

LIBERO 007 FOLIO 01
COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

2017 Legislative Session,
Legislative Day No. 6

Introduced By: County Council

BILL NO. 2017-3

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY MARYLAND, ACTING PURSUANT TO THE LAND USE ARTICLE OF THE MARYLAND ANNOTATED CODE, WHICH ENTRUSTS LOCAL JURISDICTIONS WITH LAND USE PLANNING AUTHORITY TO GUIDE GROWTH AND DEVELOPMENT AND ACTING PURSUANT TO TITLE 27, CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS, SUBTITLE 01, CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT, OF THE CODE OF MARYLAND REGULATIONS (COMAR) AND ACTING PURSUANT TO SECTION 8-1808 OF THE NATURAL RESOURCES ARTICLE, PROGRAM DEVELOPMENT FOR THE CHESAPEAKE BAY CRITICAL AREA, TO REPEAL CHAPTER 62 OF THE DORCHESTER COUNTY CODE ENTITLED, AGRICULTURAL USE, AND TO REPEAL CHAPTER 97 OF THE DORCHESTER COUNTY CODE ENTITLED, FORESTRY, AND TO REPEAL SECTION 100-13, CRITICAL AREA PROTECTION, AND SECTION 100-13.1, CIVIL PENALTIES IN CRITICAL AREA; ADMINISTRATIVE ABATEMENT ORDERS, OF CHAPTER 100 OF THE DORCHESTER COUNTY CODE ENTITLED, GRADING, EROSION AND SEDIMENT CONTROL, AND TO REPEAL ARTICLE XV, ADDITIONAL PROVISIONS, SECTION 134-31, CRITICAL AREA PROTECTION, OF CHAPTER 134 OF THE DORCHESTER COUNTY CODE ENTITLED, STORMWATER MANAGEMENT, AND TO REPEAL ARTICLE XII, CRITICAL AREA PROTECTION, SECTION 140-49 THROUGH SECTION 140-55.1 OF CHAPTER 140 OF THE DORCHESTER COUNTY CODE ENTITLED, SUBDIVISION REGULATIONS, AND TO REPEAL CERTAIN TERMS AND THEIR DEFINITIONS SET FORTH IN SECTION 155-13, TERMS DEFINED IN CHAPTER 155 OF THE DORCHESTER COUNTY CODE ENTITLED, ZONING, AND TO REPEAL ARTICLE VII, DISTRICT REGULATIONS, SECTION 155-38, CA CRITICAL AREA PROTECTION DISTRICT, OF CHAPTER 155 OF THE DORCHESTER COUNTY CODE ENTITLED, ZONING, AND TO ENACT NEW CHAPTER 68 ENTITLED, CHESAPEAKE BAY CRITICAL AREA, TO THE DORCHESTER COUNTY CODE PROVIDING FOR THE PROTECTION OF THE CHESAPEAKE BAY AND ITS TRIBUTARIES

CC DORCHESTER MAY 03 '17 PM 12:48

LIBERO 007 FOLIO 02

Introduced, read first time, ordered posted on official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, May 2, 2017 in Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:20 PM.

By order:



Jeremy Goldman, County Manager

COUNTY COUNCIL

OF

DORCHESTER COUNTY, MARYLAND

BILL NO. 2017- 3 _____

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY MARYLAND, ACTING PURSUANT TO THE LAND USE ARTICLE OF THE MARYLAND ANNOTATED CODE, WHICH ENTRUSTS LOCAL JURISDICTIONS WITH LAND USE PLANNING AUTHORITY TO GUIDE GROWTH AND DEVELOPMENT AND ACTING PURSUANT TO TITLE 27, CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS, SUBTITLE 01, CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT, OF THE CODE OF MARYLAND REGULATIONS (COMAR) AND ACTING PURSUANT TO SECTION 8-1808 OF THE NATURAL RESOURCES ARTICLE, PROGRAM DEVELOPMENT FOR THE CHESAPEAKE BAY CRITICAL AREA, TO REPEAL CHAPTER 62 OF THE DORCHESTER COUNTY CODE ENTITLED, AGRICULTURAL USE, AND TO REPEAL CHAPTER 97 OF THE DORCHESTER COUNTY CODE ENTITLED, FORESTRY, AND TO REPEAL SECTION 100-13, CRITICAL AREA PROTECTION, AND SECTION 100-13.1, CIVIL PENALTIES IN CRITICAL AREA; ADMINISTRATIVE ABATEMENT ORDERS, OF CHAPTER 100 OF THE DORCHESTER COUNTY CODE ENTITLED, GRADING, EROSION AND SEDIMENT CONTROL, AND TO REPEAL ARTICLE XV, ADDITIONAL PROVISIONS, SECTION 134-31, CRITICAL AREA PROTECTION, OF CHAPTER 134 OF THE DORCHESTER COUNTY CODE ENTITLED, STORMWATER MANAGEMENT, AND TO REPEAL ARTICLE XII, CRITICAL AREA PROTECTION, SECTION 140-49 THROUGH SECTION 140-55.1 OF CHAPTER 140 OF THE DORCHESTER COUNTY CODE ENTITLED, SUBDIVISION REGULATIONS, AND TO REPEAL CERTAIN TERMS AND THEIR DEFINITIONS SET FORTH IN SECTION 155-13, TERMS DEFINED IN CHAPTER 155 OF THE DORCHESTER COUNTY CODE ENTITLED, ZONING, AND TO REPEAL ARTICLE VII, DISTRICT REGULATIONS, SECTION 155-38, CA CRITICAL AREA PROTECTION DISTRICT, OF CHAPTER 155 OF THE DORCHESTER COUNTY CODE ENTITLED, ZONING, AND TO ENACT NEW CHAPTER 68 ENTITLED, CHESAPEAKE BAY CRITICAL AREA, TO THE DORCHESTER COUNTY CODE PROVIDING FOR THE PROTECTION OF THE CHESAPEAKE BAY AND ITS TRIBUTARIES

SECTION ONE: Acting pursuant to the Land Use Article of the Maryland Annotated Code, which entrusts local jurisdictions with land use planning authority to guide growth and development and acting pursuant to Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, Subtitle 01, Criteria for Local Critical Area Program Development, of the Code of Maryland Regulations (COMAR) and acting pursuant to Section 8-1808 of the Natural Resources Article, Program Development for the Chesapeake Bay Critical Area (the “Acts”), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 62 of the Dorchester County code entitled, Agricultural Use, be repealed in its entirety.

SECTION TWO: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 97 of the Dorchester County Code entitled, Forestry, be repealed in its entirety.

SECTION THREE: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Section 100-13, Critical Area Protection, and Section 100-13.1, Civil Penalties in Critical Area; Administrative Abatement Orders, of Chapter 100 of the Dorchester County Code entitled, Grading, Erosion and Sediment Control, be repealed.

SECTION FOUR: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Article XV, Additional Provisions, Section 134-31, Critical Area Protection, of Chapter 134 of the Dorchester County Code, entitled Stormwater Management, be repealed.

SECTION FIVE: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Article XII, Critical Area Protection, Sections 140-49 through Section 140-55.1 of Chapter 140 of the Dorchester County Code entitled, Subdivision Regulations, be repealed.

SECTION SIX: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that the following terms and their definitions as set forth in Section 155-13, Terms Defined, of Chapter 155 of the Dorchester County Code entitled, Zoning, be repealed; to wit:

ADMINISTRATIVE VARIANCE - CA
AFFORESTATION - CA
BUFFER - CA
BUFFER EXEMPTION AREA (BEA) - CA
BUFFER MANAGEMENT PLAN - CA

FISHERIES ACTIVITIES - CA
HABITAT PROTECTION AREA - CA
LIMITED DEVELOPMENT AREA - CA
PLANT AND WILDLIFE HABITAT - CA
PUBLIC WATER-ORIENTED
RECREATION - CA
RESOURCE CONSERVATION AREA - CA
SPECIES OF CONCERN - CA
TRANSPORTATION FACILITIES - CA
WATER-DEPENDENT FACILITY - CA

WATER-USE INDUSTRY - CA

CRITICAL AREA - CA
DEVELOPMENT AREA - CA
DEVELOPMENT ENVELOPE - CA
DEVELOPED WOODLAND - CA
DOCUMENTED BREEDING BIRD
AREA - CA
FISH PROPAGATION WATERS - CA
INTENSELY DEVELOPED AREA - CA
NATURAL VEGETATION - CA
PORT - CA

REFORESTATION - CA
RIPARIAN HABITAT - CA
TIDEWATER BUFFER - CA
UNWARRANTED HARDSHIP - CA
WATERFOWL CONCENTRATION
AREA - CA
WETLAND MITIGATION PLAN - CA

SECTION SEVEN: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Article VII, District Regulations, Section 155-38, CA Critical Area Protection District, of Chapter 155 of the Dorchester County Code entitled, Zoning, be repealed.

SECTION EIGHT: Pursuant to the Acts, be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that new Chapter 68 entitled, Chesapeake Bay Critical Area, be enacted and added to the Dorchester County Code to read as follows:

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Article 1. Critical Area

§68-1 Definitions

Applicability.

The following words have the following meanings for the purposes of implementing the Critical Area Program and this Ordinance, and the singular always include the plural, and vice versa, except where such construction would be unreasonable. Terms identified with the initials "CA" apply county-wide and, where applicable to lands in the critical area, may not be modified without the approval of the Maryland Chesapeake Bay Critical Area Commission:

"Abandoned or abandonment –CA" means to cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

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

"Accessory structure" means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure and is not attached by any common wall or by a common roof to the main structure.

"Addition" means construction that increases the size of a structure.

"Administrative Variance - CA" means an alternative to the standard critical area buffer variance procedures available only if a development project meets specific criteria.

"Afforestation - CA" means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

"Agriculture" means the use of land for the purposes of farming, dairying, pasturing, agriculture, horticulture, viticulture, silvaculture, floriculture, fish culture, and animal and poultry husbandry. The processing, packaging or manufacture of agricultural products is not included.

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

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

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

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

"Barren land" means unmanaged land having sparse vegetation.

“Bed and Breakfast Home – CA” means a dwelling occupied by the owner or operator that contains not more than 10 guest rooms, excluding resident quarters offering overnight lodging accommodations and breakfast for transient guests only.

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

“Bona Fide Intrafamily Transfer” means a transfer to a member of the owner’s immediate family of a portion of the owner’s property for the purpose of establishing a residence for that family member.

“Buffer - CA” means an area that based on conditions at the time of development, is immediately landward from mean high water of tidal waterways, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland; and the area exists in or is established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. The Buffer includes an area of at least 100-feet even if that area was previously disturbed by human activity or is currently developed and also includes any expansion for contiguous sensitive areas, such as a steep slope, hydric soil, highly

erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.

“Buffer Exemption Area (BEA) – CA” means those areas of the county located within the tidewater buffer that are largely or totally developed such that the pattern of residential, industrial, commercial or recreational development present as of December 1, 1985, prevents the tidewater buffer from fulfilling its intended purposes. Buffer exemption areas may be exempted from certain requirements of the tidewater buffer, as may be determined by the county. The term “Modified Buffer Area” has replaced the term, “Buffer Exemption Area.”

“Buffer Management Plan - CA” means 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. Buffer Management Plan includes a major Buffer Management Plan, a minor Buffer Management Plan, or a Simplified Buffer Management Plan as described in this Ordinance.

“Bufferyard” means an area at least 25 feet wide, located between development activity and tidal waters, tidal wetlands, or a tributary stream, planted with vegetation consisting of native canopy trees, understory trees, shrubs, and perennial herbaceous plants that is used in Modified Buffer Areas to provide water quality and habitat benefits. This area is to be managed and maintained in a manner that optimizes these benefits.

“Canopy tree” means a tree that when mature commonly reaches a height of at least 35 feet.

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

“Cluster development - CA” means a predominantly 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 of the tract.

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

“COMAR” means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.

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

"Comprehensive Plan" means the Dorchester County Comprehensive Plan adopted in 1996, by the County Council, and any amendments thereto.

"Conforming" means 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" means a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.

"Consolidation" means a combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. Consolidation includes a lot line abandonment, a boundary line adjustment, a replatting request, and a lot line adjustment.

"Cover crop" means 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 - CA" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- (a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide as indicated on State wetland maps;
- (b) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;
- (c) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and
- (d) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Critical Area Commission as

specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.

"Critical Area Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays and is also referred to as CAC.

"Density - CA" means the number of dwelling units per acre of gross measurable and defined area of a development tract, unless otherwise specified.

"Designated Growth Areas" means the incorporated municipalities of Brookview, Cambridge, Church Creek, East New Market, Eldorado, Galestown, Hurlock, Secretary, and Vienna., any area of the CA Critical Area Protection District that was mapped IDA or LDA in the initial Dorchester County Critical Area Program approved by the Critical Area Commission, and major growth centers, community centers and villages as designated in the County Comprehensive Plan, as amended. The designated growth areas in the Comprehensive Plan are as follows:

- (a) Major Growth Center – areas mapped as "County Development District" and "Planned Growth Area" east and west of Cambridge along the Choptank River, (map 2-3), areas west of East New Market, (map 2-4), areas east of Hurlock (map 2-4);
- (b) Community Centers – areas within corporate boundaries and adjacent areas mapped as "Municipal Growth Area" and areas mapped as "Joint Planning Areas" on maps 2-3 through 2-7 to include Woolford and Madison; West Vienna; Green Point (near Secretary); and the Depot area outside East New Market;
- (c) Villages –,incorporated towns without public water and sewer, such as Eldorado, Brookview and Galestown as well as other smaller hamlets and crossroad communities in Agricultural or in Natural Resource Areas.

"Department" means the Dorchester County Department of Planning and Zoning (DP&Z) or the Dorchester County Department of Public Works (DPW).

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

"Developer" means a person who undertakes development activity as defined in this Ordinance; or a person who undertakes development activity as defined in the Criteria of the Critical Area Commission.

"Development activity" means human activity that results in disturbance to land, natural vegetation, or a structure. "Development activity" includes the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures. Agricultural structures and water-dependent structures and uses are not considered to be a "development

activity.”

“Development Area - CA” means a system of land classification within the critical area which recognizes existing land uses and serves as a basis for future growth limitations and other controls. Development areas include intensely developed areas, limited development areas and resource conservation areas.

“Development Envelope – CA” means developed portion of a parcel or tract of land that encompasses all lots, required buffers, lot coverage, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use as active recreation areas and any additional acreage needed to meet the development requirements of the Dorchester County Critical Area Program. The development envelope need not include the tidewater buffer if it is at least 300 feet deep as measured from tidal waters, tidal wetlands or tributary streams.

“Developed Woodland – CA” means an area containing mainly trees and natural vegetation but which also includes residential, commercial or industrial or recreational development and structures and uses and covering a land area of one acre or more.

“Director” means the Director of the appropriate agency within county government that administers primary responsibility for the respective land use or resource protection or governmental service impacted by the critical area program.

“Disturbance” means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintenance of an existing grass lawn.

“Documented Breeding Bird Area - CA” means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

“Dwelling Unit - CA” In the Critical Area, dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence. A dwelling unit shall be located in a structure containing a minimum gross floor area of 600 square feet.

“Ecosystem” means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.

“Emergency Services – CA” means fire, rescue, ambulance and police services, including related structures and activities.

“Endangered species” means any species of fish, wildlife, or plants that have been designated as endangered by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State’s resources are determined to be in jeopardy. This includes any species determined to be an “endangered” species pursuant to the Federal Endangered Species Act, 16 U.S.C. §et seq., as amended.

“Essential Services” means water lines, sewer lines, natural gas lines, propane gas, electric lines or poles, telephone lines and poles, underground conduits, including such incidental equipment which is located on poles or in underground conduits or vaults. Essential Service structures include tandem poles and tower structures. Essential Service buildings shall include administration, storage, construction, or maintenance buildings or yards, sewage treatment or disposal plants, or water treatment plant developed in accordance with all lot area, setback, yard and height regulations as required for the principal building in the zoning district.

“Establishment’ means the planting or regeneration of native vegetation throughout the Buffer.

“Excess stormwater run-off” means all increases in stormwater resulting from:

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

“Financial assurance” means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the County.

“Fisheries Activities - CA” means commercial water dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations.

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

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

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

"Forest practice" means 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" means the Buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.

"Grandfathering CA" means provisions which allow certain preexisting uses to continue even though they may be inconsistent with a new law.

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

"Growth allocation" means:

- (a) An area of land calculated as 5 percent 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; and/or
- (b) An act of the County Council, such as approving the GA Growth Allocation Floating District, 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 CA-1 Critical Area District that results in an increase in the permitted density/use. Such action is dependent upon the approval of the Critical Area Commission.

"Growth allocation envelope" means all of the proposed components of a growth allocation project that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater

management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.

“Habitat Protection Area (HPA) - CA” means Buffer, Non-Tidal Wetlands, Threatened and Endangered Species, Plant and Wildlife Habitats, Anadromous Fish Spawning Propagation Waters and Species in Need of Conservation, i.e. colonial nesting waters, historic waterfowl staging and concentration areas, habitats of local significance, as defined in the County Critical Area Program.

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

“Hazardous tree” means 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” means those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

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

“Home improvement” means the addition to or alteration, conversion,

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

“Hotel/Motel – CA” means a facility providing transient lodging accommodations on a daily rate to the general public and providing additional services such as restaurants, meeting rooms and recreational facilities. A hotel/motel does not include a boarding house, bed-and-breakfast, inn or recreational trailer park.

"Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils. A list of hydric soils is maintained by the Natural Resources Conservation Service and at the Dorchester County Department of Planning and Zoning.

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

“Immediate family” means a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, or sibling.

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

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

“Intrafamily Transfer” means a transfer of a portion of the owner's property to a member of the owner's immediate family, as defined herein, for the purpose of establishing a residence for that family member.

“Invasive species” means a type of plant that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

"K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

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

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

"Landforms" means feature of the earth's surface created by natural causes.

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

“Large shrub” means a shrub that, when mature, reaches a height of at least six feet.

“Legally developed” means all physical improvements to a property that existed before Critical Area Commission approval of a local Program, or were properly permitted in accordance with the provisions of the local Program in effect at the time of construction.

“Limit of disturbance” means the area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance.

“Limited Development Area - CA” means an area: with a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre; with a public water or sewer system; that is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space nor a public water or public sewerage system; or that is less than 20 acres and otherwise qualifies as an intensely developed area under the definition in this Section.

“Living shoreline” means a suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal process, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures,

breakwaters, or other natural components.

“Local significance” means development of a minor scale, which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Program of the County; and is not considered to be major development as defined in this Section.

“Lot coverage” means the percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with gravel, stone, shell, impermeable decking, pavers, permeable pavement, or any other manmade material. Lot coverage includes the ground area covered or occupied by, a stairway, impermeable deck, or decking material that is not attached to a dwelling. Lot coverage 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 that is attached to a dwelling and with gaps to allow water to pass freely.

“Major Buffer Management Plan” means a type of Buffer Management Plan and all supporting documentation required under COMAR 27.01.09.01-3J.

“Major development” means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area Program of a local jurisdiction. This development includes, but is not limited to, airports, power plants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.

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

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

“Minor Buffer Management Plan” means a type of Buffer Management Plan and all supporting documentation required under COMAR 27.01.09.01-3I

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

“Modified Buffer Area (MBA)” means an area officially mapped by the County

and approved by the 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 prevents the Buffer from fulfilling its water quality and habitat functions, and where development in accordance with specific MBA provisions can be permitted in the Buffer without a variance. MBAs have formerly been referred to as “Buffer Exempt Areas”.

“Municipal Annexation Growth Allocation” means areas outside of the municipal boundary as of original adoption of the municipality's critical area program.

“Municipal Infill Growth Allocation” means infill growth allocation allotment allocated to the municipality by the county council that is used for projects within the municipal boundary as of original adoption of its critical area program.

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

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

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

“Natural Vegetation – CA” means those plant communities that develop in the absence of human activities.

“Natural Heritage Area” means any communities of plants or animals which are considered to be among the best statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

“Natural parks” means areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.

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

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

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

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

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

"Non-renewable resources" means resources that are not naturally regenerated or renewed.

"Nontidal wetlands" means those areas regulated under Subtitle 26 of the Environment Article that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended. Nontidal wetlands do not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.

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

"Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

"Palustrine" means all non-tidal 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 one-half part per 1,000 parts of water.

"Permanent disturbance" means 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.

Permanent disturbance does not include installation of a septic system on a grandfathered lot if located in existing grass or clearing is not required.

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

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

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

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

"Plant and Wildlife Habitat – CA" means plant communities and wildlife areas which have statewide or local significance because of their uniqueness, rarity or uncertain future. These areas include, but are not limited to, colonial water bird nesting sites, waterfowl concentration areas, forests with breeding populations of forest interior bird species, riparian forests and designated natural heritage areas.

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

"Principal structure" means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.

"Private harvesting" means the cutting and removal of trees for personal use.

"Program amendment" means any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission

to be a Program refinement.

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

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

"Project approvals" means 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” means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.

“Public Utilities – CA” means uses or structures for the public purpose of power transmission and distribution (but not power generation); fuel transmission and distribution (but not manufacturing or storage); water treatment and distribution; sewage collection and treatment; telephone service facilities (but not utility truck terminal facilities); radio and television facilities (not including broadcasting studios); and rail or highway rights-of-way (not including stations or terminals).

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

"Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including water bodies.

“Reconfiguration” means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. Reconfiguration includes a lot line adjustment, a boundary line adjustment, and a replatting

request.

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

“Reforestation - CA” means the establishment of a forest through artificial reproduction or natural regeneration.

“Remaining Lands” means a notation on a subdivision plat denoting land area or areas of the original tract or tracts that are residual and not part of the proposed subdivision. Remaining lands may be developed, provided that they meet requirements of the applicable zoning district or districts.

“Renewable resource” means a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

“Reserved Lands” means notation on a subdivision plat or plats denoting a land area or areas of the original tract or tracts that are assigned by the subdivider to meet the minimum density requirements for subdivision of land in the Resource Conservation Area (RCA). Reserved lands are not included in the area of the lots created in the subdivision, but are assigned a reservation status by the developer in order to ensure that there is a minimum of 20 acres in the RCA set aside from development for each lot created in the RCA. Reserved lands are restricted from further development; however, reserved lands may be utilized for agricultural, aquacultural, forestry and resource conservation purposes, including erection of buildings and structures related to these uses, provided that such uses, buildings or structures comply with all other applicable requirements of the Dorchester Zoning Ordinance and this Chapter. Reserved lands shall be clearly shown on the subdivision plat.

“Resource Conservation Area - CA” means an area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource conservation areas include areas with a housing density of less than one dwelling per five acres.

“Resource utilization activities” means any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.

“Restoration” means the act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions

of a site or area.

"Riparian habitat - CA" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

"Road - CA" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body. "Road" does not include a drive aisle or driveway.

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

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

"Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area. 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 non-wooded bank to manage tidal water contact, using structures to contain sloped materials if necessary; and
 - (3) Contained Beach. Filling along shore with sandy materials, grading, and containing the new beach to eliminate tidal water contact with the bank.
- (b) Structural Erosion Control.
 - (1) Revetment. Facing laid on a sloping shore to reduce wave energy and contain shore materials;
 - (2) Bulkhead. Excluded due to adverse impacts to the near shore marine environment, except in the following special cases:
 - a. Where erosion impact is severe and high bluffs and/or dense woodland preclude land access, bulkheads can be installed by shallow draft barge and pile driver; and
 - b. In narrow, manmade lagoons for activities that require frequent interchange between boats and land.

"Shoreline" Means in the case where land abuts tidal waters, the boundary line between state and private wetlands as defined herein, and in the case where land abuts regularly flowing nontidal waters, the boundary line between open water and wetlands or fastlands.

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

"Simplified Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under COMAR 27.01.09.01-3H.

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

"Soil Conservation and Water Quality Plans" means 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 landowners plans to install to treat undesirable conditions; and
- (c) The schedule for applying those Best Management Practices.

"Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the 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.

"Species of Concern – CA" means plant and wildlife species whose continuing existence is in question and which warrant special attention. This category includes endangered species, threatened species and species in need of conservation.

"Spoil pile" means the overburden and reject materials as piled or deposited during surface mining.

"Steep slopes" means slopes of 15 percent or greater incline.

"Structure" means anything constructed or erected on or over land or water that may or may not result in lot coverage.

"Substantial alteration" means 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.

"Supplemental Growth Allocation" means growth allocation granted for a specific project as part of annexation process.

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

“Surface mining” means the breaking of the surface soil in order to extract or remove minerals in the Critical Area. Surface mining includes any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this Ordinance, surface mining is also defined as operations engaged in processing minerals at the site of extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.

“Temporary disturbance” means a short-term change in the landscape that occurs as part of a development or redevelopment activity. “Temporary disturbance” includes:

- (a) Storage of materials 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
- (d) 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.

“Temporary disturbance” does not include a violation.

“Thinning” means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.

“Threatened species” means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources that appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a “threatened” species pursuant to the federal Endangered Species Act, 16 U.S.C. §1431 et seq., as amended.

“Tidewater Buffer - CA” means a protective vegetated area established landward

from the mean high-water line of tidal waters, tributary streams and tidal wetlands. The width of the buffer is a minimum of 100 feet and will be expanded beyond 100 feet to include contiguous, sensitive areas of nontidal wetlands, soils with high erosion potential and certain hydric soils. More specifically, the minimum one-hundred- or two-hundred-foot buffer as described in COMAR 27.01.09.01.E.

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

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

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

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

"Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local program procedures approved by the Critical Area Commission.

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

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

"Unwarranted hardship - CA" 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."

"Upland boundary" means the landward edge of a tidal wetland or nontidal wetland.

"Use" means:

- (a) A permitted activity as defined in this chapter.
- (b) If not covered by Sub-Section an above, as identified as a permitted activity in this chapter and defined by general custom in Dorchester County.

- (c) If not covered by Sub-Section b above, an activity which, by general custom in Dorchester County, is separate and may be purposefully conducted independent of other activities.

"Utility" means any activity or use which provides and offers such services as water, sewerage, sewage treatment, electricity, gas or telecommunication.

"Utility Transmission Facilities - CA" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.

"Variance - CA" means a modification only of density, bulk or area requirements in this chapter where such modification will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of any action taken by the applicant, a literal enforcement of this chapter would result in unwarranted hardship.

"Wash plant" means a facility where sand and gravel is washed during processing.

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

"Water-dependent facilities - CA" means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. Such activities 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-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

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

"Waterfowl Concentration Area - CA" means locations where waterfowl, e.g., geese, ducks, swan, etc., have historically congregated in large numbers.

"Water-use Industry - CA" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes. Ports and industries which use water for transportation and derive economic benefits from shore access on sites approved by the county where it is determined

that the proposed use will provide significant economic benefit to the County.

“Wetland Mitigation Plan - CA” means a detailed plan that shows how adverse effects on nontidal wetlands resulting from development activities will be addressed.

“Wildlife corridor” means a strip of land having vegetation that provides habitat and safe passage for wildlife.

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

§68-2 Intent, Purpose, and Goals ⁽¹⁾

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 Critical Area Program are to accomplish the following:

- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;

¹ Natural Resources Article 8-1801 and 8-1808.

- (2) Conserve fish, wildlife, and plant habitat; and
- (3) Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

§68-3 Implementation of the Critical Area Provisions ⁽²⁾

A. Local implementation.

These provisions regulate development activities and resource utilization activities, e.g., agriculture and forestry, within the Critical Area. They supplement existing land use regulations by imposing specific standards and requirements as set forth in the Critical Area Act and Criteria. The Critical Area provisions as set forth herein and in any other applicable regulations, supersede any inconsistent law, Chapter, or plan of the County. In the case of conflicting provisions, the stricter provisions shall apply.

B. Critical Area Program.

The County adopted its Critical Area Program on August 23, 1988. The Program consists of this Ordinance, the County’s Comprehensive Plan, the County’s Critical Area maps, and the County’s zoning, grading, erosion and sediment control and subdivision regulations.

C. Regulated activities and applicability.

Any applicant for a permit or license to pursue activities within the Critical area, including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the Director or designee after review and approval under the County’s Critical Area Program.

D. Notification of project applications ⁽³⁾.

The County shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area to the Critical Area Commission for review and comment. The application shall be accompanied by a completed “Project Notification Application” form. The Critical Area Commission shall send written notification of receipt of the application before the close of the fifth business day. The County may not process an application, which has been sent to the Critical Area Commission for notification until it has received notice of receipt by the Critical Area

² Natural Resources Article 8-1808. Program Development.

³ COMAR 27.03.01

Commission. Any action by the County in violation of these procedures shall be void.

E. Responsible agencies.

The County's Critical Area Program and all applicable provisions of this Ordinance shall be implemented and enforced by the appropriate agency within County government that administers primary responsibility for the respective land use or resource protection or governmental service policies impacted by the Critical Area Program. Should an infraction of the provisions contained in any law, regulation, or plan related to the County's Critical Area Program be brought to the attention of any County official, said official shall contact the Director or designee who may consult with the County Attorney to determine the proper remedial course of action. If appropriate, the Director or designee shall inform the Critical Area Commission about the infraction and any decision made regarding remedial action. The Critical Area Commission, at its discretion, may also take remedial action under the authority it is given under State law.

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§68-4 Administrative Enforcement⁽⁴⁾

A. Applicability.

The purpose of this chapter is to establish administrative enforcement procedures to identify violations, assess administrative civil penalties, and require abatement, restoration, and mitigation for violations to the County's Critical Area Program. The provisions of this Chapter are in accordance with the Critical Area Act and Criteria, and as set out in any other applicable ordinances and regulations, apply throughout the Critical Area and supersede any inconsistent law, regulation, ordinance or plan of the County. In the case of conflicting provisions, the stricter provisions shall apply.

B. Compliance officials.

These provisions shall be implemented and enforced by the Director or designee

- (1) The Director or designee shall enforce, and supervise enforcement responsibilities of this Ordinance.
- (2) The Director or designee shall conduct administrative reviews as set forth in this Chapter, to evaluate the amount of administrative civil penalties in accordance with County regulations. Following an administrative review, the Director or designee may decrease, increase, or confirm the amount of the civil penalty. In addition, the Director or designee may modify or impose payment terms, conditions, schedules, or other requirements and may suspend all or part of any civil penalty.
- (3) The Director or designee may notify the Critical Area Commission of any violation and inform the Critical Area Commission of all actions taken to halt the violation, restore the property, and require appropriate mitigation. The Critical

⁴ Natural Resources Article 8-1808 and 8-1815.

Area Commission, at its discretion, may also pursue its own remedial action or assist the County as provided for in State law.

C. **Violations⁽⁵⁾**

No person shall violate any provision of this Ordinance. Each violation that occurs and each calendar day that a violation continues shall be a separate offense. Each person who violates a provision of this Ordinance shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.

Administrative civil penalties for continuing violations shall accrue without a requirement for an additional assessment, notice, or opportunity for hearing for each separate offense. If the Director or a designee shall find that any of the provisions of this Ordinance are being violated, the Director, or a designee, shall notify in writing the person responsible for such violation or violations indicating the nature of the violation and ordering the action necessary to correct it.

- (1) The Director or designee shall order discontinuance of illegal use of land, buildings, or structure; removal of illegal buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.
- (2) For the purposes of this provision, a violation shall include but not be limited to the following:
 - (a) Violation of Dorchester County Critical Area Program.
 - (b) Violation of Dorchester County Zoning Ordinance.
 - (c) Violation of an existing Dorchester County Board of Zoning Appeals order, condition or restriction.
 - (d) Violation of an existing Dorchester County Planning Commission order, condition or restriction.
 - (e) Violation of Dorchester County Forest Conservation Ordinance.
 - (f) Violation of Dorchester County Flood Plain Management Ordinance.
 - (g) Violation of Dorchester County Subdivision Ordinance.
 - (h) Violation of Dorchester County Building Code Ordinance (regarding grading, erosion, and sediment control).

- (i) Violation of the Dorchester County Grading, Erosion and Sediment Control Ordinance.
 - (j) Any other violation including, but not limited to, non-compliance with any order of the Department of Planning and Zoning (DP&Z), the Department of Public Works, the Planning Commission, the Board of Zoning Appeals, or a court of competent jurisdiction including but not limited to an order to modify or remove a structure, to perform mitigation, or to pay fines or assessed penalty fees related to a citation or other violation issued by DP&Z.
- (3) No zoning application, application to the Dorchester County Board of Zoning Appeals for administrative review, modification of an existing Board of Zoning Appeals order, special exception, variance or other application seeking action by the Board to Zoning Appeals or the Dorchester County Planning and Zoning Commission shall be accepted or shall otherwise proceed if a violation as above described shall exist upon or be related to the subject parcel until the violation is corrected or a plan has been approved permitting the application to proceed⁽⁶⁾.

D. Required enforcement action⁽⁷⁾.

If DP&Z or the Department of Public Works identifies a violation of this subtitle or any provision of the County's Critical Area ordinances or regulations, it shall take enforcement action including:

- (1) Assess administrative civil penalties as necessary to cover the costs associated with local authorities performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, and reviewing mitigation plans and ensuring compliance with these plans;
- (2) Issue abatement, restoration, and mitigation orders as necessary to:
 - (a) Stop unauthorized activity;
 - (b) Restore and stabilize the site, as appropriate, to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits; and
- (3) Require the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation.

6 Natural Resources Article 8-1808(c)(1)(iii)15.F

7 Natural Resources Article 8-1808(c)(4)

E. Responsible persons⁽⁸⁾.

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

F. Administrative civil penalties⁽⁹⁾.

In addition to any other penalty applicable under State or County law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or the County's Critical Area Program, ordinance, or regulations shall be punishable by a civil penalty of up to \$10,000 per calendar day.

- (1) Before imposing any civil penalty, the person(s) believed to have violated this Ordinance shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, the Director or designee 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 State or local authorities for performing, supervising, or rendering assistance to the restoration and mitigation.
- (2) When a Section of this Ordinance establishes a different maximum amount for a civil penalty for any violation, the larger amount shall apply.
- (3) Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.

8 Natural Resources Article 8-1808(c)(1)(iii)14,15.C and (c)(2)(ii)
 9 Natural Resources Article 8-1808(c)(1)(iii)14 and (c)(2)

- (4) The person responsible for any continuing violation shall promptly provide the Director or 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. Administrative 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 otherwise.
- (5) Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by the County of all damages, costs, and other expenses caused by the violation, including the cost to correct any violation or repair, restore, or replace any County property.
- (6) Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Code.
- (7) In this Section "owner" or "property owner" includes two or more persons holding title to the property under any form of joint ownership;
- (8) In this Section "person" includes the Federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, including a contractor, property owner or any other person who committed, assisted, authorized or participated in a violation of title 8, subtitle 18, of the Annotated Code of Maryland entitled "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" or a violation of this Chapter entitled "Critical Area."
- (9) The Director of Planning is hereby authorized to issue citations for civil infractions for violations of this Chapter in accordance with §147-2 of the Dorchester County Code and the amount of the civil penalty or fine to be assessed under this Section. All civil penalties or fines for civil infractions under this Section shall be payable to the County;
- (10) The Director of Planning is also authorized to issue with the citation for civil infractions an administrative abatement order requiring the owner, property owner or person to abate or to correct an alleged violation of this Chapter, entitled "Critical Area" or to cease work or activity being performed in the Critical Area Protection District. The administrative abatement order shall be served with the citation for civil infraction pursuant to Chapter 147, §147-2, et seq. of this Code. The administrative abatement order shall be enforced pursuant to §147-6f(4) and g of Chapter 147 of the Dorchester County Code;
- (11) If a final adjudication of a notice of violation results in a determination that a

violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs; and

- (12) Application for a variance constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

G. Notice of violations and assessment of administrative civil penalties⁽¹⁰⁾.

Every notice of violation and assessment of civil penalty shall be in writing and shall include:

- (1) A description of the facts supporting each alleged violation;
- (2) Classification of each alleged violation as a continuing or non-continuing violation;
- (3) Separate assessment of a civil penalty for each violation, and a separate daily assessment for each continuing violation;
- (4) Notice of the right to request administrative review before the Director or designee to evaluate the amount(s) of administrative civil penalties; and
- (5) Notice of the right to file an appeal to the Board of Zoning Appeals.

H. Administrative abatement, restoration, and mitigation orders⁽¹¹⁾.

The provisions of this Chapter apply to orders issued by the Director or designee to a person conducting or having conducted an unauthorized action. Orders shall be sent to the alleged violator by certified mail, return receipt requested. Service shall be effective upon mailing. In addition, any other method of service reasonably calculated to provide actual notice, and any method that does provide actual notice, shall be sufficient, including service by personal delivery to a responsible person at any construction site or posting the order in a conspicuous place on any structure, sign, land, or equipment.

- (1) The Director or designee may issue an administrative abatement order to any person, compelling the person to perform the following:
 - (a) To correct, discontinue or abate any violation;
 - (b) To cease any activity being performed in violation of this Ordinance; and
 - (c) To apply for any permit, approval, special exception, or variance required

10 Natural Resources Article 8-1808(c)(1)(iii)14

11 Natural Resources Article 8-1808(c)(1)(iii)15

by this Ordinance; however, the filing of an application will not negate or stay the requirement for abatement, restoration, or mitigation measures required by the Director or designee.

- (2) Director or designee may issue a restoration order to any person compelling the person to perform the following:
- (a) To remove any construction materials, equipment, and any structures or other construction work built or erected in violation of this Ordinance;
 - (b) To restore any property to its condition as it existed before any violation of this Ordinance;
 - (c) To perform any condition or obligation required by this Ordinance or by any permit, approval, special exception, variance, license, contract, deed, or other instrument required or executed pursuant to this Ordinance;
- (3) Administrative abatement and restoration orders shall be sent to the alleged violator by certified mail, return receipt requested. Service shall be effective upon mailing. In addition, any other method of service reasonably calculated to provide actual notice, and any method that does provide actual notice, shall be sufficient, including service by personal delivery to a responsible person at any construction site or posting the order in a conspicuous place on any structure, sign, land, or equipment.
- (4) The Director or designee shall issue a mitigation order to any person receiving notice of or issued a citation for conducting or having conducted an unauthorized action. Mitigation is required for all violations of the County's Critical Area Program and shall be in addition to any required abatement or restoration activities.⁽¹²⁾ In evaluating the type and amount of mitigation, the Department shall consider the severity of the impact on water resources and habitat and the length of time necessary to restore the resources to their condition prior to the violation, or if that is not possible to recreate or establish and permanently protect similar resources in another location. The mitigation order shall compel the person to perform the following:
- (a) To implement appropriate water quality improvement or habitat enhancement measures that are sufficient to offset adverse impacts to the Critical Area resulting from the violation as follows:
 - (i) Mitigation is required at a three-to-one ratio for the area disturbed or the area of the development activity outside the 100-foot Buffer

¹² Natural Resources Article 8-1808(c)(4)(ii)

- and expanded Buffer, and
- (ii) Mitigation is required at a four-to-one ratio for the area disturbed or the area of the development activity within the 100-foot Buffer or expanded Buffer;
- (b) To prepare or to have a qualified professional prepare a mitigation plan that includes water quality improvement or habitat enhancement measures to offset adverse impacts to the Critical Area resulting from the violation as specified in Paragraph (a) above; or
- (c) To pay a fee-in-lieu of mitigation 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 the County.

I. Contents of administrative abatement, restoration, and mitigation orders.

The provisions of this Chapter apply to orders issued by the Director or designee to a person conducting or having conducted an unauthorized action. All orders shall include:

- (1) A description of each violation, including citation to the applicable County ordinance, regulation, or other requirement allegedly violated;
- (2) The time within which any required action is to occur, taking into account the specific action required to comply with the order and any existing or intervening harm or threat to the public health, safety, and welfare. Except for emergencies, which can require compliance as soon as 24 hours or otherwise less than 30 days, there is a rebuttable presumption that compliance with the orders shall take place within 30 days from the date of the order; and
- (3) Notice of the right to appeal the order to the Board of Zoning Appeals and the period within which any such appeal must be filed.

J. Bonding for restoration and mitigation orders⁽¹³⁾.

For abatement or restoration activities and mitigation activities that exceed 1,000 square feet or involve expenses exceeding \$1,000, the Department shall:

- (1) Collect a bond or other financial security to ensure that the restoration or mitigation is properly completed;
- (2) Hold a bond for at least two years if the restoration involves planting in order to ensure the survival of the plantings. The two years will run from the date the plantings are installed; and

- (3) Schedule and perform an inspection of the property at the property owner's request as necessary to ensure compliance and promptly release the bond or other financial security when compliance is confirmed.

K. Cumulative remedies⁽¹⁴⁾.

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

L. Injunctive relief⁽¹⁵⁾.

The Director or designee is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Ordinance, an administrative order, a permit, a decision, or other imposed condition.

- (1) The pendency of an appeal to the Board of Zoning 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 a civil fine up to \$10,000 for each day that an administrative order was violated, but not exceeding \$10,000, after considering:
 - (a) The willfulness for the violation;
 - (b) The harm to the environment or the community in which the violation occurred; and
 - (c) The cost to the County of enforcing the administrative order.

M. Permits pursuant to a violation⁽¹⁶⁾.

The Department may not issue any permit, approval, variance, or special exception, unless the person seeking the permit has:

- (1) Fully paid all administrative, civil, or criminal penalties as set forth in Sub-Section E. above;
- (2) Prepared a restoration or mitigation plan, approved by the Department, to abate impacts to water quality or natural resources as a result of the violation;
- (3) Performed the abatement measures in the approved plan in accordance with the local Critical Area regulations; and

14 Natural Resources Article 8-1808 and 8-1815

15 Natural Resources Article 8-1815

16 Natural Resources Article 8-1808(c)(4)

- (4) Unless an extension of time is approved by the Department 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.

N. Non-issuance, non-renewal, suspension, or revocation of a permit.

The Director or 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 Ordinance.

- (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 Ordinance, or any terms, conditions, or restrictions in the permit or license itself.
- (2) The Director or designee shall give written notice and opportunity to be heard before any non-issuance, non-renewal, 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 Zoning Appeals.

O. Enforcement costs⁽¹⁷⁾.

In any action or proceeding in which the County substantially prevails, the County may recover all costs incurred to enforce the terms of this Ordinance, including counsel fees and litigation expenses.

P. Appeals.

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

§68-5 Development in the Critical Area⁽¹⁸⁾

A. Description.

The provisions of this Chapter apply generally to all development, redevelopment and

¹⁷ Natural Resources Article 8-1815

¹⁸ COMAR 27.01.02.01 through .02 and Natural Resources Article 8-1808

development activities throughout the Critical Area, except where specifically noted.

B. General policies.

In order to accommodate already existing land uses and growth in the County Critical Area while providing for the conservation of habitat and the protection of water quality, the County has identified and mapped three land use management districts within the Critical Area. The Critical Area has also been defined as an overlay zone in the County Zoning Ordinance. The County has identified each of the three land use management districts within the Critical Area based on the following criteria and has developed policies and programs to achieve the objectives as proposed by the County Program. The County recognizes the following three types of development areas: Intensely Developed Areas (IDAs); Limited Development Areas (LDAs); and Resource Conservation Areas (RCAs). The following general provisions are applicable throughout the Critical Area:

- (1) Intense development should be directed outside of the Critical Area. Future intense development activities, when proposed in the Critical Area, shall be directed towards the Intensely Developed Areas.
- (2) Additional low intensity development may be permitted in the Limited Development areas, but shall be subject to strict regulation to prevent adverse impacts on habitat and water quality.
- (3) Development shall be limited in the Resource Conservation Area, which shall be chiefly designated for agriculture, forestry, fisheries activities, and other resource utilization activities and for habitat protection.

C. Permitted Uses by Zoning District.

The Table of Permitted Uses by Zoning District, in §155-34B(1), is here by adopted by reference as part of this chapter.

D. Implementation.

For purposes of implementing this regulation the County has determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of land management and development areas described in this program.

E. Activities not permitted except in IDA.

Certain new development, redevelopment or expanded activities or facilities, because of their intrinsic nature or because of their potential for adversely affecting habitats or water quality, may not be permitted in the Critical Area except in Intensely Developed Areas under regulations of this Chapter and only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:

- (1) Non-maritime heavy industry;

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- (2) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants); or
- (3) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.
- (4) The County may preclude additional development activities that it considers detrimental to water quality or fish, wildlife, or plant habitats within the Critical Area.

F. Activities not permitted.

Certain new development activities or facilities, or the expansion of certain existing facilities, because of their intrinsic nature or because of their potential for adversely affecting habitat and water quality, may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem. These include:

- (1) Solid or hazardous waste collection or disposal facilities, including transfer stations; or
- (2) Sanitary landfills.

G. Continuation of existing, permitted facilities.

Existing, permitted facilities of the type noted in paragraph (e) above shall be subject to the standards and requirements of the Department of the Environment, under COMAR Title 26.

H. Reasonable accommodations for the needs of disabled citizens.

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

- (1) An applicant shall have the burden of demonstrating by a preponderance of evidence that:
 - (a) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
 - (b) Literal enforcement of the requirements of this Chapter would result in

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discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;

- (c) A reasonable accommodation would reduce or eliminate the discriminatory effect of the requirements or restore the disabled resident's or user's reasonable use or enjoyment of the property;
- (d) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and
- (e) The accommodation would
 - (i) Be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or
 - (ii) Allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.

(2) The Board of Zoning Appeals shall determine the nature and scope of accommodation under this Sub-Section and may award different or other relief than requested after giving due regard to:

- (a) The standards given in this Sub-Section;
- (b) The purpose, intent, or effect of the requirements from which relief is requested; and
- (c) The size, location, nature, and type of accommodation proposed and whether alternatives exist which could accommodate the need with less adverse effect.

(3) The Board of Zoning Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this Ordinance. Appropriate bonds may be collected or liens placed in order to ensure the County's ability to restore the property should the applicant fail to do so.

I. Reasonable accommodations for emergency services.

The Board of Appeals may make reasonable accommodations, on the basis of public need, for development and redevelopment in the buffer for emergency services. Reasonable accommodations may be permitted in accordance with the evidentiary requirements set forth in the following Sub-Sections:

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- (1) An applicant shall have the burden of demonstrating the following:
 - (a) The existence of a public need.
 - (b) Literal enforcement of the provisions of this Sub-Section would result in diminished or inadequate emergency services provided to the local community.
 - (c) Without a reasonable accommodation, the provisions of this Sub-Section would prohibit adequate emergency services in the local community.
 - (d) The accommodation requested will not substantially impair the purpose, intent, or effect of the provisions of this Sub-Section as applied to the property.
 - (e) Environmental impacts associated with the accommodation are the minimum necessary to provide adequate emergency services to the local community.
- (2) The Board of Appeals shall determine the nature and scope of any accommodation under this Sub-Section and may award different or other relief than that requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Sub-Section. The board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
- (3) The Board of Appeals shall require 3:1 mitigation as a condition of variance approval for requests regarding emergency services.

§68-6 Intensely Developed Areas⁽¹⁹⁾

A. Description.

Areas where residential, commercial, institutional, and/or industrial developed uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features:

- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;

B. Additional requirements.

In addition, these features shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

C. General policies.

The Critical Area Ordinance for Dorchester County hereby incorporates the following policies for Intensely Developed Areas. New or expanded development or redevelopment shall take place in such a way as to:

- (1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
- (2) Accommodate additional development of the type and intensity designated by the County in this Program provided that water quality is not impaired;
- (3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;
- (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat Protection Area Sections of this Ordinance, to the extent possible within Intensely Developed Areas; and
- (5) Encourage the use of retrofitting measures to address existing stormwater management problems.

D. Development standards.

The following criteria are hereby adopted for intensely developed areas:

- (1) All development plans shall be assessed for their impacts on water quality and other biological resources;
- (2) For redevelopment plans, opportunities to reduce impacts on water quality generated by existing development shall be analyzed;
- (3) A part of all plans for development and redevelopment, urban best management practices shall be considered and, where appropriate, implemented;
- (4) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in those Sections of this Ordinance;
- (5) All roads, bridges, and utilities are prohibited in a Habitat Protection Area, unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction, and maintenance shall:

- (a) Provide maximum erosion protection;
 - (b) Minimize negative impact on wildlife, aquatic life, and their habitats; and
 - (c) Maintain hydrologic process and water quality.
- (6) All development activities that must cross or affect streams shall be designed to:
- (a) Reduce increases in flood frequency and severity that are attributable to development;
 - (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
 - (c) Provide a natural substrate for stream beds; and
 - (d) Minimize adverse water quality and quantity impacts of stormwater.
- (7) 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 use of the keystone pollutant method by at least 10 percent 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 as 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 percent of the pre-development 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) Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures. Guidance regarding offsets is provided in the *Maryland Chesapeake and*

Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003.

- (8) If practicable, permeable areas shall be established in vegetation and whenever possible, redevelopment shall reduce existing levels of pollution.
- (9) Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within Intensely Developed Areas.
- (10) Ports and industries which use water for transportation and derive economic benefits from shore access shall be located near existing port facilities. The County may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or County and is consistent with the provisions of the Water Dependent Facilities Section of this Ordinance and other State and Federal regulations.
- (11) The County shall promote, with the assistance from State agencies, participation in programs and activities for the enhancement of biological resources within the Critical Area for their positive effects on water quality and urban wildlife habitat. These programs may include urban forestry, landscaping, gardens, wetland and aquatic habitat restoration elements.
- (12) To the extent practicable, future development in the Critical Area shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.
- (13) When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, the following shall be required:
 - (a) Participation in programs established by the County for the enhancement of forest and developed woodland resources, such as programs for urban forestry that involve street tree plantings, gardens, landscaping, and open land buffer plantings;
 - (b) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
 - (c) Development activities shall address the protection of existing forests and developed woodlands identified as Habitat Protection Areas in the applicable Sections of this Ordinance.

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§68-7 Limited Development Areas.⁽²⁰⁾

A. **Description.**

Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. The quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:

- (1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;
- (2) Areas not dominated by agricultural, wetland, forest, barren land, surface water, or open space;
- (3) Areas meeting the conditions of Intensely Developed Area but comprising less than 20 acres;
- (4) Areas having public sewer or public water, or both.

B. **General policies.**

The County's Critical Area Ordinance hereby incorporates the following policies for Limited Development Areas. New or expanded development or redevelopment shall take place in such a way as to:

- (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 Sub-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.

C. **Development standards.**

For all development activities in the Limited Development Areas, the County shall require that the applicant identify any environmental or natural feature described below, and shall meet all of the following standards of environmental protection:

- (1) Adherence to the provisions of the applicable Sections of this Ordinance regarding Habitat Protection Areas and water-dependent facilities;
- (2) All roads, bridges, and utilities are prohibited in a Habitat Protection Area, unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction, and maintenance shall:
 - (a) Provide maximum erosion protection;
 - (b) Minimize negative impact on wildlife, aquatic life, and their habitats; and
 - (c) Maintain hydrologic process and water quality.
- (3) All development activities that must cross or affect streams shall be designed to:
 - (a) Reduce increases in flood frequency and severity that are attributable to development;
 - (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
 - (c) Provide a natural substrate for stream beds; and
 - (d) Minimize adverse water quality and quantity impacts of stormwater.
- (4) All development sites shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Ordinance. The County shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the County Attorney through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations.
- (5) For the cutting or clearing of trees in forests and developed woodland areas which are associated with current or planned development activities in a Limited Development Area, the County shall:
 - (a) Require that the applicant consider the recommendations of the Maryland Department of Natural Resources when planning development on forested land;
 - (b) Design and implement development activities to minimize the destruction

of woodland vegetation; and

- (c) Provide protection for forests and developed woodlands identified as Habitat Protection Areas in this Program.
- (6) For the alteration of forest and developed woodland in the Limited Development Area, the County shall apply all of the following requirements:
 - (a) The total acreage in forest coverage within the County in the Critical Area shall be maintained or preferably increased;
 - (b) All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
 - (c) If a developer is authorized to clear more than 20 percent of a forest or developed woodlands on a lot or parcel, the developer shall replace the forest or developed woodlands at 1.5 times the areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared;
 - (d) A developer may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel, unless the County:
 - (i) Authorizes the removal of more than 30 percent by the granting of a variance; or
 - (ii) Adopts procedures for the removal of more than 30 percent of a forest or developed woodland and the Commission has approved those procedures as part of a local program; and
 - (e) If a developer is authorized to clear any percentage of forest or developed woodlands from forest use under §C(6) of this regulation, the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments.
- (7) Clearing in excess of 30 percent of an existing forest or developed woodland is prohibited without a variance.
- (8) In addition, applicants shall adhere to the following criteria for forest and woodland development:
 - (a) Grading permits shall be required before forest or developed woodland is cleared;

- (b) Forests which have been cleared before obtaining a grading permit or that exceed the maximum area allowed in Sub-Section C.(7) above shall be replanted at three times the areal extent of the cleared forest;
 - (c) 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;
 - (d) All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants or other protective instruments approved by the County Attorney;
 - (e) The applicant shall designate, subject to the approval of the County, a new forest area on a part of the site not forested; and
 - (f) The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the County Attorney.
- (9) Applicants shall adhere to the following standards for development on steep slopes. Development on slopes greater than 15 percent, 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 set forth above.
- (10) Except as otherwise provided in this Sub-Section, for stormwater runoff, lot coverage shall be limited to 15 percent of the site ⁽²¹⁾. This Section does not apply to agricultural uses and structures in use for agricultural purposes on parcels with approved soil conservation and water quality plans or erosion and sediment control plans approved by the soil conservation district. Structures which qualify as water-dependent facilities do not require a variance; however, they must still meet the lot coverage limits.
- (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) This Section does not apply to a trailer park that was in residential use on or before December 1, 1985.
- (e) Lot coverage limits provided in Paragraphs (a) and (b) above may be exceeded, upon findings by the Planning Director or his designee that the following conditions exist:
 - (i) Lot coverage associated with new development activities on the property have been minimized;
 - (ii) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed thirty-one and one quarter percent (31.25%) or twenty-five percent (25%) plus five hundred square feet (500 square feet), whichever is greater;
 - (iii) For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed fifteen percent (15%) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
 - (iv) Water quality impacts associated with runoff from new development activities that contribute to lot coverage can be and have been minimized through site design considerations or use of best management practices approved by the County to improve water quality; and
 - (v) The property owner performs on-site mitigation as required by the County to offset potential adverse water quality impacts from the new development activities that contribute to lot coverage, or the property owner pays a fee to the County in lieu of performing the on-site mitigation.
 - (vi) All fees collected by the County under Sub-Section (e)(v) above of this Section must be used to fund projects that improve water quality within the critical area consistent with The County's Critical Area Protection Program.
 - (vii) The following table summarizes the limits set forth in paragraphs (a) through (c) above:

Table 68-7.C(10)(e) Lot Coverage Limits

LOT/PARCEL SIZE (SQUARE FEET)	LOT COVERAGE LIMIT
0 – 8,000	25% of Parcel + 500 SF
8,001 – 21, 780	31.25% of Parcel
21,780 – 36,300	5,445 SF
36,301 – 43,560	15% of Parcel

- (f) If the Planning Director or his designee makes the findings set forth in Paragraph (e) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
- (i) Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
 - (ii) Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.
 - (iii) If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the County may require the property owner to pay a fee to the County in lieu of performing the on-site mitigation. The amount of the fee shall be \$1.00 per square foot of the required mitigation. The County shall use all fees collected under this provision to fund projects that improve water quality within the Critical Area, consistent with the County's Critical Area Program and Zoning Ordinance.
- (g) A lot coverage exchange may be conducted on a lot that exceeds the lot coverage limits of Paragraph (e). A property owner may remove existing lot coverage in exchange for new lot coverage under the following circumstances:
- (i) The existing lot coverage on site shall be legally grandfathered or permitted by the Planning and Zoning office;
 - (ii) No more than 500 square feet of lot coverage will be exchanged;
 - (iii) There will be no net increase in lot coverage on site;
 - (iv) The removal of lot coverage outside of the buffer will not be used to accommodate new lot coverage in the buffer;

- (v) In no case shall redevelopment increase any nonconformity on site.
- (vi) Mitigation is required at a ratio of 1:1 for the square footage of exchanged lot coverage.

In the instance where a lot exceeds its lot coverage limit, a property owner may remove existing lot coverage in the Buffer in exchange for new lot coverage in the Buffer under the following circumstances:

- (i) The applicant receives a variance in accordance with §68-16.
 - (ii) The existing lot coverage on site shall be legally grandfathered or permitted by the Planning and Zoning office;
 - (iii) No more than 500 square feet of existing lot coverage in the Buffer or expanded Buffer shall be exchanged for new lot coverage in the Buffer or expanded Buffer;
 - (iv) Lot coverage in the expanded Buffer may not be exchanged for new lot coverage in the 100-foot Buffer.
 - (v) There will be no net increase of lot coverage on site;
 - (vi) There will be no net increase of lot coverage within the Buffer or expanded Buffer;
 - (vii) Mitigation shall be provided for disturbance in the Buffer as required under the Variance provisions in §68-16.
- (h) A fee in lieu shall be provided to the County if the area of the site precludes the implementation of on-site mitigation. The amount of the fee shall be determined by the Director or his designated representative. All moneys collected will be retained in the Critical Area Forest Replacement Fund.
- (i) A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements. For the purpose of increasing lot coverage on these parcels, the lot coverage limitations may not be construed to apply to a development activity for which a building permit was issued before July 1, 2008 and construction was initiated and an inspection was performed before July 1, 2009.

- (11) Lot coverage on a parcel is limited in accordance with the following maximums (22):
 - (a) When a site is mapped entirely as a Limited Development Area, 15 percent of the total site;
 - (b) When a portion of a lot or parcel is mapped as a limited development area, 15 percent of that portion of the lot or parcel; and
 - (c) In the case of a growth allocation award:
 - (i) 15 percent of the growth allocation development envelope; or
 - (ii) 15 percent of the acreage proposed for growth allocation deduction.
- (12) Dorchester County shall allow for modifications in road standards to reduce potential impact to the site and critical area resources, where the reduced standards do not significantly affect safety.
- (13) Development may be allowed on soils having development constraints if it 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.

D. Complementary State laws and regulations.

In applying this Critical Area Program, the County refers to all of the following complementary existing State laws and regulations:

- (1) For soil erosion and sediment control (COMAR 26.17.01)
 - (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 the Natural Resources Article and Environment Article of the Annotated Code of Maryland and local ordinances. Sediment control practices shall be appropriately designed to reduce adverse water quality impacts.
- (2) For stormwater runoff (COMAR 26.17.02)
 - (a) The County requires limitations on stormwater runoff are consistent with

the requirements contained in COMAR 26.17.02.

- (b) The County requires that applicants for development ensure that all stormwater storage facilities shall be designed with sufficient capacity to achieve water quality goals of this Section 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 pre-development state.
- (c) Stormwater management measures shall be consistent with the requirements of Environment Article 4-201 et seq., Annotated Code of Maryland.
- (d) Development activities on individual lots within subdivisions recorded prior to adoption of the provisions in COMAR 26.17.02 shall provide stormwater quantity and quality management unless:
 - (i) The project is an addition or modification to an existing single family dwelling;
 - (ii) The project involves disturbance that does not exceed 5,000 square feet; or
 - (iii) The project is otherwise regulated under other State laws that include provisions for managing stormwater runoff.

§68-8 Resource Conservation Areas⁽²³⁾

A. Description.

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). At the time of the initial mapping, these areas shall have had at least one of the following features:

- (1) Existing density is less than one dwelling unit per five acres; or
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water or open space.

B. General policies.

The County's Critical Area Ordinance hereby incorporates the following policies for Resource Conservation Areas. New or expanded development or redevelopment in these areas shall take place in such a way as to:

23 COMAR 27.01.02.05

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- (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 those wildlife populations that require the Chesapeake Bay, the Atlantic Coastal Bays, their tributaries or coastal habitats in order to sustain populations of those 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; and
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

C. Development standards.

In implementing this Critical Area Ordinance, the County shall use all of the following requirements for Resource Conservation Areas:

- (1) Additional low-intensity residential development is allowed in resource conservation areas, subject to the land use and other regulations applicable to the underlying zoning district. Residential uses shall not exceed an overall density of one dwelling unit per 20 acres.
- (2) In calculating the allowable residential development density for a parcel within a resource conservation area, the area of any private tidal wetlands located on the property may be included. However, the area of private tidal wetlands must be estimated on the basis of vegetative information as designated on the state wetland maps, and the development density on the upland portion of the parcel may not exceed one dwelling unit per eight acres.
- (3) Commercial, institutional, industrial, and agricultural facilities in the resource conservation area shall be as follows:
 - (a) Existing industrial, institutional, commercial and agricultural facilities, including those directly supporting agriculture, forestry, aquaculture, or residential development [not exceeding the density specified in §68-8C(1) above shall be allowed to continue in RCAs.
 - (b) Except as provided by §68-12, additional land in the RCA may not be zoned for industrial, institutional, or commercial development.
 - (c) New commercial, industrial or institutional uses in existing structures may

be allowed where the underlying zoning classification permits, provided:

- (i) The existing structure or structures housed a commercial, industrial or institutional use and such commercial, industrial or institutional use has not been abandoned for more than one year; and
 - (ii) The proposed new use does not constitute an intensification or expansion of the preexisting commercial, industrial or institutional use.
- (d) Intensification or expansion of existing industrial, commercial, and institutional facilities and uses may be permitted in the RCA by the Planning Commission. A variance, in accordance with §68-16 must be granted if such expansion or intensification involves a use which the Planning Commission determines does not conform with the provisions of the Dorchester County Critical Area Program and the Critical Area Overlay Zone.
- (e) Nonresidential uses permitted without growth allocation. The following nonresidential uses may be permitted in resource conservation areas without obtaining growth allocation:
- (i) Nonresidential uses permitted in RCA Districts on the Table of Permitted Uses by Zoning District.
 - (ii) An accessory or supportive use clearly incidental to an existing industrial and commercial facility, including those that directly support agriculture, forestry, aquaculture, or residential development and which is located wholly within an existing structure or structures. Any expansion of existing structures may only be approved with future growth allocation.
 - (iii) A use that will be completely housed in an existing building or buildings expressly designed for the proposed use and use of the building or buildings has not been abandoned for more than one year.
- (f) Local government projects may be permitted in Resource Conservation Areas without obtaining growth allocation if certified by the County Council as being a project of local significance. A project of local significance is defined as a public project of minor scale which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which the development is located, does not substantially affect the Dorchester County Critical Area Program, and is not considered a major development by the Critical Area

Commission.

- (g) Except as may be provided in Sub-Section C (3) (e) and (f) above, any additional structures, facilities, or uses not directly related to and a part of an existing industrial, commercial, or institutional use in terms of location, nature, and legal incorporation shall be considered new uses and must be located outside of the RCA except as may be provided by §68-11.
- (4) Forests and developed woodlands which are cleared after the adoption of this Section are to be replaced on not less than an equal basis. The formula for replacement of these forests is as follows:
 - (a) If less than 20% of the forested land on the parcel is cleared, the forest shall be replaced on an equal basis.
 - (b) If between 20% and 30% of the forested land on the parcel is cleared, the afforested area shall consist of 1 1/2 times the total surface acreage of the disturbed forest.
 - (c) Clearing of forested land may not exceed 30% without a variance.
- (6) Where sufficient land area does not exist on the site for afforestation, an applicant may make arrangements with other landowners or the County to reforest their lands within the critical area.
- (7) There is hereby created a Forest Replacement Fund which shall be used to collect and disburse moneys for the sole purpose of afforestation and reforestation in the critical area. The fund shall be administered by the Dorchester County Planning and Zoning Office.
 - (a) Any developer unable to reforest to meet the standards established above shall pay into the Forest Replacement Fund a dollar amount equal to the total cost of replacing the forest land to be cleared, including appropriate penalties.
 - (b) The fee shall be calculated on a per-acre basis, and shall be determined annually by the Dorchester County Planning and Zoning Office. All fees shall be made payable to the County Treasurer.
- (8) Except as provided for otherwise, all clearing of forests and developed woodlands must take place outside of the tidewater buffer.
- (9) Man-made lot coverage must adhere to Sub-Section C of §68-7 of this Article.
- (10) If no forest or developed woodlands exist on proposed development sites, these

sites shall be planted to provide a forest or developed woodland cover of at least 15%.

D. Development policies

- (1) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area Section, the Agricultural Section, and the Forest and Woodlands Protection Section of this Ordinance.
- (2) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.
- (3) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the County. Such mechanisms as cluster development, transfer of development rights, maximum lot size provisions and/or additional means to maintain the land area necessary to support the protective uses will be encouraged by the County and implemented as necessary.
- (4) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture or residential development not exceeding the density specified above, shall be allowed in Resource Conservation Areas.
- (5) If any existing use does not conform to the provisions of the Resource Conservation Area, its intensification or expansion may be permitted only in accordance with the variance provisions outlined in §68-15.
- (6) 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 in Part F. below. Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the County's growth allocation provisions.
- (7) Development activity within the Resource Conservation Areas shall be consistent with the requirements for Limited Development Areas as specified in this Ordinance.
- (8) This Section applies to an application for subdivision or site plan approval within the Resource Conservation Area that²⁴:

- (a) Receives final local approval on or after July 1, 2008, unless an application for subdivision or site plan approval is submitted before July 1, 2008 and legally recorded by July 1, 2010; and
 - (b) Does not involve the use of Growth Allocation.
- (9) Except as provided under Sub-Section C of this Section, the minimum buffer shall be:
- (a) 200 feet from tidal waters or a tidal wetland; and
 - (b) 100 feet from a tributary stream.
- (10) All provisions under COMAR 27.01.09.01 that are applicable to development activities within the 100-foot buffer, including the establishment of vegetation and expansion requirements, shall apply to the 200-foot buffer.
- (11) The 200-foot buffer may be reduced if:
- (a) The strict application of the minimum 200-foot buffer would preclude:
 - (i) Subdivision of the property at a density of one dwelling unit per 20 acres, and all other state and local requirements will be satisfied; or
 - (ii) An intra-family transfer authorized under §8-1808.2 of this subtitle; and
 - (b) The reduction will occur in accordance with local program procedures approved by the Commission

E. Calculation of 1-in-20 acre density of development⁽²⁵⁾.

In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, the County:

- (1) Shall count each dwelling unit; including dwelling units existing at the time of subdivision.
- (2) May permit the area of any private wetlands located on the property to be included under the following conditions:
 - (a) The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and

- (b) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the County, subject to review and acceptance by the Critical Area Commission, and the State Department of the Environment.
- (3) May consider one additional dwelling unit per lot or parcel as part of a primary dwelling unit for the purpose of the density calculation under this Sub-Section in accordance with the following provisions:
- (a) 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
 - (b) 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;
 - (c) An additional dwelling unit meeting all of the provisions of this Sub-Section may not be subdivided or conveyed separately from the primary dwelling unit; and
 - (d) The provisions of this Sub-Section may not be construed to authorize the granting of a variance, unless the variance is granted in accordance with the variance provisions in Section 68-16.

F. 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 Director or designee that the proposed use is one of the following:

- (1) A home occupation as an accessory use on a residential property and as provided for in the County's Zoning Ordinance; and any lot coverage associated with the home occupation shall be limited to 20,000 square feet or 15% of the parcel, whichever is less;
- (2) 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; and as restricted in the Table of Permitted Uses by Zoning District in §155-34B(1).;
- (3) 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;

- (4) A bed and breakfast facility located in an existing 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.; and as restricted in the Table of Permitted Uses by Zoning District in §155-34B(1);
- (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) An essential services, provided the service meets a public need and is not solely for the purposes of a commercial enterprise. A privately owned wastewater treatment plant may not be located in the RCA for the purposes of serving development outside the RCA;
- (9) Other uses determined by the County and approved by the Critical Area Commission to be similar to those listed above.

G. Special Provisions in Resource Conservation Areas (RCA).

Existing industrial, institutional and commercial facilities, including those directly supporting agriculture, forestry, aquaculture, or residential development shall be allowed in RCAs. If any existing grandfathered use does not conform to the RCA, its intensification or expansion may be permitted only in accordance with the variance procedures in §68-16.

H. Conveyance of Parcels Participating in the Agricultural Easement Program

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 will result in a density greater than 1 dwelling unit per 20 acres.

§68-9 Subdivision Standards in the Critical Area.

It is the intent of this Section to provide, as authorized by the Natural Resources Article of the Annotated Code of Maryland, §8-1801 et seq., necessary development controls for a designated critical area so as to protect water quality and natural habitat associated with the Chesapeake Bay.

A. Greater restrictions to prevail; other applicable provisions.

- (1) The provisions of §68-9 are in addition to other regulations of Chapter 140 SUBDIVISION REGULATION of the Dorchester County Code. In all cases of conflicting requirements, the provision which represents the greatest restriction or

highest standard shall govern.

- (2) Various other requirements also are applicable to the critical area and must be followed, including but not limited to the provisions set forth in the Dorchester County Zoning Ordinance, Stormwater Management Ordinance and Erosion and Sediment Control Ordinance.²⁶

B. General Provisions.

- (1) No provision of this article shall preclude the subdivision of land which is developed as of the adoption date of this article. However, no further development shall be permitted on the parcel if:
 - (a) The parcel is designated as a resource conservation area; and
 - (b) The development density of the parcel as of the adoption date of this article exceeds that which is allowed in a resource conservation area.
- (2) Landowners within the critical area may exchange land between adjoining properties, provided that:
 - (a) Such exchange occurs in accordance with §140-4.A.(3) of the Code; and
 - (b) The overall development density of the parcels subject to the exchange does not exceed that which is permitted in the designated development area.
- (3) For all proposed development activities in the critical area, the developer shall identify on the preliminary plat significant natural or environmental features protected under the Critical Area Law. The following site features shall be shown if they exist:
 - (a) Critical area boundaries.
 - (b) Development area designations.
 - (c) Tidal wetlands.
 - (d) Forested lands, including developed woodlands.
 - (e) Agricultural lands.
 - (f) Soils with development constraints, including hydric soils.

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²⁶ Editor's Note: See Ordinances.

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- (g) Fish and wildlife habitat areas.
 - (h) Other features as required by the County Planning Director or Planning Commission.
- (4) When planning development on forested lands, the developer shall consider the recommendations of the Maryland Forest Service, Maryland Park Service and the Department of Natural Resources Wildlife and Heritage Service prior to tree cutting or clearing operations. A grading permit is required before forest or developed woodland is cleared, as detailed in the Dorchester County Erosion and Sediment Control Ordinance.²⁷
- (5) New or expanded community pier and other noncommercial boat docking and storage facilities are permitted in the tidewater buffer if:
- (a) The facility:
 - (i) Is water dependent.
 - (ii) Meets a recognized private right or public need.
 - (iii) Is community owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision.
 - (iv) Is associated with a residential development approved by the local jurisdiction for the critical area and is consistent with all criteria and local regulations for the critical area.
 - (b) Adverse effects on water quality and fish, plant and wildlife habitat are minimized.
 - (c) Insofar as possible, nonwater dependent structures or operations associated with water dependent projects or activities are located outside the buffer.
 - (d) Disturbance to the buffer is the minimum necessary to provide a single point of access to the facility.
 - (e) Food, fuel or other goods and services are not offered for sale and adequate and clean sanitary facilities are provided.
 - (f) When a community pier with slips is provided as part of a new development project, private piers are not permitted in the development area.

²⁷ Editor's Note: See Ordinance.

- (6) The number of slips permitted at a marina facility shall be the lesser of the following:
- (a) One slip for each 50 feet of shoreline in the subdivision within intensely developed areas and limited development areas, and one slip for each 300 feet of shoreline in the subdivision within resource conservation areas; or
 - (b) A density of slips to platted lots or dwellings within a subdivision in the critical area according to the following schedule:

68.9.B(6) Number of Slips Permitted

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

- (7) Land subdivision in the Resource Conservation Area. If the proposed lot or lots to be subdivided within the Resource Conservation Area contain less than 20 acres each, then the applicant must reserve sufficient land to ensure that a minimum of 20 acres, located in the Resource Conservation Area, are reserved from further development for each lot created. Reserved lands are not included in the area of the lots created in the subdivision, but are assigned a reservation status by the developer in order to ensure that there is a minimum of 20 acres in the RCA set aside from development for each lot created in the RCA. Reserved lands are restricted from further development; however, reserved lands may be utilized for agricultural, aquacultural, forestry and resource conservation purposes, including erection of buildings and structures related to these uses, provided that such uses, buildings or structures comply with all other applicable requirements of the Dorchester Zoning Ordinance and this chapter. The location and ownership of reserved land may be changed from time to time, provided that they continue to serve the purpose and meet the requirements of this Section. All reserved land shall be:
- (a) Located completely within the Resource Conservation Area.
 - (b) Included with the subdivision plat in sufficient detail for the county to ascertain the actual location and area of the reserved land.
 - (c) Be marked with the following notation:

"Areas within the Resource Conservation Area shown as reserved lands on this plat may not be further subdivided, built upon or in

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any way developed subject to the right of the grantors to petition the Planning Commission for reduction of the land hereby reserved, in the event that further changes in the law reduce acreage necessary to be reserved.”

- (8) Applicants for subdivision in the Resource Conservation Area shall provide the county with the following information:
 - (a) Total acres in the Resource Conservation Area in the original parcel of record on or before December 1, 1985, from which the parcel proposed for subdivision was or will be subdivided, if applicable. (Note: this may require tracking the parcel back through more than one subdivision.)
 - (b) Description and status of the balance of the Resource Conservation Area portion of the original parcel since December 1, 1985. (Note: Besides the parcel for which subdivision is requested, the applicant shall determine how many other parcels in the RCA there are and if any of these parcels from the original tract have been subsequently subdivided.)
 - (c) Based on this information, the county will determine:
 - (i) The total permitted density for the Resource Conservation Area portion of the parcel of record as of December 1, 1985.
 - (ii) Density remaining for the Resource Conservation Area portion in light of subdivision activity involving the parcel of record as of December 1, 1985.)
 - (iii) Assign appropriate density to the Resource Conservation Area portion of the parcel for which subdivision (or a building permit) is being requested, if any remains.)

- (9) Afforestation:
 - (a) If no forest is established on the portion of a parcel being subdivided, planting shall be provided to create a forest or developed woodland cover of 15% of the portion of the parcel being subdivided.
 - (b) In the case of large lot development the Director may permit the required afforestation calculation to be based on an established building envelope for each affected lot.
 - (c) Any afforestation required by this chapter shall be performed in accordance with the requirements for landscaping and planting in Section 68-10 and Section 68-24 of this Article.

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§68-10 Forest and Woodland Protection⁽²⁸⁾.

A. General Policies.

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

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

B. Identification.

The County has identified and mapped forests and developed woodlands within the Critical Area and has identified and mapped habitat protection areas as described. More detailed evaluation of forest resources on specific sites shall be accomplished as part of the environmental analysis required prior to site plan and subdivision approval.

C. Policies for the Protection of Riparian and Forest Habitat.

The County adopts the following policies for the protection of riparian habitat:

- (1) Where forests or developed woodlands occur within the County, the County shall develop a Forest Preservation Plan as part of the Critical Area Program. These Plans will be developed in cooperation with the forestry programs and the Fish, Heritage and Wildlife Administration of the Department of Natural Resources and other appropriate agencies.
- (2) Each Forest Preservation Plan shall consist of the following:
 - (a) Identification and mapping, or otherwise designating, forests and developed woodland occurring within the Critical Area;

- (b) Identification of those forest areas and developed woodlands which include habitat protection areas in COMAR 27.01.09; and which also may include forest areas that are periodically flooded within the state wetlands boundary; and
 - (c) Programs to provide incentives for the conversion of other land uses to forested conditions.
- (3) Where forests or developed woodland occur within the Critical Area, policies and programs for tree cultural operations in the Critical Area shall include all of the following:
- (a) A Forest Management Plan shall be required for all timber harvesting occurring within any 1-year interval and affecting 1 or more acres in forests and developed woodland in the Critical Area. The Plans shall be prepared by a registered professional forester and be reviewed and approved by the forestry programs and the Fish, Heritage and Wildlife Administration of the Department of Natural Resources through the District Forestry Boards and the Project Forester, and filed with an appropriate designated agency in the County. Plans shall include measures to protect surface and ground water quality and identify whether the activities will disturb or affect habitat protection areas as identified in COMAR 27.01.09, and incorporate protection measures for these areas as specified by the county. To provide for the continuity of habitat, the Plans shall address mitigation through forest management techniques which include scheduling size, timing and intensity of harvest cuts, afforestation, and reforestation.
 - (b) A Sediment Control Plan shall be required for all harvests of 5,000 square feet or more of disturbed area in the Critical Area, including harvesting on agricultural lands. this plan shall be developed according to the state guidelines entitled: "*STANDARD EROSION AND SEDIMENT CONTROL PLAN FOR FOREST HARVEST OPERATIONS.*" the operations shall be implemented in accordance with specifications set out by the forestry programs and the Fish, Heritage and Wildlife Administration of the Department of Natural Resources, and enforced by the Department of Natural Resources.
 - (c) The cutting or clearing of trees within the 100-foot buffer, as described in COMAR 27.01.09, shall be in accordance with that Chapter.

§68-11 Reforestation and Afforestation Standards Beyond the Buffer⁽²⁹⁾.

²⁹ Existing County procedures.

A. Afforestation.

- (1) If no forest is established on the portion of a parcel being subdivided, planting shall be provided to create a forest or developed woodland cover of at least 15% of the portion of the parcel being subdivided.
- (2) In the case of grandfathered large lot development the Director may permit the required afforestation calculation to be based on an established building envelope not less than one acre for each affected lot.
- (3) All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants, or other protective instruments;
- (3) The developer shall designate, subject to the approval of the local jurisdiction, a new forest area on a part of the site not forested; and
- (4) The afforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments.
- (5) Any afforestation required by this chapter shall be performed in accordance with the requirements for landscaping and planting in Article VIII of the Zoning Ordinance.

B. Subdivision Afforestation Review Fees

Fees to cover the costs of considering, examining and checking the several plats and plans required herein and of recording the final plat shall be collected at the time of filing a preliminary plat, in accordance with a fee schedule of charges, adopted by resolution of the Dorchester County Council.

C. Site Plan Planting Plan Requirements

Landscaping and planting.

- (1) Applicability.

This Section does not apply to the planting of vegetated buffers, forests or landscaping done pursuant to the Dorchester County Forest Conservation Program.

- (2) Required landscaping.

When landscaping or the planting of a vegetated buffer is required as a condition of this chapter, or as a condition of approval by the Board of Appeals or Planning Commission, the planting or landscaping must either be:

- (a) Completed prior to final approval of the project; or
 - (b) Subject to a planting agreement.
- (3) Planting agreements.
- (a) Planting agreements shall:
 - (i) Be prepared on forms approved by the County Attorney;
 - (ii) Include some form of financial surety in an amount equal to at least 120% of the estimated cost of completing the project; and
 - (iii) Provide for the continued maintenance of the planted area once completed.
 - (b) The planting agreement requirement may be waived by the Director if the planting requirement is considered too minor to justify the need for a written agreement and surety.

D. Site Plan Schedule of Fees and Charges.

The County Council shall establish a schedule of fees, charges and expenses and a collection procedure for applications for special exceptions, variances, amendments, appeals, permits and other matters pertaining to this chapter. Such schedule shall be posted in the office of the Director of Planning and may be altered or amended, from time to time, without a public hearing, only by the County Council upon the recommendations of the Planning Commission. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal pertaining to this chapter.

§68-12 Growth Allocation⁽³⁰⁾.

A. Description.

Growth allocation means the number of acres of land in the Critical Area that a local jurisdiction may use to create new Intensely Developed Areas and new Limited Development Areas. The growth allocation acreage available to the County was calculated based on five percent of the total Resource Conservation Area in the County at the time of the original approval of the County's program by the Critical Area Commission, not including tidal wetlands or land owned by the federal government.

B. Growth allocation acreage

At the time of Critical Area Program adoption there were 58,000 acres classified as RCA. The County's original growth allocation acreage was 2,900 acres. To date 1416 acres have been awarded or used, remaining growth allocation for use by the County is 1486 acres.

30 Natural Resources Article 8-1808.1 and COMAR 27.01.02.06

C. Standards.

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

- (1) Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area;
- (2) Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area;
- (3) New Intensely Developed Areas shall be at least 20 acres in size unless:
 - (a) They are contiguous to an existing IDA or located in an LDA; or
 - (b) They are a grandfathered commercial or industrial use, which existed as of the August 23, 1988. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.
- (4) No more than one-half of the County's growth allocation may be located in Resource Conservation Areas except as provided in Sub-Section C. (9) below;
- (5) Locate a new Limited Development Area or Intensely Developed Area in a manner that minimizes impacts to Habitat Protection Area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
- (6) Locate new Intensely Developed Areas where they minimize their impacts to the defined land uses of the Resource Conservation Area;
- (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;
- (8) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the County for such areas, shall be so 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 Council and the Critical Area Commission.
- (9) If the County is unable to utilize a portion of its growth allocation as set out in paragraphs (1) and (2) above within or adjacent to existing Intensely Developed or Limited Development Areas, then that portion of the allocated expansion which cannot be so located may be located in the Resource Conservation Areas in

addition to the expansion allowed in (4) above. An applicant shall be required to cluster any development in an area of expansion authorized under this paragraph.

- (10) A growth Allocation application for a residential subdivision shall comply with the requirements of Environment Article, §9-206, Annotated Code of Maryland, and Land Use Article, Title 1, Subtitle 5, and §5-104, Annotated Code of Maryland.

D. Additional Factors.

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, of 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;

- (b) A completion of an existing subdivision;
 - (c) An expansion of an existing business; or
 - (d) To be clustered;
- (4) The use of existing public infrastructure, where practical;
 - (5) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
 - (6) Impacts on a priority preservation area, as defined under Agriculture Article, §2-518, Annotated Code of Maryland;
 - (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.

E. Application of Standards and Additional Factors.

When the County submits a request for the Critical Area Commission to review and approve the use of growth allocation, the request shall state how the County has applied the preceding standards and shall provide information as necessary for the Critical Area Commission to consider the additional factors set forth above. The Critical Area Commission shall ensure that standards set forth in this Section have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Critical Area Commission.

F. Deduction methodology.

“Deduction” means the total number of growth allocation acres that are necessary for approval of a growth allocation project and, after approval by the Critical Area Commission, are subtracted from the growth allocation reserves of Dorchester County.

“Growth allocation envelope” means all of the proposed components of a growth allocation project that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.

The following standards shall be used to determine the area of growth allocation to be deducted when the designation of a parcel or a portion of a parcel is changed through the growth allocation process:

- (1) Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA where all or part of the parcel is identified by the County as a growth allocation area, shall result in the acreage of the entire parcel, not in tidal wetlands, being deducted from Dorchester County's growth allocation, unless the development envelope concept outline in paragraph (2) below, is used.
- (2) In order to allow some flexibility in the use of growth allocation when development is only proposed on a portion of the property, the following methodology may be used. On a parcel proposed for the use of growth allocation, a single growth allocation envelope may be specified, and the acreage of the growth allocation envelope rather than the acreage of the entire parcel shall be deducted from the County's growth allocation if the growth allocation envelope meets the following criteria:
 - (a) Only one growth allocation envelope shall be established per parcel of land unless:
 - (i) Deduction of more than one growth allocation envelope will provide a water quality or habitat benefit, and
 - (ii) The Critical Area Commission approves the use of more than one growth allocation envelope.
 - (b) A minimum of 20 acres must remain outside of the growth allocation envelope or the acreage of the entire parcel must be deducted. The minimum 20-acre residue outside of the growth allocation envelope may be developed at an RCA density unless some type of permanent protection exists that restricts development.
 - (c) If the original parcel in the RCA is less than 20 acres, the acreage of the entire parcel must be deducted unless there is an adjacent, contiguous, permanently protected RCA on another parcel, resulting in a minimum 20-acre total. Provided the permanent protections are in place on the minimum 20 acres, the growth allocation envelope may be used;
- (3) The following may be excluded from a growth allocation deduction:
 - (a) The acreage of a 300-foot setback, even when it is less than 20 acres;
 - (b) The acreage within a buffer when it is within a 300-foot setback; and
 - (c) The acreage of tidal wetlands on the parcel.

G. Process.

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

- (1) All applications for growth allocation shall be submitted to DP&Z. Requests shall be accompanied by a concept plan and appropriate environmental reports and 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. The subdivision history of parcels designated as RCA must be provided as part of the growth allocation application. The date of December 1, 1985 is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.
- (2) All applications for growth allocation shall be forwarded to the Planning Commission for review and shall include comments and recommendations from the staff. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the County Council.
- (3) The applicant shall address the Planning Commission's comments and recommendations and 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.
- (4) The County Council shall hold a public hearing on the request for growth allocation and any revisions to the concept plan.
- (5) The County Council may establish conditions of approval that are consistent with the intent of the County's Critical Area Program.
- (6) 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 their growth allocation. The request shall be accompanied by pertinent plans and environmental reports and 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 Program. Refinements shall be acted on within 130 days of the Critical Area Commission's notification to the County of a complete submission. Amendments will be acted on within 130 days of the Critical Area Commission's notification of a complete submission.
- (7) Following approval of the growth allocation request by the Critical Area Commission, the County Council shall incorporate it into the Critical Area Ordinance within 120 days of Commission approval, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recording in

the County land records.

- (8) Prior to approving the final site plan or subdivision plat, the Planning Commission or their designee shall ensure that all conditions of approval, including those from the Critical Area Commission, are incorporated into the final plan, public works agreement, deed covenants, etc.
- (9) Final subdivision plats and site plans shall be processed in accordance with the requirements of this Ordinance and the County's subdivision regulations.
- (10) 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. Dorchester County shall require deduction of the number of growth allocation acres that are shown on the locally approved map.
- (11) As a condition of approval, the County may require that all projects approved for the use of growth allocation shall demonstrate that they are substantially completed within three years of the date of growth allocation approval by the Critical Area Commission. Substantially completed shall be determined by the Planning Commission and is defined as projects in which all public improvements such as roads, sewer and/or water facilities, etc. have been built as required by the County.

H. General submittal requirements⁽³¹⁾.

Applications for growth allocation shall include the following information:

- (1) 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;
- (2) 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;
- (3) A conceptual site development plan;
- (4) An environmental features map;
- (5) An environmental report that demonstrates that the project has been designed and will be constructed in compliance with all requirements of the proposed Critical Area land classification;

- (6) For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Department of the Environment, Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:
 - (a) Rare, threatened, and endangered species;
 - (b) Forest interior dwelling birds and colonial water birds;
 - (c) Anadromous fish and their propagation waters and any other aquatic species located onsite;
 - (d) Plant and wildlife habitat and historic 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; and
- (8) Verification that the amount of proposed growth allocation indicated on the map submitted under Sub-Section A.(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.

I. Site plan and environmental features map requirements.

The conceptual site development plan and environmental features map required under Sub-Sections H(3) and (4) of this regulation shall each include:

- (1) The conceptual site development plan and environmental features map required under Sub-Sections H(3) and (4) of this regulation shall each include: The name of the project and its street address;
- (2) Tax map information that includes, as applicable, the tax map number, the block number, the parcel number, and lot number;
- (3) A site plan with a scale provided at 1"=10', 1"=20', 1"=30', 1"=40', 1"=50', 1"=60', or 1"=100';
- (4) Orientation;

- (5) A vicinity map with the project site clearly identified;
- (6) Existing parcel and tract boundaries or lot lines;
- (7) The project boundary;
- (8) The limits of disturbance;
- (9) Any proposed development envelope;
- (10) All Critical Area boundaries, including existing and proposed land classifications and the land classification of all lots or parcels adjacent to the project site;
- (11) The boundaries of the 100-year floodplain;
- (12) The field-run topography;
- (13) Vegetative cover information by acre or square footage, including field determination of existing forest and developed woodland cover, location of proposed forest and developed woodland clearing; and as applicable, the location of proposed afforestation and reforestation areas;
- (14) Soil features of the project and where each soil type is located;
- (15) Field determination of each intermittent stream and each perennial stream;
- (16) A delineation of the minimum 100-foot buffer as measured from the mean high water line of tidal waters or the landward edge of a tidal wetland or a tributary stream;
- (17) As applicable and in accordance with the requirements of COMAR 27.01.09.01 or the local program, a delineation of any expanded buffer that is necessary because of a contiguous slope of 15 percent or greater or the presence of hydric soil, highly erodible soil, or a nontidal wetland;
- (18) When converting from a resource conservation area to a limited development area or an intensely developed area, the location and extent of the 300-foot minimum setback;
- (19) Unless the Critical Area Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a nontidal wetland, that is less than 2 years old, including the 25-foot buffer from that nontidal wetland;

- (20) Unless the Critical Area Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a tidal wetland, that is less than 2 years old, including the delineation of State and private tidal wetland boundaries;
- (21) Identification and location of all wildlife habitat and plant habitat, including a nesting site of colonial nesting water birds, an historic waterfowl staging and concentration area, riparian habitat, habitat of forest interior dwelling birds, an area of State or local significance, and a natural heritage area;
- (22) Identification and location of habitat of threatened and endangered species, including a species in need of conservation;
- (23) Identification and location of anadromous fish propagation waters;
- (24) Location of existing and proposed area of lot coverage, including identification of a building, road, parking lot, and any other area that contributes to lot coverage;
- (25) Location of any other proposed development feature, including an outlet, storm drain and outfall, utility connection, septic system, stormwater management system, shore erosion control measure, and pier;
- (26) Location of a path or walkway, including those exempt from lot coverage requirements;
- (27) Location of an existing or proposed mitigation area that is required because of an impact on forest, developed woodland, wetland, buffer, or other habitat protection area; and
- (28) If applicable, the identification and location of agricultural land, a surface mining site, natural park, dredging activity, and dredge material disposal area, as well as the boundary and area of an existing easement, the identity of the easement holder, and any restriction on development as a result of the easement.

J. Environmental Report⁽³³⁾.

The Environmental Report required under sub-Section H.(5) of these regulations shall include:

- (1) A project description;
- (2) The subdivision history since December 1, 1985;

- (3) A brief narrative that describes the type of project, the proposed change of Critical Area land classification, and how the growth allocation would support the County's overall planning goals, including reference to the relevant Sections of the County's adopted Comprehensive Plan, Water and Sewer plan, and adopted Zoning Ordinance;
- (4) Total acreage in the Critical Area and total acreage for which Critical Area designation is proposed to be changed;
- (5) Total forest, developed woodland, and vegetated area proposed to be cleared;
- (6) Method and description of proposed stormwater management, including all qualitative and quantitative management measures;
- (7) In the Intensely Developed Area, the preliminary plan for compliance with the 10 percent pollutant reduction rule, including all worksheets and all supporting documentation;
- (8) Measures proposed for soil erosion and sediment control, including implementation strategy;
- (9) In the Limited Development Area and Resource Conservation Area, existing and proposed lot coverage information, calculated by square feet of coverage for each lot and total area of lot coverage within the limited development area and the total area of lot coverage within the resource conservation area;
- (10) Mitigation required for clearing of forest area, developed woodland, or vegetation in accordance with the requirements of this Ordinance;
- (11) If applicable, the proposed afforestation area;
- (12) Identification of the local zoning district and that district's defining characteristics;
- (13) A Buffer Management Plan, consistent with Section 156-24 of this Ordinance;
- (14) A Habitat Protection Plan, consistent with Section 156-28, if the proposed development will impact an identified Habitat Protection Area. The Developer shall ensure that full implementation of the Habitat Protection Plan can be achieved on the project site and execute all necessary long-term protective agreements. The Habitat Protection Plan shall:
 - (a) Identify any habitat or species on the project site, as set forth in this Ordinance;

- (b) Include recommendations that are based on consultation with the Department of Natural Resources and any other appropriate federal or State agency; and
- (c) Include all protective measures necessary and appropriate to provide for long-term conservation of the identified habitat and species

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§68-13 Grandfathering⁽³⁴⁾.

A. Continuation of existing uses.

The County shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of this Ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in the Section 68-16 of this Ordinance.

B. Residential density.

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

- (1) A legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;
- (2) Land that received a building permit for a primary dwelling subsequent to December 1, 1985, but prior to August 23, 1988;
- (3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; and
- (4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.

C. Consistency.

Nothing in this Section may be interpreted as altering any requirements for development activities set out in the Water-Dependent Facilities Section or the Habitat Protection Areas Section of this Ordinance.

34 Natural Resources Article 8-1808(c)(1)(iii)E and COMAR 27.01.02.07

§68-14 Lot Consolidation and Reconfiguration.⁽³⁵⁾

A. Applicability.

Except as provided under Sub-Section B of this Section and notwithstanding the location of the affected lot or parcel in a Modified Buffer Area, the provisions of this regulation shall apply to a consolidation or reconfiguration of any nonconforming legally grandfathered parcel or lot. These provisions do not apply to the reconfiguration or consolidation of parcels or lots which are conforming or meet all Critical Area requirements. Nonconforming parcels or lots include:

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

B. Goals.

Any consolidation or reconfiguration of any nonconforming legal parcel of land or recorded legally buildable will meet the goals of the County Critical Area Program set forth in Section 68-2 "Intent, Purpose, and Goals" of this Ordinance, to the extent possible, and shall not increase or intensify development activities or human activities in the Buffer or any other Habitat Protection Area beyond what would have resulted from the existing lot configuration.

C. Procedures.

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

- (1) The date of recordation of each legal parcel of land or legally buildable lot to be consolidated or reconfigured;
- (2) A plan drawn to scale in accordance with DCTS requirements;
- (3) Information sufficient for the local jurisdiction to make the findings set forth in Sub-Section D of this Section;
- (4) A plan that shows all existing and proposed lot or parcel boundaries; and
- (5) A table that lists the number of all legal parcels of land or recorded legally buildable lot and the number of proposed lots or parcels or dwelling units to be derived.

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D. Standards.

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

- (1) The proposed consolidation or reconfiguration will result in no greater number of lots, parcels, or dwelling units in the Critical Area than the existing configuration would allow;
- (2) The proposed lot consolidation or reconfiguration will result in no greater lot coverage than the existing configuration would allow;
- (3) The proposed consolidation or reconfiguration does not:
 - (a) Create an additional riparian lot or parcel, waterfront lot, or any other lot or parcel deeded with water access; or
 - (b) Intensify or increase impacts associated with riparian access;
- (4) The proposed consolidation or reconfiguration does not create:
 - (a) A lot or parcel or portion of a lot or parcel that will serve development activities outside the Critical Area; or
 - (b) A Resource Conservation Area lot or parcel that serves development activities in the Intensely Developed Area or Limited Development Area;
- (5) The proposed consolidation or reconfiguration identifies each Habitat Protection Area and if impacts to a Habitat Protection Area are proposed, the proposal demonstrates that:
 - (a) No greater impact to a Habitat Protection Area would result than the impact that would have resulted from the existing lot configuration;
 - (b) Adverse impacts to an Habitat Protection Area are minimized; and
 - (c) Protective measures and restoration measures are included that provide for the least possible impact;
- (6) The proposed consolidation or reconfiguration provides:
 - (a) Stormwater management for all proposed development activities; and
 - (b) Benefits to fish, wildlife, and plant habitat that are clearly identified.

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E. Approval and notification.

Based upon the standards, the Planning Commission or its designee shall issue a final written decision or order granting or denying an application. A copy of a final decision or order shall be submitted to the Critical Area Commission, and if applicable, the approved development plan within 10 days of the final approval by U.S. mail to the Critical Area Commission’s business address. The County may not issue a building permit until the appeal time has expired.

§68-15 Intrafamily Transfers.⁽³⁶⁾

A. Applicability.

“Bona fide intrafamily transfer” means a transfer to a member of the owner’s immediate family of a portion of the owner’s property for the purpose of establishing a residence for that family member.

- (1) An owner of a parcel of land in a Resource Conservation Area (RCA) may transfer a portion of his/her property to an immediate family member, notwithstanding the density provisions of the Critical Area Protection Program and §68-8.C.(1). Any lot or parcel in the RCA subject to an intrafamily transfer subdivision must be seven acres or more but less than sixty acres in size and must be a lot or parcel or record as of March 1, 1986.
- (2) A lot or parcel in the RCA that is seven acres or more but less than twelve acres in size may be subdivided into two lots. A lot or parcel in the RCA that is twelve acres or more but less than sixty acres in size may be subdivided into three lots. The lots may be created at different times.
- (3) A lot or parcel that is subdivided by means of a bona fide intrafamily transfer:
 - (a) May be transferred only to a member of the owner’s immediate family for the purpose of establishing a residence for that family member. Only the recipient of a lot through an intrafamily transfer may request a building permit for a structure on a lot created through this process. For the purposes of this Section, “immediate family” means a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, or sibling who has attained the age of 21 years as of the date of the recording of the subdivision plat;
 - (b) Must comply with Chapter 140, Subdivision Regulations, and Chapter 155, Zoning, of the Dorchester County Code and COMAR 27.01.01.01, ET. SEQ.;
 - (c) May not be further subdivided; and

³⁶ Natural Resources Article 8-1808.2

- (d) May not be conveyed subsequently to any person other than a member of the owner's immediate family, except for a conveyance to a third party as security for a mortgage or deed of trust and except for a conveyance resulting from court proceedings, including bankruptcy, divorce, mental competency, probate, foreclosure, etc., or from the disposition of a will or trust. An exception from this limitation may be obtained from the Board of Appeals if the applicant proves that:
 - (i) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for the purpose of ultimate commercial sale; and
 - (ii) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this Section and warrants an exception. Changes in circumstances include situations where the intrafamily transfer recipient has not resided in the county for five years prior to application for an exception or suffers significant financial hardship. The Board may define such hardship as being unable to meet all financial obligations for the preceding six months.
- (e) Any deed for a lot created by bona fide intrafamily transfer shall contain a covenant stating that the lot is created subject to the provisions of this Section.
- (f) Any plat or site plan for a lot created by a bona fide intrafamily transfer shall contain notes stating that the lot is created subject to the provisions of this Section.

B. Special Circumstances.

- (1) On lots created by an intrafamily transfer subdivision for which application was made prior to January 1, 2010 and for which final approval was granted after March 8, 2010, development in and disturbances to the expanded tidewater buffer for hydric or highly erodible soils may be permitted without a variance, provided that all other subdivision requirements are met or, in the case of county road standards, waived. Mitigation at a ratio of 3:1 must be provided for any development activities in and disturbances to the expanded buffer for hydric or highly erodible soils. Nothing in the above is meant to allow development in or disturbances to 100 or 200 foot tidewater buffer.
- (2) Pursuant to COMAR 27.01.09.01.e.6.c, in the case of an application for an intrafamily transfer subdivision approved after July 1, 2010, the 200 foot buffer required by COMAR 27.01.09.01.e.5 may be reduced to the minimum width

necessary to allow approval of the intrafamily transfer subdivision, but no less than the 100 foot tidewater buffer, provided that the strict application of the 200 foot buffer would preclude the intrafamily transfer subdivision.

C. Further Subdivisions or Transfers of Ownership.

A lot or parcel that is subdivided by means of a bona fide intrafamily transfer;

- (1) May be transferred only to a member of the owner's immediate family for the purpose of establishing a residence for that family member. Only the recipient of a lot through an intrafamily transfer may request a building permit for a structure on a lot created through this process. For the purposes of this Section, "immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, or sibling who has attained the age of 21 years as of the date of the recording of the subdivision plat;
- (2) Must comply with Chapter 140, Subdivision Regulations, and Chapter 155, Zoning, of the Dorchester County Code and COMAR 27.01.01.01, et.seq.;
- (3) May not be further subdivided; and
- (4) May not be conveyed subsequently to any person other than a member of the owner's immediate family, except for a conveyance to a third party as security for a mortgage or deed of trust and except for a conveyance resulting from court proceedings, including bankruptcy, divorce, mental competency, probate, foreclosure, etc., or from the disposition of a will or trust. An exception from this limitation may be obtained from the Board of Appeals if the applicant proves that:
 - (a) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for the purpose of ultimate commercial sale; and
 - (b) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this Section and warrants an exception. Changes in circumstances include situations where the intrafamily transfer recipient has not resided in the county for five years prior to application for an exception or suffers significant financial hardship. The board may define such hardship as being unable to meet all financial obligations for the preceding six months.
- (5) Any deed for a lot created by bona fide intrafamily transfer shall contain a covenant stating that the lot is created subject to the provisions of this Section.
- (6) Any plat or site plan for a lot created by a bona fide intrafamily transfer shall contain notes stating that the lot is created subject to the provisions of this Section.

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§68-16. Variances.⁽³⁷⁾

A. **Applicability.**

The County has established provisions where, owing to special features of a site or other circumstances, implementation of this program or a literal enforcement of provisions within the program would result in unwarranted hardship to an applicant, a Critical Area Program variance may be obtained. In this Ordinance, “unwarranted hardship” means that, without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested. In considering an application for a variance, the County shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the County’s Critical Area Program.

B. **Standards.**

A variance shall only be granted if the applicant proves to the satisfaction of the Director of DP&Z, or, when applicable to the County Board of Appeals, based upon written application and testimony that all of the following standards are met:

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

³⁷ Natural Resources Article 8-1808(c)(1(ii), 8-1808(d) and COMAR 27.01.12

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Dorchester County Critical Area program.

- (8) That the applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance pursuant to sub-Section B.(5).
- (9) That based on competent and substantial evidence, the approving authority shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- (10) That the written findings may be based on evidence introduced and testimony presented by the applicant, the County or any other government agency, or any other person deemed appropriate by the County.

C. Application

Applications for a variance will be made in writing with a copy provided to the Critical Area Commission. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (A.) above. The County shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

D. Standard Variance Process

- (1) Applications for a variance or administrative variance shall be made in writing to the Dorchester County Board of Zoning appeals or planning director, respectively, in accordance with the procedures set forth herein. The Critical Area Commission shall receive a copy of the application for any variance or administrative variance that relates to the critical area at least 15 days prior to any hearing on such matter and shall receive a copy of the finding. Variance or administrative variance decisions may be appealed as provided herein. In addition, the Chairman of the Critical Area Commission may appeal an action or decision, even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.
- (2) Appeals for variances from the strict application of this ordinance shall be made to the Board of Appeals on forms provided by the Director of Planning and Zoning. Such applications shall be acted upon within a reasonable time, not to exceed 60 days from the date of the receipt of the application or such lesser period as may be provided by the rules of the Board. Applications for variance shall be accompanied by the required fees as established by the County Council, shall be filed with the Director of Planning and Zoning who shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. No permit, approval, variance or special exception for any property located within the CA-Critical Area Protection District shall be issued, unless the person seeking the permit, approval, variance, or special exception has:

- (a) Fully paid all administrative, civil, and criminal penalties imposed by Chapter 155: Zoning, of the Dorchester County Code for violation for the subject property within the CA-Critical Area Protection District; and
 - (b) prepared a restoration or mitigation plan, approved by the County, to abate impacts to water quality or natural resources as a result of the violation for the subject property within the CA-Critical Area Protection District; and
 - (c) Performed the abatement measures in the approved plan in accordance with the County's Critical Area Program for the subject property; and
 - (d) Satisfaction of all conditions specified under this Section shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property; and
 - (e) 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.
- (3) Hearings; Notification.
- (a) The Board shall fix a reasonable time for the hearing of appeals and applications, consistent with its rules of practice and procedure. Public notice shall be given by the Board of all hearings relating to zoning matters in accordance with the procedures set forth in §155-6 requirements for public notices of the Code.
- (4) Calendar of the Board.
- (a) A calendar of the board showing the times and dates of hearings relating to zoning matters shall be maintained and posted in a conspicuous location in the office of the Director of Planning. The Board shall assure that a current copy of the calendar is provided to the Planning Commission.
- (5) Advice from Planning Commission.
- (a) Before deciding any application for special exception or variance, the Board of Appeals shall seek the advice and recommendation of the Planning Commission in reference to such applications. The advice of the Planning Commission shall not be binding upon the Board of Appeals. The Board may request from the Planning Commission such technical service, data or factual evidence as will further assist the Board in

reaching decisions, and any such information forwarded by the Planning Commission shall be incorporated into the record, and it shall also be made available to the applicant, should he so desire.

(6) Stay of Proceedings.

- (a) An appeal that is filed with the Board of Appeals stays all actions by the Director of the Department of Planning and Zoning seeking enforcement of or compliance with the order or decision appealed from, unless the Director certifies to the Board of Appeals that (because of facts stated in the certificate), in his opinion, such stay will cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Appeals or a court-issued application of the party seeking the stay, for due cause shown, after notice to the Director.

(7) Withdrawal; subsequent appeals or reapplication.

- (a) If an application or appeal is disapproved by the Board of Appeals, thereafter the Board shall not accept for filing another application for substantially the same proposal on the same premises until after one year from the date of such disapproval.
- (b) An appeal or application may be withdrawn prior to advertisement of the hearing without prejudice; however, the fees for such appeal or application may be retained by the County, at the discretion of the Board of Appeals.
- (c) In the event that an appeal or application is withdrawn subsequent to advertisement of the public hearing, the applicant shall be precluded from filing another application or appeal for substantially the same proposal on the same premises for one year from the date of withdrawal unless good cause shall be shown to the Board. The fees for such application or appeal may be retained by the County, at the discretion of the Board of Appeals.

(8) Appeals to Court.

- (a) Time limit for appeal. Any person allegedly aggrieved by any decision of the Board of Appeals or by a reclassification by the County Council may appeal the same to the Circuit Court of Dorchester County within 30 days of the notification of the decision.
- (b) Stays. The filing of an appeal does not stay an order or action of the Board of Appeals. Upon motion and after hearing the, Court may grant a stay, unless prohibited by law, upon conditions as to bond or otherwise that the Court considers proper.

- (c) Cost of transcript. The appellant shall be responsible for paying the expense of transcription.
- (d) Hearing; testimony. if, upon the hearing, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court, with his proposed findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made.
- (e) Liability of Board of Appeals for costs. Costs shall not be allowed against the Board of Appeals unless it shall appear to the Circuit Court that the Board acted with gross negligence or in bad faith or with malice in making the decision appealed from.
- (f) Decision; subsequent appeals. Upon its determination of the case, the Circuit Court shall file a formal order embodying its final decision. An appeal may be taken to the Court of Special Appeals of Maryland or the Court of Appeals of Maryland, during the period and in the manner prescribed by the rules of the Court of Appeals, from any decision of the Circuit Court. In such cases, the award of costs shall be subject to the discretion of the Court of Appeals.

E. Administrative Variance Process.

The Planning Director may use the Administrative Variance process for the following:

- (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 a replacement of a structure or the expansion of a structure in the 100-foot tidewater buffer:
 - (i) The replacement or expansion does not encroach any further than the existing structure into the 100-foot tidewater 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;

- (ii) The proposed expansion will not enlarge the existing footprint of the structure by greater than 30% of the primary structure that existed on March 8, 2010, or 500 square feet, whichever is greater.
 - (iii) The property will comply with the lot coverage restrictions in §68-7C(10), (11). A lot coverage exchange may be conducted in accordance with §68-7C(10)(f).
- (b) Except as 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:
 - (i) The replacement or expansion does not encroach into the 100-foot tidewater buffer;
 - (ii) The proposed expansion will not enlarge the existing footprint of the structure by greater than 30% of what existed on March 8, 2010, or 500 square feet, whichever is greater; and
 - (iii) The property will comply with the lot coverage restrictions in §68-7C(10), (11). A lot coverage exchange may be conducted in accordance with §68-7C(10)(f).
- (c) In the case of a relocated structure within the 100-foot or expanded buffer:
 - (i) 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:
 - (i) 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 §68-24 shall be minimized;
 - (ii) The width of the driveway shall not exceed 12 feet;
 - (iii) The property will comply with the lot coverage restrictions in §68-7C(10), (11). A lot coverage exchange may be conducted in accordance with §68-7C(10)(f).
- (e) In the case of a new accessory structure or other lot coverage in the 100-foot or expanded buffer, excluding pools, as indicated in Sub-Section (h)

below:

- (i) 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;
 - (ii) 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 March 8, 2010;
 - (iii) If no lot coverage associated with a primary structure existed on the site as of March 8, 2010, the footprint of the new accessory structure or other lot coverage will not exceed 500 square feet; and
 - (iv) The property will comply with the lot coverage restrictions in §68-7C(10), (11) and accessory structure limitations in §155-50.a. A lot coverage exchange may be conducted in accordance with §68-7C(10)(f)
 - (v) 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 §68-16E.
- (f) Except as in COMAR 27.01.09.01.e.8, in the case of a new primary structure in the expanded buffer:
- (i) The new primary structure and any associated parking pad, accessory structure or other lot coverage, excluding driveways as applicable to (d) above, shall not encroach into the 100-foot tidewater buffer;
 - (ii) 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;
 - (iii) The width of a proposed driveway within the expanded buffer shall not exceed 12 feet; and
 - (iv) The property will comply with the lot coverage restrictions in §68-7C(10), (11). A lot coverage exchange may be conducted in accordance with §68-7C(10)(f).

- (g) In the case of a deck attached to the primary structure, the following requirements must be met:
 - (i) 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.
 - (ii) 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.
 - (iii) An 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.
 - (iv) A deck(s) approved by an administrative variance shall not be converted to lot coverage.
- (h) 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, per §68-16(D).

- (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 §68-16 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 §68-16.B.(8), 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 his/her written findings on evidence introduced and testimony presented by the applicant, the county, or 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) A recommendation from the Planning Commission is required for all administrative variances.
- (5) 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, non-conforming structure.
 - (b) The construction of steps and landings, built to the current minimum building code requirement, for access to a structure.
- (6) In the case of an approval of an administrative variance under this Sub-Section, the Planning Director shall require the following:
- (a) For each of the Sub-Sections (a)–(e) of §68-16.E (1), mitigation is required for all new disturbance in the 100-foot or expanded buffer in accordance with COMAR 27.01.09.01-2;
 - (b) For Sub-Section 68-16.E (1) (f), the planning director shall require 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: within the 100-foot buffer, within the expanded buffer, on-site and adjacent to the buffer; and on-site and elsewhere in the critical area;
 - (d) If buffer mitigation cannot be planted in accordance with §68-25.E a fee in lieu shall be collected in accordance with Sub-Section 68-25.J.
 - (e) The planning director shall require a buffer management plan approved by the Dorchester County Planning and Zoning Office in accordance with COMAR 27.01.09.01-3.
- (7) Decisions on administrative variances by the Planning Director may be appealed within 30 days to the Board of Appeals.
 - (8) Adjoining property owners will be notified by mail of an application for an administrative variance as part of the planning commission recommendation process.
 - (9) Administrative variances granted for the expansion of existing structures are intended to be construed as cumulative for each structure subject to said variance.

F. Conditions and Mitigation.

In granting a variance, the approving authority may impose reasonable conditions to assure that the spirit and intent of the Critical Area Program is maintained.

- (1) Having determined that the necessary standards for a Critical Area variance have been met the applicant will take steps to mitigate impacts including:
 - (a) Reforestation on the site to offset disturbed forest or developed woodlands on at least equal area basis.
 - (b) Afforestation to mitigate any lot coverage created and to mitigate for all disturbance to the Buffer, measured as, a calculation of square feet disturbed, on at least a 3 to 1 ratio per COMAR 27.01.09.01-2; and
 - (c) Implementation of any mitigation measures that relate to Habitat Protection Areas as delineated in the County Critical Area Ordinance, or as recommended by State and/or County agencies.
- (2) The approving authority shall prescribe time limits within which any conditions to a variance must be completed. Failure to complete any of the prescribed conditions within the time limits set shall be a violation of this Ordinance, and at the discretion of the Director of DP&Z, after notice and hearing, shall be grounds for termination or revocation of the variance. Under no circumstance, unless

otherwise specified by the Director of DP&Z, or extended by order of DP&Z, shall the time limits exceed two (2) years from the date of the variance decision.

G. 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.

H. Commission Notification.

Within ten working days after a written decision regarding a variance application is issued, the Critical Area Commission must receive a copy of the written decision. The County may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed.

I. Appeal to the Board of Zoning Appeals.

- (1) In considering an application for a variance, the Board of Zoning Appeals shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.
- (2) The Board of Zoning Appeals shall follow the standards and procedures outlined in Section 68-16, Sub-Sections A through D and Sub-Sections F through H.

J. Appeals to Circuit Court.

Variance decisions by the Board of Zoning Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Section.

§68-17 State and Local Development Projects⁽³⁸⁾

A. Applicability.

For all development in the Critical Area resulting from State and local agency projects, the County shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

³⁸ COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06

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If applicable, consistency reports shall be submitted to the Critical Area Commission.

B. Procedures.

The sponsoring agency of any development project within the County's Critical Area shall work with the DP&Z to identify the appropriate procedures for determining compliance with the State and local Critical Area Program requirements. A determination will be made regarding whether the project is one of local significance or if it meets the definition of major development, which requires approval by the Critical Area Commission.

C. Standards for projects of local significance.

For any development activity within the Critical Area, the County agency proposing the project shall work with the DP&Z to ensure that the project is consistent with all of the provisions and requirements of the County's Critical Area Program. The DP&Z shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the Critical Area Commission. If the Critical Area Commission determines that the proposed project is major development, then the Critical Area Commission shall notify the County within 15 days of receipt of the report, and the project shall be reviewed in accordance with the provisions in Sub-Section D below.

D. Standards for major development.

New major development by the State or a County agency shall, to the extent practical be located outside the Critical Area. If the siting of the development in the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area, the sponsoring agency shall seek approval from the Critical Area Commission and shall provide the following information:

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

E. Notice requirements for major development.

Public notice is required for all major development projects unless the development is covered by a general approval or a consistency report. Public notice shall be the responsibility of the County agency proposing the project and the agency shall, as part of

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its submittal to the Critical Area Commission, provide evidence that:

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

F. Posting requirements for major development⁽³⁹⁾.

39 COMAR 27.03.01.03

The sponsoring agency for any major development project shall ensure that a sign is posted on the property indicating that the site is proposed for major development. Posting shall meet the following requirements:

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

§68-18 Program Changes⁽⁴⁰⁾.

A. Program changes.

The County Council may from time to time amend the County Critical Area Program. Critical Area Program changes include, but are not limited to, amendments, revisions, and modifications to zoning regulations, subdivision regulations, Critical Area Maps, implementation procedures, and local policies that affect the County's Program. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in §8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law

40 Natural Resources Article 8-1809(g) through (s)

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§8-1809(i) and §8-1809(d), respectively.

B. Comprehensive reviews.

The County will review its entire Program and propose any necessary amendments to its entire Program, including Critical Area Maps, at least every six years. The anniversary of the date that the Program became effective shall be used to determine when the review shall be completed. Within 60 days after the completion of the review, the County will send the following information in writing to the Critical Area Commission:

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

C. Zoning map amendments.

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

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

D. Process.

When an amendment is requested, the applicant shall submit the amendment to the DP&Z for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the County Council. The County Council shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fourteen (14) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. After the County Council approves an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the Critical Area Commission for final approval.

E. Critical Area Commission review.

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 will include all relevant information necessary for the Chairman of the Critical Area Commission, and as appropriate, the Critical Area Commission, to evaluate the changes. The Chairman, and as appropriate, the Critical Area Commission, shall determine if the requests for Program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Critical Area Commission.

F. Critical Area Commission decision.

In accordance with the determination of consistency outline above, the Chairman, or as appropriate, the Critical Area Commission will:

- (1) Approve the proposed program refinement or amendment and notify the local jurisdiction;
- (2) Deny the proposed program refinement or amendment;
- (3) Approve the proposed program 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.

§68-19 Water Dependent Facilities⁽⁴¹⁾.

A. Applicability.

The provisions of this Section 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. 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.

B. Identification.

Water dependent facilities 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

41 COMAR 27.01.03

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activities. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision that provides community piers.

C. General policies.

The policies of the DP&Z with regard to water-dependent facilities shall be to limit development activities in the Buffer to those that are water-dependent and provide by design and location criteria that these activities will have minimal individual and cumulative impacts on water quality and fish, wildlife, and plant habitat in the Critical Area.

D. Standards.

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

- (1) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:
 - (a) That they are water-dependent;
 - (b) That the project meets a recognized private right or public need;
 - (c) That adverse effects on water quality, fish, plant and wildlife habitat are minimized;
 - (d) That, insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and
 - (e) That the facilities are consistent with an approved local plan as set forth below.
- (2) Except as otherwise provided in this program, new or expanded development activities may not be permitted in those portions of the Buffer, which occur in Resource Conservation Areas.

E. Implementation.

Applicants for new or expanded water-dependent facilities in Intensely Developed Areas or Limited Development Areas shall set out in the application how the above requirements are met. Applicants for water-dependent facilities in a Resource

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Conservation Area, other than those specifically permitted herein, must apply for a portion of the County's growth allocation as set forth in this Ordinance.

F. Evaluating plans for new and expanded water-dependent facilities.

The DP&Z shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The County shall work with appropriate State and federal agencies to ensure compliance with applicable regulations. The following factors shall be considered when evaluating proposals for new or expanded water dependent facilities:

- (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 in the area;
- (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 run-off, 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, generally;
- (7) That dredged spoil 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 except as necessary for:
 - (a) Backfill for permitted shore erosion protection measures;
 - (b) Use in approved vegetated shore erosion projects;
 - (c) Placement on previously approved channel maintenance spoil disposal areas; and
 - (d) Beach nourishment.

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- (8) That interference with the natural transport of sand will be minimized; and
- (9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in the Habitat Protection Area Sections of this Ordinance.

G. Availability of information.

The information necessary for evaluating the above factors, if not available locally, shall be obtained from appropriate State and Federal agencies.

H. Industrial and port-related facilities ⁴².

New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas as described in this Ordinance and are subject to the provisions set forth in Section 68-25.

Marinas and other commercial maritime facilities.

New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements set forth in this Section. New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except as provided in this Section. Expansion of existing marinas may be permitted by the DP&Z within Resource Conservation Areas 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. New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

J. Community piers.

New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the Buffer subject to the requirements in this Section of the Zoning Ordinance provided that:

- (1) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;

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42 COMAR 27.01.09.01-8

- (2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
- (3) The facilities are associated with a residential development approved by the County for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;
- (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and
- (5) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.

K. Number of slips or piers permitted.

The number of slips or piers permitted at the facility shall be the lesser of (1) or (2) below:

- (1) One slip for each 50 feet of shoreline in the subdivision in the Intensely Developed and Limited Development Areas and one slip for each 300 feet of shoreline in the subdivision in the Resource Conservation Area; or
- (2) A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Table 68-19.K(2) Number of Slips Permitted

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

- L. Public beaches and other public recreation or education areas.**
 Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed Areas. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation

Areas provided that:

- (1) Adequate sanitary facilities exist;
- (2) Service facilities are, to the extent possible, located outside the Buffer;
- (3) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
- (4) Disturbance to natural vegetation is minimized; and
- (5) Areas for PASSIVE recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within Resource Conservation Areas if service facilities for these uses are located outside of the Buffer.

M. Research areas.

Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the Buffer.

N. Fisheries activities.

Lands and water areas with high aquacultural potential will be identified by the DP&Z in cooperation with the State when applications for new or expanded fisheries or aquaculture facilities in these areas are submitted to the County. These areas are encouraged for that use and if so used, should be protected from degradation by other types of land and water use or by adjacent land and water uses. Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities may be permitted in the Buffer in Intensely Developed Areas, Limited Development Areas and Resource Conservation Areas.

§68-20 Shore Erosion Protection⁽⁴³⁾.

A. Applicability.

Shore erosion protection includes nonstructural shoreline stabilization measures and structural shoreline stabilization measures authorized by Maryland Department of the Environment, the Board of Public Works, or the Army Corps of Engineers, as appropriate. The provisions of this Section shall apply to areas of the shoreline that are mapped as Modified Buffer Areas and areas of the shoreline that are not mapped as Modified Buffer Areas. The criteria set forth in Section 68-20 are not intended to apply to those structures necessarily associated with Water-dependent Facilities as discussed in

43 COMAR 27.01.04 and COMAR 26.24.04

Section 68-19.

B. Process.

The DP&Z shall review and approve all authorized shore erosion protection measures and accompanying Buffer Management Plans and Sediment and Erosion Control plan prior to start of construction.

- (1) Upon authorization by Maryland Department of the Environment, an applicant for a shore erosion protection measure shall submit an application to the DP&Z containing the following information:
 - (a) Photographs of the erosion problem;
 - (b) The specific location of the site indicated on a 7 ½ Minute USGS Topographic Quadrangle Map;
 - (c) Soil type and erodibility;
 - (d) The proposed and existing land use; and
 - (e) Appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.
- (2) The application shall include a Buffer Management Plan per the requirements of sub-Section 68-25 F. The plan will identify all associated disturbance, including grading and clearing, above Mean High Water.

C. Mapping

As a part of this Critical Area Program, Dorchester County, with assistance from the State, shall designate and map the following shoreline areas:

- (1) Shoreline areas where no significant shore erosion occurs;
- (2) Other eroding areas where nonstructural measures would be a practical and effective method of erosion control, and;
- (3) Eroding areas where only structural measures would provide effective and practical erosion control.

D. Policies

The following policies are intended to accomplish the following objectives:

- (1) Provide that structural control measures only be used in areas designated §c (3), above;

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- (2) Provide that where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;
- (3) Provide that nonstructural measures be utilized in areas of erosion as described in §c(2) and (3), above;
- (4) Provide that structural erosion measures not be encouraged in areas where no significant erosion occurs, and
- (5) provide that if significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change may be used for sites in that area.
- (6) Dorchester County shall provide the Commission with the approved buffer management plan for a shore erosion control measure in accordance with COMAR 26.24.04.01-3 and 27.01.09.01-3.

E. Mitigation

Most shore erosion control projects involve disturbance to the shoreline and the 100-foot Buffer. Applicants shall be required to mitigate for this disturbance in accordance with the provisions of Section 68-25. Shore erosion control projects that are installed completely from the water and involve only offshore measures, such as breakwaters, may not require mitigation if the applicant demonstrates that the construction does not affect the Buffer.

§68-21 Commercial Timber Harvesting⁽⁴⁴⁾.

A. General policies.

A goal of the Critical Area program is to maintain or increase the lands in forest cover, because forests provide protection of the water quality and habitat values of the Chesapeake Bay and its tributaries.

B. Process.

Landowners proposing to harvest timber within any one year interval and affecting one or more acres in the Critical Area shall submit a "Timber Harvest Plan." This plan shall be prepared by a registered professional forester. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources and the Dorchester County Forestry Board. The approved plan is valid for 3 years from the date on which the Forestry Board signs it. The Plan shall be filed with the County Soil Conservation District and the approved plan shall be sent to the DP&Z prior to beginning timbering operations.

44 COMAR 27.01.05

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C. Timber Harvest Plan contents.

Plans shall include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas as identified in this Ordinance and shall incorporate protection measures for these areas as specified in that Section. To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which shall include scheduling size, timing and intensity of harvest cuts, afforestation and reforestation.

D. Sediment Control Plans.

In the Critical Area, any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more including harvesting on agricultural lands shall submit a Sediment Control Plan. This plan is also required for any harvests which will cross perennial or intermittent streams. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations". The operations shall be implemented in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the Dorchester County Department of Public Works.

- (1) If cuts and fills are three feet or more, if grades for roads are 15 percent or more, or if landings are on slopes of 10 percent or more, then the landowner must get a custom Sediment Control Plan for the operation. These are prepared by Registered Professional Foresters and include controls necessary to prevent site erosion and to ensure site stabilization. This plan shall be submitted to the local Soil Conservation District for approval and notice of approval sent to the Department of Planning and Zoning.
- (2) If a custom Sediment Control Plan is not required, a Standard Erosion and Sediment Control Plan is available through the Soil Conservation District. The landowner shall provide the following information:
 - (a) Location description;
 - (b) Harvest operation description;
 - (c) Sketch map of the property showing acres to be cleared;
 - (d) Identification of the landowner, licensed timber harvest operator, and other operators or subcontractors.
- (3) Either the owner or the operator shall take responsibility for implementation of the Sediment Control Plan or each subcontractor must file a separate plan.
- (4) The landowner must sign the agreement to certify that he understands the terms of

the plan and is responsible for preventing erosion and sedimentation during the forest harvesting.

- E. **Buffer protection standards for timber harvests.**
Timber harvests are permitted in the Buffer in accordance with the provisions of Sub-Section M of §68-25.

§68-22 Agriculture⁽⁴⁵⁾.

- A. **Purpose.**
The County's intent is to maintain agriculture and forestry as viable and productive land uses within the Critical Area. The County has identified agriculture and the protection of agricultural land uses and activities as a priority in the County's Comprehensive Plan. The County works cooperatively with the Soil Conservation District, the County Agricultural Land Preservation Advisory Boards, the Farm Bureau, and other appropriate agencies to promote sound land and water stewardship on agricultural lands.

- B. **General policies.**
The County shall follow all of the following policies with regard to agriculture in the Critical Area:

- (1) Assure that agricultural lands are identified and that programs are established for the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the greatest extent possible.
- (2) Recognize that agriculture is a protective land use that should be properly managed so that it minimizes its contribution to pollutant loadings to the Bay and its tributaries.
- (3) Assure that the creation of new agricultural lands is not accomplished:
 - (a) By diking, draining or filling of any class or subclass of palustrine wetlands, as described in this program which have a seasonally flooded or wetter water regime, unless mitigation is accomplished in accordance with as applicable State and County regulations;
 - (b) By clearing of forests or woodlands on soils with a slope greater than 15 percent; or on soils with a "K" value greater than .35 and slope greater than 5 percent;
 - (c) If the clearing will adversely affect water quality or will destroy plant and

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45 COMAR 27.01.06

wildlife habitat as defined in this Ordinance; or

- (d) By the clearing of existing natural vegetation within the Buffer as defined in this Ordinance.
- (4) Assure that the drainage of non-tidal wetlands for the purpose of agriculture be done in accordance with a Soil Conservation and Water Quality Plan, approved by the County Soil Conservation District ⁴⁶.
- (5) Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and further, shall minimize adverse effects on plants, fish and wildlife resources.
- (6) Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage and manure storage minimize the contamination of water bodies.
- (7) Assure that agricultural activity permitted within the Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the County Soil Conservation District.

C. Performance Standards for Agriculture.

The following performance standards shall be adopted for all land in agricultural use or to be converted to agricultural use within the Critical Area:

- (1) The County hereby incorporates the agricultural components of the State 208 Water Quality Plan into this program. These components shall be applicable to all agricultural activities in the Critical Area.
- (2) Soil Conservation and Water Quality Plans and Best Management Practices shall be developed and implemented for those portions of farms which lie within the Critical Area. Local farmers shall cooperate with the local Soil Conservation District for approval of their proposed plans. Landowners who have signed up as Conservation District operators but who do not have a Conservation Plan prepared for them by the local Conservation District shall be allowed to continue to farm until a Conservation Plan is developed provided that the goals of this program are being met.
- (3) A landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several best management practices that minimize impacts to water quality, conserve fish,

⁴⁶ COMAR 26.23.04.

wildlife, and plant habitat, and integrate best with the farming operation.

- (4) Until such time as the farm plans are developed and implemented farmers shall as a part of the program be encouraged to use the following practices:
- (a) Cover crops shall be planted to reduce erosion;
 - (b) Nutrients shall be applied at the appropriate time and appropriate methods shall be used;
 - (c) Reduced tillage (e.g.) no till practices shall be utilized where practical; and
 - (d) Crop rotations shall be implemented where effective.

D. Agricultural activities in the Buffer.

Agricultural activities are permitted in the Buffer in accordance with the provisions of Sub-Section L of §68-25.

§68-23 Surface Mining in the Critical Area⁽⁴⁷⁾.

A. Applicability.

The provisions of this Section apply to all existing and proposed operations 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, removal and mining when done for the purpose of prospecting, washing mined material, and loading and transporting mined material.

B. General policies.

The Dorchester County Department of Public Works (DPW) shall assure that all available measures are taken to protect the Critical Area from all sources of pollution from surface mining operations including, but not limited to sedimentation, siltation, chemical and petrochemical use and spillage, and storage and disposal of waste, dusts and spoils. The DPW shall further assure that surface mining is conducted in a way to permit the reclamation of surface mining sites as soon as possible and to the extent possible.

C. Mineral Resource Plan and Program.

The DPW will develop and comply with a Mineral Resource Plan and Program for Management if applicable.

47 COMAR 27.01.07

D. Standards.

Surface mining operation permits are issued by the Maryland Department of the Environment (MDE) and periodic site inspections of permitted areas are made to determine whether the conditions of the permit and the accompanying Reclamation Plan are being fulfilled. Local approvals and related permits for surface mining operations in the County in the Critical Area shall only be granted if the following conditions are met:

- (1) A Reclamation Plan shall be submitted as part of the permit application which specifies the use which is proposed to be made of the site following reclamation, the manner in which that soil and subsoil are to be conserved and restored, the specifications for surface gradient restoration suitable for the subsequent use, the proposed manner and type of re-vegetation or other surface treatment of affected areas and an acceptable schedule to the DPW for the implementation of reclamation measures. Reclamation is to occur as mining on each segment of a site is completed;
- (2) The operation will not have an unduly adverse effect on wildlife, forests, or fresh water, estuarine or marine fisheries;
- (3) The operator has provided applicable permits from all federal, State and local regulatory agencies responsible for air and water pollution and sediment control; and
- (4) Adequate consideration shall be given to:
 - (a) The effects of the proposed action on the environment, including adverse and beneficial environmental effects that are reasonably likely if the proposal is implemented or if it is not implemented.
 - (b) Measures that might be taken to minimize potential adverse environmental effects and maximize potential beneficial environmental effects, including monitoring maintenance, replacement, operation and other follow-up activities.
 - (c) An applicant's previous experience with similar operations which indicates that the operation will not result in substantial deposits of sediment in stream beds or lakes, landslides, or other causes of water pollution.

E. Location of future sites.

Presently most of the Resource Conservation Area of the County's Critical Area is zoned for agricultural or conservation use. Surface mining is permitted in Agricultural Districts. Proposed new surface mining sites or expanded operations of existing sites shall comply with the following:

- (1) New surface mining operations are permitted within the Critical Area provided that identification of appropriate post-excitation uses for this land such as recreation, habitat restoration, open space use, or development are accomplished according to the appropriate land management classification (IDA, LDA or RCA) and other applicable County and State codes and ordinances.
- (2) Areas such as the following shall not be used for surface mining:
 - (a) Habitat Protection Areas and other important natural resource areas such as those of scientific value or areas where assemblages of rare species occur;
 - (b) Areas where highly erodible soils exist;
 - (c) Areas where the use of renewable resource lands would result in the substantial loss of long-range (25 years or more) productivity of forest and agriculture, or would result in a degrading of water quality or a loss of vital habitat;
 - (d) Lands that are within 100 feet of the mean high water line of tidal waters, tidal wetlands, or the edge of streams.
- (3) Surface mining operations shall operate under the following conditions:
 - (a) Future wash plants including ponds, spoil piles, and equipment may not be located within the Buffer as defined in this Ordinance;
 - (b) Existing wash ponds shall be reclaimed as soon as possible after the cessation of a sand and gravel operation;
 - (c) 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

§68-24 Habitat Protection⁽⁴⁸⁾.

A. Description.

The Habitat Protection Areas Sections of the County's Critical Area Ordinance address protection of the following five habitats:

- (1) The 100-foot Buffer;
- (2) Nontidal wetlands;
- (3) Threatened and Endangered Species and Species in Need of Conservation;
- (4) Plant and Wildlife Habitat Protection Areas including non-tidal wetlands;
and
- (5) Anadromous Fish Propagation Waters

B. Identification.

Maps illustrating the general location, extent and configuration of Habitat Protection Areas in the County are on file with the DP&Z. They will be used as a "flagging" device to assist property owners, developers, any person proposing development activity, DP&Z and other agencies of the County government when reviewing development plans. While these maps give a general indication of the area, they do not excuse any property owner or operator from establishing to the satisfaction of the DP&Z, whether or not the property or activity will affect the element of habitat to be protected. At the time of development the applicant will be responsible for providing an on-site analysis and inventory.

§68-25 The 100-foot and Expanded Buffer⁽⁴⁹⁾.

A. Applicability and delineation.

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

- (1) The minimum 100-foot Buffer is delineated landward from:
 - (a) The mean high water line of tidal water;
 - (b) The edge of each bank of a tributary stream; and
 - (c) The upland boundary of a tidal wetland.
- (2) The Buffer shall be expanded beyond the minimum 100-foot Buffer as described

48 COMAR 27.01.09

49 COMAR 27.01.09.01 though .01-8

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in §A(1) above and the minimum 200-foot Buffer as described in §A(3) below, to include the following contiguous land features:

- (a) A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
 - (b) A non-tidal wetland to the upland boundary of the non-tidal wetland;
 - (c) The 100-foot Buffer that is associated with a Non-tidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
 - (d) For an area of hydric soils or highly erodible soils, the lesser of:
 - (i) The landward edge of the hydric or highly erodible soils; or
 - (ii) Three hundred feet where the expansion area includes the minimum 100-foot Buffer.
- (3) Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include:
- (a) An expanded Buffer in accordance with §A(2) above; or
 - (b) A Buffer of at least 200 feet from a tidal waterway or tidal wetlands; and a Buffer of at least 100-feet from a tributary stream, whichever is greater.
- (4) The provisions of §A(3) above do not apply if:
- (a) The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans), by July 1, 2010;
 - (b) The application involves the use of growth allocation.

B. Permitted activities.

If approved by Dorchester County, disturbance to the 100-foot and expanded Buffer is permitted for the following activities, provided mitigation is performed in accordance with an approved Buffer Management Plan as required per Sub-Section F of this Part:

- (1) A new development or redevelopment activity associated with a water-dependent facility or located in an approved Modified Buffer Area;
- (2) A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Ordinance;
- (3) A development or redevelopment activity approved in accordance with the variance or administrative variance provisions of this Ordinance;

- (4) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
- (a) The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;
 - (b) The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- (5) A new or replacement septic system on a lot created before August 23, 1988, where:
- (a) The Dorchester County Health Department has determined the Buffer is the only available location for the septic system; and
 - (b) Mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.
 - (c) The Dorchester County Health Department shall enforce all requirements related to the approval and construction of septic systems consistent with this sub-Section.
- (6) Non-structural, vegetated stormwater management practices may be installed within the Buffer or expanded Buffer if required by the Dorchester County Department of Public Works, provided that 1:1 mitigation is performed for the removal of woody vegetation.
- (7) An In-kind replacement of a legally existing principal and/or accessory non-conforming structure within the 100-foot and/or expanded buffer.
- (8) The construction or replacement of steps and landings, built to the current minimum building code requirement, for access to a structure.

C. Buffer establishment in vegetation.

An applicant for a development activity, redevelopment activity or a change in land use that occurs outside the Buffer, but is located on a riparian lot or parcel that includes the minimum 100-foot Buffer, shall establish the Buffer in vegetation if the Buffer is not fully forested or fully established in woody or wetland vegetation. Dorchester County shall require a Buffer Management Plan in accordance with the standards of this Part.

- (1) The provisions of this Sub-Section apply to:
 - (a) A new subdivision or a new lot created subsequent to the adoption of this Ordinance;
 - (b) A lot or parcel that is converted from one land use to another;
 - (c) Development or redevelopment on a lot or parcel created before January 1, 2010.
- (2) The provisions of this Sub-Section do not apply to the in-kind replacement of a structure.
- (3) If a Buffer is not fully forested or fully established in woody or wetland vegetation, the Buffer shall be established through planting in accordance with COMAR 27.01.09.01-1.

D. Mitigation for impacts to the Buffer.

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

- (1) Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, septic system approved by the Dorchester County Health Department on a lot created before August 23, 1988, and special exception.
- (2) All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2.
- (3) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
- (4) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then DP&Z may permit planting in the following order of priority:
 - (a) On-site and adjacent to the Buffer; and
 - (b) On-site elsewhere in the Critical Area.
 - (c) A fee in lieu as referenced in §G below.

E. Buffer planting standards.

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

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

F. Required submittal of Buffer Management Plans.

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

- (1) A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials, clearly specify the area to be planted and state if the applicant is:
 - (a) Fully establishing the Buffer;
 - (b) Partially establishing an area of the Buffer equal to the net increase in lot coverage, or
 - (c) Partially establishing an area of the Buffer equal to the total lot coverage.
- (2) Any permit for development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by DP&Z.
- (3) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by DP&Z.
- (4) DP&Z may not approve a Buffer Management Plan unless:
 - (a) The plan clearly indicates that all planting standards under §E of this Ordinance will be met; and
 - (b) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
- (5) For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
 - (a) Completes the implementation of a Buffer Management Plan; or
 - (b) Provides financial assurance to cover the costs for:
 - (i) Materials and installation; and

- (ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- (6) Concurrent with recordation of a subdivision plat, an applicant shall record an approved Major Buffer Management Plan, where applicable, as set forth in COMAR 27.01.09.01-3J.
- (7) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance.
 - (a) A permit for development activity will not be issued for a property that has the violation.
- (8) An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.

G. Simplified Buffer Management Plan⁵⁰ :

A simplified buffer management plan is type of buffer management plan that an applicant submits as part of a request for specifically limited, permitted development activities and removal of vegetation in the buffer.

- (1) A Simplified Buffer Management Plan is required before any of the activities listed below are performed, as part of the application associated with the following:
 - (a) to provide a single access pathway through the buffer directly to a private pier or to the shoreline that is no wider than three feet;
 - (b) to manually remove invasive or noxious vegetation;
 - (c) to fill or maintain an existing grass lawn; or
 - (d) except in the case of an emergency under Section (k)(2), to cut a tree that is in imminent danger of falling and causing damage to a dwelling or other structure, causing blockage to a stream, or accelerating shore erosion.
- (2) An applicant that cuts a tree in the buffer because it was immediately necessary due to an emergency situation shall submit a simplified buffer management plan to the county at the earliest possible time after the tree has been cut.
- (3) A Simplified Buffer Management Plan includes the following minimum information:

⁵⁰ COMAR 27.01.09.01-3(H)

- (a) A brief statement describing the activity, how it will be accomplished (i.e. chainsaw, hand removal, etc.), and the anticipated date of the work;
- (b) The proposed mitigation;
- (c) In the case of the removal of invasive or noxious species, the revegetation of the area in a manner that:
 - (i) Prohibits installation or cultivation of new lawn or turf in the buffer; and
 - (ii) Ensures coverage of the area cleared with mulch or ground cover or both until revegetation is established;
- (d) The proposed mitigation planting date; and
- (e) The signature of the party responsible for the activity and for ensuring survival of the planting.

H. Minor Buffer Management Plans ⁵¹

A Minor Buffer Management Plan is a landscape plan required for applications for development activities that exceed the limitations for simplified buffer management plans and require planting less than 5,000 square feet due to mitigation or establishment calculations.

- (1) A Minor Buffer Management Plan shall include all of the following information:
 - (a) A plan that shows the limit of disturbance, the total number and size of trees removed, if applicable, and the arrangement of the proposed planting;
 - (b) A landscape schedule showing the proposed species type, the quantity of plants, the size of plants, and the stock type that is proposed for installation;
 - (c) The anticipated planting date, based on the next available planting season and construction timeline;
 - (d) A maintenance plan that includes:
 - (i) practices to control invasive species and pests and minimize herbivory;

⁵¹ COMAR 27.01.09.01-3(I)

- (ii) the signature of a responsible party;
 - (iii) provisions for monitoring and reinforcement planting if survival rates fall below those required in this chapter;
 - (iv) a signature that confirms the review and approval of the maintenance plan by the local jurisdiction.
- (e) An inspection agreement that grants permission to the local government to inspect the plantings at appropriate times, and requires a reinforcement planting provision if survival rates fall below those required in chapter h; and
- (f) Signature(s) of the party responsible for the proposed activity and for ensuring the survivability of the planting.

I. Major Buffer Management Plan

A Major Buffer Management Plan is a landscape plan required for applications for development activities that exceed the limitations for a Minor Buffer Management plan and requires planting for more than 5,000 square feet due to mitigation or establishment calculations.

- (1) A Major Buffer Management Plan shall include the following:
- (a) A plan that shows the proposed limit of disturbance, the total number and size of trees to be removed, if applicable, and the arrangement of the planting to be done;
 - (b) A landscape schedule that shows the proposed species type, the quantity of plants, the size of plants to be installed, and the planting date;
 - (c) A maintenance plan for the control of invasive species, pests, and predation that shows invasive species and pest control practices, the provisions of at least 2 years of monitoring, and a reinforcement planting provision if survival rates fall below the standards in regulation .01-2 m and n of COMAR Chapter 27;
 - (d) A long-term protection plan that includes evidence of financial assurance that adequately covers the planting and survivability requirement, a provision for at least 2 years of monitoring as required in regulation .01-2 m and n of COMAR Chapter 27, and if planting, an anticipated planting date before construction or the sale of the lot;
 - (e) An inspection agreement that grants permission to the local jurisdiction to inspect the plantings at appropriate times;

- (f) If buffer establishment is required under regulation .01-1 of COMAR Chapter 27, the information on which calculation of the amount of buffer to be planted was based;
- (g) If buffer mitigation is required under regulation .01-2 of COMAR Chapter 27, the information on which calculation of the amount of the buffer to be planted was based; and
- (h) The signature of the party responsible for the proposed activity and for the survival of the planting.
- (i) For a Major Buffer Management Plan a single species may not exceed 20 percent of the total planting requirement.

J. Fees-In-Lieu of Buffer mitigation.

A fee- in-lieu of mitigation will be collected if the planting requirements of the Buffer Management Plan cannot be fully met onsite, in accordance with the following standards:

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

K. Shore erosion control projects.

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

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

project stated in COMAR 27.01.04 and COMAR 27.01.09.01-6

L. Agriculture in the Buffer.

Agricultural activities within the Buffer are subject to the following limitations and standards:

- (1) The following activities associated with agriculture are prohibited in the Buffer and other Habitat Protection Areas as set forth in COMAR 27.01.09 and Sections 68-24 and 25 through 31:
 - (a) Clearing of existing natural vegetation;
 - (b) New farming activities, including the creation of new pastures and the grazing of livestock; and
 - (c) Feeding or watering of livestock within 50 feet of the mean high water line of tidal waters or the edge of a tidal wetland or tributary stream, whichever is further inland
- (2) Agricultural activities are permitted in the Buffer if:
 - (a) A 25-foot vegetated filter strip is established. The filter strip shall be measured landward from the mean high water line of tidal waters or tributary streams, or from the edge of tidal wetlands, whichever is further inland; or
 - (b) A current and approved Soil Conservation and Water Quality Plan is being implemented that achieves the water quality and habitat objectives of the 25-foot filter strip.
- (3) If a 25-foot vegetated filter strip is provided, it shall meet the following standards:
 - (a) Maintained with trees with a dense ground cover or a thick sod of grass;
 - (b) Managed to control noxious weeds, including Johnson grass, Canada thistle, and multiflora rose by authorized means;
 - (c) Managed to provide water quality benefits and habitat protection consistent with the policies stated in Section 68-2 of this Article;
 - (d) The filter strip shall be expanded by 4 feet for every 1 percent of slope, for slopes greater than 6 percent; and
 - (e) Maintained until such time as the landowner implements an approved Soil Conservation and Water Quality Plan.

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- (4) If a Soil Conservation and Water Quality Plan is implemented, it shall meet the following standards:
 - (a) Include a program of agricultural best management practices that improve water quality and protect plant and wildlife habitat;
 - (b) Insofar as possible due to its narrower width, achieve the water quality and habitat protection objectives of the 100-foot Buffer; and
 - (c) Include the implementation of grassland and manure management program, where appropriate.

M. Timber Harvests in the Buffer.

Except for the commercial harvest of trees by selection or by clear-cutting of loblolly pine and tulip poplar permitted under COMAR 27.01.09.01-7, a person may not cut or clear trees within the Buffer.

- (1) A person may commercially harvest trees by selection or by clear-cutting of loblolly pine and tulip poplar if the cutting or clearing:
 - (a) Is further than 50 feet landward from the Mean High Water Line of a tidal water, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland;
 - (b) Does not occur in a Habitat Protection Area described in COMAR 27.01.09.02-.05;
 - (c) Is conducted in accordance with the requirements of COMAR 27.01.05; and
 - (d) Is conducted in accordance with a buffer management plan that is prepared by a registered professional forester who is approved by the Department of Natural Resources.
- (2) The County shall not approve any harvest plan that allows:
 - (a) Disturbance to any stream bank or shoreline; and
 - (b) Cutting that involves the creation of logging roads and skid trails within the Buffer; and
- (3) An applicant shall submit a buffer management plan for any commercial harvest within the Buffer, regardless of the size of the area to be cut or cleared, that meets the following minimum requirements:
 - (a) The applicant shall plant or allow the forest to regenerate in a manner that

assures the availability of cover and breeding sites for wildlife, and reestablished the wildlife corridor function of the Buffer; and

- (b) The commercial harvesting of trees, by any method, may be permitted to the edge of an intermittent stream if the cutting is conducted in accordance with the requirements of this Section.

§68-26 Modified Buffer Area Provisions⁽⁵²⁾.

A. Description.

Section 27.01.09.01.C(8) of the Critical Area criteria permits Dorchester County to request an exemption of certain portions of the Critical Area from the buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, and recreational development in the Critical Area prevent the Buffer from fulfilling the functions set forth in the criteria. The designation of these areas, formerly referred to as Buffer Exemption Areas (BEAs), and are now referred to as Modified Buffer Areas (MBAs) without any further action by County Council, must be approved by the Critical Area Commission.

The following provisions are intended to accommodate limited use of shoreline areas that have been mapped Modified Buffer Areas while protecting water quality and wildlife habitat to the greatest extent possible. This Section applies only to new development or redevelopment within 100 feet of tidal waters, tidal wetlands and tributary streams on lots of record as of December 1, 1985. The lots shall have been officially designated by the County, and approved by the Critical Area Commission, as Modified Buffer Areas.

B. Commercial, Industrial, Institutional, Recreational and Multi-family residential Development and Redevelopment Standards.

The purpose of this Section is to guide the County in effectively implementing the Modified Buffer Area provisions for commercial, industrial, institutional, recreational and multifamily residential development that achieve the water quality and habitat protection objectives of the policies for the buffer set forth in Section 27.01.09.01.B of the Critical Area Criteria.

New development or redevelopment activities, including structures, roads, parking areas and other lot coverage or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the Director of DP&Z or his designee finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:

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

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- (2) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
- (3) Convenience and expense were not factors considered when evaluating the extent of allowable impacts to the Buffer.
- (4) 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 local 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 50 foot setback shall be maintained for all subsequent development or redevelopment of the property.
- (5) 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 area of lot coverage. Opportunities to establish a 25 foot setback should be maximized.
- (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 for development or redevelopment in the in the Modified Buffer Area approved under the provisions of this sub-Section shall be implemented as follows:
 - (a) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the DP&Z.
 - (b) Applicants who cannot fully comply with the planting requirement may use offsets to meet the mitigation requirement. Offsets include the removal of an equivalent area of existing lot coverage in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.

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- (c) Applicants who cannot comply with either the planting or offset requirements in (a) or (b) above shall pay into a fee-in-lieu program as follows:
 - (i) Applicants shall submit to the DP&Z one cost estimate from a qualified landscape business for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a two year guarantee.
 - (ii) The DP&Z shall determine the amount of the fee-in-lieu based on one cost estimate.
- (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 Critical Area Program. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported in Dorchester County's quarterly reports.
- (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 Dorchester County.

C. Single Family Residential Development and Redevelopment Standards.

New development or redevelopment activities, including structures, roads, parking areas and other lot coverage or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, and the DP&Z finds that efforts have been made to minimize Buffer impacts. The development must comply with the following standards:

- (1) 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 the MBA setback. The MBA setback on a site is determined by the principal structure on that site, the principle structures on adjacent properties, or the setback for the zoning district. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
- (2) Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area or lot coverage within the Buffer shall comply fully with the requirements of this policy.

- (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 DP&Z or their designee that there are no other locations for the accessory structures.
 - (b) The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.
 - (c) In no case shall new accessory structures be located less than 25 feet from the water (or edge of tidal wetlands).
- (4) Variances to other local setback requirements shall have been considered before additional intrusion into the Buffer.
- (5) Development may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (6) 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.
- (7) Modified Buffer Area designation shall not be used to facilitate the filling of nontidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.
- (8) Mitigation for development or redevelopment in the Modified Buffer Areas approved under this Section shall be implemented as follows:
 - (a) Natural 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 other location as may be determined by the DP&Z. 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 requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of existing lot coverage within 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 Paragraph (a) and (b) above shall pay into a fee-in-lieu program as follows:
 - (i) Applicants shall submit to the DP&Z one cost estimate from a qualified landscape business for planting the equivalent of an area twice the extent of the footprint of the development activity within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a two- year survival guarantee.
 - (ii) The DP&Z shall determine the amount of the fee-in-lieu based on one cost estimate.
- (d) 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 Dorchester County.

D. Notification Requirements.

All new commercial, industrial, institutional, recreational, multi-family 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.

E. Review Process.

The DP&Z shall make written findings documenting that all the Criteria in this Section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings shall be available to the Critical Area Commission upon request.

F. Modified Buffer Area Mapping Standards.

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

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

or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.

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

§68-27 Nontidal Wetlands⁽⁵³⁾.

A. Identification.

Nontidal wetlands shall be identified, and the applicable standards applied, on all lands on which a development activity or a change in land use is proposed. Nontidal wetlands shall be delineated in the field by a professional qualified to perform delineations in accordance with the publication, "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989. The applicant shall be responsible for ensuring that nontidal wetlands are accurately identified and delineated.

B. General policies.

Disturbance and alteration of nontidal wetlands should be avoided, and if unavoidable should be minimized because of the hydrologic and habitat functions they perform:

- (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) Facilitate the control, infiltration, and absorption of floodwaters associated with extreme high tides and storm events;
- (3) Minimize the adverse effects of human activities on waterways and aquatic resources;
- (4) Maintain an area of transitional habitat between aquatic and upland communities;
- (5) Maintain the natural environment of streams;
- (6) Provide wildlife habitat for wetland species.

C. Standards for nontidal wetland protection.

In addition to the standards set forth in this Ordinance for protection of the Buffer and expansion of the Buffer for nontidal wetlands, development activity affecting nontidal wetlands shall comply with the following standards:

- (1) New development activity is prohibited in nontidal wetlands unless the development activity is water dependent and requires access to a nontidal wetland as a central element of its basic function, or is not water dependent, and has no practicable alternative;
- (2) Where nontidal wetlands exist within the Buffer, the 100 foot buffer shall be expanded to the upland limit of the non-tidal wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands;
- (3) The hydrologic regime and water quality of identified nontidal wetlands shall be protected by providing that development activities or other land disturbances in the drainage area of the wetlands shall minimize alterations to the surface or subsurface flow of water into and from the wetlands and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland;
- (4) New development activity will first avoid and then minimize adverse impacts to the nontidal wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions;
- (5) New development activity affecting nontidal wetlands must be designed so that it does not cause or contribute to a degradation of ground waters or surface waters; and
- (6) Development activity permitted in accordance with these standards must be consistent with any comprehensive watershed management plan developed or approved by the Department under Environment Article, §5-908, Annotated Code of Maryland.

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D. Review process.

Applicants for approval of development projects that involve disturbance or alteration to nontidal wetlands shall demonstrate to the appropriate approving authority:

- (1) That proposed impacts are unavoidable;
- (2) That alternative proposals were evaluated; and
- (3) That mitigation measures will be provided. Mitigation measures shall provide water quality benefits and plant and wildlife habitat equivalent to those of the wetland destroyed or altered and shall be accomplished, to the extent possible, on site or near the affected wetland.

§68-28 Threatened and Endangered Species/Species in Need of Conservation⁽⁵⁴⁾.**A. Identification.**

The approximate location of rare, threatened and endangered species, and species in need of conservation are shown on a digitized Geographic Information System (GIS) data layer on file with the Dorchester County Department of Planning and Zoning. These maps will be used as a flagging device and do not carry the force of regulation. Final determinations will be made on the basis of field investigation by qualified persons.

B. General policies.

The County shall provide protection for threatened and endangered species, those species in need of conservation and their habitats, which occur in the Critical Area.

C. Standards.

The County shall provide for the protection of the known habitats of species in need of conservation, threatened and endangered species, and also habitats of these species that may be identified in the future.

- (1) If a development activity is proposed for a site within the Critical Area, then the DP&Z shall review the proposed activities on a case-by-case basis and seek technical advice from the Department of Natural Resources, Wildlife & Heritage Division. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.
- (2) Pursuant to recommendations from the Department of Natural Resources, when development is proposed on or near sites which serve as, include, or are adjacent to, a habitat of a threatened or endangered species or a species in need of conservation, the County will require that an applicant perform an appropriate ecological survey to verify the presence of the protected habitat or species.

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- (3) If the presence of a protected habitat or species is confirmed, the County shall require that an applicant develop a Habitat Protection Plan that provides for the protection and conservation of the species and habitats identified. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be implemented on the specific site.
- (4) The applicant shall obtain approval of the Habitat Protection Plan from the DP&Z or the appropriate designated approving authority. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.
- (5) It is the policy of the 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 acquisition of the lands for preservation of these habitats should be sought. Management agreements, easements, and acquisition efforts shall be coordinated with the Maryland Department of Natural Resources and other appropriate public agencies, private organizations and affected landowners.

D. Public notice.

The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the County and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.

- (1) The establishment of Habitat Protection Areas shall not be intended to restrict or affect, beyond any existing local, State or Federal laws or regulations or on private land, any private restrictions, such activities as non-commercial passive recreation (for example, hiking and nature photography), educational pursuits, scientific observation, or non-commercial hunting, trapping or fishing.
- (2) Development activities in areas of threatened or endangered species in need of conservation may be subject to other provisions and requirements of this program.

§68-29 Plant and Wildlife Habitat Protection Plan⁽⁵⁵⁾.

A. Description.

The following plant and wildlife habitats shall be identified in the Critical Area and appropriately protected and conserved:

- (1) Colonial water bird nesting sites;
- (2) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;
- (3) 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);
- (4) 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);
- (5) Other areas which may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat areas;
- (6) Other plant and wildlife habitats determined to be of local significance; and
- (7) Natural Heritage Areas which have been designated;

B. General policies.

The policies of the County regarding plant and wildlife habitat in the Critical Area shall be to:

- (1) Conserve wildlife habitat in the Critical Area;
- (2) Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
- (3) Protect those wildlife habitat types which are required to support the continued presence of various species;
- (4) Protect those wildlife habitat types and plant communities which are determined by the County to be of local significance;
- (5) Protect Natural Heritage Areas; and
- (6) Protect and conserve non-tidal wetlands.

C. Standards.

The County's Critical Area Program and Ordinance will serve to accomplish the goals of the Critical Area Program to protect water quality and wildlife habitat. In addition to the standards set forth in this Ordinance for the protection of the Buffer, the following standards shall apply to new development and re-development within the Critical Area:

- (1) Any development or significant land use change of property located within the Critical Area of the County will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property owner proposes to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.
- (2) The County may seek additional information and comments from the Department of Natural Resources, Wildlife and Heritage Division and other appropriate agencies and adjacent jurisdictions.
- (3) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants shall review and utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development.
- (4) The County will encourage the conservation of rough areas, e.g., depressions, swales, non-tidal wetlands or other areas unsuitable for development or agriculture as wildlife cover. Using cluster development, the developer shall leave these areas in natural vegetation or where this is not feasible, replant with native vegetation.
- (5) For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts which are located outside of the area of the property being developed or subdivided. The area left in forest cover (at least 70 percent of the tract in LDAs or RCAs as required by this Ordinance) shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.
- (6) Buffer areas for colonial water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
- (7) New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as 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 Ordinance.

- (9) Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster zoning or other site design criteria which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs which use the acquisition of easements and other similar techniques.
- (10) When development activities, or the cutting or clearing of trees, occurs in 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 the County shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in Dorchester County, 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. The following standards apply in Natural Heritage Areas:
- (a) Development activities or cutting and clearing in Natural Heritage Areas shall be prohibited unless an analysis is performed and measures proposed to mitigate any adverse impacts of the proposed activities. The analysis and mitigation measures shall be prepared by qualified professionals (e.g., ornithologists, zoologists, environmental engineers and planners) at the expense of the applicant and shall address the expected effects on the natural environment within the Natural Heritage Area.
- (b) The analysis shall be submitted to the DP&Z which will then submit it to the State Department of Natural Resources for review and comment. Upon receiving said comment and, if appropriate, upon seeking the advice of expert consultants, the DP&Z shall find against or in favor of the activities or may make suggestions for changing the analysis and ask the applicant to resubmit the analysis. The initial review between the DP&Z and State Department of Natural Resources should be completed within sixty (60) days from submission.

D. Public notice.

The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the County and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.

- (1) The establishment of Habitat Protection Areas shall not be intended to restrict or affect, beyond any existing local, State or Federal laws or regulations or on private land, any private restrictions, such activities as non-commercial passive recreation (for example, hiking and nature photography), educational pursuits, scientific observation, or non-commercial hunting, trapping or fishing.
- (2) Development activities in areas of threatened or endangered species in need of conservation may be subject to other provisions and requirements of this program.

§68-30 Anadromous Fish Propagation Waters⁽⁵⁶⁾.

A. Applicability.

The provisions of this Section apply to anadromous fish propagation waters. These are designated streams that are tributary to the Chesapeake Bay where spawning of anadromous occurs or has occurred.

B. Identification.

The Department of Natural Resources has identified and mapped anadromous fish propagation waters as defined in this Section, and these maps are available by contacting the Department.

C. General policies.

The policies of the County with regard to anadromous fish propagation waters shall be to:

- (1) Protect the in stream and stream bank habitat of anadromous fish propagation waters;
- (2) 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
- (3) Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

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D. Standards.

Within anadromous fish propagation watersheds, the following measures are required:

- (1) 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.
- (2) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
- (3) The County shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
 - (a) Minimize development activities or land disturbances within the watershed;
 - (b) Maintain, or if practicable, improve water quality in affected streams or other water bodies;
 - (c) Minimize to the extent possible the discharge of sediments into affected streams or other water bodies;
 - (d) Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams;
- (4) The County shall ensure coordination and compliance with complementary State laws and regulations:
 - (a) Prohibit the construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams 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 in stream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

§68-31 Natural Parks⁽⁵⁷⁾.

A. Identification.

Natural parks are areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions. The County has identified and acquired areas within their Critical Area where natural parks have been established, and identified other areas for future protection through acquisitions, easements, designation, or other appropriate means. Parks should not be chosen to preserve only natural curiosities, but they should be planned to include coastal ecosystems that are within Dorchester County, each with its geological and biological resources intact. Park boundaries should be based on biological necessity rather than administrative convenience.

B. Policies.

The County shall encourage the creation of opportunities for interaction between people and natural environments without destroying the fragile components of natural habitats. Any plans developed for the use of parks should recognize that all natural terrain has a finite capacity to tolerate human disturbances, and, therefore, attention should be given to limiting the number of park visitors in any park at any one time or in the course of a season.

LIBERO 007 FOLIO 45

57 COMAR 27.01.08

LIBERO 007 FOLIO 46

SECTION NINE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that this Bill is subject to the approval of the Critical Area Commission.

SECTION TEN: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that upon approval of the Critical Area Commission, General Code Publishers is directed to codify the repeal of Chapter 62 of the Dorchester County Code entitled, Agricultural Use, and the repeal of Chapter 97 of the Dorchester County Code entitled, Forestry, and the repeal of Section 100-13, Critical Area Protection, and Section 100-13.1, Civil Penalties in Critical Area; Administrative Abatement Orders, of Chapter 100 of the Dorchester County Code entitled, Grading, Erosion and Sediment Control, and the repeal of Article XV, Additional Provisions, Section 134-31, Critical Area Protection, of Chapter 134 of the Dorchester County Code entitled, Stormwater Management and the repeal of Article XII, Critical Area Protection, Sections 140-49 through Section 140-55.1 of Chapter 140 of the Dorchester County Code entitled, Subdivision Regulations, and the repeal of certain terms and their definitions set forth in Section 155-13, Terms Defined, of Chapter 155 of the Dorchester County Code entitled, Zoning, and the repeal of Article VII, District Regulations, Section 155-38, CA Critical Area Protection District of Chapter 155 of the Dorchester County Code entitled, Zoning, as approved by the Critical Area Commission, in the Dorchester County Code accordingly.

SECTION ELEVEN: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, that upon approval of the Critical Area Commission, General Code Publishers is directed to codify new Chapter 68 entitled, Chesapeake Bay Critical Area, to the Dorchester County Code as approved by the Critical Area Commission, in the Dorchester County Code accordingly.

SECTION TWELVE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that this Bill shall be known as Bill No. 2017- 3 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage or upon Critical Area Commission approval whichever is later.

SECTION THIRTEEN: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND that the disapproval or invalidity by the Critical Area Commission or its Chairman of any provisions of this Bill shall not affect the validity or enforceability of any other provisions of this Bill, which shall remain in full force and effect. Only those portions of this Bill approved by the Critical Area Commission shall be codified in the Dorchester County Code.

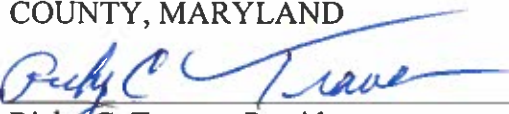
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PASSED this 2nd day of May, 2017.

ATTEST:



Jeremy Goldman
County Manager

COUNTY COUNCIL OF DORCHESTER
COUNTY, MARYLAND
BY: 


Ricky C. Travers, President

APPROVED this 2nd day of May, 2017.

ATTEST:



Jeremy Goldman
County Manager

COUNTY COUNCIL OF DORCHESTER
COUNTY, MARYLAND
BY: 

Ricky C. Travers, President

- Travers - *aye*
- Nichols - *aye*
- Bradshaw - *aye*
- Price - *aye*
- Satterfield - *aye*