b)~~

~~A habitat protection plan, including the comments of the Maryland Forest, Park and Wildlife Service.~~

~~(c)~~

~~Preliminary indication of a cooperators' agreement with the Wicomico County Soil Conservation District or farm plan, as applicable.~~

~~(d)~~

~~A preliminary stormwater management plan.~~

~~(e)~~

~~A preliminary sediment and erosion control plan.~~

~~(f)~~

~~A shore erosion protection plan, complete specification for proposed shore erosion work.~~

~~(g)~~

~~A natural park management plan, as appropriate.~~

~~(h)~~

~~An environmental assessment report which provides a coherent statement of how the proposed development addresses the goals and objectives of the Wicomico County Chesapeake Bay Critical Area Program. At a minimum, the environmental assessment shall include:~~

~~{1}~~

~~A statement of existing conditions, e.g., amount and types of forest cover, amount and type of wetlands, discussion of existing agriculture activities on the site, soil types, topography, etc.~~

~~{2}~~

~~A discussion of the proposed development project, including the number and type of residential units, amount of impervious surface, proposed sewer treatment and water supply, acreage devoted to development, proposed open space and habitat protection areas.~~

~~{3}~~

~~A discussion of the proposed development's impacts on water quality and habitat protection areas.~~

~~{4}~~

~~Documentation of all correspondence and findings received from any County, state or federal agency.~~

~~C.~~

~~Final subdivision plats:~~

~~(1)~~

~~In addition to the required exhibits for preliminary plat submission required in Chapter 200, Subdivision of Land, for proposed subdivisions located in the Critical Area District, the following additional information will be shown on the final subdivision plat, as applicable:~~

~~(a)~~

~~A tabulation on final plat (above approval block), showing the following for subdivisions wholly or partially located in the critical area:~~

~~{1}~~

~~The total number of lots and/or parcels to be recorded.~~

~~{2}~~

~~The total area of lots and/or parcels, including widening strips.~~

~~{3}~~

~~The total area of roadways to be recorded.~~

~~{4}~~

~~The total area of subdivision to be recorded and, where density restrictions apply, the acreage dedicated to the development.~~

~~{5}~~

~~The total area of subdivision or parcels to be recorded in the Critical Area District.~~

~~{6}~~

~~The total number of lots in the Critical Area District.~~

~~{7}~~

~~The residential density in the Critical Area District.~~

~~(b)~~

~~For subdivisions in the critical area, accurate outlines (metes and bounds, where required) of any required open space areas, common or reserved areas or portions of lots to be maintained by covenant, easement or similar approved instrument in permanent forest cover, including existing forested areas, reforested areas and afforested areas.~~

~~(c)~~

~~For subdivisions in the critical area, accurate outlines (metes and bounds, where required) of any areas to be maintained as resource protection use (e.g., agriculture, natural parks, forest, etc.).~~

~~(d)~~

~~An outline of building envelope, paved drives and any other proposed impervious surface areas.~~

~~(e)~~

~~For subdivisions in the critical area, accurate outlines (metes and bounds, where required) of any areas to be maintained as permanent wildlife and plant habitat protection area or areas.~~

~~(2)~~

~~In addition to the information above and any required planning, zoning and community development plans, the final subdivision plat shall be accompanied by the following when the subdivision or development is proposed in the critical area, as required:~~

~~{Amended 12-18-2012 by Bill No. 2012-13}~~

~~(a)~~

~~Planting and forest management plans. The subdivider in the Critical Area District shall prepare and submit a planting plan and/or woodland conservation plan for areas where planting is required, and a shoreline protection plan for areas of eroding shore to be stabilized.~~

~~(b)~~

~~Open space maintenance plans. A detailed proposal, including easements, covenants, agreements and other specific documents showing ownership and the method of assuring perpetual maintenance to be applied to those areas of common open space, recreation areas, wildlife corridors and habitat protection areas in developments located in the Critical Area District, shall be required.~~

~~§ 125-45. Design standards.~~

~~A.~~

~~The standards and requirements outlined herein shall be considered minimum standards and requirements for the promotion of the public health, safety and general welfare.~~

~~B.~~

~~General requirements.~~

(1)

~~Land shall be suited for the purposes for which it is to be subdivided. The subdivision shall be laid out as to proper design and improvement, form and dimensions and in relationship to street and lot design, as well as proposed and existing land uses in the proposed subdivision and adjoining areas. The land use pattern of the adopted County Comprehensive Plan, critical area program and the regulations of Chapter 225, Zoning, shall form the basic theme for the design pattern.~~

(2)

~~Where trees, waterways, scenic points, historic sites and structures or other assets and landmarks are located within a proposed subdivision, the Wicomico County Planning and Zoning Commission shall see that all practical means are to be taken to preserve these features.~~

(3)

~~Where a tract of land bordering tidal water, tidal wetlands or tributary streams in the critical area is to be subdivided and a special Buffer area has not been established, a Buffer of at least 100 feet shall be established in natural vegetation (except areas of the Buffer which are planted in vegetation where necessary to protect, stabilize or enhance the shoreline). No development, including septic systems, impervious surfaces, parking areas, roads or structures, are permitted in the Buffer. However, approved development or expansion of water dependent facilities, as defined in this chapter, are excepted from these Buffer provisions.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

(4)

~~If the lot ownership extends to the water, wetlands or streambed, then the Buffer shall be included in the required setback distance for building on that lot, except in the case of water-dependent facilities. Where the Buffer is to be owned and maintained by a homeowners' or similar appropriate organization, the required setback distance shall be measured from the property line separating that lot from the designated Buffer. This Buffer, when not included in the lots, may be included in the calculating of the required open space.~~

(5)

~~The Buffer will be expanded to include contiguous sensitive areas. This expansion will occur whenever new land development or other land disturbing activities, such as clearing natural vegetation for agriculture, forestry or mining, are proposed and the Wicomico County Planning and Zoning Commission determines that such activities may impact wetlands or other aquatic environments. The expanded Buffer must be shown on plans required for such development or~~

activities. "Sensitive areas" are defined as follows: hydric soils and soils with hydric properties as designated by the Soil Conservation Service, steep slopes greater than 15% and highly erodible soils. The Buffer shall be expanded according to the following rules:

(a)

The Buffer shall be expanded four feet for every 1% of slope or to the top of slope, whichever is greater.

{Amended 6-26-2001 by Bill No. 2001-11}

(b)

The Buffer shall be expanded to the upland limit of adjacent hydric soils, soils with hydric properties and erodible soils within the critical area.

(6)

All subdivisions in the Critical Area District shall be subject to the habitat protection requirements prescribed in the critical area program.

(7)

The subdivider shall be required to identify stormwater management practices appropriate to site development which achieve the following standards:

(a)

In areas designated intensely developed area on the Critical Area District Map, the subdivider shall identify stormwater management practices appropriate to site development which achieve the following standards:

{1}

The subdivider shall demonstrate that the best management practices for stormwater assure a ten-percent reduction of predevelopment pollutant loadings.

{2}

Subdivisions which cannot demonstrate they meet the requirements of Subsection B(7)(a){1} above may be approved only if it can be demonstrated that mitigation measures or offsets will be provided to achieve equivalent water quality benefits elsewhere in the same watershed.

{3}

~~Methods of determining mitigation measures necessary to achieve ten-percent reductions or in determining alternative offsets required in Subsection B(7)(a){2} above shall be consistent with methodologies as adopted by Critical Area Commission guidance papers or policies.~~

~~{Amended 6-26-2001 by Bill No. 2001-11}~~

~~(b)~~

~~The subdivider shall delineate those site areas not covered by impervious surfaces to be maintained or established in vegetation. Where vegetation is not proposed, the developer shall demonstrate why plantings for such portions of the site are impracticable. Types of plantings and vegetation proposed shall be in accordance with guidelines established in § 125-21.~~

~~(8)~~

~~The subdivision shall be designed to assure those features or resources identified as habitat protection areas are afforded protection as prescribed in the habitat protection element of the critical area program.~~

~~(9)~~

~~In LDA's and RCA'S, roads, bridges and utilities serving lots shall be located to avoid disturbances to habitat protection areas. When no alternative exists and such infrastructure must cross or be located in a habitat protection area, the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists.~~

~~(10)~~

~~In LDA's and RCA'S, all roads, bridges, lots or other development which cross or are located adjacent to tributary streams in the critical area shall:~~

~~(a)~~

~~Minimize clearing in the Buffer.~~

~~(b)~~

~~Be designed in a manner to reduce increases in flood frequency and severity.~~

~~(c)~~

~~Provide for the retention of natural streambed substrate.~~

~~(d)~~

~~Minimize adverse impacts to water quality and stormwater runoff.~~

~~(e)~~

~~Retain existing tree canopy so as to maintain stream water temperature within normal variation.~~

~~(11)~~

~~Lots and open space areas shall be located and designed to provide for maintenance of existing site wildlife and plant habitats and continuity with those on adjacent sites. Existing wildlife corridors shall be identified on proposed development plats. When wildlife corridors exist or are proposed, they shall include any existing habitat protection areas and connect large forested areas on or adjacent to the site. The subdivider shall ensure the permanent maintenance of wildlife corridors by establishing easements, restrictive covenants or similar instruments through which the corridor is preserved by public or private groups, including homeowners' associations, nature trusts and other organizations, as approved by the County.~~

~~(12)~~

~~Impervious surfaces are limited to 15% of the gross site area, except as follows:~~

~~[Amended 6-13-1991 by Bill No. 1991-2; 6-26-2001 by Bill No. 2001-11]~~

~~(a)~~

~~If a parcel or lot 1/2 acre or less in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to 25% of the parcel or lot. Impervious surfaces on such parcels or lots may cover up to 31.25% of the parcel or lot or 500 square feet more than 25% of the parcel or lot, whichever is greater, provided the conditions as stated in Subsection B(12)(d) below are met.~~

~~(b)~~

~~If a parcel or lot greater than 1/2 acre and less than one acre in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to 15% of the parcel or lot or 5,445 square feet, whichever is greater, provided the conditions as stated below are met.~~

~~(c)~~

~~If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then man-made impervious surfaces of the lot may not exceed 25% of the lot. However, the total of the impervious surfaces over the entire subdivision may not exceed 15%.~~

~~(d)~~

~~If impervious surfaces are expanded beyond 25% in accordance with Subsection B(12)(a) above or, 15% in accordance with Subsection B(12)(b) above, the following conditions must be met:~~

{1}

~~Water quality impacts associated with runoff from the new impervious surfaces have been minimized through site design considerations; and~~

{2}

~~The property owner performs on-site mitigation to offset potential adverse water quality impacts from the new impervious surfaces.~~

{13}

~~Approved minor (private) roads shall not serve more than a total of six lots.~~

{14}

~~Roads serving development shall be located to avoid disturbances to habitat protection areas as described in the critical area program. When no alternative exists and such infrastructure must cross or be located in a habitat protection area, the developer shall demonstrate how impacts to habitats have been minimized and that no feasible alternative location of such infrastructure exists.~~

~~Article IX. Legal Provisions~~

~~§ 125-46. Conflicts with other regulations.~~

~~Whenever any provision of this chapter and any other provisions of law, whether set forth in these regulations or in any other law or regulation, impose, overlap or contradict existing regulations or contain any restrictions covering any of the same subject matters, that provision which is more restrictive or impose higher standards or requirements shall govern.~~

~~§ 125-46.1. Reasonable accommodation for needs of disabled citizens.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~A.~~

~~The Planning Director or his/her designee may make reasonable accommodations for the benefit of disabled citizens to avoid discrimination on the basis of physical disability. Reasonable accommodation for the needs of disabled citizens may be permitted in accordance with the requirements set forth in Subsection B of this section.~~

~~B.~~

~~An applicant shall have the burden of demonstrating by a preponderance of the evidence that:~~

~~{1}~~

~~There exists a disability within the meaning of the Americans with Disabilities Act;~~

~~(2)~~

~~Literal enforcement of the statute, ordinance, regulation, or other requirement would result in discrimination by virtue of such disability or deprive the applicant/appellant of the reasonable use and enjoyment of the property;~~

~~(3)~~

~~A reasonable accommodation would reduce or eliminate the discriminatory effect of the statute, ordinance, regulation, or other requirement or restore the applicant/appellant's reasonable use or enjoyment of the property;~~

~~(4)~~

~~The accommodation requested will not substantially impair the purpose, intent, or effect of the statute, ordinance, regulation or other requirement as applied to the property;~~

~~(5)~~

~~The accommodation will be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; and~~

~~(6)~~

~~Only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant will be allowed.~~

~~C.~~

~~The Planning Director or his/her designee shall determine the nature and scope of any accommodation under this section and may grant different or other relief than requested after giving due regard to:~~

~~(1)~~

~~The purpose, intent, or effect of any applicable statute, regulation or ordinance; and~~

~~(2)~~

~~The size, location, nature and type of accommodation proposed and whether alternatives exist, which accommodate the need with less adverse effect.~~

~~D.~~

~~The accommodation granted shall be documented in a written agreement between the County and applicant. This agreement shall reference the property the accommodation is being allowed on, the property's deed number, the accommodation being granted and the purpose of the accommodation. The agreement shall state when the need for the accommodation ceases, the property will be returned to its original condition. This agreement shall be recorded in the land records of Wicomico County and bind all future owners.~~

~~E.~~

~~Upon termination of the need for any accommodation, as determined by the Planning Director or his/her designee, the property shall be restored to comply with all applicable statutes, ordinances, regulations or other requirements.~~

~~F.~~

~~In the event that the Planning Director or his/her designee denies a reasonable accommodation, the applicant may appeal this decision to the Board of Appeals, provided that said appeal is taken within 30 days after the final decision was rendered.~~

~~§ 125-47. Appeals.~~

~~{Amended 7-6-2004 by Bill No. 2004-6}~~

~~It is expressly provided that if any property owner, developer or any other person interested therein is dissatisfied with any final ruling as to the interpretation or application of the terms and conditions herein provided, they may appeal to the Board of Appeals, provided that said appeal is taken within 30 days after the final decision has been rendered.~~

~~§ 125-48. Violations and penalties.~~

~~{Amended 6-26-2001 by Bill No. 2001-11; 10-17-2006 by Bill No. 2006-11; 8-2-2011 by Bill No. 2011-07}~~

~~A.~~

~~Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating in full the causes and basis thereof, shall be filed with the Department of Planning, Zoning and Community Development. The Planning Director or his/her designee shall properly record the complaint, investigate and take action thereon. Every violation identified by the Planning Director requires an enforcement action. A violation of this chapter shall include, but not be limited to, the following:~~

~~(1)~~

~~Violation of any existing Wicomico County Board of Appeals order, condition or restriction;~~

~~(2)~~

~~Violation of the Wicomico County Critical Area Program;~~

~~(3)~~

~~The existence of unpaid fines or penalties assessed by the Wicomico County courts related to a citation or other violation issued by an official of the Wicomico County Department of Planning, Zoning, and Community Development;~~

~~(4)~~

~~Unpaid administrative, civil or criminal penalties imposed on the violator;~~

~~(5)~~

~~Failure to prepare a restoration and/or mitigation plan approved by Wicomico County to abate the impacts to water quality or natural resources as a result of a violation; or~~

~~(6)~~

~~Failure to perform the abatement measures in the approved restoration and/or mitigation plan approved by Wicomico County.~~

~~B.~~

~~Any person who shall violate any of the provisions of this chapter shall be guilty of a civil infraction and shall be subject to a fine not to exceed \$10,000 per violation. A schedule of fines may be established by resolution of the County Council.~~

~~(1)~~

~~Any person who shall violate this chapter shall be deemed guilty of a separate offense for every day that the violation shall continue.~~

~~(2)~~

~~A person shall be subject to separate civil penalties, orders and sanctions for each violation.~~

~~(3)~~

~~For continuing violations, civil penalties continue to accrue for each day each violation continues without a separate requirement for an additional assessment, notice or opportunity for hearing for the separate offense.~~

~~(4)~~

~~The person responsible for a violation or any continuing violation shall promptly provide the Planning Director or his/her designee with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for the County inspection to verify compliance. Civil penalties for continuing violations continue to accrue as set forth herein until the County receives such written notice and verifies compliance by inspection or another manner.~~

~~(5)~~

~~For civil penalties imposed for violations of the Critical Area Program, the following criteria shall apply to determine the amount of the civil penalty:~~

~~(a)~~

~~The gravity of the violation;~~

~~(b)~~

~~The willfulness or negligence, if any, of the violation;~~

~~(c)~~

~~The environmental impact of the violation; and~~

~~(d)~~

~~The cost to restore the affected resource, mitigation for damage to that resource and costs to the state and County for performing, supervising or assisting with restoration and mitigation.~~

~~(6)~~

~~Payment of all civil penalties shall be a condition precedent to the issuance of any permit or other approval required by this Code.~~

~~C.~~

~~Any person who shall violate any of the provisions of this chapter may be subject to the following additional penalties:~~

~~(1)~~

~~Restoration and/or abatement of the area disturbed; and/or~~

~~(2)~~

~~Additional plantings as required by Subsections H and I.~~

~~D.~~

~~The owner or tenant of any building, structure, premises or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. "Person," for the sake of this provision, includes any individual, partnership, corporation, organization, or other entity, or combination thereof.~~

~~E.~~

~~The Planning Director or his/her 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 the Director or his/her designee has probable cause to believe that a violation of this chapter has occurred, is occurring or will occur. The Planning Director or his/her designee shall make a reasonable effort to contact a property owner before obtaining access to or entering the property. If entry is denied, Wicomico County shall have recourse to every remedy provided by law to secure entry onto the property.~~

~~F.~~

~~The Planning Director or his/her designee shall have authority to issue citations for civil infractions of this chapter.~~

~~G.~~

~~The Planning Director or his/her designee also has the authority to issue a stop-work order, in addition to civil fines and penalties, requiring a person to discontinue any further development, construction or other land disturbance activity until a violation has been corrected.~~

~~(1)~~

~~A stop-work order must include the following information as may be applicable:~~

~~(a)~~

~~The name and address of the person charged;~~

~~(b)~~

~~The nature of the violation;~~

~~(c)~~

~~The place where and the approximate time that the violation occurred;~~

~~(d)~~

~~A clear statement indicating the action that must be taken or discontinued to cure the violation, including, when appropriate, instructions to restore and stabilize the site to the required condition;~~

~~(e)~~

~~A clear statement indicating the requirement to prepare a planting plan per Subsections H and I;~~

~~(f)~~

~~A clear statement requiring the person to apply for a permit, approval, special exception or variance required by this chapter;~~

~~(g)~~

~~The time within which any required action is to occur, taking into account the specific action required to comply with the order; and~~

~~(h)~~

~~A certification by the Planning Director or his/her designee attesting to the truth of the matters set forth in the order.~~

~~(2)~~

~~The stop work order must be prominently displayed in close proximity to the location where the violation has occurred. In addition, the Planning Director or his/her designee may deliver or mail, as practical, a copy of the order to the last known address of the person that secured approval.~~

~~(3)~~

~~When a stop work order has been posted, the recipient must immediately discontinue any further construction activities until such time as the property is brought into compliance and the stop work order is rescinded.~~

~~H.~~

~~Planting, as required, shall be in addition to any required abatement or restoration activities. In evaluating the type and amount of planting, the Planning Director or his/her designee shall consider the severity of the impact on water resources. The stop work order shall advise the person that the following may be required:~~

~~(1)~~

~~To implement appropriate water quality improvements or habitat enhancement measures that are sufficient to offset adverse impacts to the critical area resulting from the violation as follows:~~

~~(a)~~

~~Planting is required at a three to one ratio for the area disturbed or the area of the development activity outside the one hundred foot Buffer and expanded Buffer;~~

~~(b)~~

~~Planting is required at a six to one ratio for the area disturbed or the area of the development activity within the one hundred foot Buffer and expanded Buffer;~~

~~(c)~~

~~In the event plantings are required, they shall take place within two growing seasons of the notification of violation; and~~

~~(d)~~

~~Failure to complete the additional plantings will result in an additional fine at the rate of \$1.50 per square foot of remediation required.~~

~~(2)~~

~~To prepare or have a qualified professional prepare a planting plan that includes water quality improvement or habitat enhancement measures to offset adverse impacts to the critical area resulting from the violation specified in Subsection H(1)(a) above; or~~

~~(3)~~

~~To pay a fee in lieu of planting, with the Planning Director's or his/her designee's concurrence, that shall be deposited in a dedicated Critical Area Restoration Fund and used exclusively to conduct or facilitate activities or projects that promote the goals of the Critical Area Program and to ensure its effective implementation within Wicomico County.~~

~~h.~~

~~For planting requirements that exceed 1,000 square feet or involve expenses exceeding \$1,000. The Department of Planning, Zoning and Community Development shall:~~

~~(1)~~

~~Collect a bond or other financial security to ensure that the planting plan is properly completed;~~

~~(2)~~

Hold a bond for at least two years to ensure the survival of the plantings. The two years will start from the date the plantings are installed; and

(3)

Schedule and perform an inspection of the property after two years as necessary to ensure compliance and promptly release the bond or other financial security when compliance is confirmed.

J.

Anyone who knowingly makes any false statements in any application, record, or plan required by this chapter shall be guilty of a civil infraction and subject to the penalties provided in this section.

K.

The County may, in addition to other remedies herein provided, institute any appropriate action or proceeding in the Circuit Court, either by injunction or otherwise, to prevent any unlawful development activity and/or to restrain, correct or abate such activity or violation, to prevent the occupancy of such building, structure or land and to prevent any illegal act, conduct, or use in or about the critical area.

(1)

The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent the County from seeking injunctive relief to enforce an administrative order, permit, decisions, or other imposed condition or to restrain a violation pending the outcome of the appeal or judicial review.

(2)

In an action for injunctive relief to enforce an administrative order, the court may also impose civil penalties up to \$10,000 for each day that an administrative order was violated after considering:

(a)

The willfulness of the violation;

(b)

The harm to the environment or the community in which the violation occurred; and

(c)

~~The cost to the County for enforcing the administrative order.~~

~~(3)~~

~~In any action or proceeding in which the County substantially prevails, the County may recover all costs incurred to enforce the terms of this chapter, including attorney's fees and litigation expenses.~~

~~L.~~

~~The Planning Director or his/her designee may decline to issue or renew, or may suspend or revoke any permit or license issued under the authority of, or required by this chapter.~~

~~(1)~~

~~Such action may be taken on the following grounds:~~

~~(a)~~

~~False, misleading, inaccurate, incomplete or incorrect information given on any application; or~~

~~(b)~~

~~Serious or repeated violations of this chapter, or any terms, conditions or restrictions in the permit or license itself.~~

~~(2)~~

~~The Planning Director or his/her designee shall give written notice and opportunity to be heard before any nonissuance, nonrenewal, suspension or revocation and shall render a written decision on the matter, which shall be considered an administrative order and may be appealed to the Board of Appeals.~~

~~§ 125-49. Reviews, permits, approvals, special exceptions or variances related to violation of Critical Area Program.~~

~~{Added 8-2-2011 by Bill No. 2011-07}~~

~~The provisions of this section govern applications for any review, permit, approval, special exception or variance related to a violation of the Critical Area Program.~~

~~A.~~

~~No County department, commission or agency, including the Planning Commission or Board of Appeals, may:~~

~~(1)~~

~~Accept an application for any review, approval, permit, special exception or variance to legalize a critical area violation until a notice of violation has been issued and a separate civil penalty has been assessed for each violation of the Critical Area Program on the affected property;~~

~~(2)~~

~~Issue any review, permit, approval, special exception or variance for property on which a violation of the Critical Area Program exists until and unless:~~

~~(a)~~

~~All civil monetary penalties imposed under this chapter have been paid in full;~~

~~(b)~~

~~A restoration and/or mitigation plan to abate impacts to water quality and natural resources caused by or related to the violation has been prepared and approved by the County;~~

~~(c)~~

~~All restoration and/or mitigation has been performed or guaranteed, as set forth in the approved plan; and~~

~~(d)~~

~~All abatement measures have been performed or guaranteed, as set forth in any administrative order or any other order.~~

~~B.~~

~~Satisfaction of all conditions specified under Subsection A above shall be a condition precedent to issuance by any County department, commission or agency, including the Planning Commission or Board of Appeals, of any review, permit, approval, variance or special exception for the affected property.~~

~~C.~~

~~Unless an extension of time is appropriate 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.~~

Article I. General Provisions.

§ 125-1. Intent, purpose, goals.

- A. Intent. In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The decline was found to have resulted, in part, from the cumulative effects of human activity that caused increased levels of pollutants, nutrients, and toxins, and also from declines in protective land uses such as forest land and agricultural land in the Bay region. In 2002, the Atlantic Coastal Bays were added to the Critical Area because these bays were experiencing a similar decline.
- B. Purpose. The General Assembly enacted the Critical Area Act for the following purposes:
- (1) To establish a resource protection program for the Chesapeake Bay and Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and
 - (2) To implement a resource protection program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner, subject to State Criteria and oversight.
- C. Goals. The goals of the Wicomico County Critical Area Program are to accomplish the following:
- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or runoff from surrounding lands;
 - (2) Conserve fish, wildlife, and plant habitat;
 - (3) Establish land use policies for development in the Critical Area that 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 their tributaries, and
 - (5) Ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation, and adaptation to climate change within the Critical Area.

§ 125-2. Notification of project approval.

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

- A. The application shall be accompanied by a completed "Project Notification Application" form downloaded from the Critical Area Commission's website.
- B. Wicomico County may not process an application that has been sent to the Critical Area Commission for notification until it has received notice of receipt from the Critical Area Commission.
- C. Any action by Wicomico County in violation of these procedures shall be void.

**Table 1
Summary of Notification Requirements
to the Critical Area Commission**

Type of Application	Requires Notification to the Critical Area Commission Yes/No		
	IDA	LDA	RCA
1. Disturbance to a Habitat Protection Area	Y	Y	Y
2. Physical disturbance to the Buffer (see Note 1)	Y	Y	Y
3. Variance from Critical Area provisions	Y	Y	Y
4. Development resulting in less than 5,000 square feet of disturbance, unless 1, 2, 3 above	N	N	N
5. Development resulting in between 5,000 and 15,000 square feet of disturbance, unless 1, 2, 3 above	N	N	Y
6. Development resulting in greater than 15,000 square feet of disturbance, unless 1, 2, 3 above	Y	Y	Y
7. Subdivision of 3 lots or fewer, unless 1, 2, 3 above	N	N	Y
8. Subdivision of 4 to 10 lots, unless 1, 2, 3 above	N	Y	Y
9. Subdivision of greater than 10 lots, unless 1, 2, 3 above	Y	Y	Y
10. Subdivision affecting growth allocation	N/A	Y	Y
11. Intrafamily transfer	N/A	N/A	Y
12. Rezoning that would occur wholly or partially within the Critical Area	Y	Y	Y
13. Special exception or conditional use for industrial, commercial, institutional, non-residential, or multi-family	N	Y	Y
14. Substantial alteration to applications previously submitted to the Critical Area Commission	Y	Y	Y
Note 1: Shore stabilization measures and private piers that do not involve disturbance to the Buffer and are not permitted by MDE do not require Commission notification.			

Article II. Implementation of the critical area provisions.

§ 125-3. Critical area program.

The County adopted its Critical Area Program on October 13, 1989. The Wicomico County Critical Area Program consists of Chapter 125 and the Official Critical Area map(s). Related provisions may be found in Chapter 225, Wicomico County Zoning, and Chapter 200, Wicomico County Subdivision Regulations.

- A. Notwithstanding any provision in this Chapter or the lack of a provision in this Chapter, all of the requirements of Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 shall apply to, and be applied by, Wicomico County as minimum standards.
- B. In the case of conflicting provisions, the stronger provision applies.

§ 125-4. Official maps.

- A. District Maps. The Wicomico County Critical Area District shall be delineated on Official Critical Area District Maps prepared as part of the Wicomico County Critical Area Program. The Critical Area District Maps shall be maintained in force as official maps of Wicomico County. The Critical Area District Maps shall delineate the extent of the Critical Area District in Wicomico County, which is as defined in § 125-102. [1]

[1] Editor's Note: The Official Critical Area District Map is on file in the Office of the Wicomico County Department of Planning, Zoning and Community Development.

- B. Modified Buffer Area Maps (MBAs). Those areas which have been mapped by Wicomico County and approved by the Critical Area Commission as MBAs shall be delineated on official Critical Area MBA Maps and maintained in force as official maps of Wicomico County. These maps shall delineate the extent of MBAs as defined in § 125-24. (Modified Buffer Areas).
- C. Any amendment to the Critical Area District Maps must comply with the provisions of this Chapter, the Maryland Critical Area Law, and COMAR Title 27.

§ 125-5. Regulated activities and applicability.

The Planning Director or designee shall review a permit, license, or other authorization for a development or redevelopment activity in the Critical Area for compliance with this Critical Area Chapter prior to issuance of that permit or license.

§ 125-6. Responsible agencies.

All applicable provisions of this Chapter shall be implemented and enforced by the appropriate agency within the County government that administers primary responsibility for the respective land use or resource protection, or governmental service policies regulated by Chapter 125.

§ 125-7. Enforcement.

A. Violations.

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

B. Responsible persons. The following persons may each be held jointly or individually responsible for a violation:

- (1) any persons who apply for or obtain any permit or approval,
- (2) contractors,
- (3) subcontractors,
- (4) property owners,
- (5) managing agents, or
- (6) any person who has committed, assisted, authorized, or participated in the violation.

C. Required enforcement action. When the County identifies a violation of this Chapter, Wicomico County shall take enforcement action, including:

- (1) Citing the violation;
- (2) Issuing abatement, restoration, and mitigation orders as necessary to:
 - (a) Stop unauthorized activity; and
 - (b) Restore and stabilize the site to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits;
- (3) Requiring the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation, or loss of environmental benefit resulting from the violation; and

- (4) Assessing an administrative fine or pursuing a penalty in accordance with F below.

B. 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 Chapter.
- (2) For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000, the County shall collect a bond or other financial security.
- (3) If restoration or mitigation involves planting, a bond shall be held for at least two (2) years after the date the plantings were installed to ensure plant survival.
- (4) A property owner may request the County to schedule inspections as necessary to ensure compliance and the return of the bond or other financial security.

E. Right to enter property.

- (1) Except as otherwise authorized and in accordance with the procedures specified herein, the Planning Director or 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 the County has probable cause to believe that a violation of this Chapter has occurred, is occurring, or will occur.
- (2) The County shall make a reasonable effort to contact a property owner before obtaining access to or entering the property. If entry is denied, the County may seek an injunction to enter the property to pursue an enforcement action.

F. Penalties.

In addition to any other penalty applicable under State or County law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or of this Chapter shall be punishable by a fine or penalty of up to \$10,000 per calendar day.

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

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

G. Cumulative remedies.

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

H. Variances pursuant to a violation.

For any violation that requires a variance to this Chapter, the County shall follow the after-the-fact variance provisions in §125-49.

I. Permits pursuant to a violation.

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

- (1) Fully paid all penalties as set forth in F above;
- (2) Prepared a restoration or mitigation plan, approved by the County, to abate impacts to water quality or natural resources due to the violation;
- (3) Performed the abatement measures in the approved plan in accordance with the County regulations; and
- (4) Unless the County approves an extension of time because of adverse planting conditions within ninety (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.

J. Appeals.

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

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

L. Additional enforcement authorities.

- (1) The County is authorized to pursue violations in Circuit Court or District Court in accordance with Natural Resources Article §8-1815(a)(2) as amended from time to time.
- (2) The County is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Chapter, an administrative order, a permit, a decision, or other imposed conditions. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall

not prevent the County from seeking injunctive relief to enforce an administrative order, permit, decision, or other imposed condition or to restrain a violation pending the outcome of the appeal or judicial review.

Article III. Development in the Critical Area.

§ 125-8. Land use management classifications.

- A. All land within the Wicomico County Critical Area District shall be assigned one of the following land use management classifications, which shall be shown on the Official Critical Area District Map(s):
 - (1) Intensely Developed Area (IDA);
 - (2) Limited Development Area (LDA); or
 - (3) Resource Conservation Area (RCA)
- B. The land use management classification shall be based on the actual land use as of December 1985 and mapped according to rules for making such determination as established in COMAR 27.01.02.03 through 27.01.02.05, except as provided in Article VI and Article VIII.

§ 125-9. Policies.

The following policies apply to development in the Critical Area:

- A. Development in each land classification shall be subject to strict criteria in order to prevent adverse impacts on water quality or fish, wildlife, or plant habitat;
- B. It is preferable to direct intense development activities outside the Critical Area;
- C. If proposed in the Critical Area, an intense development activity is appropriately located in an IDA;
- D. Low-intensity development may be authorized in an LDA, and
- E. Land uses in an RCA are primarily designated for nature-dominated environments, such as wetlands, forests, and abandoned fields, and resource-utilization activities, such as agriculture, forestry, fishery activities, and aquaculture.
- F. It is a priority to improve the quality of stormwater entering the Chesapeake or Atlantic Coastal Bays or their tributary streams.

§ 125-10. Criteria.

- A. Wicomico County 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 footpaths, scenic drives, and other public recreational facilities.

B. Development shall comply with the following complementary State statutes and regulations, including:

- (1) For soil erosion and sediment control, management measures shall be consistent with the requirements of the Environment Article, §§4-101 - 4-116, Annotated Code of Maryland, and COMAR 26.17.01;
- (2) 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;
- (3) For shoreline stabilization measures, shall be consistent with the requirements of the Environment Article, Title 16, Annotated Code of Maryland, and COMAR 26.24.04; and
- (3) Any other applicable State statute or regulation.

§ 125-11. Restricted activities.

A. 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, fish habitat, or plant habitat, unless:

- (1) For an activity or facility such as nonmaritime heavy industry:
 - (a) It is located within an IDA;
 - (b) It fully complies with all requirements under § 125-13 of this Chapter; and
 - (c) 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
- (2) For an activity or facility such as a sanitary landfill or a solid or hazardous waste collection or disposal facility:
 - (a) There is no environmentally acceptable alternative outside the Critical Area and
 - (b) The activity or facility is necessary in order to correct a water quality or wastewater management problem.

B. A transportation facility or a utility transmission facility, or activity may not be authorized in the Critical Area unless it is:

- (1) A facility that serves a use identified under this Chapter;
- (2) A linear regional or interstate transportation facility that must cross tidal waters or

- (3) A linear regional or interstate utility transmission facility that must cross tidal waters.
- C. A permanent sludge handling, storage, or disposal activity or facility may not be authorized in the Critical Area unless:
 - (1) The activity or facility is associated with a wastewater treatment facility; or
 - (2) 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.
- D. 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:
 - (1) Provides maximum erosion protection;
 - (2) Minimizes negative impact on wildlife, aquatic life, and their habitats; and
 - (3) Maintains hydrologic processes and water quality.
- E. 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:
 - (1) Reduce increases in flood frequency and severity that are attributable to development;
 - (2) Retain tree canopy so as to maintain stream water temperature within normal variation;
 - (3) Provide a natural substrate for stream beds; and
 - (4) Minimize adverse water quality and quantity impacts of stormwater.

§ 125-12. Reasonable accommodations for the needs of disabled citizens.

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

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

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

§ 125-13. Intensely Developed Areas (IDA).

A. Mapping standards.

- (1) Intensely Developed Areas are those areas where residential, commercial, institutional, or industrial developed land uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these development areas shall have had at least one of the following features:
 - (a) Housing density is at least four dwelling units per acre;
 - (b) Industrial, institutional, or commercial uses are concentrated in the area; or

- (c) Public sewer and water collection and distribution systems are currently serving the area, and housing density is greater than three dwelling units per acre;
- (2) The following standards apply to any new or expanded IDA:
 - (a) A new IDA shall be located within an LDA or adjacent to an existing IDA. An IDA shall encompass at least 20 acres, except as provided in Subsection (b) below.
 - (b) A new IDA may be less than 20 acres only if:
 - [1] The area is served by public sewer;
 - [2] The proposed IDA would be for the purpose of allowing land uses consistent with Wicomico County Comprehensive Plan goals;
 - [3] The Wicomico County Comprehensive Plan land use policies for the particular location support development with density or intensity suitable for an IDA;
 - [4] The IDA would have overall economic benefits for the community; and
 - [5] The IDA designation will support the established character of the community and facilitate suitable infill and redevelopment.

B. General policies.

- (1) Wicomico County shall develop a strategy to reduce the impacts on water quality generated by existing development. This strategy shall include an assessment of water quality and the impacts on biological resources resulting from redevelopment plans and programs. It may also include a public education program, the implementation of urban best management practices, and the use of techniques such as urban forestry programs, street tree plantings, gardens, and open land buffer plantings.
- (2) The County shall follow the policies below when addressing Intensely Developed Areas:
 - (a) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or Atlantic Coastal Bays or their tributary streams;
 - (b) Accommodate additional development of the type and intensity designated by the County in this Chapter if water quality is not impaired;
 - (c) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and as Resource Conservation Areas under this Chapter.

- (d) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat Protection Area outlined in this Chapter, to the extent possible within Intensely Developed Areas.
- (e) Minimize the adverse water quality and quantity impact of stormwater and encourage the use of retrofitting measures to address existing stormwater management problems; and
- (f) With assistance from the State, establish programs to enhance biological resources that provide positive effects on water quality and urban wildlife habitat within the Critical Areas, such as urban forestry, landscaping, gardens, wetlands, and aquatic habitat restoration elements.

C. Development standards.

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

- (1) Development and redevelopment shall be subject to the habitat protection area criteria prescribed in COMAR 27.01.09, as amended from time to time, and Articles IV and V of this Chapter.
- (2) Stormwater shall be addressed in accordance with the following provisions:
 - (a) The County shall require, at the time of development or redevelopment, that technologies, as required by applicable state and local ordinances, be applied by anyone undertaking development activities in order to minimize adverse impacts to water quality caused by stormwater.
 - (b) In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by the use of the keystone pollutant method by at least 10% below the level of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for compliance with this requirement is provided in the Critical Area 10% Rule Guidance Manual (Fall 2003) and may be subsequently amended.
 - (c) In the case of new development, offsets, as determined by the County, shall be used if they reduce pollutant loadings by at least 10% of the predevelopment levels. Guidance for compliance with this requirement is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance - Fall 2003, and as may be subsequently amended.
 - (d) Where the 10% requirement cannot be met onsite, the following options are available:
 - [1] A fee-in-lieu for the 10% requirement may be provided at \$35,000 per pound of phosphorus removed.

- [2] Other offsets as described in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003, and as may be subsequently amended. Offsets must remove a phosphorus load equal to or greater than the remaining 10% of the total phosphorus load.
- (e) The County will track and report annually to the Critical Area Commission all stormwater fees-in-lieu collected and expended, as well as any authorized stormwater offsets.
- (3) When the cutting or clearing of trees is associated with current or planned development activities, the County shall require:
 - (a) All development activities should be designed and implemented to minimize the destruction of forest and woodland vegetation;
 - (b) Protection of existing forests and developed woodlands identified as Habitat Protection Areas; and
 - (c) Participation in programs established by the County for the enhancement of forest and developed woodland resources.

§ 125-14. Limited Developed Areas (LDA).

A. Mapping standards.

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

B. General policies.

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

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

C. Development standards.

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

- (1) Development and redevelopment shall be subject to the habitat protection area criteria prescribed in COMAR 27.01.09 and Articles IV and V of this Chapter.
- (2) Except as otherwise provided in this Subsection, lot coverage is limited to 15% of a lot or parcel, or that portion of a lot or parcel, that is designated LDA.
 - (a) If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
 - (b) If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
 - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however, the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
 - (d) Lot coverage limits provided in §(a) and §(b) above may be exceeded upon findings by the Planning Commission or its designee that the following conditions exist:
 - [1] The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008, may be considered legally nonconforming for lot coverage requirements.

- [2] Lot coverage associated with new development activities on the property has been minimized;
- [3] 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;
- [4] 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;
- [5] The following table summarizes the limits set forth in § [1] through § [4] above:

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

Lot/Parcel Size (Square Feet)	Lot Coverage Limit
0 – 8,000	25% of parcel + 500 SF
8,001 – 2,1780	31.25% of the parcel
21,781 – 36,300	5,445 SF
36,301 – 43,560	15% of the parcel

- (e) If the Planning Commission or its designee makes the findings set forth in §(d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
 - [1] 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
 - [2] Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts resulting from the development activities, which will result in new lot coverage. The plantings shall be equal to two times the area of the development activity.
 - [3] If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to the County in lieu of performing the on-site mitigation. The fee amount shall be \$1.50 per square foot of the required mitigation.
 - [4] For development that uses pervious materials that the Critical Area Commission has approved, the limits established in sections (d),

[3], and [4] of this Subsection may be exceeded by up to 500 square feet.

- (3) If the Department of Natural Resources identifies a wildlife corridor system on or near a proposed development site, the developer shall:
 - (a) Incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site and
 - (b) Record a conservation easement, restrictive covenant, or similar instrument to ensure maintenance of the wildlife corridor. A public or private group, including homeowners' associations, nature trusts, or other organizations, shall hold the easement or restriction.
- (4) Development on slopes 15 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
- (5) If the Department of Natural Resources identifies a wildlife corridor system on or near a proposed development site, the developer shall:
 - (a) Incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site and
 - (b) Record a conservation easement, restrictive covenant, or similar instrument to ensure maintenance of the wildlife corridor. A public or private group, including homeowners' associations, nature trusts, or other organizations, shall hold the easement or restriction.
- (6) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent.
 - (a) The applicant shall designate, subject to the approval of the County, a new forest area on a part of the site not forested; and
 - (b) The aforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments approved by the County.
 - (c) Individual lots in a subdivision may be exempted from the afforestation requirement, provided the overall subdivision plan approval provides 15 percent coverage for the original subdivided parcel and
 - (d) The acreage of a bona fide agricultural parcel that is managed under a soil conservation and water quality plan (farm plan) and/or nutrient management plan may be exempted from the afforestation requirement.

Any area excluded from management under the farm plan or nutrient management plan, including home sites, roads, barren lands, and other areas with non-farm use, shall be subject to the minimum forest coverage and afforestation requirements for the parcel.

- (7) When forests or developed woodland exist on the site, and the proposed development requires the cutting or clearing of trees, areas proposed for clearing shall be identified in the proposed development plan. The developer shall submit proposed plans for development showing areas to be cleared, reforested, and/or afforested to the Maryland Department of Natural Resources, Wildlife, and Heritage Service for comments and recommendations, and shall transmit the comments to the Wicomico County Department of Planning, Zoning, and Community Development.
- (8) A grading permit shall be obtained prior to any clearing or cutting associated with the proposed development. No grading permit shall be approved until the proposed development activity has been reviewed and received a final Chesapeake Bay Critical Areas compliance certificate. If forest cutting occurs before a grading permit is obtained, the forest is required to be replanted at a rate of three times the entire areal extent of the forest or the developed woodlands cleared.
- (9) Cutting or clearing, which is associated with development, shall be subject to the following limits and replacement conditions:
 - (a) Removal of forest or developed woodland cover in the Buffer is prohibited.
 - (b) All forests cleared or developed shall be replaced on not less than an equal-area basis on the site or on an alternative site in the Critical Area District approved by the Wicomico County Planning and Zoning Commission.
 - (c) No more than 20 percent of the forested or developed woodland within the site proposed for development may be removed (except as provided for below), and the remaining 80 percent shall be maintained as forest cover through the use of appropriate instruments (e.g., easements or recorded restrictive covenants) as approved by Wicomico County.
 - (d) The clearing of forest or developed woodlands of up to 20 percent shall be replaced on an area basis of 1:1. A developer may propose clearing between 20 percent and up to 30 percent of the forest or developed woodland on a site, provided that the reforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland.

- (e) Except as provided in subsection (g), an applicant may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel unless the Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of 3 times the entire areal extent of the forest or developed woodlands cleared.
- (f) Clearing of forest or developed woodlands that exceed the maximum area allowed in this subsection shall be replanted at three times the areal extent of the cleared forest or developed woodland.
- (g) Clearing on residential lots 1/2 acre or less in size that were in existence on or before December 1, 1985, may exceed 30 percent of the existing forest or developed woodland if clearing is limited to the minimum amount necessary to accommodate a principal structure, including decks, patios, and accessory structures, and does not exceed 8,000 square feet. Mitigation shall be required at a ratio of 1:1.
- (h) Surety in the form of a performance bond or other means acceptable to Wicomico County shall be provided in an amount suitable to assure forest replacement as required.
- (i) The forests and developed woodlands required to be retained or created through afforestation or reforestation shall be maintained through restrictive covenants, easements, or similar instruments in a form approved by Wicomico County.
- (j) A fee-in-lieu for mitigation will be collected if the mitigation requirements of (5) of this Subsection cannot be met fully on site, 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 Wicomico County's general fund.
 - [2] Fee-in-lieu shall be assessed at \$0.30 per square foot of forest and/or developed woodland mitigation.
 - [3] A portion of the fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20 percent of the fees collected.
 - [4] Fee-in-lieu monies shall be used for the following projects:
 - [a] To provide reforestation on sites where planting is not a condition of development or redevelopment.
 - [b] For water quality and habitat enhancement projects, as an agreement between Wicomico County and the Critical Area Commission.

- (7) The County will allow for modifications in road standards to reduce potential impacts to the site and Critical Area resources, where the reduced standards do not significantly affect safety.
- (8) Development may be allowed on soils having development constraints if the development includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish, or wildlife habitat.

§ 125-15. Resource Conservation Areas (RCA).

A. Mapping standards.

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

B. General policies.

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

- (1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;
- (2) Provide adequate breeding, feeding, and wintering habitats for wildlife populations that require the Chesapeake and Atlantic Coastal Bays, their tributaries, or coastal habitats in order to sustain their species;
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture;
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide;
- (5) Promote agricultural and conservation easements in resource conservation areas;
- (6) Encourage tax incentives or other incentive or disincentive programs that promote the continuation of agriculture, forestry, and natural habitats in resource conservation areas;

- (7) Consider cluster development, transfer of development rights, maximum lot size provisions, and any other means likely to maintain the land area necessary to support the protective uses and
- (8) Assure that the overall acreage of forest and woodland within the resource conservation areas does not decrease.

C. Development standards.

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

- (1) Nothing in this Section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members, provided that no such conveyance will result in a density greater than one (1) dwelling unit per twenty (20) acres.
- (2) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area provisions, agriculture provisions, and forestry provisions of this Chapter.
- (3) Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in this Chapter.
- (4) Limitations on lot coverage on a parcel shall be in accordance with the following maximums:
 - (a) When a site is mapped entirely as a resource conservation area, 15 percent of the total site and
 - (b) When a portion of a lot or parcel is mapped as a resource conservation area, 15 percent of that portion of the lot or parcel.

D. Density.

- (1) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. In accordance with COMAR 27.01.02.05, a variance may not be granted to the maximum density of one dwelling unit per 20 acres.
- (2) In calculating the one per 20-acre density of development that is permitted on a parcel located within the Resource Conservation Area, the County:
 - (a) Shall count each dwelling unit;
 - (b) May permit the area of any private wetlands located on the property to be included under the following conditions:
 - [1] Only when using transfer of development rights and

- [2] The area of private wetlands shall be field delineated when certifying development rights for transfer.
- (3) Within a Resource Conservation Area, the Planning Commission may consider one additional dwelling unit per lot or parcel as part of a primary dwelling unit for the density calculation under this Subsection if the additional dwelling unit:
 - (a) Does not require a variance to any critical area development standards; and
 - [1] is located within the primary dwelling unit, or its entire perimeter is within 100 feet of the primary dwelling unit, and
 - [2] does not exceed 900 square feet in total enclosed area, or
 - [3] 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.
 - (b) The provisions of this section may not be construed to consider an additional dwelling unit as part of a primary dwelling unit for the density calculation under this Subsection.
 - (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.
 - (d) An additional dwelling unit that exceeds 900 square feet shall count towards the density calculation.
 - (e) Is a permitted use in the Wicomico County Zoning Ordinance.

E. RCA uses.

- (1) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the one dwelling unit per 20-acre density, shall be allowed in RCAs.
- (2) Expansion of existing industrial and commercial facilities and uses in the RCA shall be subject to the nonconforming use provisions of this Chapter and the Vesting provisions in Article VII and may require growth allocation.
- (3) New or additional industrial or commercial facilities may not be located in the Resource Conservation Area.
- (4) A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.14.
- (5) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the County's growth

allocation provisions or as listed below, provided the use is permitted in the Wicomico County Zoning Ordinance:

- (a) A home occupation as an accessory use on a residential property and as provided for in the County's Zoning Ordinance;
- (b) A golf course developed in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005, excluding main buildings and/or structures such as the clubhouse, pro shop, parking lot, etc.;
- (c) A cemetery that is an accessory use to an existing church, provided lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;
- (d) A bed and breakfast facility located in an existing residential structure, 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 (8) children.
- (g) A group home or assisted living facility with no more than eight (8) residents.
- (h) Other uses determined by the County and the Critical Area Commission to be similar to those listed above.

Article IV. Critical Area Buffer.

§ 125-16. Applicability and delineation.

- A. An applicant for a development activity or a change in land use shall apply all of the required standards as described below. The Buffer shall be delineated in the field and shall be shown on all applications as follows:
 - (1) A Buffer of at least 100 feet is delineated and expanded as described in (3), based on existing field conditions landward from:
 - (a) The mean high-water line of a tidal water;
 - (b) The edge of each bank of a tributary stream;
 - (c) The upland boundary of a tidal wetland.
 - (2) Applications for a subdivision or site plan approval located on land located within the RCA shall include a minimum Buffer of at least 200 feet from tidal waters or tidal wetlands and 100 feet from a tributary stream.

- (a) The 200-foot Buffer may be reduced if the strict application of the 200-foot Buffer would preclude the creation of a new lot either by subdivision at a density of one dwelling unit per 20 acres or through an intrafamily transfer subdivision.
 - (b) The reduced Buffer shall be the minimum necessary to accommodate a dwelling and a sewage reserve area, as determined by the Planning Director or designee, but no less than 100 feet.
- (3) The Buffer shall be expanded beyond 100 feet as described in § A(1) above, and beyond 200 feet as described in § A(2) above, to include the following contiguous land features:
 - (a) A steep slope at a rate of four (4) feet for every one (1) percent of slope or the entire steep slope to the top of the slope, whichever is greater;
 - (b) A nontidal wetland to the upland boundary of the nontidal wetland;
 - (c) The 100-foot Buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
 - (d) For an area of hydric soils or highly erodible soils, the lesser of:
 - [1] The landward edge of the hydric or highly erodible soils, or
 - [2] Three hundred (300) feet where the expansion area includes the minimum 100-foot Buffer.
- (4) If a Buffer is contiguous to a hydric soil or a highly erodible soil on a slope less than 15 percent and that Buffer is located on a lot or parcel that was created before January 1, 2010, the County may authorize a development activity in the expanded Buffer if:
 - (a) The location of the development activity is in the expanded portion of the Buffer but not in the Buffer required under §A(1) of this regulation;
 - (b) The Buffer occupies at least 75 percent of the lot or parcel; 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) The expanded Buffer must be shown on plans required for such development or land disturbance.

§ 125-17. Development activities in the Buffer.

Wicomico County may authorize disturbance to the Buffer for the following activities, provided mitigation is performed in accordance with § 125-19 and an approved Buffer Management Plan is submitted as required per § 125-22, for the following activities:

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

§ 125-18. Buffer establishment.

- A. The requirements of this regulation are applicable to the following:
 - (1) A development or redevelopment activity that occurs on a lot or parcel that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream if that development or redevelopment activity is located outside the Buffer; and
 - (2) The approval of a subdivision that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream.
- B. If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:
 - (1) In accordance with Wicomico County land recordation requirements, shall record an approved Buffer Management Plan under § 125-22 of this Chapter; and
 - (2) If authorized by the County, may delay implementation of the Buffer Management Plan until the use of the lot is converted to a nonagricultural purpose.
- C. The requirements of this regulation are not applicable to an in-kind replacement of a structure.

- D. The County shall require an applicant to establish the Buffer in vegetation in accordance with Table 2 below and Section E, and to provide a Buffer Management Plan under § 125-22 when an applicant applies for:
- (1) Approval of a subdivision;
 - (2) Conversion from one land use to another land use on a lot or a parcel; or
 - (3) Development on a lot or a parcel created before January 1, 2010.
- E. An applicant shall establish the Buffer to the extent required in Table 2 below:

Table 2		
Buffer Establishment Requirements		
Development Category	Lot Created Before October 13, 1989	Lot Created After October 13, 1989
Development on a vacant lot	Establish the Buffer based on the total square footage of lot coverage outside the Buffer.	Fully establish the Buffer.
Subdivision	Fully establish the Buffer.	
New lot with an existing dwelling unit	Establish the Buffer based on the total square footage of lot coverage outside the Buffer.	
Conversion of a land use on a parcel or lot to another land use	Fully establish the Buffer	
Addition, accessory structure, or redevelopment that increases the size of the structure	Establish the Buffer based on net square footage increase in lot coverage outside the Buffer.	
Substantial alteration	Establish the Buffer based on the total square footage of lot coverage outside the Buffer.	

- F. Any lot coverage removed from the Buffer may be deducted from the total cumulative amount of establishment required if:
- (1) The lot coverage existed before October 13, 1989, or was allowed by this Chapter; and
 - (2) The total area is stabilized.

§ 125-19. Mitigation for impacts to the Buffer.

An applicant for a development activity that includes disturbance to the Buffer shall mitigate impacts to the Buffer and shall provide a Buffer Management Plan in accordance with the standards set forth in this § 125-22.

- A. All authorized development activities shall be mitigated based on the ratios noted in Table 3 below, in addition to the area of canopy coverage removed of an individual tree, developed woodland, or forest:

**Table 3
Buffer Mitigation Ratios**

Activity	Mitigation Ratio	
	Permanent Disturbance	Temporary Disturbance
Septic on a lot created before October 13, 1989, if located in existing grass, or if clearing is not required	N/A	0
Septic system in a forest or developed woodland on a lot created before October 13, 1989, if clearing is required	1:1	N/A
Shore Stabilization	1:1	1:1
Riparian Water Access	2:1	1:1
Water-dependent Facility	2:1	1:1
Variance	3:1	1:1
In-kind replacement of slope stabilization measures	N/A	0

- B. All unauthorized development activities that result in a violation and/or citation in the Buffer shall be mitigated at a ratio of 4:1 for the area of permanent disturbance in the Buffer.
- C. For the removal of a dead tree, the affected area shall be stabilized with native ground cover or other native vegetation as necessary.
- D. The removal of a diseased, dying, invasive, or hazardous tree shall be mitigated with one (1) tree of at least ¾-inch caliper for each tree removed.
- E. Any lot coverage removed from the Buffer may be deducted from the total cumulative amount of mitigation required if:
 - (1) The lot coverage existed before October 13, 1989, or was allowed by County procedures; and
 - (2) The total area is stabilized.
- F. Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then Wicomico County may permit planting in the following order of priority:
 - (1) On-site and adjacent to the Buffer; and
 - (2) On-site elsewhere in the Critical Area.
- G. The installation or cultivation of new lawn or turf in the Buffer is prohibited.
- H. As applicable to a site, an applicant shall restore any area in the Buffer that is temporarily disturbed by a development activity to pre-disturbance conditions.

§ 125-20. Buffer planting standards.

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

- A. If planting to meet a mitigation requirement, the following combination of plantings may be used:
 - (1) If required to plant less than one (1) acre, the entire requirement must be met using landscape stock, as noted in Table 4.
 - (2) If required to plant one (1) acre or more, at least 50 percent of the planting requirements may be met in stock per Table 4, and the remainder may be met in flexible stock per Table 5.
- B. If planting to meet an establishment requirement, the following combination of plantings may be used:
 - (1) If required to plant less than $\frac{1}{4}$ acre, the entire requirement must be met using landscape stock per Table 4.
 - (2) If required to plant at least $\frac{1}{4}$ acre and up to one (1) acre, at least 25 percent of the requirement must be met using landscape stock per Table 4, and the remainder may be met in flexible stock per Table 5.
 - (3) If required to plant more than one (1) acre, at least 10 percent of the requirement must be met using landscape stock per Table 4, and the remainder may be met in flexible stock per Table 5.
- C. Per COMAR 27.01.09.01-2, a variance to the planting and mitigation standards of this Chapter is not permitted.

§ 125-21. Planting credits.

- A. If required to plant using landscape stock, the following planting sizes and credit shall be used:

Table 4 Landscape Stock Credit			
Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percentage of Landscape Stock Credit
Canopy Tree	2-inch caliper	200	Not Applicable
Canopy Tree	¾-inch caliper	100	Not applicable
Understory Tree	¾-inch caliper	75	Not applicable
Large Shrub	3 feet high	50	30%
Small Shrub	18 inches high	25	20%
Herbaceous perennial	1 quart, or based on the area covered by plugs or seed mix	2	10%
Planting Cluster A (For less than ½ acre of planting)	1 canopy tree; and 3 large shrubs or 6 small shrubs of size listed above	300	Not applicable
Planting Cluster B (For less than ½ acre of planting)	2 understory trees; and 3 large shrubs or 6 small shrubs of size listed above	350	Not applicable

B. The Wicomico County Department of Planning, Zoning, and Community Development may authorize an applicant to increase the percentage of large shrubs, small shrubs, or herbaceous perennials if:

- (1) The Buffer has existing canopy coverage of at least 50 percent or
- (2) There are verified site constraints that preclude canopy plantings, including severely eroding slopes, saltwater intrusion, predominately sandy soils, or unconsolidated fill.

C. The following flexible planting stock may be used if authorized under § 125-20A or B.

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

§ 125-22. Required submittal of Buffer Management Plans.

An applicant required to plant a buffer to meet establishment or mitigation requirements shall submit a Buffer Management Plan in accordance with COMAR 27.01.09.01-3. The provisions of

this subsection do not apply to maintaining an existing grass lawn or an existing garden in the Buffer.

- A. Any permit for a development activity that requires Buffer establishment or Buffer mitigation will not be issued until Wicomico County approves a Buffer Management Plan.
- B. An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by Wicomico County.
- C. Wicomico County may not approve a Buffer Management Plan unless:
 - (1) The plan clearly indicates that all planting standards under § 125-20 will be met; and
 - (2) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
- D. 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:
 - (1) Completes the implementation of a Buffer Management Plan; or
 - (2) Provides financial assurance to cover the costs for:
 - (a) Materials and installation; and
 - (b) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- E. Any required mitigation or establishment, or offset areas shall be protected from development through an easement, development agreement, plat notes, or other instrument and recorded among the land records of Wicomico County.
- F. If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Chapter. A permit for development activity will not be issued for a property that has a violation.
- G. An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
- H. Buffer Management Plans that include natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

§ 125-23. Fee-in-lieu of Buffer mitigation.

A fee-in-lieu for mitigation will be collected if the planting requirements of § 125-20 cannot be fully met onsite in accordance with the following standards:

- A. Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to Wicomico County's general fund;
- B. Applicants shall submit to the Planning Commission two cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the mitigation for impacts to the Buffer. The estimate shall include the cost of stock, planting, staking, mulching, and a one-year guarantee. The Planning Commission shall determine the amount of the fee-in-lieu based on the average of the two estimates.
- C. A portion of the fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20 percent of the fees collected and
- D. Fee-in-lieu monies shall be used for the following projects:
 - (1) To establish the Buffer on sites where planting is not a condition of development or redevelopment.
 - (2) For water quality and habitat enhancement projects, as by agreement between Wicomico County and the Critical Area Commission.

§ 125-24. Modified Buffer Areas.

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

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

 - (1) Only lots of record as of December 1, 1985, are eligible for mapping as Modified Buffer Areas (MBAs).
 - (2) The parcel or lot being considered for MBA status shall contain a Buffer that was significantly impacted by development on or before October 13, 1989, and that prevents the Buffer from fulfilling its functions.
 - (3) Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).

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

C. Development standards for the MBA.

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

- (1) New development or redevelopment activities, including structures, roads, parking areas, and other lot coverage or septic systems, are not permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the Planning Director, or designee, finds that efforts have been made to minimize Buffer impacts.
- (2) Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.

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

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

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

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

Table C(4) Required Buffer Planting		
Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of buffer yard	5 Trees and	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar
	10 Understory Trees/Large Shrubs, and	Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry
	30 Small Shrubs and	Pepperbush, Chokeberry, Strawberry Bush, Sweetspire
	40 Herbaceous Plants, Grasses, etc.	Wild Columbine, Butterflyweed, Common Milkweed, Asters

E. Single-family residential development and redevelopment standards.

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

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

Article V. Other Habitat Protection Areas.

§ 125-25. Description.

An applicant for a development activity, redevelopment activity, or change in land use shall identify all applicable Habitat Protection Areas (HPAs) and follow the standards contained in this Chapter. In addition to the Buffer, other HPAs include:

- A. Threatened and Endangered Species and Species in Need of Conservation;
- B. Plant and Wildlife Habitat Protection Areas; and
- C. Anadromous Fish Propagation Waters.
- D. This Chapter incorporates by reference the most recent Critical Area habitat protection inventory and associated reports, as provided, maintained, and updated by the Maryland Department of Natural Resources, Wildlife and Heritage Division, applicable to Wicomico County. These documents are available for public review through the Maryland Department of Natural Resources or the Wicomico County Planning Department, as applicable.

§ 125-26. Process.

The County shall protect HPAs that occur in the Critical Area.

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

§ 125-27. Threatened and Endangered Species and Species in Need of Conservation.

- A. If a threatened or endangered species or species in need of conservation is identified on a development site, the Habitat Protection Plan shall include a designated protection area around the habitat occurring on the site unless the applicant can demonstrate development impacts have been minimized, as determined by the Maryland Department of Natural Resources.
- B. Plant and Wildlife Habitat Protection Areas.
 - (1) Plant and wildlife habitats in the Critical Area include:
 - (a) Colonial waterbird nesting sites;
 - (b) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands;
 - (c) Existing riparian forests (example, relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the bay shoreline and which are documented breeding areas);

- (d) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (example: relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);
 - (e) Other areas that may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat areas;
 - (f) Other plant and wildlife habitats determined to be of local significance and
 - (g) Natural Heritage Areas which have been designated;
- (2) The policies of Wicomico County regarding plant and wildlife habitat in the Critical Area shall be to:
- (a) Conserve wildlife habitat in the Critical Area;
 - (b) Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
 - (c) Protect those wildlife habitat types that are required to support the continued presence of various species and
 - (d) Protect those wildlife habitat types and plant communities that the County determines to be of local significance.
- (3) If a Plant or Wildlife Habitat is identified on a development site, the Habitat Protection Plan shall include a designated protection area around the habitat occurring on site unless the applicant can demonstrate development impacts have been minimized, as determined by the Maryland Department of Natural Resources.
- (4) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants shall utilize the guidance found in the Critical Area Commission publication entitled *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. Additionally, the Maryland Department of Natural Resources may provide specific recommendations based on an evaluation of the site and the proposed development.
- (5) For development activities in Resource Conservation Areas (RCA) and Limited Development Areas (LDA), wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts that are located outside of the area of the property being developed or subdivided. The area left in forest cover (at least 70 percent of the tract in LDAs or RCAs as required by this Chapter) shall be adjacent to a larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to another habitat.

- (6) Buffer areas for nesting sites of colonial nesting water birds shall be established so that these sites are protected from the adverse impacts of development activities and disturbance during the breeding season.
- (7) New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife, such as historic, aquatic staging, and concentration areas for waterfowl.
- (8) Protection measures, including a Buffer area, shall be established where appropriate for other plant and wildlife habitat sites identified in this Chapter.
- (9) Forested areas required to support wildlife species identified as threatened and endangered or in need of conservation shall be protected and conserved by developing management programs that have, as their objective, conserving the wildlife that inhabits or use the areas. Development activities, such as the clearing or cutting of trees, that may occur in the areas shall be conducted to conserve riparian habitats, forest interior wildlife species, and their habitats. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster zoning, or other site design criteria that provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans, which have provisions for wildlife habitat protection appropriate to the areas defined above, and incentive programs that utilize the acquisition of easements and other similar techniques.
- (10) When development activities, or the cutting or clearing of trees, occur in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.
- (11) Those plant and wildlife habitats considered to be of local significance by Wicomico County shall be protected. Examples of these include habitats that may not be of statewide significance but are important locally or regionally because they contain species that are uncommon or of limited occurrence within the jurisdiction, or because the species are found in unusually high concentrations.
- (12) Natural Heritage Areas shall be protected from alterations due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained.

C. Anadromous Fish Propagation Waters.

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

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

described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

Article VI. Growth Allocation.

§ 125-28. Definitions.

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

§ 125-29. Description.

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

- A. At the time of the Wicomico County Chesapeake Bay Critical Area Program adoption, the original growth allocation acreage was 894.23.
- B. To date, zero acres of growth allocation have been dedicated to municipalities.
- C. At the time of this Chapter update, the available growth allocation acreage is 639.45.

§ 125-30. Purpose.

Growth Allocation is available for use in a Resource Conservation Area (RCA) or a Limited Development Area (LDA) in the Wicomico County Critical Area District. The

purpose is to authorize a change in the Critical Area classification to develop at either a higher density or intensity than what the current classification allows or authorize a use that the current classification would otherwise prohibit.

§ 125-31. Process and Submittal Requirements.

An applicant must submit a complete application for growth allocation that complies with the requirements outlined below.

- A. A growth allocation request shall be reviewed and approved according to the process for Zoning Map Amendments in Chapter 255. Article II, Part IV, § 255-20.
- B. The County Council may establish conditions of approval that are consistent with the intent of the County's Critical Area Program, which may include a Buffer Management Plan or Habitat Protection Plan.
- C. Upon approval of the growth allocation request by the County Council, the County shall send a request to the Critical Area Commission to utilize a portion of its growth allocation.
- D. The request shall be accompanied by pertinent findings, plans, environmental reports, and studies as described below:
 - (1) A finding that ensures the growth allocation is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Commission.
 - (2) All information and documentation relevant to the local jurisdiction's determination that the project meets the standards listed under Natural Resources Article, § 8-1808.1(c)(2), Annotated Code of Maryland;
 - (3) All information and documentation that addresses the factors to be considered by the Critical Area Commission under Natural Resources Article, § 8-1808.1(c)(4), Annotated Code of Maryland;
 - (4) A conceptual site development plan and environmental features map in accordance with COMAR 27.01.02.06-1.B33;
 - (5) An environmental report in accordance with COMAR 27.01.02.06-2, including the following:
 - (a) If applicable, a Buffer Management Plan and/or Habitat Protection Plan in accordance with COMAR 27.01.02.06-2.B and C;

- (b) If applicable, the preliminary stormwater management plan for compliance with the 10% pollutant reduction rule, including all worksheets and supporting documentation;
 - (6) For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Maryland Department of the Environment, Maryland Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:
 - (a) Threatened and endangered species and species in need of conservation;
 - (b) Forest interior dwelling birds and colonial nesting water birds;
 - (c) Anadromous fish and their propagation waters and any other aquatic species located onsite;
 - (d) Plant and wildlife habitat and waterfowl staging and concentration areas;
 - (e) Submerged aquatic vegetation;
 - (f) Riparian forests and tidal and nontidal wetlands; and
 - (g) Natural heritage areas and other historical and cultural resources.
 - (7) A map that shows the land area for which the local jurisdiction proposes a change of Critical Area land classification.
 - (8) Verification that the amount of proposed growth allocation indicated on the map submitted under subsection D(7) of this regulation is accurate and equal to the amount of growth allocation to be deducted from the local jurisdiction's existing total allotment of growth allocation.
 - (9) A report outlining measures to mitigate and adapt to climate-related challenges, including sea level rise, storm surge, flooding from heavy rainfall, extreme weather events, shifting wetlands, and coastal forest changes. Highlight specific actions to boost climate resilience, such as restoring, creating, or preserving current and future natural and nature-based features.
 - (10) Provide an evaluation of how proposed mitigation, restoration, conservation, and adaptation measures for climate change affect underserved communities. Include steps to ensure that the benefits and impacts of development, restoration, and mitigation are fairly shared across all communities.
- E. If the Critical Area Commission approves the growth allocation with one or more conditions:

- (1) The County has sixty (60) days to notify the Commission of its intent to adopt the conditions and
 - (2) The County shall enforce the Buffer Management Plan, Habitat Protection Plan, and other conditions of approval.
- F. Prior to approving the final site plan or subdivision plat, the County shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.
- G. The County's official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission within 120 days of the Commission's approval.

§ 125-32. Standards.

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

- A. Except as may be provided in subsection (d) below, locate a new Intensely Developed Area (IDA) in an existing Limited Development Area (LDA) or adjacent to an existing IDA;
- B. Except as may be provided in subsection (d) below, locate a new LDA adjacent to an existing LDA or IDA;
- C. Except as may be provided in D below, a new IDA shall be at least 20 acres.
- D. The County Council recognizes that the County may not be able to utilize growth allocation acreage in the locations set forth in subsections A and B above and/or may not satisfy the 20-acre size threshold set forth in subsection C above, and further recognizes that the majority of its critical area lands for which growth allocation is planned are currently classified as Resource Conservation Areas. Accordingly, in the event that the County is unable to satisfy any or all of the criteria set forth in subsections A-C, the County may utilize a portion of its growth allocation in a manner that varies from subsections A-C above, provided that the area to receive growth allocation meets the following standards:
 - (1) Any development will be serviced by public water and sewer or septic system that uses the best available nitrogen removal technology;
 - (2) The area is located in a Priority Funding Area;
 - (3) The development will have an overall economic benefit to the area, or
 - (4) Implements a specific goal, objective, or policy of the Wicomico County

Comprehensive Plan; or

- (5) Is a commercial marina or restaurant in existence since October 13, 1989.
- E. No more than 1/2 of the growth allocated may be located in the Resource Conservation Area (RCA), except as provided in Subsection F below.
- F. If Wicomico County is unable to utilize any portion of the Growth Allocation within or adjacent to existing IDAs or LDAs, that portion of the Growth Allocation that cannot be used may be located in the RCA. The developer will be required to cluster. The developer shall cluster the development 300 feet from tidal waters or tidal wetlands.
- G. The location of development projects that use Growth Allocation shall minimize impacts to Habitat Protection Areas (HPAs) as defined in COMAR 27.01.09 and as provided in Articles IV and V of this Chapter and optimize benefits to water quality. The design of development projects that utilize the Growth Allocation shall minimize impacts to Habitat Protection Areas (HPAs), as defined in COMAR 27.01.09 and as provided in Article II of this Chapter, and optimize benefits to water quality.
- H. Projects using Growth Allocation in the RCA shall conform to all criteria of this Chapter for such areas. The Growth Allocation used shall be designated on Wicomico County Critical Area District Maps and shall constitute an amendment to this Chapter, subject to review and approval by the Wicomico County Planning Commission, Wicomico County governing body, and the Critical Area Commission.
- I. Locate a new IDA or an LDA in an RCA at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
- J. Locate a new IDA where it will minimize impacts on the defined land uses of the RCA.
- K. Locate new Intensely Developed Areas and Limited Development Areas outside of areas vulnerable to climate change as identified by the County, unless the County proposes and the Commission approves measures that assess climate resiliency and vulnerability and incorporate siting, design, construction, and other natural features to enhance climate resiliency and reduce vulnerability significantly.

§ 125-33. Factors.

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

- A. Consistency with the County's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.
- B. For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:
 - (1) To be served by a public wastewater system;
 - (2) 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;
 - (3) If greater than 20 acres, be located in a priority funding area; and
 - (4) Have a demonstrable economic benefit to the area.
- C. For a map amendment or refinement involving a new Limited Development Area, whether the development is:
 - (1) To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
 - (2) Completion of an existing subdivision;
 - (3) An expansion of an existing business; or
 - (4) To be clustered.
- D. The use of existing public infrastructure, where practical;
- E. 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;
- F. Impacts on a priority preservation area, as defined under § 2-518 of the Agriculture Article;
- G. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
- H. Environmental impacts associated with a location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.
- I. Environmental impacts on underserved or overburdened communities.

§ 125-34. Deduction.

- A. The County shall deduct acreage from its growth allocation reserves using the following methodology consistent with COMAR 27.01.02.06-4:

- (1) For the entire acreage of the parcel, if, as of December 1, 1985, in the Chesapeake Bay Critical Area:
 - (a) The parcel was less than 20 acres in the RCA; or
 - (b) The RCA parcel was at least 20 acres, but the application does not qualify for the use of a growth allocation envelope under (2) below, or
 - (2) For the number of acres approved within a growth allocation envelope, if:
 - (a) Areas that support the proposed development are included within the growth allocation envelope as defined in this Chapter.
 - (b) When converting:
 - [1] A resource conservation area, the remaining resource conservation area on the parcel outside the growth allocation envelope is at least 20 acres, or
 - [2] From a limited development area to a new intensely developed area, the new intensely developed area is at least 20 acres unless a lesser amount is approved in accordance with § 125-33.
- B. The County may not approve a growth allocation development envelope in the RCA unless the County determines, based on subdivision and development history, that given the existing dwelling units and the development potential on the parcel outside the growth allocation envelope, there remains sufficient resource conservation area acreage outside the envelope to support a minimum density of one dwelling per 20 acres.
- C. The County may exclude the following from a growth allocation deduction:
- (1) The remaining RCA outside the growth allocation envelope if it is at least 20 acres;
 - (2) The remaining RCA outside the growth allocation if it is less than 20 acres and is adjacent and contiguous to a permanently protected RCA on another parcel, and the sum of the combined area is at least 20 acres;
 - (3) The acreage of a 300-foot setback, even when it is less than 20 acres;
 - (4) The acreage within the Buffer, when it is within a 300-foot setback; and
 - (5) The acreage of tidal wetlands on the parcel.
- D. The County shall authorize a maximum of one growth allocation envelope per parcel unless;
- (1) Deduction of more than one growth allocation envelope will provide a water quality or habitat benefit and
 - (2) The Commission approves more than one growth allocation envelope.

- E. When a 300-foot setback is not provided, the County shall require a deduction of the area of the Buffer.
- F. The acreage of the area deducted shall match the acreage of the area shown on the official Critical Area map as amended by the County and Critical Area Commission.

Article VII. Vesting.

§ 125-35. Continuation of existing uses.

- A. The continuation, but not necessarily the intensification or expansion, of any use in existence on October 13, 1989, may be allowed unless the use has been abandoned for more than one year or is otherwise restricted by existing ordinances.
- B. If any existing use does not conform with the provisions of this Ordinance, its intensification or expansion may be authorized only in accordance with the variance procedures in Article XI (Variance).

§ 125-36. Residential density.

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

- A. Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members;
- B. A legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985;
- C. Land that received a building permit subsequent to December 1, 1985, but prior to October 13, 1989;
- D. Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984, and December 1, 1985; and
- E. Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985, if the development of any such land conforms to the IDA, LDA, or RCA requirements in this Ordinance, or the area of the land has been counted against the growth allocation permitted under this Ordinance.

§ 125-37. Implementation.

- A. 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.

- B. Nothing in this Section may be interpreted as altering any requirements of this Ordinance related to water-dependent facilities or Habitat Protection Areas.

Article VIII. Critical Area Amendments.

§ 125-38. Amendment regulations generally.

- A. The County Council may, from time to time, amend the provisions of this Chapter, but not more than four (4) times per calendar year, and the land use management classification of properties in the Critical Area District. In addition, the County Council shall review and propose any necessary amendments, as required, to the land use management classifications in the Critical Area District at least every ten (10) years.
- B. All such amendments shall be approved by the Chesapeake and Coastal Bays Critical Area Commission pursuant to § 8-1809(g) of the Critical Area Law, Subtitle 18. Standards for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, § 8-1809(h) and (i). The Critical Area Commission process for approval of proposed amendments is as set forth in the Critical Area Law, Subtitle 18, § 8-1809(d).

§ 125-39. Comprehensive reviews.

The County shall review Chapter 125 and propose any necessary amendments to this Chapter at least every ten (10) years in accordance with Natural Resources Article, §8-1809 (g). The anniversary of the date that Chapter 125 became effective shall be used to determine when the review shall be completed. Within sixty (60) days after the completion of the review, the County shall send the following information in writing to the Commission:

- A. A statement certifying that the required review has been accomplished.
- B. All necessary requests for Chapter 125 amendments, refinements, or other matters that the County wishes the Commission to consider.
- C. An updated resource inventory.
- D. A statement quantifying acreages within each land classification, the growth allocation used, the growth allocation remaining, and a list of changes to be made.

§ 125-40. Modified Buffer Areas amendments.

The Wicomico County Council may designate a Buffer Management Area (MBA) as per § 125-24 only by Chapter amendment, where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area District portion of the site prevents the Buffer from performing its function. All such amendments shall require a public hearing by the Planning Commission and the County Council, as well as approval by the Critical Area Commission. In order to approve a Buffer exemption

amendment, the County Council shall find and require, at a minimum, that other measures for achieving the habitat and water quality protection objectives of the adopted Critical Area District criteria have been met.

§ 125-41. Amendment procedures.

- A. Proposed amendments to the text provisions of this Chapter may only be initiated by the Wicomico County Planning Commission or the Wicomico County Council.
- B. All Chapter amendments and any map amendments involving specific properties requested by the property owner shall be submitted to the Wicomico County Department of Planning, Zoning, and Community Development.
- C. For all Chapter amendments, the Wicomico County Planning and Zoning Commission shall first hold a public hearing related thereto, at which parties of interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in Wicomico County. For amendments involving only one specific property, the Wicomico County Planning and Zoning Commission shall post notice of its public hearing on the property(ies) for which amendments are requested and, to the extent possible based on the best available information, notify all property owners immediately contiguous to the applicant of the hearing date, time, and place. The Wicomico County Planning and Zoning Commission shall also furnish these property owners with a copy of said application.
- D. The Wicomico County Planning and Zoning Commission shall then forward proposed amendments to the Wicomico County Council. The Council shall hold a public hearing on the amendments and, if approved, shall submit said amendment(s) to the Critical Area Commission.
- E. After receiving the approval of the Critical Area Commission, the County Council may, at its discretion, hold a second public hearing on the ordinance enacting the proposed amendment. At this time, parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such public hearing shall be published in a newspaper of general circulation in Wicomico County once each week for two consecutive weeks.
- F. Requirements for amendments.
 - (1) Critical Area District Map amendments. Except for Chapter amendments or Chapter refinements developed during a ten-year comprehensive review, a change to a Critical Area designation may be granted by the County Council on proof of mistake if the proposed Critical Area classification:
 - (a) Conforms to the State Critical Area mapping criteria.

- (b) Is based on land uses or natural features in existence as of December 1, 1985, or for areas included in the Critical Area due to remapping, is based on land uses or natural features in existence at the time of the remapping.
 - (c) Follows the County's documented mapping methodology for Critical Area classifications at the time of the original program adoption.
 - (d) Is consistent with the purposes, policies, and goals of this subtitle and all criteria of the Critical Area Commission.
 - (e) Is approved by the Critical Area Commission.
- (2) A Critical Area District Map Amendment may be granted if the zoning map amendment:
- (a) Is wholly consistent with the Critical Area land classifications (IDA, LDA, RCA, and MBA) as shown on the adopted Critical Area Overlay Map.
 - (b) Proposes the use of a part of the remaining growth allocation in accordance with the growth allocation provisions of this Chapter, or
 - (c) Proposes to change the land classification from either an Intensely Developed Area to a Limited Development Area or a Resource Conservation Area, or a Limited Development Area to a Resource Conservation Area.
 - (d) Is approved by the Critical Area Commission.
- G. Adoption of a Chapter amendment or refinement. If approved by the Critical Area Commission, the County will incorporate an amendment or refinement into Chapter 125, including any conditions of approval, within 120 days of receiving notice from the Chair of the Commission.

Article IX. Lot consolidation and reconfiguration.

§ 125-42. Applicability.

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

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

§ 125-43. Procedure.

- A. An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the required information in § 200-9 of the Wicomico County Subdivision Chapter and subsection D below to Wicomico County.
- B. Wicomico County may not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with § 125-45 below and COMAR 27.01.02.08.F.
- C. Wicomico County shall issue a final written decision or order granting or denying an application for consolidation or reconfiguration.
- D. After a final written decision or order is issued, Wicomico County shall send a copy of the decision or order and a copy of any approved development plan within ten (10) business days by U.S. mail to the Critical Area Commission's business address.
- E. Wicomico County may not issue a building permit until the appeal time has expired.

§ 125-44. Application.

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

- A. The date of recordation of each legal parcel of land or legally buildable lot to be consolidated or reconfigured;
- B. A plan drawn to scale that shows all existing and proposed lot or parcel boundaries as per § 200 of the Wicomico County Subdivision Chapter;
- C. Information sufficient for Wicomico County to make the findings set forth in Chapter 200 of the Wicomico County Subdivision Chapter and subsection D below; and
- D. A table that lists the number of all legal parcels of land or recorded legally buildable lots and the number of proposed lots or parcels, or dwelling units to be derived.

§ 125-45. Standards.

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

- A. The proposed consolidation or reconfiguration will result in no greater number of lots, parcels, or dwelling units in the Critical Area District than the existing configuration would allow;
- B. The proposed lot consolidation or reconfiguration will result in no greater lot coverage than the existing configuration would allow;

- C. The proposed consolidation or reconfiguration does not:
 - (1) Create an additional riparian lot or parcel, waterfront lot, or any other lot or parcel deeded with water access; or
 - (2) Intensify or increase impacts associated with riparian access;
- D. The proposed consolidation or reconfiguration does not create:
 - (1) A lot or parcel, or portion of a lot or parcel that will serve development activities outside the Critical Area District or
 - (2) An RCA lot or parcel that serves development activities in the Intensely Developed Area District (IDA) or Limited Development Area District (LDA);
- E. The proposed consolidation or reconfiguration identifies each Habitat Protection Area (HPA), and if impacts to an HPA are proposed, the proposal demonstrates that:
 - (1) No greater impact on an HPA would result than the impact that would have resulted from the existing lot configuration;
 - (2) Adverse impacts on an HPA are minimized; and
 - (3) Protective measures and restoration measures are included that provide for the least possible impact.
- F. The proposed consolidation or reconfiguration provides:
 - (1) Stormwater management for all proposed development activities; and
 - (2) Benefits to fish, wildlife, and plant habitats that are clearly identified.
- G. The proposed consolidation or reconfiguration fully complies with the afforestation and reforestation requirements in COMAR 27.01.05 and 27.01.09, unless clearing is necessary to avoid a habitat protection area.

Article X. Intrafamily transfers.

§ 125-46. Intrafamily transfers.

The one (1) unit per 20-acre density limitation shall not prevent a bona fide intrafamily transfer to members of the owner's immediate family, subject to the following limitations:

- A. Intrafamily transfers will be permitted on parcels of land in the Critical Area District where it is shown that the parcel was recorded on or before March 1, 1986, and such parcel is at least seven (7) acres and not more than 60 acres in size.
- B. A bona fide intrafamily transfer shall be subject to all requirements of the Wicomico County Subdivision Regulations,[1] and a notation shall be placed on the final subdivision plat denoting the lot(s) that are created under these provisions.

C. Subdivision of land under the bona fide intrafamily transfer provisions contained herein shall be subject to the following limitations:

- (1) Parcels of seven (7) acres to less than 12 acres cannot be subdivided into more than a total of two (2) lots.
- (2) Parcels of 12 acres to less than 60 acres cannot be subdivided into more than three (3) lots.
- (3) The lots may be created at different times.

D. Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. A lot created pursuant to these provisions may not be subsequently conveyed to any person except as provided herein:

- (1) Where the conveyance is to a member of the owner's immediate family; or
- (2) Where the conveyance of the lot is as part of a default on a mortgage or deed of trust.

E. Conditions of approval.

As a condition of approval, the County shall require that:

- (1) Any deed for a lot that is created by a bona fide intrafamily transfer shall contain a covenant approved by the County Attorney stating that the lot is created subject to the provisions of Natural Resources Article Chapter 8-1808.2, Annotated Code of Maryland, and
- (2) A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family except as provided in F below.
- (3) This Chapter does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.

F. Any lot created under this section may not be transferred or sold to a third party who is not a member of the owner's immediate family or holder of a mortgage or deed of trust on the property unless and until the Wicomico County Planning and Zoning Commission has determined that the following conditions apply:

- (1) A change in circumstances has occurred since the original transfer, not of the owner's own doing, which would warrant permitting a subsequent transfer when such circumstances are consistent with the warrants and exceptions contained herein; or
- (2) Other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCA warrant an exception.

Article XI. Variances.

§ 125-47. Authorization.

The Wicomico County Board of Appeals is hereby empowered to grant variances to the provisions of this Chapter where, owing to special features of a site or other circumstances, a literal enforcement of provisions would result in unwarranted hardship.

- A. In considering an application for a variance, Wicomico County shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of the Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of this Chapter.
- B. 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.

§ 125-48. 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.

§ 125-49. Standards.

The Board of Appeals shall examine all facts of the case and render a decision. Variance requests in the Critical Area District shall not be granted unless the applicant has satisfied each of the following standards:

- A. Due to special features of the site or special conditions or circumstances peculiar to the land or structure involved, a literal enforcement of provisions and requirements of this Critical Area Ordinance would result in an unwarranted hardship.
- B. A literal interpretation of the provisions of this Chapter will deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Chapter;
- C. That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
- D. That the variance request is not based upon conditions or circumstances that are self-created or self-imposed, including the commencement of development activity before an application for a variance has been filed;

- E. The variance request does not arise from conditions or circumstances, either permitted or nonconforming, which are related to adjacent parcels.
- F. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District and that the granting of the variance will be consistent with the spirit and intent of this Chapter and associated Chapters.
- G. The granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and this Chapter.
- H. That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
- I. Other considerations.
 - (1) The applicant has the burden of proof and the burden of persuasion to prove they meet all the required standards.
 - (2) Wicomico County will carefully review all the evidence presented and create a written document detailing its findings as to whether the applicant successfully met the required standards, using competent and substantial evidence.
 - (3) The evidence used to make the decision can come from:
 - (a) The applicant.
 - (b) Wicomico County or other government agencies.
 - (c) Any other individuals that Wicomico County considers relevant.

§ 125-50. Process.

- A. Applications for a variance will be made in writing to the Wicomico County Board of Appeals, with a copy provided to the Critical Area Commission. The County shall follow its established procedures for advertising and notification of affected landowners.
- B. After hearing an application for a Critical Area Program variance, the Board of Appeals shall make written findings reflecting an analysis of each standard. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - (1) The applicant;
 - (2) The County or any other government agency; or
 - (3) Any other person deemed appropriate by the County.

- C. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the County shall consider that fact and whether the application has met the requirements of § 125-52.
- D. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in § 125-47.
- E. The County shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

§ 125-51. After-the-fact requests.

- A. Wicomico County will not accept an application for a variance to legalize a violation, including an unpermitted or otherwise authorized structure or other development activity, until the County:
 - (1) Issues a notice of violation; and
 - (s) Assesses an administrative or civil penalty for the violation.
- B. The County will not issue a permit, approval, variance, or special exception to legalize a violation of this subtitle unless an applicant has:
 - (1) Fully paid all penalties imposed under Natural Resources Article, §8-1808(c)(1), Annotated Code of Maryland;
 - (2) 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
 - (3) Performed the abatement measures in the approved plan in accordance with this Chapter.
- C. If the Board denies the requested after-the-fact variance, then the County shall:
 - (1) Order removal or relocation of any structure; and
 - (2) Order restoration of the affected resources.

§ 125-52. Appeals.

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

- C. Appeals may be taken by any person, firm, corporation, or governmental agency aggrieved or adversely affected by any decision made under this Chapter or any person with standing as described in § 125-48 above.
- D. The County may not issue a permit or any other type of authorization until the applicable 30-day appeal period has expired.

§ 125-53. Conditions and mitigation.

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

- A. Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the Planning and Zoning Commission, 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.
- B. New or expanded structures or lot coverage shall be located at the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

§ 125-54. 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.

§ 125-55. Administrative Variance.

- A. Administrative variance process. The Planning Director may use the administrative variance process as follows:
 - (1) On a lot or parcel that was recorded before January 1, 2010, an administrative variance in the Critical Area may be granted for the replacement, expansion, or relocation of a legally existing, nonconforming structure, the construction of a new accessory structure, the construction of a new primary structure, or the construction or relocation of a driveway, sidewalk, patio or other similar lot coverage within the Buffer that meets the following conditions:
 - (a) In the case of the replacement of a structure or the expansion of a structure in the 100-foot Buffer:
 - [1] The replacement or expansion does not encroach any further than the existing structure into the 100-foot Buffer unless the proposed development is restricted by more than one Buffer; in this case, the proposed expansion may not encroach any further than 50 feet into any one of the Buffers.

- [2] The proposed expansion will not increase the existing footprint of the subject structure by more than 30% of that structure's footprint as it existed on January 1, 2010, or 500 square feet, whichever is greater.
 - [3] The property will comply with the lot coverage restrictions in § 125-14C(2).
- (b) Except as provided in COMAR 27.01.09.01.E.8, in the case of a replacement of a structure or the expansion of a structure in the expanded Buffer:
 - [1] The replacement or expansion does not encroach on the 100-foot Buffer.
 - [2] The proposed expansion will not enlarge the existing footprint of the structure by more than 30% of what existed on January 1, 2010, or 500 square feet, whichever is greater; and
 - [3] The property will comply with the lot coverage restrictions in § 125-14C(2).
- (c) In the case of a relocated structure within the 100-foot or expanded Buffer:
 - [1] The relocated structure lessens the extent of the nonconformity unless the proposed development is restricted by more than one Buffer; in this case, the proposed relocation may not encroach any further than 50 feet into any one of the buffers.
- (d) In the case of the construction of a driveway in the 100-foot and/or expanded Buffer:
 - [1] The routing of the driveway through the Buffer shall provide direct access to the property, given site conditions, and for which there is no feasible alternative. Tree clearing and impacts to habitat protection areas, as defined in Articles IV and V, shall be minimized;
 - [2] The width of the driveway shall not exceed 12 feet.
 - [3] The property will comply with the lot coverage restrictions in § 125-14C(2).
- (e) In the case of a new accessory structure or other lot coverage in the 100-foot or expanded Buffer, excluding pools:
 - [1] The new accessory structure or other lot coverage will not be located any further shoreward than the closest point of the existing

primary structure unless the proposed development is restricted by more than one Buffer; in this case, the proposed expansion may not encroach any further than 50 feet into any one of the buffers.

- [2] The footprint of the new accessory structure or other lot coverage will not exceed 30% of the footprint of the primary structure as it existed on January 1, 2010;
 - [3] If no lot coverage associated with a primary structure existed on the site as of January 1, 2010, the footprint of the new accessory structure or other lot coverage would not exceed 500 square feet;
 - [4] The property will comply with the lot coverage restrictions in § 125-14C(2) and
 - [5] The footprint of any new accessory structure or other lot coverage approved by an administrative variance shall be counted against the expansion of a primary structure allowed under this subsection
- (f) Except as in COMAR 27.01.09.01.E.8, in the case of a new primary structure in the expanded Buffer:
- [1] The new primary structure and any associated parking pad, accessory structure, or other lot coverage, excluding driveways as applicable to subsection (d) above, shall not encroach into the 100-foot Buffer;
 - [2] The footprint of the new principal structure, any associated parking pad, accessory structure, and/or other lot coverage within the expanded Buffer shall not exceed 2,500 square feet.
 - [3] The width of a proposed driveway within the expanded Buffer shall not exceed 12 feet, and
 - [4] The property will comply with the lot coverage restrictions in § 125-14C(2).
- (g) In the case of a deck attached to the primary structure, the following requirements must be met:
- [1] Within the 100-foot Buffer:
 - [a] The deck is constructed with decking material that has gaps to allow water to pass freely;
 - [b] Lot coverage cannot be located over and/or under the proposed deck;
 - [c] The deck will be no greater than 500 square feet; and

- [d] The location of the deck cannot result in the 100-foot Buffer being reduced to less than 50 feet.
 - [2] Within the expanded Buffer:
 - [a] The deck is constructed with decking material that has gaps to allow water to pass freely;
 - [b] Lot coverage cannot be located over and/or under the proposed deck;
 - [c] The deck will be no greater than 500 square feet; and
 - [d] The location of the deck does not encroach into the 100-foot Buffer.
 - [3] Approval of a deck(s) through an administrative variance:
 - [a] Does not expand the footprint of the existing structure;
 - [b] Does not allow the deck to become the closest point to the water of the structure to which it is attached; the closest point shall remain within the footprint of the existing structure.
 - [4] A deck(s) approved by an administrative variance shall not be converted to lot coverage.
- (2) The administrative variance process is not applicable to a pool in the 100-foot or expanded Buffer. An applicant seeking a variance for a pool in the 100-foot or expanded Buffer must follow the standard variance process.
- (3) The Planning Director shall:
 - (a) Approve, approve with conditions, or deny an administrative variance in the Critical Area pursuant to the standards for variances as expressed in § 125-49 and Natural Resources Article 8-1808(d);
 - (b) Make written findings, based on competent and substantial evidence, as to whether the applicant has overcome the presumption of nonconformance established in § 125-50, including that the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and criteria; and
 - (c) Base their written findings on evidence introduced and testimony presented by the applicant, the County, any other government agency, or any other person deemed appropriate by the County, with due regard for the person's experience, technical competence, and specialized knowledge.

- (4) The following disturbances are exempt from needing an administrative variance from the 100-foot and expanded Buffer.
 - (a) An in-kind replacement of a legally existing, nonconforming structure.
 - (b) The construction of steps and landings, built to the current minimum Building Code requirement, for access to a structure.
- (5) In the case of an approval of an administrative variance under this subsection, the Planning Director shall require the following:
 - (a) For subsections (1)(a) through (e), mitigation is required for all new disturbances in the 100-foot or expanded Buffer in accordance with COMAR 27.01.09.01-2;
 - (b) For (1)(f), the Planning Director shall require the full establishment of the 100-foot tidewater buffer or mitigation for all disturbance to the expanded Buffer at 3:1, whichever is greater, in accordance with the planting standards found in COMAR 27.01.09.01-2;
 - (c) Mitigation plantings shall be located in the following order of priority:
 - [1] Within the 100-foot Buffer;
 - [2] Within the expanded Buffer,
 - [3] On-site and adjacent to the Buffer, and
 - [4] On-site and elsewhere in the Critical Area;
 - (d) If buffer mitigation cannot be planted in accordance with § 125-19, a fee-in-lieu shall be collected in accordance with § 125-23.
 - (e) The Planning Director shall require a buffer management plan in accordance with COMAR 27.01.09.01-3.
- (6) Adjacent and adjoining property owners will be notified by mail of an application for an administrative variance as part of the Planning Director decision. Following a decision by the Planning Director, the adjacent and adjoining property owners will be notified by mail of the decision as to the administrative variance.
- ~~(6)~~ (7) Decisions on administrative variances by the Planning Director may be appealed within 30 days to the Board of Appeals.
- ~~(7)~~ (8) Administrative variances granted for the expansion of existing structures are intended to be construed as cumulative for each structure.

Article XII. Transfer of development rights.

§ 125-56. Definition.

- A. Transfer of development rights is the conveyance of development rights by deed, easement, or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Wicomico County, Maryland.

§ 125-57. Right of transfer.

- A. In general. Transfer of Development Rights (TDR) allows a property owner to sell their development rights, thereby separating these rights from the bundle of rights associated with land ownership. A development right of a transferor parcel may be transferred and used to increase residential or nonresidential development on a receiving parcel in accordance with the provisions of this section.
- B. The TDR option allows the landowner to potentially double the density of a cluster subdivision by transferring additional development rights to the subdivision from another Resource Conservation Area District (RCA) property.
- C. Limitations.
 - (1) A development right may not be used in any manner inconsistent with the provisions set forth in this section.
 - (2) A development right may not be used to increase density for receiving parcels located within the Critical Area RCA beyond the density allowed within the parcel's zoning district.
 - (3) The property from which the additional development rights are transferred must place a reservation of development rights on 20 acres for every development right that is transferred from the RCA in accordance with the RCA density limitations.
 - (4) Intermediate transfer. Subject to the provisions of § 125-59 below, a development right may be transferred to a transferee prior to the time when its use for a specific receiving parcel has been finally approved in accordance with this Chapter.

§ 125-58. Eligibility Criteria.

- A. Eligible sending areas are properties vulnerable to climate-related hazards, including sea-level rise, flooding, storm surges, or erosion, where natural features (e.g., wetlands, forests, coastal ecosystems) or human systems (e.g., infrastructure, communities) are at risk of damage. These areas have limited capacity to adapt, recover, or mitigate the impacts of climate change due to constraints such as geographic location, economic resources, or ecological limitations. The climate resilience analysis (as outlined in

subsections C and D) must demonstrate these vulnerabilities quantitatively, indicating that approved transfers will reduce long-term exposure to hazards, protect sensitive ecosystems, and equitably distribute adaptation benefits by preserving sending areas for conservation or low-impact uses.

- B. Eligible receiving areas are properties with low or no vulnerability to climate-related hazards, such as sea-level rise, flooding, storm surges, or erosion. These areas feature resilient natural features (e.g., uplands, stable soils, non-sensitive ecosystems) and human systems (e.g., infrastructure, communities) capable of withstanding climate change impacts. Eligible receiving areas have sufficient adaptive capacity to support development without significant ecological or societal risk, bolstered by factors such as a favorable geographic location (e.g., higher elevation, inland areas), robust economic resources, or ecological stability. Designating receiving areas aims to foster sustainable development in locations that can safely accommodate increased development while minimizing environmental harm and climate-related risks. The climate resilience analysis (as outlined in subsections C and D) must verify this resilience through quantifiable metrics, implying that approved transfers will enhance overall Critical Area adaptation by directing development to low-risk zones, reducing potential economic losses from future hazards, and supporting equitable community resilience.
- C. In addition to the requirements for TDRs in Chapter 225, Section 225-58, applications for TDRs under this section must include a climate resiliency analysis based on the climate resilience criteria outlined in subsection D, demonstrating that sending and receiving properties meet the eligibility criteria outlined in subsections A and B. The analysis's implications include guiding the Planning Director's certification and Planning Commission's approval decisions (§ 125-60 and § 125-64), where failure to meet quantifiable thresholds may result in application denial or required modifications. Positive findings imply strengthened climate adaptation in the RCA, reduced vulnerability for human systems (e.g., underserved communities), and alignment with state mandates on environmental justice and resilience (e.g., SB0306, 2024 Maryland General Assembly).
- D. Climate resilience criteria (quantifiable where possible).
 - (1) Project outside 0-2 foot sea level rise inundation zones (per MD Commission on Climate Change projections) unless elevated ≥ 2 feet above base flood elevation (Base Flood Elevation). Implication: Ensures long-term habitability, implying reduced relocation costs and preserved property values in sending areas while enabling safe density increases in receiving areas.
 - (2) No increase in flood risks (e.g., within 100-year floodplain, must comply with 500-year standards if in a vulnerable area). Implication: Prevents the amplification of downstream flooding, resulting in lower insurance premiums, minimized community disruption, and equitable protection for vulnerable populations.

- (3) Minimizes erosion: In areas with >2 feet/year historical erosion (per DNR maps), use living shorelines or permeable materials for $\geq 50\%$ new coverage. Implication: Stabilizes shorelines and ecosystems, implying enhanced biodiversity, reduced sediment pollution, and cost savings on future erosion control measures.
- (4) Incorporates resilient design (e.g., native, flood-tolerant vegetation in mitigation; elevated structures to withstand Category 2 storm surge). Implication: Builds adaptive capacity into development, implying decreased damage from extreme events, improved ecological services, and support for sustainable growth without environmental degradation.
- (5) Demonstration via site plan showing consideration of 2-5 foot Sea Level Rise over project lifespan (50-100 years). Evidence includes applicant submissions, County/agency input, and expert testimony. Implication: Future-proof investments, implying alignment with long-term climate goals, avoid economic losses from maladaptation, and equitable benefits through proactive planning for all stakeholders.

§ 125-59. Effect of transfer.

After an original instrument of transfer has transferred development rights:

A. The transferor parcel:

- (1) May not be subdivided or reconfigured;
- (2) Shall be used only for agricultural uses, other than farm residences; and
- (3) May not be used in connection with any determination of site area or site capacity, except as may be necessary in determining the number of development rights involved in the transfer; and

B. All development rights that are the subject of the transfer, and the value of such rights, shall be deemed for all other purposes, including assessment and taxation, to be appurtenant to the transferor parcel until such rights have been finally approved for use on a specific receiving parcel and transferred to the County Council.

§ 125-60. Certificate of Planning Director.

A. General requirement. A transfer may not be recognized under this Chapter unless the original instrument of transfer:

- (1) Contains a certificate of the Planning Director that the number of development rights that are the subject of the transfer represents the number of development rights applicable to the transferor parcel and
- (2) Is recorded by the Planning Director as provided in this Chapter.

- B. Responsibility. The transferor and the transferee named in an original instrument of transfer shall have sole responsibility to:
 - (1) Supply all information required by this section.
 - (2) To provide a proper original instrument of transfer; and
 - (3) To pay, in addition to any other fees required by this section, all costs of its recordation among the land records of Wicomico County.
- C. Application for certificate. An application for a certificate shall:
 - (1) Contain information prescribed by the Planning Director, as may be necessary to determine the number of development rights involved in the proposed transfer;
 - (2) Include five copies of a plat of the proposed transferor parcel prepared by a registered land surveyor on the basis of an actual on-site survey and
 - (3) Be accompanied by such fee(s) as may be prescribed by the County Council.
- D. On the basis of the information submitted, the Planning Director shall affix a certificate of the Planning Director's findings to the original instrument of transfer. The certificate shall contain a specific statement of the number of development rights derived from the transferred parcel.
- E. Effect of determination. The determination of the Planning Director may not be construed to enlarge or otherwise affect in any manner the nature, character, and effect of a transfer, as set forth in § 125-59 of this subsection.

§ 125-61. Instruments of transfer.

- A. In general. An instrument of transfer shall conform to the requirements of this section.
- B. An instrument of transfer, other than an original instrument of transfer, need not contain a metes and bounds description or plat of the transferor parcel.
- C. Contents. In addition to any necessary covenants, an instrument of transfer shall contain:
 - (1) The names of the transferor and the transferee;
 - (2) A covenant that the transferor grants and assigns to the transferee and the transferee's heirs, personal representatives, and successors, and assigns a specified number of development rights from the transferor parcel;
 - (3) If the instrument is not an original instrument of transfer, a statement that the transfer is an intermediate transfer of rights derived from a transferor parcel described in an original instrument of transfer (which original instrument shall be identified by its date, the names of the original transferor and transferee, and the liber and folio where it is recorded among the land records of Wicomico County);

- (4) A specific statement of the number of development rights included within the transfer;
- (5) A covenant by which the transferor acknowledges that the transferor has no further use or right of use with respect to the development rights being transferred;
- (6) Except when development rights are being transferred to Wicomico County in accordance with this section, a statement of the rights of the transferee prior to final approval of the use of those development rights on a specific receiving parcel, as provided in § 125-59;
- (7) County covenants.
 - (a) Except when development rights are being transferred to Wicomico County in accordance with this section, a statement of the rights of the transferee prior to final approval of the use of those development rights on a specific receiving parcel, as provided in subsection D of this section; and
 - (b) A covenant that, at the time when any development rights involved in the transfer are finally approved for use on a specific receiving parcel, the rights shall be transferred to Wicomico County for no consideration or
 - (c) In cases when development rights are being transferred to Wicomico County after approval, a covenant that the rights are being transferred to Wicomico County for no consideration

§ 125-62. Original instruments of transfer.

- A. Contents of original instruments of transfer. In addition to fulfilling the requirements of Subsection F of this section, an original instrument of transfer shall also contain:
 - (1) A metes and bounds description of the transferor parcel, prepared by a licensed surveyor named in the instrument.
 - (2) A covenant that the development rights being transferred represent all development rights with respect to the transferor parcel under the existing or any future zoning or similar ordinance regulating the use of land in Wicomico County;
 - (3) A covenant that the transferor parcel may not be subdivided or reconfigured;
 - (4) A covenant by which use of the transferor parcel is restricted to, and may be used only for, open space uses other than farm residences;
 - (5) A covenant that all provisions of the instrument of transfer shall run with and bind the transferor parcel and may be enforced by the County Executive or his designee; and
 - (6) This section requires the certificate of the Planning Director.

- B. Recording of the original transfer. After it is properly executed, an original instrument of transfer shall be delivered to the Planning Director. The Planning Director shall:
- (1) Deliver the original instrument of transfer to the Clerk of the Circuit Court for Wicomico County, together with the required fees for recording furnished by the original transferor and transferee; and
 - (2) Immediately notify the original transferor and transferee in writing of the recording.

§ 125-63. Application for use on receiving parcel.

- A. Application. The owner of a proposed receiving parcel shall file with the Planning Director an application to use transferred development rights with respect to the development of the proposed receiving parcel.
- B. Contents.
- (1) The application shall contain information as may be prescribed by the Planning Director.
 - (2) Include five (5) copies of a plat of the proposed receiving parcel, prepared by a registered land surveyor on the basis of an actual on-site survey;
 - (3) Be accompanied by such fee as may be prescribed by the County Council; and
 - (4) Be accompanied by:
 - (a) Original or certified copies of a recorded original instrument of transfer involving the development right proposed to be used and any intervening instruments of transfer through which the applicant became a transferee of those rights; or
 - (b) A signed, written agreement between the applicant and a proposed original transferor that contains the plat of a proposed transferor parcel and other information required by § 125-60 and in which the proposed transferor agrees to execute an original instrument of transfer from the proposed transferor parcel to the applicant at the time when the use of such rights on the proposed receiving parcel is finally approved.
 - (5) The climate resiliency analysis required under § 125-58.C, demonstrating compliance with eligibility criteria in § 125-58.A and B through the quantifiable resilience criteria in § 125-58. The analysis must include implications for the proposed use, such as recommended design modifications (e.g., elevations, vegetation) to mitigate identified risks, ensuring the receiving parcel's resilience supports increased development without exacerbating climate vulnerabilities.

§ 125-64. Consideration of the application for use.

- A. Review of application. The Planning Director shall review the instruments of transfer or agreement submitted with the application and determine their sufficiency to fulfill the requirements of this Chapter.
- B. Determination. The Planning Director shall:
 - (1) Determine the number of development rights that are available for use under the terms of the instruments submitted with the application, incorporating findings from the climate resiliency analysis on vulnerability and adaptive capacity.
 - (2) Determine the number of development rights that this section allows to be used on the proposed receiving parcel based on resilience metrics in § 125-58D, ensuring no increase in ecological or societal risks.
 - (3) Report the preliminary determination of the Planning Director in writing to the applicant within thirty (30) days after all information necessary to make the determination has been received.
- C. The Planning Commission must approve a request to utilize development rights if the request:
 - (1) Does not exceed the limitation on the density or number of dwelling units permitted in the zone and the applicable comprehensive plan;
 - (2) Is in accordance with the provisions of this Chapter, including the climate resiliency analysis findings under § 125-58D.
 - (3) Is in accordance with Chapter 200, Titled "Subdivision of Land";
 - (4) Is consistent with other recommendations of the comprehensive plan; and
 - (5) Achieves a desirable development compatible with both site conditions and the surrounding existing and future development, as supported by the analysis's implications for long-term climate resilience and equity (e.g., protecting vulnerable communities from displaced risks).
- D. Effect. The Planning Director's determination is not final and may be amended, modified, or rescinded until the transfer is finalized per § 125-65. If the analysis identifies unresolved risks, the Commission may condition approval on modifications or deny the request to ensure alignment with Critical Area adaptation goals.

§ 125-65. Final approval of use.

- A. When final. Transfer from a transferor parcel to a receiving parcel is final at the time when:

- (1) Final subdivision approval or final site plan approval with respect to the receiving parcel, based upon the use of development rights, has been given; and
 - (2) All development rights upon which such approval was based have been transferred to Wicomico County as provided in Subsection B of this section.
- B. Required instruments. Final approval may not be given to any site plan or subdivision plan that involves the use of development rights transferred under the provisions of this section until satisfactory evidence is presented that such of the following instruments as may be required to effect the transfer of those rights to Wicomico County have been approved as to form and legal sufficiency by the County Attorney and recorded among the land records of Wicomico County:
- (1) An original instrument of transfer to a transferee other than Wicomico County;
 - (2) An instrument of transfer to the owner of the receiving parcel;
 - (3) Instrument(s) of transfer between any intervening transferees; and
 - (4) An instrument of transfer from the owner of the receiving parcel to Wicomico County.
- C. Incorporation of Climate Resiliency Analysis Findings: Final subdivision or site plans must incorporate the findings and recommendations from the climate resiliency analysis (§ 125-58C), such as resilient design features (e.g., elevated structures, permeable surfaces) and mitigation measures. The Planning Director shall verify compliance prior to approval, with implications including enforceable covenants in recorded instruments or post-approval inspections to ensure implementation. Non-incorporation may result in revocation of approval or denial of building permits.

§ 125-66. Reserved.

Article XIV. Water-dependent facilities.

§ 125-67. Applicability.

- A. 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.
- B. The provisions of this Chapter are not applicable to:
- (1) A private pier that:
 - (a) Is installed or maintained by a riparian landowner; and
 - (b) Is not part of a residential project that provides a community pier or other community boat-docking or storage facility under Regulation .07 of this Chapter or

(2) A nonwater-dependent project covered under COMAR 27.01.13.

C. The requirements of COMAR 27.01.02 apply to this Chapter.

§ 125-68. General Criteria.

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

- A. 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.
- B. 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:
 - (1) That the facility or activity is water-dependent;
 - (2) That the facility or activity meets a recognized private right or public need;
 - (3) That adverse effects on water quality, fish, wildlife, and plant habitats are first avoided, or if unavoidable, minimized;
 - (4) That, insofar as possible, a non-water-dependent project associated with the water-dependent facility or activity is located outside the Buffer;
 - (5) Impacts to fish, wildlife, or plant habitat are avoided, or if unavoidable, minimized; and
 - (6) Mitigation is provided at a minimum ratio of 1:1 based on the square footage of canopy coverage removed.
- C. Except as otherwise authorized in this section, a water-dependent facility or activity is prohibited in the Buffer of the Resource Conservation Area.
- D. 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:
 - (1) A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:
 - (a) Backfill for a shoreline stabilization measure;
 - (b) Use in a nonstructural shoreline stabilization measure, including a living shoreline;
 - (c) Beach nourishment;

- (d) Restoration of an island;
 - (e) The creation, restoration, or enhancement of a wetland or a fish, wildlife, or plant habitat; or
 - (f) Any other approved beneficial use; or
- (2) Placement in an area that was approved for the disposal of channel maintenance dredged material before October 13, 1989.

§ 125-69. General requirements for the location of water-dependent facilities or activities.

- A. The County shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The County shall work with, as applicable, the Departments of Agriculture, the Environment, and Natural Resources, and any other appropriate federal or State agency to develop a plan for the approval of an area suitable for the location of a new or expanded water-dependent facility or activity.
- B. The County shall document that each of the following siting factors is accorded due consideration when evaluating proposals for new or expanded water-dependent facilities:
 - (1) 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:
 - (a) Alteration of an existing water circulation pattern or salinity regime;
 - (b) Adequacy of area flushing characteristics;
 - (c) Necessity of, and proximity to, a dredging operation; and
 - (d) Interference with the natural transport of sand;
 - (2) Disturbance to:
 - (a) An oyster harvest area, as defined in COMAR 08.02.04.11;
 - (b) An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
 - (c) A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
 - (d) An oyster sanctuary, as established in COMAR 08.02.04.15A and
 - (e) Any other shellfish located in a shellfish area regulated by the Department of Natural Resources;
 - (3) Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
 - (4) The avoidance or, if avoidance is not possible, the minimization of:

- (a) Disturbance to:
 - [1] wetland;
 - [2] Submerged aquatic vegetation;
 - [3] A habitat of threatened or endangered species or species in need of conservation;
 - [4] In accordance with COMAR 26.08.02.04-2, a water body identified by the Department of the Environment as a Tier II, high-quality water body and its watershed;
 - [5] In accordance with COMAR 26.08.02.04-3, a water body identified by the Department of the Environment as a Tier III, outstanding natural resource water body and its watershed, and
 - [6] A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and .04 and COMAR 26.23.06 and
- (b) Adverse impacts on water quality that would likely result from the facility or activity, such as nonpoint source pollution, sewage discharge, or other pollution related to vessel maintenance

§ 125-70. Industrial and port-related facilities.

In addition to meeting the requirements of § 125-68 and § 125-69, 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 Chapter and are subject to the provisions set forth in that Chapter.

§ 125-71. Commercial marinas and other water-dependent commercial maritime facilities and activities.

- A. In addition to meeting the requirements of § 125-68 and § 125-69:
 - (1) A new or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an IDA or LDA;
 - (2) A redeveloped or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an RCA or
 - (3) 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 § 125-76.

B. The County shall require that the operation of each commercial marina and each related commercial maritime facility or activity comply with:

- (1) The requirements of COMAR 26.08.04.09 and, as applicable, COMAR 26.24.04.03; and
- (2) The stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of the Department of the Environment.

§ 125-72. Community piers and other community boat-docking and storage facilities.

A. In addition to meeting the requirements of § 125-68 and § 125-69, a new or expanded community pier or other community boat-docking and storage facilities may be permitted in the Buffer of an IDA, LDA, or RCA if:

- (1) The owner or operator of the pier or facility:
 - (a) Does not offer food, fuel, or other goods and services for sale in the Buffer or on the community pier; and
 - (b) As applicable, complies with the requirements of COMAR 26.24.04.03;
- (2) The pier or facility is community-owned, established, and operated for the benefit of the residents of a platted and recorded riparian subdivision;
- (3) The pier or facility is associated with a residential project approved by the County for the Critical Area and consistent with all State requirements and the requirements of this Chapter;
- (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the pier or facility, and
- (5) If community piers are provided as part of a new residential project, private piers in the development are not allowed.

B. The number of slips authorized at a pier or facility shall be the lesser of (a) or (b) below:

- (1) 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
- (2) A density of slips to platted lots or dwellings within a residential project in the Critical Area according to the following schedule:

Table B(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

Table B(2) Number of Slips Permitted	
Platted Lots or Dwellings in the Critical Area	Slips
101 - 300	50 or 25%, whichever is greater
over 300	75 or 15%, whichever is greater

§ 125-73. Public beaches and other public water-oriented recreation or education areas, or activities.

- A. In addition to meeting the requirements of § 125-68 and § 125-69, public beaches or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:
- (1) An Intensely Developed Area; or
 - (2) A Limited Development Area or a Resource Conservation Area, provided that:
 - (a) Adequate sanitary facilities exist;
 - (b) Sanitary and service facilities are, to the extent possible, located outside the Buffer;
 - (c) Permeable surfaces are used to the extent practicable if no degradation of groundwater would likely result; and
 - (d) Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.
- B. Areas for public passive outdoor recreation, such as nature study, hiking, hunting, 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.

§ 125-74. Research-associated and education-associated water-dependent facilities or activities.

In addition to meeting the requirements of § 125-68 and § 125-69, a research-associated water-dependent facility or activity or an education-associated water-dependent facility or activity may be permitted in the Buffer of an IDA, LDA, or RCA if any associated non-water-dependent project or activity is located outside the Buffer.

§ 125-75. Aquaculture and fishery facilities and activities: water quality restoration.

In addition to meeting the requirements of § 125-68 and § 125-69, the following types of facilities and activities may be permitted in the Buffer of an IDA, LDA, or RCA:

- A. A shore-based facility or activity necessary for a commercial aquaculture operation;

- B. 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
- C. A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

§ 125-76. Nonwater-dependent structures on piers.

- A. Except as provided in paragraphs B - C of this subsection and notwithstanding any other provisions of the law, the County will not issue a building permit or any other approval to authorize a non-water-dependent project constructed or established on State or private wetlands within the Critical Area.
- B. The County may issue a building permit or any other approval to authorize a non-water-dependent project on State or private wetlands within the Critical Area if the project:
 - (1) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
 - (2) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;
 - (3) Is located in an Intensely Developed Area or an area that has been excluded from Chapter 125 if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
 - (4) Is approved by the Planning Commission and the Zoning Board after **[date of Chapter 125 adoption]**;
 - (5) Allows or enhances public access to State wetlands;
 - (6) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;
 - (7) Has a height of up to 18 feet unless the project is located at a marina; and
 - (8) Is up to 1,000 square feet in total area;
- C. The County 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:
 - (1) Is located on a pier that was in existence on or before December 31, 2012;
 - (2) Satisfies all of the requirements under Section B(1)-(7) of this paragraph; and
 - (3) If applicable, has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total area.

- D. The County may issue a building permit or other approval to authorize a non-water dependent project for a small-scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:
- (1) 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;
 - (2) Is approved by the Planning Commission after **[Date of NWD opt-in]**;
 - (3) A building permit or other approval may include the installation or placement of:
 - (a) A solar energy system attached to a pier if 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 its base to the blade extended at its highest point.

Article XV. Shore Erosion Protection.

§ 125-77. Policies.

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

§ 125-78. Process.

- A. The County requires any authorized shore stabilization project to submit a Buffer Management Plan.
- B. The Buffer Management Plan shall meet the requirements of § 125-22 of this Chapter and COMAR 27.01.09.
- C. A copy of the approved Buffer Management Plan will be forwarded to the Critical Area Commission.

Article XVI. Forest and Woodland Protection.

§ 125-79. General policies.

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

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

§ 125-80. Standards.

- A. If a forest is to be developed or harvested, a site-specific field investigation shall be conducted to determine if important sensitive species are present and to ensure that appropriate protection measures are incorporated into the development plan or Timber Harvest Plan. Applications shall be forwarded to the Department of Natural Resources, Wildlife and Heritage Service (WHS) for environmental review. In addition to the below, any recommendations made by WHS shall be incorporated into the development plan or Timber Harvest Plan:
 - (1) The replacement or establishment of a forest or developed woodlands should ensure a diversified plant community and should include canopy trees, understory trees, shrubs, and herbaceous plants.
 - (2) Native species should be used for all reforestation and afforestation.

- B. When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants shall utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended.
- C. The Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development, including:
 - (1) Minimize forest and woodland disturbance from off-road vehicles, public use, or logging from May through August of each year;
 - (2) Focus all development on the periphery of the forest or woodlands;
 - (3) Retain the forest canopy as well as the shrub understory;
 - (4) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
 - (5) Discourage the creation of small clearings and expansion of forest edge habitats;
 - (6) Encourage re-establishment of native forests and woodlands; and
 - (7) Adopt harvest techniques to maintain or improve habitat.

§ 125-81. Commercial timber harvesting.

- A. Landowners proposing to harvest timber within any one-year interval and affecting one or more acres in the Critical Area shall follow a "Timber Harvest Plan." A registered professional forester shall prepare this plan. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources through the District Forestry Board. The approved plan shall be filed with the County Soil Conservation District, and a copy of the approved plan shall be sent to the County Planning, Zoning, and Community Development Department prior to commencing timbering operations. The office shall review the plan to ensure its consistency with this Chapter.
- B. Any landowner who plans to harvest timber on an area that will disturb 5,000 square feet or more, including harvesting on agricultural lands, shall follow a Sediment Control Plan in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the County.
- C. Timber harvests are permitted in the Buffer in accordance with the provisions of COMAR 27.01.09.01-7.

§ 125-82. Enforcement.

Unauthorized clearing, cutting, or removal of vegetation; unauthorized clearing, cutting, or removal of vegetation in the Buffer; and clearing, cutting, or removal of vegetation in excess of

the area permitted to be cleared by this Chapter is considered a violation of this Chapter and shall result in enforcement action as specified in Article II of this Chapter.

Article XVII. Agriculture.

§ 125-83. General policies.

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

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

§ 125-84. Criteria.

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

- [2] Soil conservation and water quality plan; and
 - [3] Nutrient management plan prepared by a certified nutrient management consultant or certified farm operator in accordance with COMAR 15.20.04.07 and .08;
- (e) Agricultural activities authorized in the Buffer are in accordance with COMAR 27.01.09.01-6 and
- (f) The creation of new agricultural land is not accomplished:
 - [1] By diking, draining, or filling of any class or subclass of palustrine wetlands, as described in this program, which has a seasonally flooded or wetter water regime, unless mitigation is accomplished in accordance with applicable State and County regulations;
 - [2] By clearing forests or woodlands on soils with a slope greater than 15 percent or on soils with a "K" value greater than 0.35 and a slope greater than 5 percent;
 - [a] If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in this Chapter, or
 - [b] By the clearing of existing natural vegetation within the Buffer as defined in this Chapter.

Article XVIII. Surface Mining.

§ 125-85. Applicability.

- A. The provisions of this Chapter apply to all existing and proposed operations for which a license, permit, or other approval was issued on or after October 13, 1989, including those engaged in the extraction or removal of minerals, sand, gravel, rock, stone, earth, or fill, and activities related to surface mining. These activities include, but are not limited to, operations engaged in processing minerals at the site, including removal and mining for prospecting, washing mined material, and loading and transporting mined material.
- B. Notwithstanding any other provision of law, the provisions of this subsection may not be construed to prohibit the location or use of a water-dependent facility, in accordance with COMAR 27.01.03 or Article XIV of this Chapter, for the transport of a surface mining product or by-product.

§ 125-86. General policies.

Wicomico County shall ensure that due consideration is accorded to the following:

- A. When locating a surface mining activity, avoidance or, in the alternative, minimization of:

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

§ 125-87. Standards.

Proposed new surface mining sites or expanded operations of existing sites shall comply with the following:

- A. The following areas shall not be used for surface mining:
 - (1) Habitat Protection Areas;
 - (2) Areas where highly erodible soils exist; and
 - (3) An area that is within 100 feet immediately landward from the mean high water of tidal waters or the edge of a bank of a tributary stream.
- B. Surface mining operations shall operate under the following conditions:
 - (1) Future wash plants, including ponds, spoil piles, and equipment, may not be located within the Buffer in accordance with COMAR 27.01.09.
 - (2) To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot Buffer of natural vegetation between the operation and the mean high-water line of tidal waters or the edges of streams and tidal wetlands, whichever is further inland.

Article XIX. Renewable Energy Generating Systems.

§ 125-88. Applicability.

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

§ 125-89. Application requirements.

- A. An applicant for a major solar energy generating system in a Resource Conservation Area shall provide the County with a site plan that addresses the requirements of COMAR 27.02.07 and includes the following:
 - (1) Calculations of any required reservation of Resource Conservation Area density development rights; and
 - (2) The identification and location of property restrictions, including the boundary and area of a conservation easement, restrictive covenant, or other protective instrument.
- B. The County may require a site plan for a minor solar energy generating system.

§ 125-90. General provisions.

- A. On or after April 1, 2021, the County may authorize:
 - (1) A major or minor solar energy generating system within the Critical Area in accordance with this subsection;
 - (2) A major solar energy generating system in the Resource Conservation Area without growth allocation in accordance with § 125-91; and
 - (3) A small residential accessory solar energy generating system in the Buffer or a Modified Buffer Area if:
 - (a) There is no alternative location outside the Buffer;
 - (b) The lot is 1/4 acre or less in size and created before October 13, 1989; and
 - (c) Mitigation is required at a 1:1 ratio.
- B. A major and minor solar energy generating system may be authorized in a modified buffer area, provided the project is located over existing legally developed lot coverage.
- C. In addition to meeting the requirements of this Article, the County may not authorize a growth allocation to accommodate a major or a minor solar energy generating system in the Limited Development Area or the Resource Conservation Area.
- D. Except for a regulated activity that the Maryland Department of the Environment authorizes in accordance with COMAR 26.23.02, the County may not authorize a major or minor solar energy generating system:
 - (1) In a habitat protection area designated under COMAR 27.01.09, or
 - (2) On a steep slope or a highly erodible soil.

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

§ 125-91. Criteria for a solar energy generating system.

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

- A. The area of a solar panel shall not count as lot coverage and:
- (1) For a minor solar energy generating system, the solar panel shall be:
 - (a) Located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland; or
 - (b) Elevated above the ground and the area under the solar panel is maintained as an area of existing grass, established grass, or other natural vegetation, or as an agricultural use; and
 - (2) For a major solar energy generating system, the solar panel shall be:
 - (a) Located over an existing, legally developed lot coverage or
 - (b) Elevated above the ground, and the area under the solar panel is maintained in accordance with the planting plan requirements § 125-93 as:
 - [1] Pollinator habitat;
 - [2] Native vegetation other than pollinator habitat; or
 - [3] An agricultural use.
- B. The Buffer shall be measured and delineated in accordance with COMAR 27.01.09.01.E(3)-(7) and Article IV of this Chapter and:
- (1) Unless there is no feasible alternative, access through the Buffer to the project area is prohibited;
 - (2) When there is no feasible alternative to access through the buffer, one point of access through the Buffer to the project area may be authorized. Where a project includes noncontiguous parcels, the number of access points through the Buffer shall be minimized;
 - (3) Mitigation for disturbance to the Buffer is required at a 2.5:1 ratio; and
 - (4) A buffer management plan shall be provided in accordance with COMAR 27.01.09.01-3.
- C. Except when a project area is in an IDA, clearing of forest and developed woodlands shall be minimized and not exceed the following:

- (1) In an LDA, clearing of forest and developed woodlands is limited to 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located; and
 - (2) In an RCA, clearing of forest and developed woodlands is limited to 10 acres or 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located, whichever is less.
- D. In an IDA, LDA, and RCA, mitigation for cleared forest and developed woodlands shall be provided on at least an equal area basis.
- E. For a major solar energy generating system, on-site or off-site planting shall be in accordance with the following:
 - (1) 15 percent of the total project area in a limited development area; and
 - (2) 20 percent of the total project area is in a resource conservation area.
- F. A planting plan shall be provided in accordance with § 125-93.
- G. Stormwater management shall be provided in accordance with the Environment Article, §§4-201-4-215, Annotated Code of Maryland, and COMAR 26.17.02.
- H. A decommissioning plan shall be required if one is not otherwise required as a result of obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission.

§ 125-92. Criteria for a major solar energy generating system in the Resource Conservation Area.

These provisions apply to a major solar energy generating system in the RCA in addition to the requirements under § 125-91 above:

- A. Except for access allowed in accordance with the provisions in COMAR 27.01.06, forest clearing shall be restricted within 300 feet landward from the mean high-water line of tidal waters, from the landward boundary of a tidal wetland, or the edge of each bank of a tributary stream.
- B. In addition to any applicable local land recordation requirements, a Reservation of Resource Conservation Area Density Rights Agreement shall be recorded in the County land records that reserves RCA density rights associated with the project as follows:
 - (1) The number of density rights reserved is equal to:
 - (a) The permitted RCA density associated with the project area of each parcel as calculated under Natural Resources Article, §8- 1808.1(e), Annotated Code of Maryland, and COMAR 27.01.02.05C(4); and

- (b) The number of density rights that are attributable to the project area, with a minimum of one density right reserved.
- C. The Reservation of Resource Conservation Area Density Rights Agreement shall remain in effect until:
 - (1) The decommissioning plan, as required in § 125-91 H, has been implemented and completed; and
 - (2) The termination of the Reservation of Resource Conservation Area Density Rights Agreement is reflected in the land records.
- D. The remaining land unencumbered by the solar energy generating system or lands not otherwise restricted by the Reservation of Resource Conservation Area Density Rights Agreement may be developed in accordance with Natural Resources Article, §8-1808.1, Annotated Code of Maryland, and COMAR 27.01.02.05C(4).
- E. A lot, parcel, or portion of a lot or parcel is not eligible for a major solar energy generating system if the density rights associated with that lot, parcel, or portion of a lot or parcel have been:
 - (1) Utilized for an intrafamily transfer;
 - (2) Transferred through a transfer of development rights program;
 - (3) Preserved or conserved through an easement; or
 - (4) Otherwise reserved in association with an area of land to be utilized for the solar energy generating system.

§ 125-93. Planting plan requirements.

- A. The County shall require a planting plan for:
 - (1) The area to be vegetated under the solar panels; and
 - (2) Replanting required in § 125-91.
- B. The County may consider the constraints and opportunities presented by a project area and authorize planting or other mitigation to address the requirements of § 125-91 from any of the following options:
 - (1) Planting on-site in one of the following planting areas:
 - (a) The area within 300 feet landward from the mean high-water line of tidal waters, from the landward boundary of a tidal wetland, or the edge of each bank of a tributary stream;
 - (b) Contiguous to or within a designated forest interior dwelling bird habitat; or

- (c) A wildlife corridor; or
 - (2) Based on a signed agreement with the Critical Area Commission:
 - (a) Planting off-site in accordance with the options specified in B(1) above;
 - (b) Create a wetland migration area, nonstructural shoreline erosion control project, or other nature-based practice that naturally adjusts to changing environmental conditions through the lifespan of the practice and is designed to address future sea level rise, precipitation-induced flooding, or other climate change impacts;
 - (c) Create, restore, or enhance a nontidal wetland that results in habitat and water quality benefits, provided the Maryland Department of the Environment authorizes it; or
 - (d) Other alternative mitigation options that include provisions for Commission review; or
 - (3) Collect a fee in lieu in accordance with § 125-94 below.
- C. Any general landscape screening requirements for an energy-generating system shall not be included as part of the mitigation planting required in § 125-91.
 - D. Long-term maintenance of the plantings through financial assurance measures shall be provided.
 - E. All planting shall be in accordance with this Chapter's reforestation and planting plan requirements, including protecting all planted areas through conservation easements, restrictive covenants, or other protective instruments.

§ 125-94. Fee-in-lieu.

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

- A. The fee shall be set at \$1.50 per square foot of mitigation as required in § 125-93;
- B. The fee shall cover the cost associated with administration, acquisition, planting, monitoring, and maintenance for the required mitigation or required planting requirements of § 125-91;
- C. The fee shall be held in a separate account independent of other Critical Area funds, which may not revert to the general fund;
- D. The fee shall not be used to meet other landscaping requirements, and
- E. The County shall use the fees to accomplish:
 - (1) Off-site plantings in accordance with the options provided in § 125-93B(1) or (2)(a); or

- (2) Other water quality and habitat enhancement projects, as described in this Chapter, approved by the Commission or in an agreement between the County and the Commission.

Article XX. Special Site Plan Provisions.

§ 125-95. Purpose.

The purpose of the site plan is to ensure detailed compliance with applicable provisions of this Chapter and to prescribe standards for the design and construction of site improvements. Development requiring site plan approval shall be permitted only in accordance with all the specifications contained in an approved site plan. It shall not be undertaken until the site plan is approved and all the required construction permits have been obtained subsequent to such approval.

§ 125-96. Approving authority.

- A. Site plans for development activities required in this Chapter shall be prepared and submitted as described below and approved by the Wicomico County Planning and Zoning Commission.
- B. Site plans for all multifamily dwellings, industrial and commercial buildings and developments, and mobile home parks shall be prepared and approved as set forth in the Wicomico County Zoning Chapter and Subdivision Chapter, as amended, in addition to the requirements of this Chapter.
- C. The Planning Director or designee shall approve site plans accompanying individual building permit applications.

Article XXI. Special Subdivision Provisions.

§ 125-97. Applicability.

Any subdivision of land, as defined in the Wicomico County Subdivision Chapter, [1] shall be subject to the following special provisions when such subdivision occurs in the Critical Area District.

[1] Editor's Note: See Ch. 200, Subdivision of Land.

§ 125-98. Submission requirements.

- A. Concept plans.
 - (1) Concept sketch plans shall be prepared and submitted to the Wicomico County Planning, Zoning, and Community Development Office prior to submission of any proposed subdivision for approval by the Wicomico County Planning and

Zoning Commission. Concept plans shall include all information required in § 200-6 of the Wicomico County Subdivision Chapter.

- (2) In addition, the following information shall also be shown:
 - (a) A development rights table as per Sections § 125-15D, and if applicable, §125-46 of this Chapter.
 - (b) Tidal and nontidal wetlands.
 - (c) Streams.
 - (d) Areas of steep slopes and highly erodible and other soils, with development constraints.
 - (e) Shore and stream Buffer (100 feet minimum).
 - (f) Natural resource protection areas, including wildlife habitats and Habitat Protection Areas (HPAs), and forests and developed woodlands on or in the vicinity of the proposed subdivision.
 - (g) The Critical Area District boundary and the applicable land management classification(s), i.e., Intensely Developed Area (IDA), Limited Development Area (LDA), or Resource Conservation Area (RCA).
 - (h) Computation of the number of acres in the Critical Area District.
 - (i) The location and extent of existing and/or proposed shore erosion abatement approaches.
- (3) Preliminary plats.
- (4) In addition to the required exhibits for preliminary plat submission required in Chapter 200, Subdivision of Land, for proposed subdivisions located in the Critical Area District, the following additional information will be shown on the preliminary plat, as applicable:
 - (a) A development rights table as per §125-15D and if applicable, §125-46 of this Chapter.
 - (b) A computation of the total area within the Critical Area District, the area within each of the land management classifications (i.e., IDA, LDA, and RCA), and the number of lots in the Critical Area District.
 - (c) Slopes of 15 percent or greater.
 - (d) The location and areal extent of all soils with:
 - [1] Septic limitations.
 - [2] Wet soils.

- [3] Hydric soils.
 - [4] Soils with hydric properties as shown on the Wicomico County Soil Survey.
- (e) The location of all existing or proposed site improvements, including storm drains, culverts, retaining walls, fences, stormwater management facilities, as well as any sediment and erosion control structures.
 - (f) The location of required open space areas, the shore and stream Buffer (100 feet minimum), and other buffer areas, forested areas, and landscaping. (The plan shall show all areas to be maintained as landscaping, and the means by which such landscaping will be permanently maintained shall be specified.)
 - (g) The location of all HPAs on the site.
 - (h) The location of tidal and nontidal wetlands on and adjacent to the site and delineation of the watershed thereof.
 - (i) The location of eroding shoreline reaches, the rates of erosion, areas where shore erosion measures are in place, and areas to be protected by the installation of proposed erosion abatement approaches.
 - (j) The location of anadromous fish spawning stream(s) on or adjacent to the site and a delineation of the watershed area of the stream on the site.
 - (k) Areas to be retained in agriculture and/or forestry use.
 - (l) Areas proposed for reforestation and afforestation.
 - (m) The total area of the site that will be temporarily disturbed during development and the area that will be permanently disturbed. ("Disturbed" is defined as any activity occurring in an area that may result in the loss of or damage to existing natural vegetation.)
 - (n) Proposed natural park areas, as appropriate.
 - (o) The location of the Critical Area District boundary, the mean high-water line, and the landward edge of tidal wetlands.
 - (p) Proposed covenants on required open space areas.
- (5) In addition to the information above, the preliminary subdivision plat shall be accompanied by the following when the subdivision or development is proposed in the Critical Area District, as required:
- (a) A planting plan or Buffer Management Plan for reforested and afforested areas and a woodland conservation plan with the comments of the Bay Forester.

- (b) A Habitat Protection Plan, including the comments of the Maryland Department of Natural Resources, Wildlife and Heritage Service.
- (c) Preliminary indication of a cooperator's agreement with the Wicomico County Soil Conservation District or farm plan, as applicable.
- (d) A preliminary stormwater management plan.
- (e) A preliminary sediment and erosion control plan.
- (f) A shore erosion protection plan, complete specification for proposed shore erosion work.
- (g) A natural park management plan, as appropriate.
- (h) An environmental assessment report that provides a coherent statement of how the proposed development addresses the goals and objectives of this Chapter. At a minimum, the environmental assessment shall include:
 - [1] A statement of existing conditions, e.g., amount and types of forest cover, amount and type of wetlands, discussion of existing agriculture activities on the site, soil types, topography, etc.
 - [2] A discussion of the proposed development project, including the number and type of residential units, amount of lot coverage, proposed sewer treatment and water supply, acreage devoted to the development, proposed open space, and Habitat Protection Areas (HPAs).
 - [3] A discussion of the proposed development's impacts on water quality and HPAs.
 - [4] Documentation of all correspondence and findings received from any county, state, or federal agency.

B. Final subdivision plats.

- (1) In addition to the required exhibits for preliminary plat submission required in Chapter 200, Subdivision of Land, for proposed subdivisions located in the Critical Area District, the following additional information will be shown on the final subdivision plat, as applicable:
 - (a) A tabulation on the final plat (above approval block) showing the following for subdivisions wholly or partially located in the Critical Area District:
 - [1] The total number of lots and/or parcels to be recorded.
 - [2] The total area of lots and/or parcels, including widening strips.

- [3] The total area of roadways to be recorded.
 - [4] The total area of the subdivision to be recorded and, where density restrictions apply, the acreage dedicated to the development.
 - [5] The total area of subdivisions or parcels to be recorded in the Critical Area District.
 - [6] The total number of lots in the Critical Area District.
 - [7] The residential density in the Critical Area District.
- (b) For subdivisions in the Critical Area District, accurate outlines (metes and bounds, where required) of any required open space areas, common or reserved areas, or portions of lots to be maintained by covenant, easement, or similar approved instrument in permanent forest cover, including existing forested areas, reforested areas, and afforested areas.
 - (c) For subdivisions in the Critical Area District, accurate outlines (metes and bounds, where required) of any areas to be maintained for resource protection use (e.g., agriculture, natural parks, forest, etc.).
 - (d) An outline of the building envelope, paved drives, and any other proposed lot coverage areas.
 - (e) For subdivisions in the Critical Area District, accurate outlines (metes and bounds, where required) of any areas to be maintained as permanent wildlife and plant habitat protection areas.
- (2) In addition to the information above and any required Wicomico County Planning, Zoning, and Community Development plans, the final subdivision plat shall be accompanied by the following when the subdivision or development is proposed in the Critical Area District, as required:
 - (a) Planting and forest management plans. The subdivider in the Critical Area District shall prepare and submit a planting plan and/or woodland conservation plan for areas where planting is required, and a shoreline protection plan for areas of eroding shore to be stabilized.
 - (b) Open space maintenance plans. A detailed proposal, including easements, covenants, agreements, and other specific documents showing ownership and the method of assuring perpetual maintenance to be applied to those areas of common open space, recreation areas, wildlife corridors, and HPAs in developments located in the Critical Area District, shall be

Article XXII. Definitions.

§ 125-99. Definitions and word usage.

For this Chapter, the following definitions describe the meanings of the terms used in the Chapter. Definitions applicable to terms used in the Critical Area District not already contained herein shall be the same as those contained in the Chesapeake Bay Critical Area criteria, COMAR 27.01.01.

ABATEMENT - The act of putting an end to a land alteration or development activity or reducing the degree of intensity of the land alteration or activity.

ACCESSORY STRUCTURE - A structure that is detached from the principal structure, located on the same lot, and clearly incidental and subordinate to the principal structure; or, if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.

ADDITION - Construction that increases the size of a structure.

AFFORESTATION - The establishment of a tree crop in an area from which it has always or very long time been absent, or the planting of open areas that are not presently in forest cover.

AGRICULTURAL EASEMENT - A nonpossessory interest in land that restricts the conversion of use of the land, preventing nonagricultural uses.

AGRICULTURE - The bona fide use of a parcel of land for cultivation, the raising of poultry and livestock, and similar agrarian activity, including the producing of crops; breeding, boarding or training of animals; horticulture; apiaries; hydroponics; viniculture; forestry; aquaculture; and the related buildings, structures, and appurtenances necessary to carry out the activities above as approved by the Advisory Board.

ANADROMOUS FISH - Fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

ANADROMOUS FISH PROPAGATION WATERS - 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 or has occurred. The Maryland Department of Natural Resources identifies the streams.

AQUACULTURE –

- 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 this definition, related activities such as wholesale and retail sales, processing, and product storage facilities are not considered aquacultural practices.

BARREN LAND - Unmanaged land having sparse vegetation.

BEST MANAGEMENT PRACTICE - Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxic substances, and sediment. Agricultural best management practices include, but are not limited to, strip cropping, terracing, contour strip cropping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

BUFFER - An existing, naturally vegetated area or an area established in natural vegetation in order to protect streams, tidal wetlands, tidal waters, shorelines, and terrestrial environments from man-made disturbances. In the Critical Area District, the area, based on conditions at the time of development, is immediately landward from the mean high-water of tidal waters, the edge of the bank of tributary streams in the Critical Area, or the edge of a tidal wetland. The Buffer exists or may be 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, and also includes any expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

BUFFER (see Natural Resources Article, §4-11A-01(b), Annotated Code of Maryland) –

A. An area that:

- (1) Based on conditions present at the time of development, is landward from the mean high water line of tidal waters, from the landward boundary of a tidal wetland, or the edge of each bank of a tributary stream, and
- (2) Exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.

B. Buffer includes an area of:

- (1) At least 100 feet, even if that area was previously disturbed by human activity; and
- (2) Expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

BUFFER MANAGEMENT PLAN - A narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will affect a portion of the

Buffer, affect Buffer vegetation, or require the establishment of a portion of the Buffer in vegetation. The Buffer Management Plan includes a Major Buffer Management Plan, a Minor Buffer Management Plan, or a Simplified Buffer Management Plan in this Ordinance.

BUFFERYARD - An area, at least 25 feet wide, located between development activity and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area is primarily maintained for the benefit of wildlife habitat and water quality. It shall not be maintained in a manner that conflicts with these purposes, such as by mowing or the application of herbicides.

CALIPER - The diameter measured at 2 inches above the root collar.

CANOPY TREE - A tree that, when matures, commonly reaches a height of at least 35 feet.

CHAIR - The Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA (Also referred to as the "Critical Area") - All lands and waters defined in § 8-1807 of the Natural Resources Article. They include:

- A. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- B. All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- C. Modification to these areas through inclusions or exclusions proposed by Wicomico County and approved by the Commission as specified in § 8-1807 of the Natural Resources Article of the Annotated Code of Maryland.

CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA COMMISSION - Also referred to as the "Critical Area Commission."

CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA DISTRICT - The Wicomico County portions of the Critical Area, as defined in the definition of "Critical Area" above.

CLEAR-CUTTING - The removal of the entire stand of trees in one (1) cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut from advanced regeneration or stump sprouts, or planting of seeds or seedlings by man.

CLEARING -

- A. An activity that removes a tree, forest, developed woodland, or vegetative cover from the land.
- B. "Clearing" includes removing trees and leaving stumps.

CLIMATE RESILIENCY -

- A. The capacity of a natural system to maintain function in the face of stresses imposed by climate change.
- B. 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.

CLUSTER DEVELOPMENT - 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.

COLONIAL NESTING WATER BIRDS - Herons, egrets, terns, and glossy ibis. For nesting, these birds congregate (i.e., colonize) in relatively few areas, at which time the regional populations of these species are highly susceptible to local disturbances.

COMAR - The Code of Maryland Regulations, as from time to time amended, including any successor provisions.

COMMERCIAL HARVESTING - A commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.

COMMUNITY PIERS - Boat docking facilities associated with subdivisions and similar residential areas and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

COMPREHENSIVE OR MASTER PLAN - A compilation of policy statements, goals, standards, maps, and pertinent 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 Commission.

CONFORMING - A parcel or lot that meets all Critical Area requirements. Conforming does not include a parcel or lot for which a Critical Area variance is sought or has been issued, or that is located in the Resource Conservation Area and is less than twenty acres.

CONSERVATION EASEMENT - A nonpossessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.

CONSISTENT WITH - A standard or factor will further, and not be contrary to, the following items in the comprehensive plan:

- A. Policies;
- B. Timing of the implementation of the plan, development, and rezoning;
- C. Development patterns;

- D. Land uses; and
- E. Densities or intensities.

CONSOLIDATION - A combination of any legal parcel of land or recorded, legally buildable lots into fewer lots or parcels than originally existed. Consolidation includes any term used by Wicomico County for a development application that proposes to combine legal parcels of land or recorded, legally buildable lots into fewer parcels or lots than the number that existed before the application, a lot line abandonment, a boundary line adjustment, a replatting request, or a lot line adjustment.

COVER CROP - The establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat, or soybean stubble, which maximize infiltration and prevent runoff from reaching erosive velocities.

CRITICAL AREA -

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

DEDUCTION - The total number of growth allocation acres that are necessary for approval of a growth allocation project, and, after approval by the Commission, is subtracted from the growth allocation reserves of the local jurisdiction in which the project is located.

DENSITY - The number of dwelling units per acre of gross area of a development tract, unless otherwise specified.

DEVELOPED WOODLANDS - An area of trees and natural vegetation interspersed with institutional or recreational development.

DEVELOPER - A person who undertakes development activity as defined in this Chapter or who undertakes development as defined in the criteria of the Critical Area Commission.

DEVELOPMENT -

A. Any activity that materially affects the condition or use of dry land, land under water, or any structure.

B. "Development" includes redevelopment.

DEVELOPMENT ACTIVITY - A human activity that results in disturbance to land, natural vegetation, or a structure, including but not limited to the following:

A. An activity shown on a subdivision plat, revised plat, site plan, building/zoning permit, or forest preservation plan; and/or

B. An activity that results in the construction or substantial alteration of any residential, commercial, industrial, institutional, recreational (including golf courses), or transportation facilities or structures.

DEVELOPMENT ENVELOPE - An individually owned lot, the lot coverage on that individually owned lot, a road, a utility, a stormwater management measure, an onsite sewage disposal measure, any area subject to human use, such as an active recreation area, any required buffers, and any additional acreage necessary to meet the requirements of the Critical Area Program.

DEVELOPMENT PAD - The area of a lot within a larger overall lot area that is devoted to structures and septic systems. Generally, where a development pad is designated, the remaining area of the lot must be maintained in its natural state, with native vegetation.

PLANNING DIRECTOR - The Director of the Wicomico County Department of Planning, Zoning, and Community Development.

DISTURBANCE - Any alteration or change to the land. Disturbance includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintenance of an existing grass lawn.

DOCUMENTED BREEDING BIRD AREAS - Forested areas where the occurrence of interior dwelling birds during the breeding season has been demonstrated as a result of onsite surveys using standard biological survey techniques.

DRAINAGEWAYS - Minor watercourses that are defined either by soil type or by the presence of intermittent or perennial streams or topography that indicates a swale where surface sheet flows join, including the land, except where areas are designated as floodplain on either side of and within 50 feet of the center line of any intermittent or perennial stream shown on the United States Geological Service's seven-and-one-half- minute quadrangle sheets covering the unincorporated areas of Wicomico County.

DWELLING UNIT - A single unit providing complete, independent living facilities for at least one (1) person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling units include living quarters for a domestic employee or other tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.

ECOSYSTEM - A more or less self-contained biological community, together with the physical environment in which the community's organisms occur.

ENDANGERED SPECIES - Any species of fish, wildlife, or plants that have been designated as endangered by regulation by the Secretary of the Maryland Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources is determined to be in jeopardy. Endangered species include any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, 16 U.S.C. §et seq., as amended.

ENERGY GENERATING SYSTEM – An energy generating system:

- A. For which a certificate of public convenience and necessity is required by State law; or
- B.
 - (1) For which a certificate of public convenience and necessity is not required by State law; and
 - (2) That is not considered to be an accessory use under the zoning law of the local jurisdiction where the system is located.

ENVIRONMENTAL ASSESSMENT - A comprehensive report that describes the natural features and characteristics of a proposed development site, the changes that will occur as a result of proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and mitigation measures to be taken to minimize undesirable impacts to the environment.

ENVIRONMENTAL JUSTICE - Equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.

EQUITY -

- A. Promotion of justice, impartiality, and fairness within the procedures, processes, and distribution of resources by institutions or systems.

- B. Equity includes consideration of environmental burdens and benefits, identification of impacts and mitigation opportunities, increased representation in public participation, and provisions for public access to waterways.

ESTABLISHMENT - The planting or regeneration of native vegetation throughout the Buffer.

EXCESS STORMWATER RUNOFF - All increases in stormwater resulting from:

- A. An increase in the imperviousness 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.

FINANCIAL ASSURANCE - A performance bond, letter of credit, cash deposit, insurance policy, or another instrument of security acceptable to Wicomico County.

FISHERIES ACTIVITIES - Commercial water-dependent fisheries facilities, including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, amphibians, and reptiles, and also including related activities, such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

FOREST - A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. A forest includes areas that have at least 100 trees per acre, with at least 50 percent of those trees having a diameter of two inches or greater at 4.5 feet above the ground and larger. Forest also includes forests that have been cut but not cleared. Forest does not include orchards.

FOREST INTERIOR DWELLING BIRDS - Species of birds that require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

FOREST MANAGEMENT - The protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

FOREST PRACTICE - The alteration of the forest, either through tree removal or replacement, in order to improve the timber, wildlife, recreational, or water quality values.

FULLY ESTABLISHED - 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.

GRANDFATHERED - Describes the status accorded certain properties and development activities that are of record prior to the date of adoption of this Chapter.

GRANDFATHERED PARCEL/LOT - A parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.

GROWTH ALLOCATION –

- A. An area of land calculated as five (5) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land) that Wicomico County may use to create new Intensely Developed Areas or new Limited Development Areas, and
- B. A resolution of the County Council, i.e., approving a request to use Growth Allocation, which provides for conversion of a property or properties located in a Resource Conservation Area and/or Limited Development Area in the Critical Area District, to use to create a new Intensely Developed Area or new Limited Development Area.

GROWTH ALLOCATION ENVELOPE - 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 onsite sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.

HABITAT PROTECTION AREAS - Include Palustrine Nontidal wetlands, threatened and endangered species habitat, plant and wildlife habitats, anadromous fish spawning propagation waters, and species in need of conservation habitat, as defined in the Wicomico County Critical Area Program. When not otherwise indicated by the text, Habitat Protection Areas also include the Critical Area Buffer.

HABITAT PROTECTION AREA –

- A. An area that is designated for protection:
 - (1) Under Natural Resources Article, §8-1806, Annotated Code of Maryland, regulations adopted under that authority, or a local program; or
 - (2) By the Secretary of Natural Resources.
- B. Habitat protection area includes:
 - (1) The Buffer as defined in this regulation and set forth in COMAR 27.01.09;
 - (2) A nontidal wetland as defined in Environment Article, §5-901, Annotated Code of Maryland, and as applied by the Department of the Environment;
 - (3) A habitat of a threatened species as defined in this regulation and set forth in COMAR 27.01.09.03;
 - (4) A habitat of an endangered species as defined in this regulation and set forth in COMAR 27.01.09.03;

- (5) A habitat of a species in need of conservation as defined in this regulation and set forth in COMAR 27.01.09.03;
- (6) A plant habitat as defined in this regulation and set forth in COMAR 27.01.09.04;
- (7) A wildlife habitat as defined in this regulation and set forth in COMAR 27.01.09.04 and
- (8) Anadromous fish propagation waters as defined and set forth in COMAR 27.01.09.05.

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

HAZARDOUS TREE - 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 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.

"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 with routine and proper arboricultural practices, such as regular watering, application of fertilizer or mulch, and pruning; or by relocation of property that is likely to be damaged.

HIGHLY ERODIBLE SOILS - Soils with a slope greater than 15 percent or those soils with a K value greater than 0.35 with slopes greater than 5 percent.

HISTORIC WATERFOWL STAGING AND CONCENTRATION AREA - 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 locations are common knowledge, and because they have been used regularly in recent times.

HYDRIC SOILS - Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

HYDROPHYTIC VEGETATION - 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).

IMMEDIATE FAMILY - A father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, or sibling.

IN-KIND REPLACEMENT - The removal of a structure and the construction of another structure that is smaller than or identical to the original structure in use, footprint area, width, and length.

INSTRUMENT OF TRANSFER - An instrument, in the form required by this section, by which one or more development rights are transferred.

IMPERVIOUS SURFACE - Any man-made surface that is resistant to the penetration of water.

INSTRUMENT OF TRANSFER — An instrument, in the form required by this section, by which one or more development rights are transferred.

INTENSELY DEVELOPED AREA (IDA)- An area of at least 20 acres or the entire upland portion of the Critical Area within a municipal corporation, whichever is less, where residential, commercial, institutional, or industrial developed land uses predominate and a relatively small amount of natural habitat occurs. Intensely Developed Areas include:

- A. An area with a housing density of at least four (4) dwelling units per acre or
- B. An area with public water and sewer systems with a housing density of more than three (3) dwelling units per acre.

INTRAFAMILY TRANSFER - A transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member. "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, or sibling.

INVASIVE SPECIES - A type of plant that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

K VALUE - The soil erodibility factor in the universal soil loss equation. It is a quantitative value that is experimentally determined.

LAND-BASED AQUACULTURE - The raising of fish or shellfish in any natural or man-made, enclosed or impounded water body.

LAND CLASSIFICATION - The designation of land in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance with the criteria adopted by the Commission as an Intensely Developed Area, Limited Development Area, or a Resource Conservation Area.

LAND CLEARING - Any activity that removes the vegetative ground cover.

LANDFORMS - Features of the Earth's surface created by natural causes.

LANDWARD EDGE - The limit of a site feature that is farthest away from tidal water, tidal wetland, or tributary stream.

LARGE SHRUB - A shrub that, when mature, reaches a height of at least six feet.

LEGALLY DEVELOPED - All physical improvements to a property that existed before Chesapeake and Atlantic Coastal Bays Critical Area Commission approval of a local Chesapeake and Coastal Bays Critical Area Program or were properly permitted in accordance with the provisions of the local Chesapeake and Coastal Bays Critical Area Program in effect at the time of construction.

LIMIT OF DISTURBANCE - The area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance.

LIMITED DEVELOPMENT AREA (LDA) - An area that is developed in low- or moderate-intensity uses and contains areas of natural plant and animal habitats, and where the quality of runoff has not been substantially altered or impaired. Limited Development Areas include an area with a housing density ranging from one (1) dwelling per five (5) acres up to four (4) 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 Areas."

LIVING SHORELINE - A suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal processes, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures, breakwaters, or other natural components.

LOCAL SIGNIFICANCE - 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 local Critical Area Program and is not considered to be a major development as defined in this Chapter.

LOT COVERAGE - Percentage of a total lot or parcel that is:

- A. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
- B. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any man-made 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 (1) 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 deck with gaps to allow water to pass freely.

MAJOR BUFFER MANAGEMENT PLAN - A Buffer Management Plan and all supporting documentation required for Buffer disturbance of 5,000 square feet or greater.

MAJOR DEVELOPMENT - Development of a scale that may cause statewide, regional, or inter-jurisdictional, environmental, or economic effects in the Critical Area District, or which may cause substantial impacts on the local Critical Area Program. This development includes, but is not limited to, airports, power plants, wastewater treatment plants, highways, regional utility

transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensively developed park and recreation facilities.

MAJOR SOLAR ENERGY GENERATING SYSTEM - An energy-generating system that derives energy from the sun to produce more than two megawatts of electricity. A major solar energy generating system comprises multiple minor solar energy generating systems located on the same parcel, collectively producing more than two megawatts of electricity.

MARINA - Any facility for the mooring, berthing, storing, or securing of watercraft, not including community piers and other noncommercial boat docking and storage facilities.

MEAN HIGH-WATER LINE - The average level of high tides at a given location.

MINERALS – The term has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

MINOR BUFFER MANAGEMENT PLAN - A type of Buffer Management Plan and all supporting documentation required for Buffer disturbance of less than 5,000 square feet.

MINOR SOLAR ENERGY GENERATING SYSTEM - An energy-generating system that derives energy from the sun to produce two megawatts or less of electricity. Minor solar energy generating systems do not include a small residential accessory solar energy generating system.

MINOR DEVELOPMENT - Development of a reduced scale that:

- A. Causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which the development is located;
- B. Is consistent with the local Critical Area program;
- C. Does not substantially affect the Critical Area program of the local jurisdiction; and
- D. Is not considered by the Commission to be a major development, as defined in COMAR 27.02.04.

MITIGATION - An action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity.

MINOR SITE PLAN - Site plans for less than three (3) duplexes, an accessory building, and/or addition to a commercial or industrial use structure in those cases where a field inspection and review of the Critical Area habitat maps indicates that the scope of the proposed accessory building and/or addition is of such a nature that the provisions for handling of natural and stormwater, sediment control, off-street parking, setbacks, water and sewerage, habitat protection and other requirements can be adequately addressed with a simplified site plan and environmental assessment process.

MINOR SUBDIVISION - Any subdivision containing seven (7) or fewer lots, plats, sites, or other divisions of land.

MODIFIED BUFFER AREA (MBA) - An area officially mapped by Wicomico County and approved by the Chesapeake and Atlantic Coastal Bays Critical Area Commission as a Modified Buffer Area where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional, or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.

NATIVE PLANT - A species that is indigenous to the physiographic area in Maryland where the planting is proposed.

NATURAL FEATURES - 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, floodplains, aquatic life, and wildlife.

NATURAL FOREST VEGETATION - 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.

NATURAL HERITAGE AREA - Any communities of plants or animals that are considered to be among the best statewide examples of their kind and are designated by regulation by the Secretary of the Maryland Department of Natural Resources.

NATURAL REGENERATION - 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.

NATURAL VEGETATION - Plant communities that develop in the absence of human activities.

NATURE-BASED FEATURES -

- A. Those small-scale nonstructural features that mimic characteristics of natural features and are created by human design, engineering, and construction to provide specific services, including coastal risk reduction.
- B. Nature-based features include living shorelines, oyster reefs, marsh restoration, and buffers.

NATURE-DOMINATED - A condition where landforms, biological communities, or both have developed by natural processes in the absence of human activities.

NEW DEVELOPMENT - A development activity that takes place on a property with pre-development imperviousness of less than 15 percent as of December 1, 1985.

NONPOINT SOURCE POLLUTION - 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. Nonpoint source pollution is not generally corrected by end-of-pipe treatment but rather by changes in land management practices.

NONRENEWABLE RESOURCES - Resources that are not naturally regenerated or renewed.

NONRESIDENTIAL DEVELOPMENT RIGHT - The use of a residential development right to increase nonresidential floor area of lot coverage beyond what is otherwise allowed under this Chapter.

NONTIDAL WETLANDS -

- A. An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation;
- B. Is determined according to the Federal Manual.
- C. Does not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.

NONWATER-DEPENDENT PROJECT -

- A. 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 projects include:
 - (1) A dwelling unit on a pier;
 - (2) A restaurant, a shop, an office, or any other commercial building or use on a pier;
 - (3) A temporary or permanent roof or covering on a pier;
 - (4) A pier used to support a non-water-dependent use; and
 - (5) A small-scale renewable energy system on a pier, including:
 - (a) A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;
 - (b) A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and
 - (c) A wind energy system and its wind turbine, tower, base, or other necessary equipment.
- C. "Non-water dependent project" does not include:
 - (1) A fuel pump or other fuel-dispensing equipment on a pier;
 - (2) A sanitary sewage pump or other wastewater removal equipment on a pier; or

- (3) 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.
- (4) A water-dependent facility or activity covered under Article XIV of this Chapter.

OFFSETS - Structures or actions that compensate for undesirable impacts.

OPEN SPACE - Undeveloped land used primarily for resource protection or recreational purposes; land and water areas retained for use as active or passive recreation areas in an essentially underdeveloped state, or land areas retained in natural cover, agricultural, or commercial forestry use.

OPEN WATER - Tidal waters of the state that do not contain tidal wetlands and/or submerged aquatic vegetation.

ORIGINAL INSTRUMENT OF TRANSFER - An instrument of transfer by which development rights are initially transferred from a transferor parcel by the original transferor.

ORIGINAL TRANSFEROR –

- A. A transferor who is the owner of the transferor parcel from which the rights are transferred, and
- B. All persons who have any mortgage, deed of trust, or other lien or encumbrance on the transferor parcel.

OVERBURDEN - The strata or material in its natural state before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

OVERBURDENED COMMUNITY – Any census tract for which three or more of the following environmental health indicators are above the 75th percentile statewide:

- A. Particulate matter (PM) 2.5;
- B. Ozone;
- C. National Air Toxics Assessment (NATA) diesel PM;
- D. NATA cancer risk;
- E. NATA respiratory hazard index;
- F. Traffic proximity;
- G. Lead paint indicator;
- H. National Priorities List Superfund site proximity;
- I. Risk Management Plan facility proximity;
- J. Hazardous waste proximity;

- K. Wastewater discharge indicator;
- L. Proximity to a Concentrated Animal Feeding Operation (CAFO);
- M. Percent of the population lacking broadband coverage;
- N. Asthma emergency room discharges;
- O. Myocardial infarction discharges;
- P. Low-birth-weight infants;
- Q. Proximity to emitting power plants;
- R. Proximity to a Toxic Release Inventory (TRI) facility;
- S. Proximity to a brownfields site;
- T. Proximity to mining operations and
- U. Proximity to a hazardous waste landfill.

PAD DEVELOPMENT - The area of a lot within a larger overall lot area that is devoted to structures and septic systems. Generally, where a development pad is designated, the remaining area of the lot must be maintained in its natural state, with native vegetation.

PALUSTRINE - All nontidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens, and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below 1/2 part per 1,000 parts of water.

PERMANENT DISTURBANCE - A material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity. "Permanent disturbance" includes:

- A. Construction or installation of any material that will result in lot coverage;
- B. Construction of a deck;
- C. Grading or clearing (except where it meets the definition of temporary disturbance); and
- D. The installation of a septic system in a forest or developed woodland on a grandfathered lot, if clearing is required.

PERSON - An individual, firm, partnership, association, corporation, company, organization, contractor, property owner, or any other entity.

PHYSIOGRAPHIC FEATURES - The soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

PIER - 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.

PLANT HABITAT - A community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.

PORT - A facility or area established or designated by the state or local jurisdictions for purposes of waterborne commerce.

PRINCIPAL STRUCTURE - The primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.

PRIVATE HARVESTING - The cutting and removal of trees for personal use.

PROGRAM AMENDMENT - Any change or proposed change to an adopted program that is not determined by the Chairman of the Chesapeake and Coastal Bays Critical Area Commission to be a program refinement.

PROGRAM REFINEMENT - Any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in the use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program, or that will not significantly affect the use of land or water in the Critical Area. Program refinement may include:

- A. A change to an adopted program that results from state law;
- B. A change to an adopted program that affects local processes and procedures;
- C. A change to a local code that clarifies an existing provision; or
- D. A minor change to an element of an adopted program that is clearly consistent with the provisions of State Critical Area law and all the criteria of the Critical Area Commission.

PROJECT APPROVAL - The approval of development, other than development by the State or local government, in the Chesapeake and Atlantic Coastal Bays Critical Area by the appropriate local approval authority. The term encompasses the approval of subdivision plats and site plans, the inclusion of areas within floating zones, the issuance of variances, special exceptions, and conditional use permits, as well as the issuance of zoning permits. The term does not include building permits.

PROJECT AREA - The total area within the limits of disturbance inside the Critical Area. Project Area includes a parcel or portions of parcels within the limits of disturbance, whether or not those parcels are contiguous, the components of a solar energy generating system as defined herein, and any required roads, internal access ways, transmission infrastructure, fencing, or improvements accessory to the solar energy generating system.

PROPERTY OWNER - Any person, group of persons, family, firm or firms, corporation or corporations, partnership, or any other legal entity having legal title to or substantial proprietary interest in the land at issue under this Chapter.

PUBLIC WATER-ORIENTED RECREATION - Shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.

RECEIVING PARCELS - The parcel that is eligible to receive development rights from a transferor parcel. These include any parcel located within a Resource Conservation Area District and the Critical Area.

RECLAMATION - The reasonable rehabilitation of disturbed land for useful purposes and the protection of the natural resources of adjacent areas, including waterbodies.

RECONFIGURATION - A change of the configuration of an existing lot or parcel line of any legal parcel of land or a recorded legally buildable lot. Reconfiguration involves numerous line adjustments, boundary line adjustments, and replatting requests.

REDEVELOPMENT - The process of developing land that is or has been developed on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.

REFORESTATION –

- A. The creation of a biological community dominated by trees and other woody plants containing at least 100 trees per acre, with at least 50% of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground within 7 years.
- B. Reforestation includes landscaping of areas under an approved landscaping plan that establishes a forest that is at least 35 feet wide and covers 2,500 square feet of area.
- C. Reforestation for a linear project that involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

RENEWABLE RESOURCE - A resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

RESERVATION OF RESOURCE CONSERVATION AREA DENSITY RIGHTS - Withholding a certain number of density rights that are attributable to a lot or parcel, which prevents them from being used for development for a specified period.

RESERVATION OF RESOURCE CONSERVATION AREA DENSITY RIGHTS AGREEMENT - A legal instrument recorded among the land records and approved by the local jurisdiction, restricting land development within a defined area in the resource conservation area for a specified period.

RESIDENTIAL DEVELOPMENT RIGHT - The right to erect a dwelling unit on property, as such, is inherent in fee simple ownership of land.

RESOURCE CONSERVATION AREA (RCA) - An area that is a nature-dominated environment, such as wetlands, surface water, forests, and open space, and prime land for resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. RCA includes an area with a housing density of less than one dwelling per five (5) acres.

RESOURCE UTILIZATION ACTIVITIES - All activities associated with the utilization of natural resources, such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.

RESTORATION - 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.

RIPARIAN HABITAT - A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

ROAD - A public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body. "Road" does not include a drive aisle or driveway.

SEASONALLY FLOODED WATER REGIME - 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.

SELECTION - The removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

SHORELINE STABILIZATION MEASURE -

- A. A nonstructural shoreline stabilization measure, as defined under COMAR 26.24.01.02 and
- B. A structural shoreline stabilization measure, as defined under COMAR 26.24.01.01.

SIGNIFICANT SHORELINE EROSION - An annual rate of erosion of two feet or greater.

SIMPLIFIED BUFFER MANAGEMENT PLAN - A type of Buffer Management Plan and all supporting documentation required for Buffer disturbance as specified in COMAR 27.01.09.01-3.

SOIL CONSERVATION AND WATER QUALITY PLANS - Land use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

- A. How the landowner plans to treat a farm unit.
- B. Which best management practices does the landowner plan to install to treat undesirable conditions.
- C. The schedule for applying best management practices.

SLOPE STABILIZATION ACTIVITIES - "Slope stabilization activities" means the prevention of soil movement by any various vegetative and/or structural means. Stabilization may include minimal grading, retaining walls, erosion control mats, blankets, or fiber logs, as well as other environmentally sensitive practices. It shall not include the use of accessory structures, including but not limited to patios and terraces.

SMALL RESIDENTIAL ACCESSORY SOLAR ENERGY GENERATING SYSTEM - An energy-generating system that derives energy from the sun to produce electricity to support the principal use on a residential property on the same lot or parcel as the principal use. Includes an energy-generating system that delivers electricity to a power grid and complies with the laws of the State of Maryland.

SMALL SHRUB – A shrub that, when mature, reaches a height no greater than six (6) feet.

SOIL CONSERVATION AND WATER QUALITY PLAN - 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 the waters of the State.

SOLAR ENERGY GENERATING SYSTEM -

- A. An energy-generating system that derives energy from the sun to produce electricity.
- B. Solar energy generating systems include:
 - (1) A land use that uses solar collectors, panels, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware, or equipment to produce electricity; and
 - (2) Any term used by a local jurisdiction for a solar application that proposes to construct a solar energy generating system such as a solar energy system utility scale, solar energy system utility-scale on farms, utility-scale solar array, solar power plant, solar energy system large scale, solar energy system medium scale, solar array, power generating facilities, solar facilities, solar energy system grid-connected, and solar energy generating facility commercial.
- C. Solar energy generating system does not include an energy storage device or facility where the device or facility operates independently of, is separate from, and the primary purpose of which does not include supporting the solar energy generating system within the Critical Area.

SPECIES IN NEED OF CONSERVATION - Those fish and wildlife whose continued existence as part of the State's resources is in question and which may be designated by regulation by the Secretary 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.

SPOIL PILE - The overburden and reject materials as piled or deposited during surface mining.

STEEP SLOPES - Slopes with an incline of 15 percent or greater.

STORMWATER -

- A. Stormwater has the meaning stated in COMAR 26.17.02.02.
- B. Stormwater includes runoff associated with:

- (1) An increase in lot coverage onsite, including all additions to a building, road, or parking lot;
- (2) A change in permeability caused by compaction during construction or a modification in contour, including the filling or drainage of a small depression area;
- (3) Alteration of a drainageway or the regrading of a slope;
- (4) Destruction of forest and developed woodland; and
- (5) Installation of a collection system to intercept street flow or to replace a swale or other drainageway.

STRUCTURE - Structure.

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

SUBDIVISION -

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

SUBSTANTIAL ALTERATION - Any repair, reconstruction, or improvement of a principal structure where the proposed total footprint is at least 50 percent greater than that of the existing principal structure.

SURFACE MINING –

- A. The breaking of surface soil located in the Critical Area in order to extract or remove a mineral;
- B. An activity or process that is part of the method of extraction or removal of a mineral from its original location in the Critical Area and
- C. The extraction or removal of sand, gravel, rock, stone, earth, or fill from a borrow pit for the purpose of constructing a road or another public facility.
- D. Surface mining includes:
 - (1) An activity related to the processing of a mineral at the site of extraction or removal;

- (2) Extraction or removal of overburden and mining of a limited amount of a mineral when done for prospecting, to the extent necessary, for the purpose of determining the location, quantity, or quality of a natural deposit; and
 - (3) A mining activity.
- E. "Surface mining" does not include an activity or process that is excluded under the provisions of the Environment Article, §15-807, Annotated Code of Maryland, or COMAR 26.21.01.08.

TEMPORARY DISTURBANCE - A short-term change in the landscape that occurs as part of a development or redevelopment activity. "Temporary disturbance" includes:

- A. Storage of materials that are necessary for the completion of the development or redevelopment activity;
- B. Construction of a road or other pathway that is necessary for access to the site of the development or redevelopment activity if the road or pathway is removed immediately after completion of the development or redevelopment activity and the area is restored to its previous vegetative condition;
- C. 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 locating a septic system on a lot created before local program approval, if the septic system is located in existing grass or clearing is not required.
- D. "Temporary disturbance" does not include a violation.

THREATENED SPECIES - A species of flora or fauna that appears likely within the foreseeable future to become endangered, including a species determined to be a threatened species in accordance with the provisions of:

- A. The federal Endangered Species Act of 1973, 16 U.S.C. §§1531—1544;
- B. Natural Resources Article, Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or
- C. COMAR 08.03.08.

THINNING - A forest practice used to accelerate the growth of quality trees in the shortest interval of time.

TIDAL WETLANDS - State wetlands, defined as any land under the navigable waters of the state below the mean high-water line affected by the regular rise and fall of tide, and private wetlands, defined as any land not considered state wetlands bordering or lying beneath tidal waters that are subject to regular or periodic tidal action and support aquatic growth. Private wetlands include those transferred by the state through a valid grant, lease, patent, or grant confirmed by Article 5 of the Declaration of Rights of the Constitution, to the extent of the interest transferred. The term "regular or periodic tidal action" means the rise and fall of the sea

produced by the attraction of the sun and moon, uninfluenced by the wind or any other circumstance.

TOPOGRAPHY - The existing configuration of the Earth's surface, including the relative relief, elevations, and position of land features.

TRANSFER - A relocation of development rights from a transferor parcel to a receiving parcel by an instrument of transfer. "Transfer" includes any intermediate transfers to or among transferees.

TRANSFeree –

- A. A person to whom development rights are transferred; and
- B. All persons who have any lien, security interest, or other interest with respect to development rights held by a transferee.

TRANSFEROR -

- A. A person who transfers development rights; and
- B. All persons who have any lien, security interest, or other interest with respect to development rights held by a transferor.

TRANSFEROR PARCEL - The parcel from which development rights can be transferred. A transferor parcel may be less than all of a lot owned by an original transferor; however, a transferor parcel must be at least 20 acres or 1/2 of the size of the transferor parcel, whichever is less. A transferor parcel within the Critical Area District shall be at least 20 acres in size.

TRANSITIONAL HABITAT - 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.

TRANSPORTATION FACILITIES - Any one or more or a combination of:

- A. Airport facilities;
- B. Highway facilities;
- C. Port facilities;
- D. Railroad facilities; and
- E. Transit facilities.

TREE - A woody perennial plant having a single, usually elongated, main stem, generally with few or no branches on its lower part; a perennial shrub or herb of arborescent form.

TRIBUTARY STREAMS - A perennial and intermittent stream in the Critical Area District that has been identified by site inspection or in accordance with local procedures described in this Chapter.

UNDERREPRESENTED COMMUNITY - A community whose members self-identify:

- A. As Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native; or
- B. With one or more of the racial or ethnic groups listed in item (a) of this paragraph.

UNDERSERVED COMMUNITY - Any census tract in which, according to the most recent U.S. Census Bureau Survey:

- A. At least 25% of the residents qualify as low-income;
- B. At least 50% of the residents identify as nonwhite or
- C. At least 15% of the residents have limited English proficiency.

UNDERSTORY - The layer of forest vegetation typically located underneath the forest canopy.

UNDERSTORY TREE - A tree that, when mature, reaches a height between 12 and 35 feet.

UNWARRANTED HARDSHIP - Without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

UPLAND - Any area that does not qualify as a tidal or nontidal wetland.

UPLAND BOUNDARY - The landward edge of a tidal wetland or nontidal wetland.

UTILITY TRANSMISSION FACILITIES - Fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits, and sewer lines.

WASH PLANT - A facility where sand and gravel are washed during processing.

WATER-BASED AQUACULTURE - The raising of fish and shellfish in any natural, open, free-flowing water body.

WATER-DEPENDENT FACILITIES - Structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that Wicomico County has determined 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 include, but 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.

WATER-DEPENDENT FACILITY OR ACTIVITY -

- A. A structure or activity that, by reason of its intrinsic nature or operation or because of its association with an industrial, maritime, recreational, educational, aquaculture, or fishery activity, is dependent on the water and requires location at or near the shoreline or in the Buffer.
- B. Water-dependent facility or activity includes:

- (1) A port;
- (2) An intake or outfall structure;
- (3) A marina, another boat-docking facility, or a structure or activity that is essential to the operation of the water-dependent facility, structure, or activity;
- (4) A fuel pump or other fuel-dispensing equipment on a pier, a sanitary sewage pump or other wastewater removal equipment on a pier, and an office on a pier for managing marina operations, such as monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations;
- (5) A public beach and any other public water-oriented recreation area; and
- (6) Any other water-dependent facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

WATER-USE INDUSTRY - An industry that requires a location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

WATERFOWL - Birds, which frequently 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.

WATERFOWL STAGING AND CONCENTRATION AREA - 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.

WETLAND MIGRATION AREA - An area that will likely be suitable for future wetland establishment in response to a change in sea level.

WICOMICO COUNTY CRITICAL AREA PROGRAM (also known as the "Wicomico County Chesapeake and Atlantic Coastal Bays Critical Area Program") - This program, approved by the Chesapeake Bay Critical Area Commission on September 6, 1989, and subsequently amended, is comprised of Chapter 125 of the County Code and the Official Critical Area map(s). A reference to Chapter 125 is equivalent to a reference to the entire Wicomico County Critical Area Program.

WILDLIFE CORRIDOR - A strip of land having vegetation that provides habitat and a safe passageway for wildlife.

WILDLIFE HABITAT - 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.