

MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE
Ordinance No. 2023-13

Introduced By: Mayor Roath

Date Introduced: June 6, 2023

Amendments Adopted: N/A

Date Adopted: July 6, 2023

Date Effective: July 26, 2023

AN ORDINANCE concerning

Critical Area Program

FOR the purpose of repealing and replacing Town of Perryville regulations relating to Maryland's Critical Area Program in the Town of Perryville.

BY repealing and reenacting, with amendments

Chapter 84 Zoning Ordinance
Article II Basic Definitions and Interpretations
Part I Definitions
Section 9
Code of the Town of Perryville

BY repealing and reenacting, with amendments

Chapter 84 Zoning Ordinance
Article VIII Nonconforming Situations
Section 84.2
Code of the Town of Perryville

BY repealing

Chapter 84 Zoning Ordinance
Article IX Zoning Districts
Part V Critical Area District
Sections 117 through 141
Code of the Town of Perryville

BY adding

Chapter 84 Zoning Ordinance
Article IX Zoning Districts
Part V Critical Area
Sections 117 through 135
Code of the Town of Perryville

EXPLANATION:
CAPITALS INDICATE MATTER ADDED TO EXISTING LAW
((Double Parenthesis)) indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-Out~~ indicates matter stricken from bill by amendment or deleted
from the law by amendment
*** indicates omitted text that is not amended by this ordinance.

SECTION 1. BE IT ENACTED BY THE MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE, that Section 9 of Part I Definitions, Article II Basic Definitions and Interpretations, of Chapter 84, Zoning Ordinance, of the Code of the Town of Perryville, is hereby repealed and re-enacted, with amendments, to read as follows:

Chapter 84 Zoning Ordinance

Article II BASIC DEFINITIONS AND INTERPRETATIONS

Part I – Definitions

Section 9. Definitions of Basic Terms

1. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter.

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((Buffer - An area within a property or site, generally adjacent to and parallel with the property line, either consisting of existing natural vegetation or created by the installation of trees, shrubs,

berms, and/or fences, and designed to limit views and sounds from the development tract to adjacent properties and vice versa.))

((**Buffer, Critical Area** (spelled with a capital B) - A naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances. In the Critical Area Overlay District, the minimum Buffer is a continuous area located Chapter 84 Zoning Ordinance 15 immediately landward of tidal waters (measured from the Mean High Water Line), tributary streams in the Critical Area, and tidal wetlands and has a minimum width of 100 feet.))

((**Buffer Management Plan** - A plan designed and intended to describe methods and means used to achieve and enhance the water quality and habitat functions of the Buffer.))

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((**Community Piers** – Boat docking facilities associated with subdivisions and other similar residential areas, condominiums, and apartments. Private piers are excluded from this definition.))

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((**Comprehensive Plan/The Comprehensive Plan of Perryville, Maryland** - A document consisting of written and mapped information, adopted by the Mayor and Town Commissioners, and intended to guide the physical development of Perryville, including all changes and additions to the plan.))

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((**Conservation Easement** – A non-possessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.))

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((**Critical Area** - All lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. All waters and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State Wetlands Maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland.
- c. Modifications to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Critical Areas Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.))

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((**Density** - The number of principal dwelling units allowed per acre of gross area of a development. For purposes of the Chapter, density is determined by dividing the gross site acres by the minimum lot area per family for each zoning district set forth in the Schedule of Zone Regulations (Section 238).))

((**Developed Woodlands** - Areas one acre or more in size that predominantly contain trees and natural vegetation and that also include residential, commercial, or industrial structures and uses.))

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((**Development /Development Activities (includes the term "develop")** - Any construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination thereof, including the subdivision of land or action that results in construction, modification, extension or expansion of buildings or structures; placement of fill or dumping; storage of materials; land excavation; land clearing; land improvement; or any combination thereof, including the subdivision of land.))

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((**Forest** - For purposes of administering provisions of this Chapter that regulate in the Critical Area, forest is defined as biological community dominated by trees and other woody plants covering a land area of one acre or more. This also includes forests that have been cut but not cleared. In all other cases, the definition of "forest" is as specified in Article XVII of this Chapter.))

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((**Grandfathered Parcel/Lot (Critical Area)** - A parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.))

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((**Growth Allocation:**

- a. An area of land calculated as 5 percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that may be converted to more intense management areas to accommodate land development; also
- b. An act of the Town Commissioners, approved by the Critical Area Commission, that provides for conversion of a property or properties located in Resource Conservation Areas (RCAs) and/or Limited Development Areas (LDAs) in the Critical Area District to another land management classification that may allow an increase in the permitted density to the level permitted by the base zoning classification.))

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((Intensely Developed Areas - Areas of at least 20 adjacent acres or the entire upland portion of the Critical Area within the boundary of a municipality, whichever is less, where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have had at least one of the following features as of December 1, 1985:

- a. Housing density equal to or greater than 4 dwelling units per acre;
- b. Industrial, institutional, or commercial uses are concentrated in the area; or
- c. Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than 3 dwelling units per acre.))

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((Limited Development Areas (LDA) - Areas which are currently developed in low or moderate intensity uses which contain areas of natural plant and animal habitats, and in which the quality of runoff has not been substantially altered or impaired. These areas shall have had at least one of the following features as of December 1, 1985:

- a. Housing density ranging from one dwelling unit per 5 acres up to 4 dwelling units per acre;
- b. Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space;
- c. Areas having public sewer or public water, or both. d. Areas meeting the definition of Intensely Developed Areas above, less than 20 acres in size.))

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((Non-tidal Wetlands – Means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. 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.))

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((Public Water-Oriented Recreation-Shore – Water dependent recreation facilities or activities provided by public agencies which are available to the general public.))

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((Redevelopment - The process of developing land that is or has been developed. Construction

in previously developed areas which may include the demolition of existing structures and building new structures, or the substantial renovation of existing structures. Projects tend to be somewhat larger and more complex than infill projects. The re-use of previously used, non-agricultural land.))

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((**Resource Conservation Areas (RCA)** - Areas characterized by nature- dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have had at least one of the following features as of December 1, 1985:

- a. Density is less than one dwelling unit per five 5 acres; or
- b. Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.))

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((**Road** - All ways used to provide motor vehicle access to (a) 2 or more lots or 2 or more distinct areas or buildings in unsubdivided developments.))

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((**Species in Need of Conservation** - Those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, 10-2A03 and 4- 2A-03, Annotated Code of Maryland.))

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((**Steep Slopes** - Within the Limited Development Area (LDA) and Resource Conservation Area (RCA) steep slopes shall mean any slope with a grade of 15 percent or more. Within the Intensely Developed Area (IDA) and non-critical area portion of the Town, steep slopes shall mean any land area exceeding forty thousand (40,000) square feet with slope in excess of twenty-five percent (25%).))

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((**Tributary Streams** - Perennial and intermittent streams in the Critical Area that are so noted on the most recent U.S. Geological Survey 7.5' topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the Town.))

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((**Wildlife Corridor** - A strip of land having vegetation that provides habitat and a safe passageway for wildlife.))

SECTION 2. BE IT FURTHER ENACTED, that Section 84.2 of Article VIII Nonconforming Situations, of Chapter 84, Zoning Ordinance, of the Code of the Town of Perryville, is hereby repealed and re-enacted, with amendments, to read as follows:

Chapter 84 Zoning Ordinance

Article VIII NONCONFORMING SITUATIONS

Section 84. Nonconforming Lots of Record

2. An individual lot of land or parcel located within the Town of Perryville Critical Area Overlay District (0) may be improved with a single-family dwelling and related accessory uses in a Resource Conservation Area (RCA) and otherwise developed in accordance with Article ((V)) IX, Part ((IX)) V, in a Limited Development Area (LDA) and an Intensely Developed Area (IDA), provided that they comply with the provisions of Section ((131)), Special Buffer yard requirements, and further, provided that they comply with the following criteria:
 - a. Any legally buildable single lot or parcel of record established in the Town of Perryville prior to May 4, 1988 may be improved or developed with a single-family residence, if one (1) is not already placed there.
 - b. Any lot on which development activity has legally progressed to the point of pouring foundation footings or installation of structural members, prior to adoption of the Town of Perryville Critical Area Program, will be permitted to complete construction as per existing development approvals (e.g., building permit).
 - c. Development may take place on lots created prior to June 1, 1984, subject to the limitations on permitted uses contained in Article X and subject to the provisions of Section ((131)) 125. However, any development of such lands must comply, insofar as possible, with the critical area criteria if the development occurs between December 1, 1985, and the time the local program is approved. Development after May 4, 1988 on land subdivided prior to June 1, 1984, must comply with the use provisions of Article IX and the provisions of Section ((131)) 125.
 - d. Development may take place on lots subdivided between June 1, 1984, and December 1, 1985, for which interim findings (Critical Area Law, 8-1813) have been made by the Town of Perryville Planning and Zoning Commission, the Town Board of Appeals or the Town Commissioners.
 - e. Development on land subdivided into recorded legally buildable lots and approved by the Planning Commission after December 1, 1985, shall conform to the critical area criteria.

SECTION 3. BE IT FURTHER ENACTED, that Part V, consisting of Sections 117 through 141, inclusive, of Chapter 84, Zoning Ordinance, Article IX Zoning Districts, of the Code of the Town of Perryville, is hereby repealed, and new Part V, consisting of Sections 117 through 135, inclusive, are hereby added to Chapter 84, Zoning Ordinance, Article IX Zoning Districts,

of the Code of the Town of Perryville, to stand in the place of the Part V so repealed and to read as follows:

Chapter 84 Zoning Ordinance

Article IX Zoning Districts

PART V – CRITICAL AREA

SECTION 117. DEFINITIONS

AS USED IN THIS PART V, THE FOLLOWING WORDS AND TERMS HAVE THE MEANINGS INDICATED:

ABATEMENT – 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 – A STRUCTURE THAT IS DETACHED FROM THE PRINCIPAL STRUCTURE, LOCATED ON THE SAME LOT AND CLEARLY INCIDENTAL AND SUBORDINATE TO A PRINCIPAL STRUCTURE, OR IF THERE IS NO PRINCIPAL STRUCTURE ON THE LOT, A STRUCTURE THAT IS CUSTOMARILY INCIDENTAL AND SUBORDINATE TO A PRINCIPAL STRUCTURE.

ADDITION – A NEWLY CONSTRUCTED AREA THAT INCREASES THE SIZE OF A STRUCTURE.

ANADROMOUS FISH PROGAGATION WATERS – THOSE STREAMS THAT ARE TRIBUTARY TO THE CHESAPEAKE BAY AND ATLANTIC COASTAL BAYS IN WHICH THE SPAWNING OF ANADROMOUS SPECIES OF FISH (E.G., ROCKFISH, STRIPED BASS, YELLOW PERCH, WHITE PERCH, SHAD, AND RIVER HERRING) OCCURS OR HAS OCCURRED. THE STREAMS ARE IDENTIFIED BY THE DEPARTMENT OF NATURAL RESOURCES.

BUFFER – AREA THAT BASED ON CONDITIONS AT THE TIME OF DEVELOPMENT IS IMMEDIATELY LANDWARD FROM MEAN HIGH WATER OF TIDAL WATERWAYS, THE EDGE OF BANK OF A TRIBUTARY STREAM, OR THE EDGE OF A TIDAL WETLAND; AND THE AREA EXISTS IN, OR IS ESTABLISHED IN, NATURAL VEGETATION TO PROTECT A STREAM, TIDAL WETLAND, TIDAL WATERS OR TERRESTRIAL ENVIRONMENTS FROM HUMAN DISTURBANCE. THE BUFFER INCLUDES AN AREA OF AT LEAST 100-FEET EVEN IF THAT AREA WAS PREVIOUSLY DISTURBED BY HUMAN ACTIVITY OR IS CURRENTLY DEVELOPED AND ALSO INCLUDES ANY EXPANSION FOR CONTIGIOUS 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 MANAGEMENT PLAN – A PLAN REQUIRED FOR REMOVING NATURAL VEGETATION WITHIN THE CRITICAL AREA ON PROPERTIES WITH DEVELOPMENT OR REDEVELOPMENT. NATURAL VEGETATION INCLUDES TREES, SHRUBS, VINES, AND HERBACEOUS GROUND COVER. BUFFER MANAGEMENT PLAN INCLUDES THE FOLLOWING:

- MAJOR BUFFER MANAGEMENT PLAN – A PLAN WHERE THE AREA OF BUFFER ESTABLISHMENT OR THE AREA OF BUFFER MITIGATION REQUIRED IS 5,000 SQUARE FEET OR GREATER.
- MINOR BUFFER MANAGEMENT PLAN – A PLAN WHERE THE AREA OF BUFFER ESTABLISHMENT OR THE AREA OF BUFFER MITIGATION REQUIRED IS LESS THAN 5,000 SQUARE FEET.
- SIMPLIFIED BUFFER MANAGEMENT PLAN – A BASIC PLAN FOR A DEVELOPED PROPERTY THAT ADDRESSES BUFFER PLANTING ASSOCIATED WITH THE FOLLOWING SPECIFIC ACTIVITIES: PROVIDING AN ACCESS PATH UP TO THREE FEET WIDE LEADING TO THE SHORELINE, MANUALLY REMOVING INVASIVE OR NOXIOUS VEGETATION, OR FILLING TO MAINTAIN AN EXISTING LAWN.

CANOPY TREE – A TREE THAT WHEN MATURE COMMONLY REACHES A HEIGHT OF AT LEAST 35 FEET.

COMAR – THE CODE OF MARYLAND REGULATIONS, AS FROM TIME TO TIME AMENDED, INCLUDING ANY SUCCESSOR PROVISIONS.

COMMUNITY PIERS - 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 OR MASTER PLAN – A COMPILATION OF POLICY STATEMENTS, GOALS, STANDARDS, MAPS AND PERTINENT DATA RELATIVE TO THE PAST, PRESENT AND FUTURE TRENDS OF THE TOWN INCLUDING, BUT NOT LIMITED TO, ITS POPULATION, HOUSING, ECONOMICS, SOCIAL PATTERNS, LAND USES, WATER RESOURCES AND THEIR USE, TRANSPORTATION FACILITIES AND PUBLIC FACILITIES PREPARED BY OR FOR THE PLANNING COMMISSION, AGENCY OR OFFICE.

CONSERVATION EASEMENT - 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 – A COMBINATION OF ANY LEGAL PARCEL OF LAND OR RECORDED LEGALLY BUILDABLE LOT INTO FEWER LOTS OR PARCELS THAN ORIGINALLY EXISTED. AN APPLICATION FOR CONSOLIDATION MAY INCLUDE A SUBDIVISION, LOT LINE ABANDONMENT, BOUNDARY LINE ADJUSTMENT,

REPLATTING REQUEST, OR LOT LINE ADJUSTMENT.

CRITICAL AREA – 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;
- B. ALL STATE AND PRIVATE WETLANDS DESIGNATE 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 – THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS.

DENSITY – THE NUMBER OF DWELLING UNITS PER ACRE WITHIN A DEFINED AND MEASURABLE AREA.

DEVELOPED WOODLANDS – AN AREA OF TREES AND NATURAL VEGETATION THAT IS INTERSPERSED WITH RESIDENTIAL, COMMERCIAL, INDUSTRIAL OR RECREATIONAL DEVELOPMENT.

DEVELOPMENT ACTIVITIES – THE CONSTRUCTION OR SUBSTANTIAL ALTERATION OF RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL OR TRANSPORTATION FACILITIES OR STRUCTURES.

DISTURBANCE – AN ALTERATION OR CHANGE TO THE LAND. IT INCLUDES ANY AMOUNT OF CLEARING, GRADING, OR CONSTRUCTION ACTIVITY. DISTURBANCE DOES NOT INCLUDE GARDENING OR MAINTAINING AN EXISTING GRASS LAWNS.

ESTABLISHMENT – THE PLANTING OR REGENERATION OF NATIVE VEGETATION THROUGHOUT THE BUFFER.

FINANCIAL ASSURANCE – A PERFORMANCE BOND, LETTER OF CREDIT, CASH DEPOSIT, INSURANCE POLICY, OR OTHER INSTRUMENT OF SECURITY ACCEPTABLE TO THE TOWN OF PERRYVILLE.

FOREST – 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 PERCENT (50%) OF THOSE TREES HAVING TWO (2)-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.

FULLY ESTABLISHED – THE BUFFER CONTAINS AS MUCH DIVERSE, NATIVE VEGETATION AS NECESSARY TO SUPPORT A FIRM AND STABLE RIPARIAN HABITAT CAPABLE OF SELF-SUSTAINING GROWTH AND REGENERATION.

GRANDFATHERED PARCEL OR GRANDFATHERED LOT - 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 – THE NUMBER OF ACRES OF LAND IN THE CRITICAL AREA THAT THE TOWN OF PERRYVILLE MAY USE, OR THE COUNTY MAY ALLOCATE TO MUNICIPAL JURISDICTIONS TO USE, TO CREATE NEW IDA'S AND NEW LDA. THE GROWTH ALLOCATION ACREAGE IS FIVE PERCENT (5%) OF THE TOTAL RCA ACREAGE IN PERRYVILLE AT THE TIME THE CRITICAL AREA COMMISSION APPROVED PERRYVILLE'S ORIGINAL CRITICAL AREA PROGRAM, NOT INCLUDING TIDAL WETLANDS, PLUS ADDITIONAL AREAS INCLUDED FROM THE MUNICIPALITY'S CALCULATED AMOUNT OF RCA THAT EXISTED WHEN THE CRITICAL AREA COMMISSION APPROVED CECIL COUNTY'S ORIGINAL CRITICAL AREA PROGRAM.

HABITAT PROTECTION PLAN (HPP) – A PLAN THAT PROVIDES FOR THE PROTECTION AND CONSERVATION OF THE SPECIES AND HABITATS IDENTIFIED AS HPA'S IN THE CRITICAL AREA. THE HPA 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 HPA, AN APPLICANT SHALL COORDINATE WITH THE DEPARTMENT OF NATURAL RESOURCES TO ENSURE THAT THE HPA IS ADEQUATE TO PROVIDE FOR LONG-TERM CONSERVATION AND CAN BE EFFECTIVELY IMPLEMENTED ON THE SPECIFIC SITE.

IN-KIND REPLACEMENT – THE REPLACEMENT OF A STRUCTURE WITH ANOTHER STRUCTURE THAT IS SMALLER THAN OR IDENTICAL TO THE ORIGINAL STRUCTURE IN FOOTPRINT AREA, WIDTH, LENGTH, AND USE.

INTENSELY DEVELOPED AREA (IDA) – AN AREA OF AT LEAST 20 ACRES OR THE ENTIRE UPLAND PORTION OF THE CRITICAL AREA WITHIN A MUNICIPAL CORPORATION, WHICHEVER IS LESS, WHERE RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, OR INDUSTRIAL DEVELOPED LAND USES PREDOMINATE; AND A RELATIVELY SMALL AMOUNT OF NATURAL HABITAT OCCURS. THESE AREAS INCLUDE AN AREA WITH A HOUSING DENSITY OF AT LEAST FOUR (4) DWELLING

UNITS PER ACRE AND/OR AN AREA WITH PUBLIC WATER AND SEWER SYSTEMS WITH A HOUSING DENSITY OF MORE THAN THREE (3) DWELLING UNITS PER ACRE.

LIMITED DEVELOPMENT AREA (LDA) - AN AREA WITH A HOUSING DENSITY RANGING FROM ONE (1) DWELLING UNIT PER FIVE (5) ACRES UP TO FOUR (4) DWELLING UNITS PER ACRE; WITH A PUBLIC WATER OR SEWER SYSTEM; THAT IS NOT DOMINATED BY AGRICULTURAL LAND, WETLAND, FORESTS, BARREN LAND, SURFACE WATER, OR OPEN SPACE; OR THAT IS LESS THAN 20 ACRES AND OTHERWISE QUALIFIES AS AN IDA UNDER THE DEFINITION IN THIS ARTICLE V.

LOCAL SIGNIFICANCE – DEVELOPMENT OF A MINOR SCALE, WHICH CAUSES ENVIRONMENTAL OR ECONOMIC CONSEQUENCES THAT ARE LARGELY CONFINED TO THE IMMEDIATE AREA OF THE PARCEL OF LAND ON WHICH IT IS LOCATED; DOES NOT SUBSTANTIALLY AFFECT THE CRITICAL AREA PROGRAM OF THE TOWN OF PERRYVILLE; AND IS NOT CONSIDERED TO BE MAJOR DEVELOPMENT AS DEFINED IN THIS ARTICLE V.

LOT COVERAGE – 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 A PAVER, WALKWAY GRAVEL, STONE, SHELL, IMPERMEABLE DECKING, A PAVER, PERMEABLE PAVEMENT, OR OTHER ANY MANMADE MATERIAL. LOT COVERAGE INCLUDES THE GROUND AREA COVERED OR OCCUPIED BY A STAIRWAY OR IMPERMEABLE DECK, BUT DOES NOT INCLUDE: A FENCE OR WALL THAT IS LESS THAN ONE FOOT IN WIDTH THAT HAS NOT BEEN CONSTRUCTED WITH A FOOTER; A WALKWAY IN THE BUFFER OR EXPANDED BUFFER, INCLUDING A STAIRWAY, THAT PROVIDES DIRECT ACCESS TO A COMMUNITY OR PRIVATE PIER; A WOOD MULCH PATHWAY; OR A DECK WITH GAPS TO ALLOW WATER TO PASS FREELY.

MAJOR DEVELOPMENT – DEVELOPMENT OF A SCALE THAT MAY CAUSE STATE-WIDE, REGIONAL, OR INTER-JURISDICTIONAL, ENVIRONMENTAL OR ECONOMIC EFFECTS IN THE CRITICAL AREA, OR WHICH MAY CAUSE SUBSTANTIAL IMPACTS TO THE CRITICAL AREA OF A LOCAL JURISDICTION. THIS DEVELOPMENT INCLUDES, BUT IS NOT LIMITED TO, AIRPORTS, POWERPLANTS, WASTEWATER TREATMENT PLANTS, HIGHWAYS, REGIONAL UTILITY TRANSMISSION FACILITIES, PRISONS, HOSPITALS, PUBLIC HOUSING PROJECTS, PUBLIC BEACHES, AND INTENSELY DEVELOPED PARK AND RECREATION FACILITIES.

MITIGATION – AN ACTION TAKEN TO COMPENSATE FOR ADVERSE IMPACTS TO THE ENVIRONMENT RESULTING FROM DEVELOPMENT, DEVELOPMENT ACTIVITY, OR A CHANGE IN LAND USE OR INTENSITY.

MODIFIED BUFFER AREA (MBA) – AN AREA OFFICIALLY MAPPED BY THE TOWN OF PERRYVILLE AND APPROVED BY THE CRITICAL AREA COMMISSION AS A MBA, 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.

NATIVE PLANT – A SPECIES THAT IS INDIGENOUS TO THE PHYSIOGRAPHIC AREA IN MARYLAND WHERE THE PLANTING IS PROPOSED.

NATURAL REGENERATION – THE NATURAL ESTABLISHMENT OF TREES AND OTHER VEGETATION WITH AT LEAST 400 FREE-TO-GROW SEEDLINGS PER ACRE, WHICH ARE CAPABLE OF REACHING A HEIGHT OF AT LEAST 20 FEET AT MATURITY.

NEW DEVELOPMENT – FOR PURPOSES OF IMPLEMENTING SPECIFIC PROVISIONS OF THIS ARTICLE, 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 (15%) AS OF DECEMBER 1, 1985.

NONTIDAL WETLANDS - 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.

PERSON - AN INDIVIDUAL, PARTNERSHIP, CORPORATION, CONTRACTOR, PROPERTY OWNER, OR ANY OTHER PERSON OR ENTITY.

PIER – ANY PIER, WHARF, DOCK, WALKWAY, BULKHEAD, BREAKWATER, PILES OR OTHER SIMILAR STRUCTURE. PIER DOES NOT INCLUDE ANY STRUCTURE ON PILINGS OR STILTS THAT WAS ORIGINALLY CONSTRUCTED BEYOND THE LANDWARD BOUNDARIES OF STATE OR PRIVATE WETLANDS.

PLANT HABITAT – A COMMUNITY OF PLANTS COMMONLY IDENTIFIABLE BY THE COMPOSITION OF ITS VEGETATION AND ITS PHYSIOGRAPHIC CHARACTERISTICS.

PRINCIPAL STRUCTURE – THE PRIMARY OR PREDOMINANT STRUCTURE ON ANY LOT OR PARCEL. FOR RESIDENTIAL PARCELS OR LOTS, THE PRINCIPAL STRUCTURE IS THE PRIMARY DWELLING.

PROPERTY OWNER – A PERSON HOLDING TITLE TO A PROPERTY OR TWO OR MORE PERSONS HOLDING TITLE TO A PROPERTY UNDER ANY FORM OF JOINT

OWNERSHIP.

PUBLIC WATER-ORIENTED RECREATION - SHORE-DEPENDENT RECREATION FACILITIES OR ACTIVITIES PROVIDED BY PUBLIC AGENCIES THAT ARE AVAILABLE TO THE GENERAL PUBLIC.

RECONFIGURATION – A CHANGE OF THE CONFIGURATION OF AN EXISTING LOT OR PARCEL LINE OF ANY LEGAL PARCEL OF LAND OR RECORDED LEGALLY BUILDABLE LOT. AN APPLICATION FOR RECONFIGURATION MAY INCLUDE A SUBDIVISION, A LOT LINE ADJUSTMENT, A BOUNDARY LINE ADJUSTMENT, A REPLATTING REQUEST, OR A REVISION OF ACREAGE TO INCREASE DENSITY.

REDEVELOPMENT – THE PROCESS OF DEVELOPING LAND WHICH IS OR HAS BEEN DEVELOPED. FOR PURPOSES OF IMPLEMENTING SPECIFIC PROVISIONS OF THIS ARTICLE, 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 (15%) OR GREATER.

RESOURCE CONSERVATION AREA (RCA) – 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 (1) DWELLING PER FIVE (5) ACRES.

RESTORATION – THE ACT OF RETURNING A SITE OR AREA TO AN ORIGINAL STATE OR ANY ACTION THAT REESTABLISHES ALL OR A PORTION OF THE ECOLOGICAL STRUCTURE AND FUNCTIONS OF A SITE OR AREA.

ROAD -

- A. A PUBLIC THOROUGHFARE UNDER THE JURISDICTION OF THE STATE, A COUNTY, A MUNICIPAL CORPORATION, OR ANY OTHER PUBLIC BODY.
- B. DOES NOT INCLUDE A DRIVE AISLE OR DRIVEWAY.

SPECIES IN NEED OF CONSERVATION - THOSE FISH AND WILDLIFE WHOSE CONTINUED EXISTENCE AS PART OF THE STATE'S RESOURCES ARE IN QUESTION AND WHICH MAY BE DESIGNATED BY REGULATION BY THE DEPARTMENT OF NATURAL RESOURCES AS IN NEED OF CONSERVATION PURSUANT TO THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE §§ 10-2A-06 AND 4-2A-03, ANNOTATED CODE OF MARYLAND.

STEEP SLOPES – SLOPES OF 15 PERCENT (15%) OR GREATER INCLINE.

STRUCTURE (CRITICAL AREA) – BUILDING OR CONSTRUCTION MATERIALS, OR A COMBINATION OF THOSE MATERIALS THAT ARE PURPOSELY ASSEMBLED OR

JOINED TOGETHER ON OR OVER LAND OR WATER. STRUCTURE INCLUDES A TEMPORARY OR PERMANENT FIXED OR FLOATING PIER, PILING, DECK, WALKWAY, DWELLING, BUILDING, BOATHOUSE, PLATFORM, GAZEBO, OR SHELTER FOR THE PURPOSE OF MARINE ACCESS, NAVIGATION, WORKING, EATING, SLEEPING, OR RECREATING.

TRIBUTARY STREAM – A PERENNIAL STREAM OR INTERMITTENT STREAM WITHIN THE CRITICAL AREA THAT HAS BEEN IDENTIFIED BY SITE INSPECTION OR IN ACCORDANCE WITH LOCAL ORDINANCE PROCEDURES APPROVED BY THE CRITICAL AREA COMMISSION.

UNWARRANTED HARDSHIP – 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 – THE LANDWARD EDGE OF A TIDAL WETLAND OR NONTIDAL WETLAND.

WATER-DEPENDENT FACILITIES – 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 – AN INDUSTRY THAT REQUIRES LOCATION NEAR THE SHORELINE BECAUSE IT UTILIZES SURFACE WATERS FOR COOLING OR OTHER INTERNAL PURPOSES.

WATERFOWL – 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.

WILDLIFE HABITAT – THOSE PLANT COMMUNITIES AND PHYSIOGRAPHIC FEATURES THAT PROVIDE FOOD, WATER, COVER, AND NESTING AREAS, AS WELL AS FORAGING AND FEEDING CONDITIONS NECESSARY TO MAINTAIN POPULATIONS OF ANIMALS IN THE CRITICAL AREA.

SECTION 118. IMPLEMENTATION OF THE CRITICAL AREA PROGRAM PURPOSE AND GOALS

1. GOALS.

THE GOALS OF THE TOWN'S CRITICAL AREA PROGRAM ARE TO ACCOMPLISH

THE FOLLOWING:

- A. MINIMIZE ADVERSE IMPACTS ON WATER QUALITY THAT RESULT FROM POLLUTANTS THAT ARE DISCHARGED FROM STRUCTURES OR RUNOFF FROM SURROUNDING LANDS;
- B. CONSERVE FISH, WILDLIFE, AND PLANT HABITAT; AND
- C. 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.

2. PERRYVILLE'S CRITICAL AREA PROGRAM.

- A. THE TOWN'S CRITICAL AREA PROGRAM IS INCLUDED IN THIS PART V, AND THE OFFICIAL CRITICAL AREA MAP(S). RELATED PROVISIONS ARE FOUND IN THE TOWN'S SUBDIVISION REGULATIONS (CHAPTER 74).
- B. NOTWITHSTANDING ANY PROVISION IN THIS PART V, OR THE LACK OF A PROVISION IN THIS PART V, ALL OF THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE 8-1801 THROUGH 8-1817 AND COMAR TITLE 27 SHALL APPLY TO, AND BE APPLIED BY, THE TOWN AS MINIMUM STANDARDS.
- C. IN THE CASE OF CONFLICTING PROVISIONS, THE STRONGER PROVISION APPLIES

3. APPLICABILITY.

THE ZONING ADMINISTRATOR SHALL REVIEW A PERMIT OR LICENSE FOR A DEVELOPMENT OR REDEVELOPMENT ACTIVITY IN THE CRITICAL AREA FOR COMPLIANCE WITH ALL CRITICAL AREA REGULATIONS PRIOR TO ISSUANCE OF THAT PERMIT OR LICENSE.

4. CRITICAL AREA OVERLAY DISTRICT MAP.

- A. THE TOWN'S OFFICIAL CRITICAL AREA OVERLAY DISTRICT MAP, AS MOST RECENTLY APPROVED BY THE MARYLAND CRITICAL AREA COMMISSION, IS HEREBY ADOPTED AND SHALL BE MAINTAINED AS PART OF THE OFFICIAL ZONING MAP FOR PERRYVILLE. THE OFFICIAL CRITICAL AREA MAP DELINEATES THE EXTENT OF THE CRITICAL AREA OVERLAY DISTRICT THAT SHALL INCLUDE:
 - (1) ALL WATERS OF AND LANDS UNDER THE CHESAPEAKE BAY AND ITS TRIBUTARIES TO THE HEAD OF TIDE, AND ALL STATE AND PRIVATE WETLANDS DESIGNATED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND; AND

- (2) ALL LAND AND WATER AREAS WITHIN 1,000 FEET BEYOND THE LANDWARD BOUNDARY OF THOSE RESOURCES INDICATED IN PARAGRAPH A. OF THIS SUBSECTION 4.

- B. WITHIN THE CRITICAL AREA OVERLAY DISTRICT, ALL LAND SHALL BE ASSIGNED ONE OF THE FOLLOWING LAND MANAGEMENT AND DEVELOPMENT AREA CLASSIFICATIONS:
 - (1) INTENSELY DEVELOPED AREA (IDA).
 - (2) LIMITED DEVELOPMENT AREA (LDA).
 - (3) RESOURCE CONSERVATION AREA (RCA).

- C. THE CRITICAL AREA OVERLAY DISTRICT MAP MAY BE AMENDED BY THE TOWN COMMISSIONERS IN COMPLIANCE WITH AMENDMENT PROVISIONS IN SECTION 132 OF THIS PART V, THE MARYLAND CRITICAL AREA LAW, AND COMAR TITLE 27.

5. NOTIFICATION OF PROJECT APPROVAL.

THE TOWN SHALL SEND COPIES OF APPLICATIONS FOR ALL DEVELOPMENTS, SUBDIVISIONS, AND SITE PLANS FOR LAND WHOLLY OR PARTIALLY WITHIN THE CRITICAL AREA AS SPECIFIED IN COMAR 27.03.01.04 TO THE CRITICAL AREA COMMISSION FOR REVIEW AND COMMENT.

- A. THE APPLICATION SHALL BE ACCOMPANIED BY A COMPLETED “PROJECT NOTIFICATION APPLICATION” FORM DOWNLOADED FROM THE CRITICAL AREA COMMISSION’S WEBSITE.

- B. THE TOWN MAY NOT PROCESS AN APPLICATION, WHICH HAS BEEN SENT TO THE CRITICAL AREA COMMISSION FOR NOTIFICATION UNTIL THE TOWN HAS RECEIVED NOTICE OF RECEIPT BY THE CRITICAL AREA COMMISSION OR THE CLOSE OF THE FIFTH BUSINESS DAY, WHICHEVER COMES FIRST.

- C. ANY ACTION BY THE TOWN IN VIOLATION OF THESE PROCEDURES SHALL BE VOID.

- D. THE FOLLOWING TABLE IDENTIFIES THE DIFFERENT TYPES OF DEVELOPMENT APPLICATIONS THAT REQUIRE NOTIFICATION TO THE CRITICAL AREA COMMISSION:

**SUMMARY OF NOTIFICATION REQUIREMENTS
CRITICAL AREA COMMISSION
(COMAR 27.03.01)**

TYPE OF APPLICATION	REQUIRES NOTIFICATION TO THE CRITICAL AREA COMMISSION		
	YES/NO		
	IDA	LDA	RCA
1. DISTURBANCE TO A HABITAT PROTECTION AREA	Y	Y	Y
2. PHYSICAL DISTURBANCE TO THE BUFFER (SEE NOTE 1)	Y	Y	Y
3. VARIANCE FROM CRITICAL AREA PROVISIONS	Y	Y	Y
4. DEVELOPMENT RESULTING IN LESS THAN 5,000 SQUARE FEET OF DISTURBANCE	N	N	N
5. DEVELOPMENT RESULTING IN BETWEEN 5,000 AND 15,000 SQUARE FEET OF DISTURBANCE	N	N	Y
6. DEVELOPMENT RESULTING IN GREATER THAN 15,000 SQUARE FEET OF DISTURBANCE	Y	Y	Y
7. SUBDIVISION OF 3 LOTS OR FEWER	N	N	Y
8. SUBDIVISION OF 4 TO 10 LOTS	N	Y	Y
9. SUBDIVISION OF GREATER THAN 10 LOTS	Y	Y	Y
10. SUBDIVISION AFFECTING GROWTH ALLOCATION	N/A	Y	Y
11. INTRAFAMILY TRANSFER	N/A	N/A	Y
12. REZONING THAT WOULD OCCUR WHOLLY OR PARTIALLY WITHIN THE CRITICAL AREA	Y	Y	Y
13. SPECIAL EXCEPTION OR CONDITIONAL USE FOR INDUSTRIAL COMMERCIAL, INSTITUTIONAL, NON-RESIDENTIAL OR MULTI-FAMILY	N	Y	Y
14. SUBSTANTIAL ALTERATION TO APPLICATIONS PREVIOUSLY SUBMITTED TO THE CRITICAL AREA COMMISSION	Y	Y	Y
NOTE 1: SHORE EROSION CONTROL MEASURES AND PRIVATE PIERS THAT DO NOT INVOLVE DISTURBANCE TO THE BUFFER AND FOR WHICH PERMITS ARE NOT ISSUED BY MDE DO NOT REQUIRE CRITICAL AREA COMMISSION NOTIFICATION.			

SECTION 119. DEVELOPMENT STANDARDS IN THE CRITICAL AREA.

THE FOLLOWING SECTIONS SPECIFY GENERAL AND SPECIFIC DEVELOPMENT REQUIREMENTS IN THE TOWN'S CRITICAL AREA OVERLAY ZONES.

SECTION 120. GENERAL REQUIREMENTS IN ALL CRITICAL AREA OVERLAY ZONES.

1. NEW SOLID OR HAZARDOUS WASTE COLLECTION OR DISPOSAL FACILITIES, OR SANITARY LANDFILLS OR RUBBLE FILLS, INCLUDING TRANSFER STATIONS, ARE NOT PERMITTED IN THE CRITICAL AREA UNLESS NO ENVIRONMENTALLY PREFERABLE ALTERNATIVE EXISTS OUTSIDE THE CRITICAL AREA, AND THESE DEVELOPMENT ACTIVITIES OR FACILITIES ARE NEEDED IN ORDER TO CORRECT AN EXISTING WATER QUALITY WASTEWATER MANAGEMENT PROBLEM. EXISTING PERMITTED FACILITIES SHALL BE SUBJECT TO THE STANDARDS AND REQUIREMENTS OF THE MARYLAND DEPARTMENT OF THE ENVIRONMENT.
2. DEVELOPMENT AND REDEVELOPMENT SHALL BE SUBJECT TO THE HABITAT PROTECTION AREA (HPA) REQUIREMENTS PRESCRIBED IN THIS PART V.
3. DEVELOPMENT AND REDEVELOPMENT SHALL BE SUBJECT TO THE WATER-DEPENDENT FACILITIES REQUIREMENTS OF THIS PART V.
4. UTILITY TRANSMISSION FACILITIES
 - A. UTILITY TRANSMISSION FACILITIES, EXCEPT THOSE NECESSARY TO SERVE PERMITTED USES, OR WHERE REGIONAL OR INTERSTATE FACILITIES MUST CROSS TIDAL WATERS, MAY BE PERMITTED IN THE CRITICAL AREA IF:
 - (1) THE FACILITIES ARE LOCATED IN IDAS; AND
 - (2) ONLY AFTER THE ACTIVITY OR FACILITY HAS DEMONSTRATED TO ALL APPROPRIATE LOCAL AND STATE PERMITTING AGENCIES THAT THERE WILL BE A NET IMPROVEMENT IN WATER QUALITY TO THE ADJACENT BODY OF WATER.
 - B. SUBSECTIONS 1. AND 2. OF THIS SECTION 119 DO NOT APPLY TO POWER PLANTS.
5. ROADS, BRIDGES, AND UTILITIES ARE PROHIBITED IN A HABITAT PROTECTION AREA UNLESS NO FEASIBLE ALTERNATIVE EXISTS. IF A ROAD, BRIDGE OR UTILITY IS AUTHORIZED, THE DESIGN, CONSTRUCTION AND MAINTENANCE SHALL:
 - A. PROVIDE MAXIMUM EROSION PROTECTION;
 - B. MINIMIZE NEGATIVE IMPACTS ON WILDLIFE, AQUATIC LIFE AND THEIR HABITATS; AND
 - C. MAINTAIN HYDROLOGIC PROCESSES AND WATER QUALITY.

6. DEVELOPMENT ACTIVITIES THAT CROSS OR AFFECT A STREAM ARE PROHIBITED UNLESS THERE IS NO FEASIBLE ALTERNATIVE. ALL DEVELOPMENT ACTIVITIES THAT MUST CROSS OR AFFECT STREAMS SHALL BE DESIGNED TO:
 - A. REDUCE INCREASES IN FLOOD FREQUENCY AND SEVERITY THAT ARE ATTRIBUTABLE TO DEVELOPMENT;
 - B. RETAIN TREE CANOPY SO AS TO MAINTAIN STREAM WATER TEMPERATURE WITHIN NORMAL VARIATION;
 - C. PROVIDE A NATURAL SUBSTRATE FOR STREAM BEDS; AND
 - D. MINIMIZE ADVERSE WATER QUALITY AND QUANTITY IMPACTS OF STORMWATER.

7. REASONABLE ACCOMMODATIONS FOR THE NEEDS OF DISABLED CITIZENS.
 - A. AN APPLICANT SEEKING RELIEF FROM THE CRITICAL AREA STANDARDS CONTAINED IN THIS PART V IN ORDER TO ACCOMMODATE THE REASONABLE NEEDS OF DISABLED CITIZENS SHALL HAVE THE BURDEN OF DEMONSTRATING BY A PREPONDERANCE OF EVIDENCE THE FOLLOWING:
 - (1) THE ALTERATIONS WILL BENEFIT PERSONS WITH A DISABILITY WITHIN THE MEANING OF THE AMERICANS WITH DISABILITIES ACT;
 - (2) LITERAL ENFORCEMENT OF THE PROVISIONS OF THIS PART V WOULD RESULT IN DISCRIMINATION BY VIRTUE OF SUCH DISABILITY OR DEPRIVE A DISABLED RESIDENT OR USER OF THE REASONABLE USE AND ENJOYMENT OF THE PROPERTY;
 - (3) A REASONABLE ACCOMMODATION WOULD REDUCE OR ELIMINATE THE DISCRIMINATORY EFFECT OF THE PROVISIONS OF THIS PART V OR RESTORE THE DISABLED RESIDENT'S OR USER'S REASONABLE USE OR ENJOYMENT OF THE PROPERTY;
 - (4) THE ACCOMMODATION REQUESTED WILL NOT SUBSTANTIALLY IMPAIR THE PURPOSE, INTENT, OR EFFECT, OF THE PROVISIONS OF THIS PART V AS APPLIED TO THE PROPERTY; AND
 - (5) THE ACCOMMODATION WOULD BE ENVIRONMENTALLY NEUTRAL WITH NO GREATER NEGATIVE IMPACT ON THE ENVIRONMENT THAN THE LITERAL ENFORCEMENT OF THIS PART V; OR WOULD ALLOW ONLY THE MINIMUM ENVIRONMENTAL CHANGES NECESSARY TO ADDRESS THE NEEDS RESULTING FROM THE PARTICULAR DISABILITY OF THE APPLICANT.

B. THE ZONING ADMINISTRATOR SHALL DETERMINE THE NATURE AND SCOPE OF ANY ACCOMMODATION UNDER THIS PART V AND MAY AWARD DIFFERENT OR OTHER RELIEF THAN REQUESTED AFTER GIVING DUE REGARD TO THE PURPOSE, INTENT, OR EFFECT OF THE APPLICABLE PROVISIONS OF THIS PART V. THE ZONING ADMINISTRATOR MAY ALSO CONSIDER THE SIZE, LOCATION, AND TYPE OF ACCOMMODATION PROPOSED AND WHETHER ALTERNATIVES EXIST WHICH ACCOMMODATE THE NEED WITH LESS ADVERSE EFFECT.

C. THE ZONING ADMINISTRATOR 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 PART V. APPROPRIATE BONDS MAY BE COLLECTED OR LIENS PLACED IN ORDER TO ENSURE THE TOWN'S ABILITY TO RESTORE THE PROPERTY SHOULD THE APPLICANT FAIL TO DO SO.

8. NON-WATER DEPENDENT STRUCTURES ON PIERS

A. EXCEPT AS PROVIDED IN PARAGRAPHS B. AND C. OF THIS SUBSECTION 8, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, THE TOWN MAY NOT ISSUE A BUILDING PERMIT OR ANY OTHER APPROVAL TO AUTHORIZE A NON-WATER DEPENDENT PROJECT LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA.

B. THE TOWN MAY ISSUE A BUILDING PERMIT OR ANY OTHER APPROVAL TO AUTHORIZE A NON-WATER DEPENDENT PROJECT LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE PROJECT:

(1) INVOLVES A COMMERCIAL ACTIVITY THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY COMMERCIAL USE;

(2) IS NOT LOCATED ON A PIER THAT IS ATTACHED TO RESIDENTIALLY, INSTITUTIONALLY, OR INDUSTRIALLY USED PROPERTY;

(3) IS LOCATED IN AN IDA;

(4) IS APPROVED BY THE ZONING ADMINISTRATOR AFTER THE EFFECTIVE DATE OF THIS PART V;

(5) ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE WETLANDS;

(6) DOES NOT EXPAND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS TO BE CONSTRUCTED;

(7) HAS A HEIGHT OF UP TO 18 FEET UNLESS THE PROJECT IS LOCATED AT A MARINA; AND

(8) IS UP TO 1,000 SQUARE FEET IN TOTAL AREA; OR

I. IS LOCATED ON A PIER THAT WAS IN EXISTENCE ON OR BEFORE DECEMBER 31, 2012;

II. SATISFIES ALL OF THE REQUIREMENTS UNDER ITEMS (1)-(7) OF THIS SUBSECTION 8.B.; AND

III. IF APPLICABLE, HAS A TEMPORARY OR PERMANENT ROOF STRUCTURE OR COVERING THAT IS UP TO 1,000 SQUARE FEET IN TOTAL AREA.

C. THE TOWN MAY ISSUE A BUILDING PERMIT OR OTHER APPROVAL TO AUTHORIZE A NON-WATER DEPENDENT PROJECT FOR A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A PIER LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE PROJECT:

(1) INVOLVES THE INSTALLATION OR PLACEMENT OF A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE;

(2) IS APPROVED BY THE TOWN'S ZONING ADMINISTRATOR AFTER THE EFFECTIVE DATE OF PART V;

(3) A BUILDING PERMIT OR OTHER APPROVAL ISSUED UNDER THE REQUIREMENTS IN SUBSECTION 8.C. MAY INCLUDE THE INSTALLATION OR PLACEMENT OF:

I. A SOLAR ENERGY SYSTEM ATTACHED TO A PIER IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT EXTEND MORE THAN:

(A) FOUR (4) FEET ABOVE OR 18 INCHES BELOW THE DECK OF THE PIER; OR

(B) ONE (1) FOOT BEYOND THE LENGTH OR WIDTH OF THE PIER;

II. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;

III. A SOLAR ENERGY SYSTEM ATTACHED TO A BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR

HEIGHT OF THE BOATHOUSE ROOF;

IV. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED DEVICES OR EQUIPMENT DO NOT:

(A) EXTEND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER;

(B) DELETERIOUSLY ALTER LONGSHORE DRIFT; OR

(C) CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE THERMAL IMPACTS TO AQUATIC RESOURCES; OR

V. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF THERE IS ONLY ONE (1) WIND ENERGY SYSTEM PER PIER FOR WHICH:

(A) THE HEIGHT FROM THE DECK OF THE PIER TO THE BLADE EXTENDED AT ITS HIGHEST POINT IS UP TO 12 FEET;

(B) THE ROTOR DIAMETER OF THE WIND TURBINE IS UP TO FOUR (4) FEET; AND

(C) THE SETBACKS OF THE WIND ENERGY SYSTEM FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS HIGHEST POINT.

SECTION 121. INTENSELY DEVELOPED AREAS (IDA).

1. THE FOLLOWING USES MAY BE PERMITTED IN THE IDA 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:

A. NONMARITIME HEAVY INDUSTRY;

B. 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.

2. DEVELOPMENT ACTIVITIES SHALL BE DESIGNED AND IMPLEMENTED TO MINIMIZE DESTRUCTION OF FOREST AND WOODLAND VEGETATION;
3. STORM WATER SHALL BE ADDRESSED IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:
 - A. THE TOWN SHALL REQUIRE, AT THE TIME OF DEVELOPMENT OR REDEVELOPMENT, THAT TECHNOLOGIES AS REQUIRED BY APPLICABLE STATE AND LOCAL REGULATIONS BE APPLIED BY ANYONE UNDERTAKING DEVELOPMENT ACTIVITIES IN ORDER TO MINIMIZE ADVERSE IMPACTS TO WATER QUALITY CAUSED BY STORM WATER. THE TECHNOLOGIES SHALL BE DEVELOPED IN ACCORDANCE WITH THE GUIDELINES PUBLISHED BY THE CRITICAL AREA COMMISSION ENTITLED "CRITICAL AREA 10% RULE GUIDANCE MANUAL", FALL 2003 AND AS MAY BE AMENDED.
 - 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.
 - C. IN THE CASE OF NEW DEVELOPMENT, OFFSETS AS DETERMINED APPROPRIATE BY THE TOWN SHALL BE USED IF THEY REDUCE POLLUTANT LOADINGS BY AT LEAST 10 PERCENT OF THE PRE-DEVELOPMENT LEVELS. OFFSET FEES-IN-LIEU SHALL BE SET BASED ON THE ACTUAL COST TO ACHIEVE THE REQUIRED POLLUTION REDUCTION PLUS REASONABLE FEES FOR COST INCURRED BY THE TOWN, INCLUDING PLANNING, DESIGN, AND ADMINISTRATION OF OFFSET MEASURES.
 - 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 AS SPECIFIED IN THE "CRITICAL AREA 10% RULE GUIDANCE MANUAL, FALL 2003" AND AS MAY BE AMENDED.
4. NEW, EXPANDED OR REDEVELOPED INDUSTRIAL OR PORT-RELATED FACILITIES AND THE REPLACEMENT OF THESE FACILITIES MAY BE PERMITTED ONLY IN THOSE PORTIONS OF IDAS THAT HAVE BEEN DESIGNATED AS MODIFIED BUFFER AREAS (MBAS).

SECTION 122. LIMITED DEVELOPMENT AREAS (LDA)

1. IF A WILDLIFE CORRIDOR SYSTEM IS IDENTIFIED BY THE DEPARTMENT OF NATURAL RESOURCES ON OR NEAR THE SITE THE FOLLOWING PRACTICES ARE REQUIRED:

- A. THE APPLICANT SHALL INCORPORATE A WILDLIFE CORRIDOR SYSTEM THAT CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATIVE TRACTS OF LAND ON AND ADJACENT TO THE SITE;
 - B. THE TOWN SHALL REQUIRE AND APPROVE A CONSERVATION EASEMENT, RESTRICTIVE COVENANT, OR SIMILAR INSTRUMENT TO ENSURE MAINTENANCE OF THE WILDLIFE CORRIDOR;
 - C. THE WILDLIFE CORRIDOR SHALL BE PRESERVED BY A PUBLIC OR PRIVATE GROUP.
2. DEVELOPMENT ON SLOPES 15 PERCENT (15%) OR GREATER, AS MEASURED BEFORE DEVELOPMENT, SHALL BE PROHIBITED UNLESS THE PROJECT IS THE ONLY EFFECTIVE WAY TO MAINTAIN OR IMPROVE THE STABILITY OF THE SLOPE AND IS CONSISTENT WITH THE POLICIES AND STANDARDS FOR LDAS.
3. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, LOT COVERAGE IS LIMITED TO 15 PERCENT (15%) OF A LOT OR PARCEL, OR ANY PORTIONS OF A LOT OR PARCEL, THAT ARE DESIGNATED LDA.
- A. IF A PARCEL OR LOT OF ONE-HALF (1/2) ACRE OR LESS IN SIZE EXISTED ON OR BEFORE DECEMBER 1, 1985, THEN LOT COVERAGE IS LIMITED TO TWENTY-FIVE PERCENT (25%) OF THE PARCEL OR LOT.
 - B. IF A PARCEL OR LOT GREATER THAN ONE-HALF (1/2) ACRE AND LESS THAN ONE (1) 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 (1) 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 MOBILE HOME PARKS THAT WERE IN RESIDENTIAL USE ON OR BEFORE DECEMBER 1, 1985.
 - E. LOT COVERAGE LIMITS PROVIDED IN SUBSECTIONS 3.A. AND 3.B. OF THIS SECTION MAY BE EXCEEDED, UPON FINDINGS BY THE TOWN PLANNING COMMISSION THAT THE FOLLOWING CONDITIONS EXIST:
 - (1) THE LOT OR PARCEL IS LEGALLY NONCONFORMING. A LOT OR PARCEL LEGALLY DEVELOPED AS OF JULY 1, 2008, MAY BE CONSIDERED LEGALLY NONCONFORMING FOR THE PURPOSES OF LOT COVERAGE REQUIREMENTS.
 - (2) LOT COVERAGE ASSOCIATED WITH NEW DEVELOPMENT ACTIVITIES

ON THE PROPERTY HAVE BEEN MINIMIZED;

- (3) FOR A LOT OR PARCEL ONE-HALF (1/2) ACRE OR LESS IN SIZE, TOTAL LOT COVERAGE DOES NOT EXCEED THE LOT COVERAGE LIMITS IN PARAGRAPH 3.A. BY MORE THAN TWENTY-FIVE PERCENT (25%) OR 500 SQUARE FEET, WHICHEVER IS GREATER;
- (4) FOR A LOT OR PARCEL GREATER THAN ONE-HALF (1/2) ACRE AND LESS THAN ONE (1) ACRE IN SIZE, TOTAL LOT COVERAGE DOES NOT EXCEED THE LOT COVERAGE LIMITS IN SUBSECTION 3.B. OR 5,445 SQUARE FEET, WHICHEVER IS GREATER;

THE FOLLOWING TABLE SUMMARIZES THE LIMITS SET FORTH IN SUBSECTIONS 3.E.(1) THROUGH (4) ABOVE:

TABLE 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
21,781 – 36,300	5,445 SF
36,301 – 43,560	15% OF PARCEL

F. IF THE PLANNING COMMISSION 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:

- (1) DEMONSTRATE THAT WATER QUALITY IMPACTS ASSOCIATED WITH RUNOFF FROM THE DEVELOPMENT ACTIVITIES THAT CONTRIBUTE TO LOT COVERAGE HAVE BEEN MINIMIZED THROUGH SITE DESIGN CONSIDERATIONS OR THE USE OF BEST MANAGEMENT PRACTICES TO IMPROVE WATER QUALITY; AND
- (2) PROVIDE ON-SITE MITIGATION IN THE FORM OF PLANTINGS TO OFFSET POTENTIAL ADVERSE WATER QUALITY IMPACTS FROM THE DEVELOPMENT ACTIVITIES RESULTING IN NEW LOT COVERAGE. THE PLANTINGS SHALL BE EQUAL TO TWO (2) TIMES THE AREA OF THE DEVELOPMENT ACTIVITY.
- (3) IF THE APPLICANT CANNOT PROVIDE APPROPRIATE STORMWATER TREATMENT AND PLANTINGS DUE TO SITE CONSTRAINTS, THEN THE APPLICANT SHALL PAY A FEE TO THE TOWN IN LIEU OF PERFORMING THE ON-SITE MITIGATION.

4. THE ALTERATION OF FOREST AND DEVELOPED WOODLANDS SHALL BE RESTRICTED AND MITIGATED AS FOLLOWS:

- A. THE TOTAL ACREAGE IN FOREST AND DEVELOPED WOODLANDS WITHIN THE TOWN'S CRITICAL AREA SHALL BE MAINTAINED OR, PREFERABLY, INCREASED;
 - B. ALL FORESTS AND DEVELOPED WOODLANDS THAT ARE ALLOWED TO BE CLEARED OR DEVELOPED SHALL BE REPLACED IN THE CRITICAL AREA ON NOT LESS THAN AN EQUAL AREA BASIS, EXCEPT AS PROVIDED IN THE REMAINDER OF THIS SUBSECTION 4;
 - C. IF AN APPLICANT IS AUTHORIZED TO CLEAR MORE THAN 20 PERCENT (20%) OF A FOREST OR DEVELOPED WOODLANDS ON A LOT OR PARCEL, THE APPLICANT SHALL REPLACE THE FOREST OR DEVELOPED WOODLANDS AT 1.5 TIMES THE ENTIRE AREAL EXTENT OF THE FOREST OR DEVELOPED WOODLANDS CLEARED, INCLUDING THE FIRST 20 PERCENT (20%) OF THE FOREST OR DEVELOPED WOODLANDS CLEARED.
 - D. AN APPLICANT MAY NOT CLEAR MORE THAN 30 PERCENT (30%) OF A FOREST OR DEVELOPED WOODLANDS ON A LOT OR PARCEL, UNLESS THE BOARD OF APPEALS GRANTS A VARIANCE AND THE APPLICANT REPLACES FOREST OR DEVELOPED WOODLANDS AT A RATE OF THREE (3) TIMES THE ENTIRE AREAL EXTENT OF THE FOREST OR DEVELOPED WOODLANDS CLEARED.¹
5. THE FOLLOWING ARE REQUIRED FOR FOREST OR DEVELOPED WOODLAND CLEARING AS REQUIRED IN SUBSECTION 4. ABOVE:
- A. THE APPLICANT SHALL ENSURE THAT ANY PLANTINGS THAT DIE WITHIN (24) MONTHS OF INSTALLATION SHALL BE REPLACED. A PERFORMANCE BOND IN AN AMOUNT DETERMINED BY THE TOWN SHALL BE POSTED TO ASSURE SATISFACTORY REPLACEMENT AS REQUIRED IN SUBSECTION 4. ABOVE AND PLANT SURVIVAL.
 - B. A ZONING CERTIFICATE SHALL BE ISSUED BY THE TOWN BEFORE FOREST OR DEVELOPED WOODLAND IS CLEARED. FORESTS AND DEVELOPED WOODLANDS WHICH HAVE BEEN CLEARED BEFORE OBTAINING A ZONING CERTIFICATE IS A VIOLATION AND SHALL BE REPLANTED AT THREE (3) TIMES THE ENTIRE AREAL EXTENT OF THE CLEARED FOREST.
 - C. CLEARING OF FOREST OR DEVELOPED WOODLANDS THAT EXCEED THE MAXIMUM AREA ALLOWED IN SUBSECTION 4 SHALL BE REPLANTED AT THREE (3) TIMES THE ENTIRE AREAL EXTENT OF THE CLEARED FOREST.
 - D. IF THE AREAL EXTENT OF THE SITE LIMITS THE APPLICATION OF THE AFFORESTATION OR REFORESTATION STANDARDS IN THIS SECTION THE APPLICANT MAY BE ALLOWED TO PLANT OFFSITE OR PAY A FEE-IN-LIEU OF PLANTING.
-

6. IF NO FOREST EXISTS ON PROPOSED DEVELOPMENT SITES, THESE SITES SHALL BE PLANTED TO PROVIDE A FOREST OR DEVELOPED WOODLAND COVER OF AT LEAST 15 PERCENT (15%). THE APPLICANT SHALL DESIGNATE, SUBJECT TO THE APPROVAL OF THE TOWN, A NEW FOREST AREA ON A PART OF THE SITE NOT FORESTED.
7. ALL FOREST, INCLUDING AFFORESTED AREAS, SHALL BE MAINTAINED THROUGH CONSERVATION EASEMENTS, RESTRICTED COVENANTS, OR OTHER PROTECTIVE INSTRUMENTS.
8. NEW, EXPANDED OR REDEVELOPED INDUSTRIAL FACILITIES MAY ONLY BE PERMITTED IN LDA IF SUCH A USE IS PERMITTED IN THE UNDERLYING ZONING DISTRICT AND PROVIDED SUCH FACILITIES MEET ALL REQUIREMENTS FOR DEVELOPMENT IN THE LDA.

SECTION 123. RESOURCE CONSERVATION AREAS (RCA)

1. NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A PARTICIPANT IN ANY AGRICULTURAL EASEMENT PROGRAM TO CONVEY REAL PROPERTY ENCUMBERED WITH SUCH AN EASEMENT TO FAMILY MEMBERS PROVIDED THAT NO SUCH CONVEYANCE WILL RESULT IN A DENSITY GREATER THAN ONE DWELLING UNIT PER 20 ACRES.
2. LAND USE MANAGEMENT PRACTICES SHALL BE CONSISTENT WITH THE POLICIES AND CRITERIA FOR THE HPA PROVISIONS OF THIS ARTICLE.
3. DEVELOPMENT ACTIVITY WITHIN THE RCAS SHALL BE CONSISTENT WITH THE REQUIREMENTS AND STANDARDS SPECIFIED FOR LDAS.
 - A. FOR THE PURPOSES OF CALCULATING LIMITATIONS ON LOT COVERAGE, THE FOLLOWING APPLY:
 - (1) WHEN A SITE IS MAPPED ENTIRELY AS RCA, LOT COVERAGE IS BASED ON THE ENTIRE SITE AREA; AND
 - (2) WHEN A PORTION OF A LOT OR PARCEL IS MAPPED AS RCA, LOT COVERAGE IS BASED ON THE AREA OF THE RCA.
4. DENSITY
 - A. LAND WITHIN THE RCA MAY BE DEVELOPED FOR RESIDENTIAL USES AT A DENSITY NOT TO EXCEED ONE (1) DWELLING UNIT PER 20 ACRES. THE TOWN MAY NOT AUTHORIZE A VARIANCE TO THE MAXIMUM DENSITY OF ONE DWELLING UNIT PER 20 ACRES. IN CALCULATING THE 1-IN-20 ACRE DENSITY OF DEVELOPMENT THAT IS PERMITTED ON A PARCEL LOCATED WITHIN THE RCA, THE TOWN:
 - (1) SHALL COUNT EACH DWELLING UNIT; AND

(2) MAY PERMIT THE AREA OF ANY PRIVATE WETLANDS LOCATED ON THE PROPERTY TO BE INCLUDED UNDER THE FOLLOWING CONDITIONS:

- I. THE DENSITY OF DEVELOPMENT ON THE UPLAND PORTION OF THE PARCEL MAY NOT EXCEED ONE DWELLING UNIT PER EIGHT (8) ACRES; AND
- II. THE AREA OF PRIVATE WETLANDS SHALL BE ESTIMATED ON THE BASIS OF VEGETATIVE INFORMATION AS DESIGNATED ON THE STATE WETLANDS MAPS OR BY PRIVATE SURVEY APPROVED BY THE TOWN, THE CRITICAL AREA COMMISSION, AND MARYLAND DEPARTMENT OF THE ENVIRONMENT.

B. ONE (1) ADDITIONAL DWELLING UNIT (ACCESSORY DWELLING UNIT) AS PART OF A PRIMARY DWELLING UNIT MAY BE PERMITTED IN THE RCA PROVIDED THE ADDITIONAL DWELLING UNIT IS SERVED BY THE SAME SEWAGE DISPOSAL SYSTEM AS THE PRIMARY DWELLING UNIT AND:

(1) IS LOCATED WITHIN THE PRIMARY DWELLING UNIT OR ITS ENTIRE PERIMETER IS WITHIN 100 FEET OF THE PRIMARY DWELLING UNIT AND DOES NOT EXCEED 900 SQUARE FEET IN TOTAL ENCLOSED AREAS; OR

(2) IS LOCATED WITHIN THE PRIMARY DWELLING UNIT AND DOES NOT INCREASE THE AMOUNT OF LOT COVERAGE ALREADY ATTRIBUTED TO THE PRIMARY DWELLING UNIT.

C. AN ADDITIONAL DWELLING UNIT MEETING ALL OF THE PROVISIONS OF THIS SECTION MAY NOT BE SUBDIVIDED OR CONVEYED SEPARATELY FROM THE PRIMARY DWELLING UNIT; AND

D. THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE THE GRANTING OF A VARIANCE, UNLESS THE VARIANCE IS GRANTED IN ACCORDANCE WITH THE VARIANCE PROVISIONS OF THIS CHAPTER.

5. RCA USES

A. EXISTING INDUSTRIAL AND COMMERCIAL FACILITIES, INCLUDING THOSE THAT DIRECTLY SUPPORT AGRICULTURE, FORESTRY, AQUACULTURE, OR RESIDENTIAL DEVELOPMENT NOT EXCEEDING THE 1-PER-20 ACRE DENSITY, SHALL BE ALLOWED IN RCAS.

B. EXPANSION OF EXISTING INDUSTRIAL FACILITIES AND USES IN THE RCA SHALL BE SUBJECT TO THE NON-CONFORMING USE AND GRANDFATHERING PROVISIONS OF THIS PART V AND MAY REQUIRE GROWTH ALLOCATION.

C. NEW COMMERCIAL, INDUSTRIAL, AND INSTITUTIONAL USES SHALL NOT BE PERMITTED IN RCAS, EXCEPT AS PROVIDED FOR IN THE TOWN'S GROWTH ALLOCATION PROVISIONS OR AS LISTED BELOW. ADDITIONAL LAND MAY NOT BE ZONED OR USED FOR INDUSTRIAL, COMMERCIAL, OR INSTITUTIONAL DEVELOPMENT, EXCEPT AS PROVIDED BY THE TOWN'S GROWTH ALLOCATION PROVISIONS.

- (1) A HOME OCCUPATION AS AN ACCESSORY USE ON A RESIDENTIAL PROPERTY AND AS PROVIDED FOR IN THIS PART V;
- (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.;
- (3) A CEMETERY THAT IS AN ACCESSORY USE TO AN EXISTING CHURCH; PROVIDED LOT COVERAGE IS LIMITED TO 15 PERCENT (15%) 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.;
- (6) A DAY CARE FACILITY IN A DWELLING WHERE THE OPERATORS LIVE ON THE PREMISES AND THERE ARE NO MORE THAN EIGHT (8) CHILDREN;
- (7) A GROUP HOME OR ASSISTED LIVING FACILITY WITH NO MORE THAN EIGHT (8) RESIDENTS.

SECTION 124. INTRAFAMILY TRANSFERS

1. DEFINITIONS. IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

- A. "BONA FIDE INTRA-FAMILY 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.
- B. "IMMEDIATE FAMILY" MEANS A FATHER, MOTHER, SON, DAUGHTER, GRANDFATHER, GRANDMOTHER, GRANDSON OR GRANDDAUGHTER.

2. APPLICABILITY. THE TOWN SHALL PERMIT BONA FIDE INTRA-FAMILY TRANSFERS TO BE MADE ONLY FROM PARCELS OF LAND THAT:
 - A. WERE OF RECORD ON MARCH 1, 1986, AND
 - B. ARE 7 ACRES OR MORE AND LESS THAN 60 ACRES IN SIZE.
3. REQUIRED SUBDIVISION. A BONA FIDE INTRA-FAMILY TRANSFER FROM A PARCEL OF LAND SHALL BE A SUBDIVISION OF THE PARCEL OF LAND THAT IS SUBJECT TO APPROVAL UNDER THE SUBDIVISION REGULATIONS OF THE TOWN.
4. APPROVAL OF SUBDIVISION OF PARCELS. THE TOWN MAY APPROVE THE SUBDIVISION OF A PARCEL OF LAND INTO THE NUMBER OF LOTS INDICATED IN THIS SUBSECTION BY MEANS OF A BONA FIDE INTRA-FAMILY TRANSFER AND MAY NOT APPROVE ANY GREATER SUBDIVISION OF THE PARCEL OF LAND OR ANY PORTION OF IT AS FOLLOWS:
 - A. A PARCEL THAT IS SEVEN ACRES OR MORE AND LESS THAN 12 ACRES IN SIZE MAY BE SUBDIVIDED INTO TWO LOTS.
 - B. A PARCEL THAT IS 12 ACRES OR MORE AND LESS THAN 60 ACRES IN SIZE MAY BE SUBDIVIDED INTO THREE LOTS. THE LOTS MAY BE CREATED AT DIFFERENT TIMES.
5. CONDITIONS OF APPROVAL. AS CONDITIONS OF APPROVAL THE TOWN SHALL REQUIRE THAT:
 - A. ANY DEED FOR A LOT THAT IS CREATED BY A BONA FIDE INTRA-FAMILY TRANSFER SHALL CONTAIN A COVENANT APPROVED BY THE TOWN ATTORNEY STATING THAT THE LOT IS CREATED SUBJECT TO THE PROVISIONS OF NATURAL RESOURCES ARTICLE SECTION 8-1808.2, ANNOTATED CODE OF MARYLAND; AND
 - B. A LOT CREATED BY A BONA FIDE INTRA-FAMILY TRANSFER MAY NOT BE CONVEYED SUBSEQUENTLY TO ANY PERSON OTHER THAN A MEMBER OF THE OWNER'S IMMEDIATE FAMILY, EXCEPT UNDER PROVISIONS SET FORTH IN SUBSECTION 6. OF THIS SECTION.

THIS SUBSECTION DOES NOT PREVENT THE CONVEYANCE OF THE LOT TO A THIRD PARTY AS SECURITY FOR A MORTGAGE OR DEED OF TRUST.

6. STANDARDS AND PROCEDURES FOR SUBSEQUENT CONVEYANCE OF LOTS. THE FOLLOWING STANDARDS AND PROCEDURES ARE ESTABLISHED TO PERMIT THE SUBSEQUENT CONVEYANCE OF LOTS TO PERSONS OTHER THAN IMMEDIATE FAMILY MEMBERS UNDER CERTAIN CIRCUMSTANCES. THE APPLICANT SHALL DEMONSTRATE TO THE PLANNING COMMISSION THAT:

- A. THE LOT WAS CREATED AS PART OF A BONA FIDE INTRA-FAMILY TRANSFER AND NOT WITH THE INTENT OF SUBDIVIDING THE ORIGINAL PARCEL OF LAND FOR PURPOSES OF ULTIMATE COMMERCIAL SALE; AND
- B. A CHANGE IN CIRCUMSTANCES HAS OCCURRED SINCE THE ORIGINAL TRANSFER WAS MADE THAT IS NOT INCONSISTENT WITH THIS PART V AND THAT WARRANTS AN EXCEPTION; OR THERE ARE OTHER CIRCUMSTANCES THAT ARE CONSISTENT WITH THIS PROGRAM TO MAINTAIN LAND AREAS NECESSARY TO SUPPORT THE PROTECTIVE USES OF AGRICULTURE, FORESTRY, OPEN SPACE AND NATURAL HABITATS IN RESOURCE CONSERVATION AREAS AND THUS WARRANT AN EXCEPTION.

SECTION 125. THE BUFFER.

1. APPLICABILITY AND DELINEATION.

AN APPLICANT FOR A DEVELOPMENT ACTIVITY OR A CHANGE IN LAND USE IN THE BUFFER SHALL APPLY ALL OF THE REQUIRED STANDARDS AS DESCRIBED BELOW. THE BUFFER SHALL BE DELINEATED IN THE FIELD AND SHALL BE SHOWN ON ALL APPLICATIONS AS FOLLOWS:

- A. A BUFFER OF AT LEAST 100 FEET IS DELINEATED, AND EXPANDED AS DESCRIBED IN SUBSECTION 1.C. OF THIS SECTION, BASED ON EXISTING FIELD CONDITIONS LANDWARD FROM:
 - (1) THE MEAN HIGH WATER LINE OF A TIDAL WATER;
 - (2) THE EDGE OF EACH BANK OF A TRIBUTARY STREAM; AND
 - (3) THE UPLAND BOUNDARY OF A TIDAL WETLAND.
- B. APPLICATIONS FOR A SUBDIVISION OR DEVELOPMENT ACTIVITY ON LAND LOCATED WITHIN THE RCA REQUIRING SITE PLAN APPROVAL AFTER JULY 1, 2008, SHALL INCLUDE A MINIMUM BUFFER OF AT LEAST 200 FEET FROM A TIDAL WATERWAY OR TIDAL WETLANDS. IN THE FOLLOWING INSTANCES, THE 200-FOOT BUFFER DOES NOT APPLY AND THE BUFFER SHALL BE DELINEATED IN ACCORDANCE WITH SUBSECTIONS 1.A. AND 1.C. OF THIS SECTION:
 - (1) 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; OR
 - (2) THE APPLICATION INVOLVES THE USE OF GROWTH ALLOCATION.
- C. THE 100-FOOT BUFFER SHALL BE EXPANDED BEYOND 100 FEET AS DESCRIBED IN SUBSECTION 1.A. OF THIS SECTION, AND BEYOND 200 FEET

AS DESCRIBED IN SUBSECTION 1.B. OF THIS SECTION, TO INCLUDE THE FOLLOWING CONTIGUOUS LAND FEATURES:

- (1) A STEEP SLOPE AT A RATE OF FOUR FEET FOR EVERY ONE PERCENT (1%) OF SLOPE OR THE ENTIRE STEEP SLOPE TO THE TOP OF THE SLOPE, WHICHEVER IS GREATER;
- (2) A NONTIDAL WETLAND TO THE UPLAND BOUNDARY OF THE NONTIDAL WETLAND;
- (3) THE 100-FOOT BUFFER THAT IS ASSOCIATED WITH A NONTIDAL WETLAND OF SPECIAL STATE CONCERN AS STATED IN COMAR §26.23.06.01; AND/OR
- (4) 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.

2. DEVELOPMENT ACTIVITIES IN THE BUFFER.

THE TOWN MAY AUTHORIZE DISTURBANCE TO THE BUFFER FOR THE FOLLOWING ACTIVITIES, PROVIDED MITIGATION IS PERFORMED IN ACCORDANCE WITH SUBSECTION 4. OF THIS SECTION AND AN APPROVED BUFFER MANAGEMENT PLAN IS SUBMITTED AS REQUIRED PER SUBSECTION 6. OF THIS SECTION:

- A. A NEW DEVELOPMENT OR REDEVELOPMENT ACTIVITY ASSOCIATED WITH A WATER-DEPENDENT FACILITY AS DESCRIBED IN SUBSECTION 6. OF THIS SECTION.
- B. IN ACCORDANCE WITH COMAR 26.24.02, A SHORE EROSION CONTROL MEASURE UNDER COMAR 26.24.04, AND THIS PART V.
- C. A DEVELOPMENT OR REDEVELOPMENT ACTIVITY APPROVED IN ACCORDANCE WITH THE VARIANCE PROVISIONS OF THIS PART V.
- D. A NEW DEVELOPMENT OR REDEVELOPMENT ACTIVITY ON A LOT OR PARCEL THAT WAS CREATED BEFORE JANUARY 1, 2010, WHERE:
 - (1) THE BUFFER IS EXPANDED FOR HIGHLY ERODIBLE SOIL ON A SLOPE LESS THAN 15 PERCENT (15%) OR IS EXPANDED FOR A HYDRIC SOIL AND THE EXPANDED BUFFER OCCUPIES AT LEAST 15 PERCENT (15%) OF THE LOT OR PARCEL;

- (2) THE DEVELOPMENT OR REDEVELOPMENT IS LOCATED IN THE EXPANDED PORTION OF THE BUFFER AND NOT WITHIN THE 100-FOOT BUFFER; AND
 - (3) MITIGATION OCCURS AT A 2:1 RATIO BASED ON THE LOT COVERAGE OF THE PROPOSED DEVELOPMENT ACTIVITY THAT IS IN THE EXPANDED BUFFER.
- E. A SEPTIC SYSTEM ON A LOT CREATED BEFORE MAY 26, 1988, WHERE MITIGATION IS PROVIDED AT A 1:1 RATIO FOR AREA OF CANOPY CLEARED OF ANY FOREST OR DEVELOPED WOODLAND.
 - F. RIPARIAN ACCESS FOR WATER ACCESS, WHERE MITIGATION IS REQUIRED AT A RATE OF 2:1.
3. BUFFER ESTABLISHMENT.
- A. THE REQUIREMENTS OF THIS SUBSECTION ARE APPLICABLE TO:
 - (1) A DEVELOPMENT OR REDEVELOPMENT ACTIVITY THAT OCCURS ON A LOT OR PARCEL THAT INCLUDES A BUFFER TO TIDAL WATERS, A TIDAL WETLAND, OR A TRIBUTARY STREAM IF THAT DEVELOPMENT OR REDEVELOPMENT ACTIVITY IS LOCATED OUTSIDE THE BUFFER; AND
 - (2) THE APPROVAL OF A SUBDIVISION THAT INCLUDES A BUFFER TO TIDAL WATERS, A TIDAL WETLAND, OR A TRIBUTARY STREAM.
 - B. IF AN APPLICANT FOR A SUBDIVISION OF A LOT OR PARCEL USES OR LEASES THE LOT OR PARCEL FOR AN AGRICULTURAL PURPOSE, THE APPLICANT:
 - (1) IN ACCORDANCE WITH LOCAL LAND RECORDATION REQUIREMENTS, SHALL RECORD AN APPROVED BUFFER MANAGEMENT PLAN UNDER SUBSECTION 6 OF THIS SECTION; AND
 - (2) IF AUTHORIZED BY THE TOWN, MAY DELAY IMPLEMENTATION OF THE BUFFER MANAGEMENT PLAN UNTIL THE USE OF THE LOT IS CONVERTED TO A NONAGRICULTURAL PURPOSE.
 - C. THE REQUIREMENTS OF SUBSECTION 3. OF THIS SECTION ARE NOT APPLICABLE TO AN IN-KIND REPLACEMENT OF A STRUCTURE.
 - D. THE TOWN SHALL REQUIRE AN APPLICANT TO ESTABLISH THE BUFFER IN VEGETATION IN ACCORDANCE WITH THE TABLE BELOW AND SUBSECTION 5. OF THIS SECTION AND TO PROVIDE A BUFFER

MANAGEMENT PLAN UNDER SUBSECTION 6 OF THIS SECTION WHEN AN APPLICANT APPLIES FOR:

- (1) APPROVAL OF A SUBDIVISION;
- (2) CONVERSION FROM ONE LAND USE TO ANOTHER LAND USE ON A LOT OR A PARCEL; OR
- (3) DEVELOPMENT ON A LOT OR A PARCEL CREATED BEFORE JANUARY 1, 2010.

E. WHEN THE BUFFER IS NOT FULLY FORESTED OR IS NOT FULLY ESTABLISHED IN EXISTING, NATURALLY OCCURRING WOODY OR WETLAND VEGETATION, AN APPLICANT SHALL ESTABLISH THE BUFFER TO THE EXTENT REQUIRED IN THE FOLLOWING TABLE:

TABLE 3.C.(5). BUFFER ESTABLISHMENT REQUIREMENTS.

DEVELOPMENT CATEGORY	LOT CREATED BEFORE MAY 26, 1988	LOT CREATED AFTER MAY 26, 1988
DEVELOPMENT ON A VACANT LOT	ESTABLISH THE BUFFER BASED ON TOTAL SQUARE FOOTAGE OF LOT COVERAGE OUTSIDE THE BUFFER	FULLY ESTABLISH THE BUFFER
SUBDIVISION	FULLY ESTABLISH THE BUFFER	
NEW LOT WITH AN EXISTING DWELLING UNIT	ESTABLISH THE BUFFER BASED ON TOTAL SQUARE FOOTAGE OF LOT COVERAGE OUTSIDE THE BUFFER	
CONVERSION OF A LAND USE ON A PARCEL OR LOT TO ANOTHER LAND USE	FULLY ESTABLISH THE BUFFER	
ADDITION, ACCESSORY STRUCTURE, OR REDEVELOPMENT	ESTABLISH THE BUFFER BASED ON NET SQUARE FOOTAGE INCREASE IN LOT COVERAGE OUTSIDE THE BUFFER	
SUBSTANTIAL ALTERATION	ESTABLISH THE BUFFER BASED ON TOTAL SQUARE FOOTAGE OF LOT COVERAGE OUTSIDE THE BUFFER	

F. THE TOWN MAY AUTHORIZE AN APPLICANT TO DEDUCT FROM THE TOTAL ESTABLISHMENT REQUIREMENT AN AREA OF LOT COVERAGE REMOVED FROM THE BUFFER IF:

- (1) THE LOT COVERAGE EXISTED BEFORE THE DATE OF THE TOWN'S PROGRAM ADOPTION OR WAS ALLOWED BY LOCAL PROCEDURES; AND
- (2) THE TOTAL AREA IS STABILIZED.

4. 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 SECTION.

- A. ALL AUTHORIZED DEVELOPMENT ACTIVITIES SHALL BE MITIGATED BASED ON THE RATIOS NOTED IN THE TABLE BELOW, IN ADDITION TO THE AREA OF CANOPY COVERAGE REMOVED FOR AN INDIVIDUAL TREE, DEVELOPED WOODLAND OR FOREST.

TABLE 3.D.1 BUFFER MITIGATION RATIOS

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

- B. FOR THE REMOVAL OF A DEAD TREE, THE AFFECTED AREA SHALL BE STABILIZED WITH NATIVE GROUND COVER OR OTHER NATIVE VEGETATION AS NECESSARY.
- C. THE REMOVAL OF A DISEASED, DYING, INVASIVE, OR HAZARDOUS TREE SHALL BE MITIGATED WITH ONE TREE OF AT LEAST 3/4-INCH CALIPER FOR EACH TREE REMOVED OR THE AFFECTED AREA SHALL BE STABILIZED IN NATIVE WOODY VEGETATION IF A TREE CANNOT BE REPLANTED DUE TO SPACE CONSTRAINTS.
- D. ANY LOT COVERAGE REMOVED FROM THE BUFFER MAY BE DEDUCTED FROM THE TOTAL CUMULATIVE AMOUNT OF MITIGATION REQUIRED IF:
- E. THE LOT COVERAGE EXISTED BEFORE THE DATE OF LOCAL PROGRAM ADOPTION OR WAS ALLOWED BY LOCAL PROCEDURES; AND
- F. THE TOTAL AREA IS STABILIZED.

G. PLANTING FOR MITIGATION SHALL BE PLANTED ONSITE WITHIN THE BUFFER. IF MITIGATION PLANTING CANNOT BE LOCATED WITHIN THE BUFFER, THEN THE TOWN MAY ALLOW PLANTING IN THE FOLLOWING ORDER OF PRIORITY:

(1) ON-SITE AND ADJACENT TO THE BUFFER; AND

(2) ON-SITE ELSEWHERE IN THE CRITICAL AREA.

H. THE INSTALLATION OR CULTIVATION OF NEW LAWN OR TURF IN THE BUFFER IS PROHIBITED.

I. AS APPLICABLE TO A SITE, AN APPLICANT SHALL RESTORE ANY AREA IN THE BUFFER THAT IS TEMPORARILY DISTURBED BY A DEVELOPMENT ACTIVITY TO PRE-DISTURBANCE CONDITIONS.

5. BUFFER PLANTING STANDARDS.

A. AN APPLICANT THAT IS REQUIRED TO PLANT THE BUFFER TO MEET ESTABLISHMENT OR MITIGATION REQUIREMENTS SHALL APPLY THE PLANTING STANDARDS SET FORTH IN THE TABLE BELOW.

TABLE 3.E.1 LANDSCAPE STOCK CREDIT

VEGETATION TYPE	MINIMUM SIZE ELIGIBLE FOR CREDIT	MAXIMUM CREDIT ALLOWED (SQUARE FEET)	MAXIMUM PERCENTAGE OF LANDSCAPE STOCK CREDIT
CANOPY TREE	2-INCH CALIPER	200	NOT APPLICABLE
CANOPY TREE	¾-INCH CALIPER	100	NOT APPLICABLE
UNDERSTORY TREE	¾-INCH CALIPER	75	NOT APPLICABLE
LARGE SHRUB	3 FEET HIGH	50	30%
SMALL SHRUB	18 INCHES HIGH	25	20%
HERBACEOUS PERENNIAL	1 QUART OR BASED ON THE AREA COVERED BY PLUGS OR SEED MIX	2	10%
PLANTING CLUSTER A (FOR LESS THAN ½ ACRE OF PLANTING)	1 CANOPY TREE; AND 3 LARGE SHRUBS OR 6 SMALL SHRUBS OF SIZE LISTED ABOVE	300	NOT APPLICABLE
PLANTING CLUSTER B (FOR LESS THAN ½ ACRE OF PLANTING)	2 UNDERSTORY TREES; AND 3 LARGE SHRUBS OR 6 SMALL SHRUBS OF SIZE LISTED ABOVE	350	NOT APPLICABLE

- B. A VARIANCE TO THE PLANTING AND MITIGATION STANDARDS OF THIS SECTION IS NOT PERMITTED.

6. REQUIRED SUBMITTAL OF BUFFER MANAGEMENT PLANS.

AN APPLICANT THAT IS REQUIRED TO PLANT THE BUFFER TO MEET ESTABLISHMENT OR MITIGATION REQUIREMENTS SHALL SUBMIT A BUFFER MANAGEMENT PLAN IN ACCORDANCE WITH COMAR 27.01.09.01-3. THE PROVISIONS OF SUBSECTION 6. OF THIS SECTION DO NOT APPLY TO MAINTAINING AN EXISTING GRASS LAWN OR AN EXISTING GARDEN IN THE BUFFER.

- A. ANY PERMIT FOR A DEVELOPMENT ACTIVITY THAT REQUIRES BUFFER ESTABLISHMENT OR BUFFER MITIGATION WILL NOT BE ISSUED UNTIL A BUFFER MANAGEMENT PLAN IS APPROVED BY THE TOWN.
- B. AN APPLICANT MAY NOT OBTAIN FINAL APPROVAL OF A SUBDIVISION APPLICATION UNTIL THE BUFFER MANAGEMENT PLAN HAS BEEN REVIEWED AND APPROVED BY THE TOWN.
- C. THE TOWN MAY NOT APPROVE A BUFFER MANAGEMENT PLAN UNLESS:
 - (1) THE PLAN CLEARLY INDICATES THAT ALL PLANTING STANDARDS UNDER PART V WILL BE MET; AND
 - (2) APPROPRIATE MEASURES ARE IN PLACE FOR THE LONG-TERM PROTECTION AND MAINTENANCE OF ALL BUFFER AREAS.
- D. FOR A BUFFER MANAGEMENT PLAN THAT IS THE RESULT OF AN AUTHORIZED DISTURBANCE TO THE BUFFER, A PERMIT AUTHORIZING FINAL USE AND OCCUPANCY SHALL NOT BE ISSUED UNTIL THE APPLICANT:
 - (1) COMPLETES THE IMPLEMENTATION OF THE BUFFER MANAGEMENT PLAN; OR
 - (2) 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 7.01.09.01-2.
- E. CONCURRENT WITH RECORDATION OF A SUBDIVISION PLAT, AN APPLICANT SHALL RECORD A PROTECTIVE EASEMENT FOR THE BUFFER IN A FORM DIRECTED OR APPROVED BY THE TOWN.

- F. IF AN APPLICANT FAILS TO IMPLEMENT A BUFFER MANAGEMENT PLAN, THAT FAILURE SHALL CONSTITUTE A VIOLATION OF THIS SECTION. A PERMIT FOR DEVELOPMENT ACTIVITY SHALL NOT BE ISSUED FOR A PROPERTY THAT HAS A VIOLATION.
- G. AN APPLICANT SHALL POST A SUBDIVISION WITH PERMANENT SIGNS PRIOR TO FINAL RECORDATION IN ACCORDANCE WITH COMAR 27.01.09.01-2.
- H. BUFFER MANAGEMENT PLANS THAT INCLUDE NATURAL REGENERATION SHALL FOLLOW THE PROVISIONS OF COMAR 27.01.09.01-4.

7. FEE-IN-LIEU OF BUFFER MITIGATION.

A FEE-IN-LIEU OF MITIGATION WILL BE COLLECTED IF THE PLANTING REQUIREMENTS OF SUBSECTION 5. OF THIS SECTION CANNOT BE FULLY MET ONSITE, IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

- A. FEE-IN-LIEU MONIES SHALL BE COLLECTED AND HELD IN A SPECIAL FUND, WHICH MAY NOT REVERT TO THE TOWN'S GENERAL FUND;
- B. FEE-IN-LIEU SHALL BE ASSESSED AT \$1.50 PER SQUARE FOOT OF REQUIRED BUFFER MITIGATION;
- C. A PORTION OF FEE-IN-LIEU MONEY MAY BE USED FOR MANAGEMENT AND ADMINISTRATIVE COSTS NOT TO EXCEED 20 PERCENT (20%) OF THE FEES COLLECTED; AND
- D. FEE-IN-LIEU MONIES SHALL BE USED FOR THE FOLLOWING PROJECTS:
 - (1) TO ESTABLISH THE BUFFER ON SITES WHERE PLANTING IS NOT A CONDITION OF DEVELOPMENT OR REDEVELOPMENT; AND/OR
 - (2) FOR WATER QUALITY AND HABITAT ENHANCEMENT PROJECTS AS DESCRIBED IN AN AGREEMENT BETWEEN THE TOWN AND THE CRITICAL AREA COMMISSION.

SECTION 126. MODIFIED BUFFER AREA (MBA).

1. APPLICABILITY.

THE FOLLOWING PROVISIONS APPLY TO AREAS DESIGNATED AND MAPPED BY THE TOWN AS MODIFIED BUFFER AREAS (MBA) AND SHOWN ON MAPS MADE AVAILABLE TO THE PUBLIC BY THE TOWN. ALL MBA MAPS AND PROVISIONS MUST BE APPROVED BY THE CRITICAL AREA COMMISSION.

2. DEVELOPMENT AND REDEVELOPMENT STANDARDS.

NEW DEVELOPMENT OR REDEVELOPMENT ACTIVITIES, INCLUDING STRUCTURES, ROADS, PARKING AREAS, OTHER IMPERVIOUS SURFACES, AND SEPTIC SYSTEMS, WILL NOT BE PERMITTED IN THE BUFFER IN A DESIGNATED MBA UNLESS THE APPLICANT CAN DEMONSTRATE THAT THERE IS NO FEASIBLE ALTERNATIVE AND THE ZONING ADMINISTRATOR FINDS THAT EFFORTS HAVE BEEN MADE TO MINIMIZE BUFFER IMPACTS, AND THE DEVELOPMENT SHALL COMPLY WITH THE FOLLOWING STANDARDS:

- A. DEVELOPMENT AND REDEVELOPMENT ACTIVITIES HAVE BEEN LOCATED AS FAR AS POSSIBLE FROM MEAN HIGH TIDE, THE LANDWARD BOUNDARY OF TIDAL WETLANDS, OR THE EDGE OF EACH BANK OF TRIBUTARY STREAMS.
- B. VARIANCES TO OTHER TOWN SETBACK REQUIREMENTS HAVE BEEN CONSIDERED BEFORE ADDITIONAL INTRUSION INTO THE BUFFER IS PERMITTED.
- C. CONVENIENCE OR EXPENSE WERE NOT FACTORS CONSIDERED WHEN EVALUATING THE EXTENT OF ALLOWABLE IMPACTS TO THE BUFFER.
- D. COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, RECREATIONAL AND MULTI-FAMILY RESIDENTIAL DEVELOPMENT AND REDEVELOPMENT SHALL MEET THE FOLLOWING STANDARDS:

- (1) NEW DEVELOPMENT, INCLUDING ACCESSORY STRUCTURES, SHALL MINIMIZE THE EXTENT OF INTRUSION INTO THE BUFFER. NEW DEVELOPMENT SHALL NOT BE LOCATED CLOSER TO THE WATER (OR EDGE OF TIDAL WETLANDS) THAN THE MINIMUM REQUIRED SETBACK FOR THE ZONING DISTRICT OR 25 FEET, WHICHEVER IS GREATER. STRUCTURES ON ADJACENT PROPERTIES SHALL NOT BE USED TO DETERMINE THE SETBACK LINE.

- (2) 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 TOWN SETBACK FOR THE ZONING DISTRICT OR 50 FEET, WHICHEVER IS GREATER. STRUCTURES ON ADJACENT PROPERTIES SHALL NOT BE USED TO DETERMINE THE SETBACK LINE. A NEW STRUCTURE MAY BE CONSTRUCTED ON THE FOOTPRINT OF AN EXISTING STRUCTURE. OPPORTUNITIES TO ESTABLISH A 50-FOOT SETBACK SHOULD BE MAXIMIZED.

- E. SINGLE-FAMILY RESIDENTIAL DEVELOPMENT AND REDEVELOPMENT SHALL MEET 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 PRINCIPAL STRUCTURES ON ADJACENT PROPERTIES OR THE TOWN SETBACK FOR THE ZONING DISTRICT, WHICHEVER IS GREATER. 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 MAY BE REPLACED IN THE SAME FOOTPRINT.
 - (3) NEW ACCESSORY STRUCTURES MAY BE LOCATED CLOSER TO THE WATER THAN THE SETBACK IF THE ZONING ADMINISTRATOR HAS DETERMINED THERE ARE NO OTHER LOCATIONS FOR THE STRUCTURES. THE AREA OF NEW ACCESSORY STRUCTURES SHALL NOT EXCEED 500 SQUARE FEET WITHIN 50 FEET OF THE WATER AND 1,000 SQUARE FEET TOTAL IN THE BUFFER.
- F. DEVELOPMENT AND REDEVELOPMENT MAY NOT IMPACT ANY HPA OTHER THAN THE BUFFER, INCLUDING NONTIDAL WETLANDS, OTHER STATE OR FEDERAL PERMITS NOTWITHSTANDING.
- G. 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.
- H. NO NATURAL VEGETATION MAY BE REMOVED IN THE BUFFER EXCEPT THAT REQUIRED BY THE PROPOSED CONSTRUCTION.
- I. MITIGATION FOR DEVELOPMENT OR REDEVELOPMENT IN THE MBA APPROVED UNDER THE PROVISIONS OF THIS SECTION SHALL BE IMPLEMENTED AS FOLLOWS:
- (1) 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 ZONING ADMINISTRATOR.
 - (2) APPLICANTS WHO CANNOT FULLY COMPLY WITH THE PLANTING REQUIREMENT IN ITEM I.(1) OF THIS SUBSECTION 2,, MAY OFFSET THE MITIGATION REQUIREMENT BY REMOVING AN EQUIVALENT AREA OF EXISTING LOT COVERAGE IN THE BUFFER.
 - I. APPLICANTS WHO CANNOT COMPLY WITH EITHER THE PLANTING OR OFFSET REQUIREMENTS IN ITEMS I.(1) OR (2) OF THIS SUBSECTION 2, SHALL PAY INTO A FEE-IN-LIEU PROGRAM AT THE RATE OF \$1.50 PER SQUARE FOOT OF

PLANTINGS REQUIRED FOR THE TOTAL MITIGATION FOR DISTURBANCE.

- (3) ANY FEES-IN-LIEU COLLECTED UNDER PARAGRAPH I.(3) 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 TOWN'S CRITICAL AREA PROGRAM. THE FUNDS MAY NOT 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 THE TOWN'S QUARTERLY REPORTS.
- (4) ANY REQUIRED MITIGATION OR OFFSET AREAS SHALL BE PROTECTED FROM FUTURE DEVELOPMENT THROUGH AN EASEMENT, DEVELOPMENT AGREEMENT, PLAT NOTES OR OTHER INSTRUMENT DIRECTED OR APPROVED BY THE TOWN AND RECORDED AMONG THE LAND RECORDS OF THE COUNTY.

SECTION 127. OTHER HABITAT PROTECTION AREAS (HPA).

1. IDENTIFICATION.

AN APPLICANT FOR A DEVELOPMENT ACTIVITY, REDEVELOPMENT ACTIVITY OR CHANGE IN LAND USE SHALL IDENTIFY ALL APPLICABLE HPAS AND FOLLOW THE STANDARDS CONTAINED IN THIS SECTION. HPAS INCLUDES:

- A. THREATENED OR ENDANGERED SPECIES OR SPECIES IN NEED OF CONSERVATION;
- B. COLONIAL WATERBIRD NESTING SITES;
- C. HISTORIC WATERFOWL STAGING AND CONCENTRATION AREAS IN TIDAL WATERS, TRIBUTARY STREAMS OR TIDAL AND NONTIDAL WETLANDS;
- D. EXISTING RIPARIAN FORESTS;
- E. FOREST AREAS UTILIZED AS BREEDING AREAS BY FOREST INTERIOR DWELLING BIRDS AND OTHER WILDLIFE SPECIES;
- F. OTHER PLANT AND WILDLIFE HABITATS DETERMINED TO BE OF LOCAL SIGNIFICANCE;
- G. NATURAL HERITAGE AREAS; AND
- H. ANADROMOUS FISH PROPAGATION WATERS.

I. LOCALLY SIGNIFICANT HPAS, KEY WILDLIFE HABITATS/IMPORTANT FEATURES:

(1) FRENCHTOWN SHORE, 57 ACRES

- TIDAL FRESHWATER MARSH AND SHRUBLAND
- INTERTIDAL MUDFLAT AND SAND FLAT
- MARYLAND BUR-MARIGOLD (BIDENS BIDENTOIDES, WATCHLIST)
- STRAP-LEAF ARROWHEAD (SAGITTARIA SUBULTA, STATUS UNCERTAIN)
- FOREST INTERIOR DWELLING SPECIES (FIDS) HABITAT

(2) MILLCREEK, 638 ACRES

- PIEDMONT SEEPAGE WETLAND
- PIEDMONT STREAM
- COASTAL PLAIN STREAM
- CHESAPEAKE LOGPERCH (PERCINA BIMACULATA, THREATENED)
- FOREST INTERIOR DWELLING SPECIES (FIDS) HABITAT

(3) LOWER SUSQUEHANNA, 4.098 ACRES

- PIEDMONT RIVER
- MONTANE-PIEDMONT FLOODPLAIN
- SHORTNOSE STURGEON (ACIPENSER BREVIRONSTRUM, STATE-LISTED AS ENDANGERED, FEDERALLY LISTED AS ENDANGERED)
- ATLANTIC STURGEON (ACIPENSER OXYRINCHUS, STATE-LISTED AS ENDANGERED, FEDERALLY LISTED AS THREATENED)
- CHESAPEAKE LOGPERCH (PERCINA BIMACULATA, STATE-LISTED AS THREATENED)
- NORTHERN MAP TURTLE (GRAPTEMYS GEOGRAPHICA, STATE-LISTED AS ENDANGERED)

J. MAPS IDENTIFYING THESE SPECIFIC HABITAT PROTECTION AREAS ARE MAINTAINED BY THE DEPARTMENT OF NATURAL RESOURCES WILDLIFE AND HERITAGE DIVISION. THE MOST RECENT UPDATED INVENTORY WAS COMPLETED ON FEBRUARY 11, 2022, AND RECOMMENDATIONS CONTAINED IN THE INDIVIDUAL WHS REPORTS FOR EACH HABITAT PROTECTION AREA ARE HEREBY INCORPORATED INTO THIS PART V.

2. STANDARDS.

A. AN APPLICANT FOR A DEVELOPMENT ACTIVITY PROPOSED FOR A SITE WITHIN THE CRITICAL AREA THAT IS IN OR NEAR A HPA LISTED ABOVE; SHALL REQUEST REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES, AND, AS NECESSARY, UNITED STATES FISH AND WILDLIFE SERVICE, FOR COMMENT AND TECHNICAL ADVICE. BASED ON THE DEPARTMENT OF NATURAL RESOURCE'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.

B. IF THE PRESENCE OF ANY HPA IS CONFIRMED BY THE DEPARTMENT OF NATURAL RESOURCES, THE APPLICANT SHALL FOLLOW ALL RECOMMENDATIONS FROM THE DEPARTMENT OF NATURAL RESOURCES, AND, AS NECESSARY, UNITED STATES FISH AND WILDLIFE SERVICE.

(1) IF POTENTIAL FOREST INTERIOR DWELLING SPECIES (FIDS) HABITAT IS IDENTIFIED, THE PROPOSED DEVELOPMENT SHALL CONFORM TO THE CRITICAL AREA COMMISSION'S FIDS GUIDANCE MANUAL, DATED JUNE 2000 AND AS UPDATED.

(2) IF POTENTIAL ANADROMOUS FISH PROPAGATION WATERS ARE IDENTIFIED, THE PROPOSED DEVELOPMENT SHALL CONFORM TO THE POLICIES AND CRITERIA LISTED IN COMAR 27.01.09.05.

C. THE SPECIFIC PROTECTION AND CONSERVATION MEASURES RECOMMENDED BY THE DEPARTMENT OF NATURAL RESOURCES AND THE UNITED STATES FISH AND WILDLIFE SERVICE SHALL BE INCLUDED ON THE SITE PLAN AND SHALL BE CONSIDERED CONDITIONS OF APPROVAL FOR THE PROJECT.

SECTION 128. WATER-DEPENDENT FACILITIES.

1. APPLICABILITY.

A. THE PROVISIONS OF THIS SECTION APPLY TO THOSE STRUCTURES OR WORKS ASSOCIATED WITH INDUSTRIAL, MARITIME, RECREATIONAL, EDUCATION, OR FISHERIES ACTIVITIES THAT REQUIRE LOCATION AT OR NEAR THE SHORELINE WITHIN THE BUFFER.

B. THE PROVISIONS OF THIS SECTION ARE NOT APPLICABLE TO:

(1) A PRIVATE PIER THAT:

(I) IS INSTALLED OR MAINTAINED BY A RIPARIAN LANDOWNER; AND

(II) IS NOT PART OF A RESIDENTIAL PROJECT THAT PROVIDES A COMMUNITY PIER OR OTHER COMMUNITY BOAT-DOCKING OR STORAGE FACILITY SUBSECTION 6 OF THIS CHAPTER, OR

(2) A NONWATER-DEPENDENT PROJECT COVERED UNDER COMAR 27.01.13.

C. THE REQUIREMENTS OF COMAR 27.01.02 APPLY TO THIS SECTION.

2. GENERAL CRITERIA.

THE FOLLOWING STANDARDS SHALL APPLY TO NEW OR EXPANDED DEVELOPMENT ACTIVITIES ASSOCIATED WITH WATER-DEPENDENT

FACILITIES:

- A. IN ACCORDANCE WITH NATURAL RESOURCES ARTICLE §8-1808.3, ANNOTATED CODE OF MARYLAND, PERMITTED DEVELOPMENT IN THE BUFFER IS LIMITED TO THE MINIMUM LOT COVERAGE NECESSARY TO ACCOMMODATE EACH WATER DEPENDENT FACILITY OR ACTIVITY.
- B. NEW OR EXPANDED DEVELOPMENT ACTIVITIES MAY BE PERMITTED IN THE BUFFER IN THE INTENSELY DEVELOPED AREAS AND LIMITED DEVELOPMENT AREAS PROVIDED THAT IT CAN BE SHOWN:
 - (1) THAT THE FACILITY OR ACTIVITY ARE WATER-DEPENDENT;
 - (2) THAT THE FACILITY OR ACTIVITY MEETS A RECOGNIZED PRIVATE RIGHT OR PUBLIC NEED;
 - (3) THAT ADVERSE EFFECTS ON WATER QUALITY, FISH, PLANT AND WILDLIFE HABITAT ARE FIRST AVOIDED, OR IF UNAVOIDABLE, MINIMIZED;
 - (4) THAT, INsofar AS POSSIBLE, A NON-WATER-DEPENDENT PROJECT ASSOCIATED WITH THE WATER-DEPENDENT FACILITY OR ACTIVITY IS LOCATED OUTSIDE THE BUFFER;
 - (5) IMPACTS TO FISH, WILDLIFE, OR PLANT HABITAT ARE AVOIDED, OR IF UNAVOIDABLE, MINIMIZED; AND
 - (6) MITIGATION IS PROVIDED AT A MINIMUM RATIO OF 1:1 BASED ON THE SQUARE FOOTAGE OF CANOPY COVERAGE REMOVED.
- C. EXCEPT AS OTHERWISE AUTHORIZED IN THIS SECTION, A WATER-DEPENDENT FACILITY OR ACTIVITY IS PROHIBITED IN THE BUFFER OF THE RESOURCE CONSERVATION AREA.
- D. THE PLACEMENT OF DREDGED MATERIAL IN THE BUFFER OR A PORTION OF THE CRITICAL AREA THAT HAS BEEN DESIGNATED AS A HABITAT PROTECTION AREA IS PROHIBITED, EXCEPT AS NECESSARY FOR:
 - (1) A BENEFICIAL USE APPROVED BY THE BOARD OF PUBLIC WORKS OR THE DEPARTMENT OF THE ENVIRONMENT, SUCH AS:
 - I. BACKFILL FOR A SHORELINE STABILIZATION MEASURE;
 - II. USE IN A NONSTRUCTURAL SHORELINE STABILIZATION MEASURE, INCLUDING A LIVING SHORELINE;
 - III. BEACH NOURISHMENT;
 - IV. RESTORATION OF AN ISLAND;
 - V. THE CREATION, RESTORATION, OR ENHANCEMENT OF A WETLAND, OR A FISH, WILDLIFE, OR PLANT HABITAT; OR
 - VI. ANY OTHER APPROVED BENEFICIAL USE; OR

(2) PLACEMENT IN AN AREA THAT WAS APPROVED FOR THE DISPOSAL OF CHANNEL MAINTENANCE DREDGED MATERIAL BEFORE JUNE 11, 1988;

3. GENERAL REQUIREMENTS FOR THE LOCATION OF WATER-DEPENDENT FACILITIES OR ACTIVITIES

A. THE TOWN SHALL EVALUATE ON A CASE-BY-CASE BASIS ALL PROPOSALS FOR EXPANSION OF EXISTING OR NEW WATER-DEPENDENT FACILITIES. THE TOWN SHALL WORK WITH APPROPRIATE STATE AND FEDERAL AGENCIES TO DEVELOP A PLAN FOR THE APPROVAL OF AN AREA SUITABLE FOR THE LOCATION OF A NEW OR EXPANDED WATER-DEPENDENT FACILITY OR ACTIVITY.

B. THE FOLLOWING FACTORS SHALL BE CONSIDERED WHEN EVALUATING PROPOSALS FOR NEW OR EXPANDED WATER-DEPENDENT FACILITIES:

(1) THE IMPACT ON THE WATER BODY UPON WHICH THE WATER-DEPENDENT FACILITY OR ACTIVITY IS PROPOSED THAT WOULD LIKELY RESULT FROM THE APPROVAL OF THAT LOCATION, INCLUDING:

- I. ALTERATION OF AN EXISTING WATER CIRCULATION PATTERN OR SALINITY REGIME;
- II. ADEQUACY OF AREA FLUSHING CHARACTERISTICS;
- III. NECESSITY OF, AND PROXIMITY TO, A DREDGING OPERATION; AND
- IV. INTERFERENCE WITH THE NATURAL TRANSPORT OF SAND;

(2) DISTURBANCE TO:

- I. AN OYSTER HARVEST AREA, AS DEFINED IN COMAR 08.02.04.11;
- II. AN AREA COVERED IN A CURRENT AQUACULTURE LEASE, AS DEFINED IN NATURAL RESOURCES ARTICLE, §4-11A-01, ANNOTATED CODE OF MARYLAND;
- III. A HARVEST RESERVE AREA, AS DESIGNATED UNDER NATURAL RESOURCES ARTICLE, §4-1009.1, ANNOTATED CODE OF MARYLAND;
- IV. AN OYSTER SANCTUARY, AS ESTABLISHED IN COMAR 08.02.04.15A; AND
- V. ANY OTHER SHELLFISH LOCATED IN A SHELLFISH AREA

REGULATED BY THE DEPARTMENT OF NATURAL RESOURCES;

(3) AVOIDANCE OF DISTURBANCE TO WATER QUALITY AND AQUATIC OR TERRESTRIAL HABITAT RESULTING FROM THE METHOD OR MANNER OF DREDGING; AND

(4) THE AVOIDANCE OR, IF UNAVOIDABLE, THE MINIMIZATION OF:

I. DISTURBANCE TO:

(A) WETLAND;

(B) SUBMERGED AQUATIC VEGETATION;

(C) A HABITAT OF THREATENED OR ENDANGERED SPECIES OR SPECIES IN NEED OF CONSERVATION;

(D) IN ACCORDANCE WITH COMAR 26.08.02.04-1, A WATER BODY IDENTIFIED BY THE DEPARTMENT OF THE ENVIRONMENT AS A TIER II, HIGH QUALITY WATER BODY AND ITS WATERSHED; AND

(E) A NONTIDAL WETLAND OF SPECIAL STATE CONCERN, AS SET FORTH IN COMAR 26.23.01.01 AND .04 AND COMAR 26.23.06.01; AND

II. ADVERSE IMPACT ON WATER QUALITY THAT WOULD LIKELY RESULT FROM THE FACILITY OR ACTIVITY, SUCH AS NONPOINT SOURCE RUNOFF, SEWAGE DISCHARGE, OR OTHER POLLUTION RELATED TO VESSEL MAINTENANCE.

4. INDUSTRIAL AND PORT-RELATED FACILITIES.

A. NEW, EXPANDED, OR REDEVELOPED INDUSTRIAL OR PORT-RELATED FACILITIES AND THE REPLACEMENT OF THESE FACILITIES MAY BE PERMITTED ONLY IN THOSE PORTIONS OF IDAS THAT HAVE BEEN DESIGNATED AS MBAS AS DESCRIBED IN THIS PART V AND ARE SUBJECT TO THE PROVISIONS SET FORTH IN THIS PART V.

5. COMMERCIAL MARINAS AND OTHER WATER-DEPENDENT COMMERCIAL MARITIME FACILITIES AND ACTIVITIES.

A. NEW, EXPANDED OR REDEVELOPED MARINAS MAY BE PERMITTED IN THE BUFFER WITHIN IDAS AND LDAS SUBJECT TO THE REQUIREMENTS SET FORTH IN THIS PART V.

B. NEW MARINAS OR RELATED MARITIME FACILITIES MAY NOT BE PERMITTED IN THE BUFFER WITHIN RCAS EXCEPT AS PROVIDED IN THIS PART V. EXPANSION OF EXISTING MARINAS MAY BE PERMITTED BY THE

TOWN WITHIN RCAS 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.

C. NEW AND EXISTING MARINAS SHALL MEET THE SANITARY REQUIREMENTS OF THE DEPARTMENT OF THE ENVIRONMENT AS REQUIRED IN COMMAR 26.04.02. NEW MARINAS SHALL ESTABLISH A MEANS OF MINIMIZING THE DISCHARGE OF BOTTOM WASH WATERS INTO TIDAL WATERS.

6. COMMUNITY PIERS AND OTHER COMMUNITY BOAT-DOCKING AND STORAGE FACILITIES.

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 PART V PROVIDED THAT:

A. THE OWNER OR OPERATOR OF THE PIER OR FACILITY:

- (1) DOES NOT OFFER FOOD, FUEL, OR OTHER GOODS AND SERVICES FOR SALE AND SHALL PROVIDE ADEQUATE AND CLEAN SANITARY FACILITIES;
- (2) AS APPLICABLE, COMPLIES WITH THE REQUIREMENTS OF COMAR 26.24.04.03;

B. THE FACILITIES ARE COMMUNITY-OWNED AND ESTABLISHED AND OPERATED FOR THE BENEFIT OF THE RESIDENTS OF A PLATTED AND RECORDED RIPARIAN SUBDIVISION;

C. THE FACILITIES ARE ASSOCIATED WITH A RESIDENTIAL DEVELOPMENT APPROVED BY THE TOWN FOR THE CRITICAL AREA AND CONSISTENT WITH ALL STATE REQUIREMENTS AND PROGRAM REQUIREMENTS FOR THE CRITICAL AREA;

D. DISTURBANCE TO THE BUFFER IS THE MINIMUM NECESSARY TO PROVIDE A SINGLE POINT OF ACCESS TO THE FACILITIES; AND

E. IF COMMUNITY PIERS, SLIPS, OR MOORINGS ARE PROVIDED AS PART OF THE NEW DEVELOPMENT, PRIVATE PIERS IN THE DEVELOPMENT ARE NOT ALLOWED.

F. THE NUMBER OF SLIPS OR PIERS PERMITTED AT THE FACILITY SHALL BE THE LESSER OF ITEMS F.(1) OR F. (2) OF THIS SUBSECTION 6. BELOW:

- (1) ONE (1) SLIP FOR EACH 50 FEET OF SHORELINE IN THE SUBDIVISION IN THE IDAS AND LDAS AND ONE SLIP FOR EACH 300 FEET OF SHORELINE

IN THE SUBDIVISION IN THE RCA; 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 H(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

7. PUBLIC BEACHES AND OTHER PUBLIC WATER-ORIENTED RECREATION OR EDUCATION AREAS.

- A. IN ADDITION TO MEETING THE REQUIREMENTS OF SUBSECTIONS 6.B AND 6.C. OF THIS SECTION, PUBLIC BEACHES OR OTHER PUBLIC WATER-ORIENTED RECREATION OR EDUCATION AREAS OR ACTIVITIES MAY BE PERMITTED IN THE BUFFER OF:

(1) AN INTENSELY DEVELOPED AREA; OR

(2) A LIMITED DEVELOPMENT AREA OR A RESOURCE CONSERVATION AREA PROVIDED THAT:

- I. ADEQUATE SANITARY FACILITIES EXIST;
- II. SANITARY AND SERVICE FACILITIES ARE, TO THE EXTENT POSSIBLE, LOCATED OUTSIDE THE BUFFER;
- III. PERMEABLE SURFACES ARE USED TO THE EXTENT PRACTICABLE, IF NO DEGRADATION OF GROUNDWATER WOULD LIKELY RESULT; AND

IV. DISTURBANCE TO NATURAL VEGETATION IS FIRST AVOIDED OR, IF UNAVOIDABLE, MINIMIZED.

B. AREAS FOR PUBLIC PASSIVE OUTDOOR RECREATION, SUCH AS NATURE STUDY, AND HIKING, HUNTING, AND TRAPPING, AND FOR EDUCATION, MAY BE PERMITTED IN THE BUFFER WITHIN A LIMITED DEVELOPMENT AREA OR A RESOURCE CONSERVATION AREA IF SANITARY AND SERVICE FACILITIES FOR THESE USES ARE LOCATED OUTSIDE OF THE BUFFER.

8. RESEARCH-ASSOCIATED AND EDUCATION-ASSOCIATED WATER-DEPENDENT FACILITIES OR ACTIVITIES.

IN ADDITION TO MEETING THE REQUIREMENTS OF SUBSECTIONS 6.B. AND 6.C. OF THIS SECTION, A RESEARCH-ASSOCIATED WATER-DEPENDENT FACILITY OR ACTIVITY OR OF AN EDUCATION-ASSOCIATED WATER-DEPENDENT FACILITY OR ACTIVITY MAY BE PERMITTED IN THE BUFFER OF AN IDA, LDA, OR RCA, IF ANY ASSOCIATED NONWATER-DEPENDENT PROJECT OR ACTIVITY IS LOCATED OUTSIDE THE BUFFER.

9. AQUACULTURE AND FISHERY FACILITIES AND ACTIVITIES: WATER QUALITY RESTORATION.

THE FOLLOWING TYPES OF AQUACULTURE AND FISHERY FACILITIES AND ACTIVITIES MAY BE PERMITTED IN THE BUFFER OF AN IDA, LDA, OR RCA:

- A. A SHORE-BASED FACILITY OR ACTIVITY NECESSARY FOR A COMMERCIAL AQUACULTURE OPERATION;
- B. A COMMERCIAL WATER-DEPENDENT FISHERY FACILITY OR ACTIVITY, INCLUDING A STRUCTURE FOR CRAB SHEDDING, A FISH OFF-LOADING DOCK, AND A SHELLFISH CULTURE OPERATION; AND
- C. A FACILITY OR ACTIVITY THAT SUPPORTS WATER QUALITY RESTORATION IN THE CHESAPEAKE BAY, THE ATLANTIC COASTAL BAYS, OR THEIR WATERSHEDS.

SECTION 129. GROWTH ALLOCATION.

1. GROWTH ALLOCATION ACREAGE AND DEDUCTION.

A. GROWTH ALLOCATION AVAILABLE TO THE TOWN INCLUDES:

- (1) AN AREA EQUAL TO FIVE PERCENT (5%) OF THE RCA ACREAGE LOCATED WITHIN THE TOWN; AND
- (2) GROWTH ALLOCATION AVAILABLE TO THE TOWN AS PROVIDED FOR BY CECIL COUNTY.

B. A LOCAL JURISDICTION SHALL DEDUCT ACREAGE FROM ITS GROWTH ALLOCATION RESERVES IN ACCORDANCE WITH COMAR 27.01.02.06-4.

2. PURPOSE.

GROWTH ALLOCATION IS AVAILABLE FOR USE IN A RCA OR IN A LDA IN THE TOWN'S CRITICAL AREA OVERLAY DISTRICT. THE PURPOSE IS TO AUTHORIZE A CHANGE IN THE CRITICAL AREA CLASSIFICATION TO DEVELOP AT A HIGHER DENSITY OR USE THAN THE CURRENT CLASSIFICATION ALLOWS.

3. PROCESS.

AN APPLICANT SHALL SUBMIT TO THE TOWN A COMPLETE APPLICATION FOR GROWTH ALLOCATION THAT COMPLIES WITH THE SUBMITTAL AND ENVIRONMENTAL REPORT REQUIREMENTS OF COMAR 27.01.02.06-1—.06-2. A GROWTH ALLOCATION REQUEST SHALL FOLLOW PROCEDURES BELOW PRIOR TO SUBMISSION TO THE CRITICAL AREA COMMISSION.

A. THE APPLICATION SHALL BE REVIEWED BY THE ZONING ADMINISTRATOR AND SUBMITTED TO THE PLANNING COMMISSION FOR REVIEW.

B. THE APPLICANT SHALL ADDRESS THE PLANNING COMMISSIONER'S COMMENTS AND RECOMMENDATIONS AND MAY REVISE THE CONCEPT PLAN ACCORDINGLY. THE GROWTH ALLOCATION REQUEST SHALL THEN BE FORWARDED TO THE TOWN COMMISSIONERS WITH A RECOMMENDATION FOR APPROVAL OR DENIAL FROM THE PLANNING COMMISSION.

C. THE TOWN COMMISSIONERS SHALL HOLD A PUBLIC HEARING CONSISTENT WITH THE PROVISIONS OF ARTICLE XVIII OF THIS CHAPTER AS IT RELATES TO CHANGES WITHIN THE CRITICAL AREA OVERLAY DISTRICT DUE TO USE OF GROWTH ALLOCATION.

D. THE TOWN COMMISSIONERS MAY ESTABLISH CONDITIONS OF APPROVAL THAT ARE CONSISTENT WITH THE INTENT OF THE TOWN'S CRITICAL AREA PROGRAM.

E. UPON APPROVAL OF THE GROWTH ALLOCATION REQUEST BY THE TOWN COMMISSIONERS, THE TOWN SHALL SEND A REQUEST TO THE CECIL COUNTY COMMISSIONERS TO AWARD A PORTION OF CECIL COUNTY'S GROWTH ALLOCATION TO THE APPLICANT. UPON RECEIPT OF ALL LOCAL APPROVALS, THE TOWN SHALL SEND A LETTER OF REQUEST TO CRITICAL AREA COMMISSION TO AWARD A PORTION OF GROWTH ALLOCATION TO THE APPLICANT. THE REQUEST SHALL BE ACCOMPANIED BY ALL LOCAL APPROVAL LETTERS PERTINENT PLANS, ENVIRONMENTAL REPORTS AND/OR STUDIES. UPON RECEIPT OF THE REQUEST FROM THE TOWN, THE CRITICAL AREA COMMISSION SHALL NOTIFY THE TOWN REGARDING THE PROCESSING OF THE REQUEST AS AN AMENDMENT OR REFINEMENT TO

THE TOWN'S CRITICAL AREA PROGRAM. REFINEMENTS SHALL BE ACTED ON WITHIN 30 DAYS OF THE COMMISSION'S NOTIFICATION TO THE TOWN OF A COMPLETED SUBMISSION. AMENDMENTS SHALL BE ACTED ON WITHIN 90 DAYS OF THE COMMISSION'S NOTIFICATION TO THE TOWN OF A COMPLETED SUBMISSION.

- F. FOLLOWING APPROVAL OF THE GROWTH ALLOCATION REQUEST BY THE CRITICAL AREA COMMISSION, THE TOWN COMMISSIONERS MAY IMPLEMENT THE CHANGE BY ORDINANCE, AND THE APPLICANT MAY PROCEED WITH THE PREPARATION OF THE FINAL SITE PLAN OR SUBDIVISION PLAT FOR RECORDATION. THE TOWN SHALL ALSO NOTIFY THE COUNTY IN WRITING.

4. REQUIREMENTS.

WHEN LOCATING NEW IDAS OR LDAS, THE FOLLOWING REQUIREMENTS APPLY:

- A. A NEW INTENSELY DEVELOPED AREA SHALL BE AT LEAST 20 ACRES UNLESS IT IS ADJACENT TO EXISTING IDA.
- B. AN APPLICATION FOR A NEW IDA OR LDA SHALL BE:
 - (1) IN CONFORMANCE WITH THE REQUIREMENTS OF COMAR TITLE 27 SUBTITLE 01; AND
 - (2) DESIGNATED ON THE APPROVED CRITICAL AREA MAP THAT IS SUBMITTED AS PART OF ITS APPLICATION TO THE COMMISSION FOR GROWTH ALLOCATION APPROVAL.
- C. AS PART OF A GROWTH ALLOCATION APPROVED BY THE COMMISSION, THE FOLLOWING SHALL BE ENFORCED:
 - (1) A BUFFER MANAGEMENT PLAN;
 - (2) A HABITAT PROTECTION PLAN; AND
 - (3) OTHER APPLICABLE CONDITIONS OF APPROVAL AS DETERMINED BY THE COMMISSION AT THE TIME OF PROJECT APPROVAL.

5. STANDARDS.

WHEN LOCATING NEW IDAS OR LDAS THE FOLLOWING STANDARDS SHALL APPLY:

- A. A NEW IDA SHALL ONLY BE LOCATED IN A LDA OR ADJACENT TO AN EXISTING IDA;

- B. A NEW LDA SHALL ONLY BE LOCATED ADJACENT TO AN EXISTING LDA OR AN IDA;
- C. A NEW LDA OR IDA SHALL BE LOCATED IN A MANNER THAT MINIMIZES IMPACTS TO HPAS AS DEFINED HEREIN AND IN COMAR 27.01.09 AND IN AN AREA AND MANNER THAT OPTIMIZES BENEFITS TO WATER QUALITY;
- D. NEW IDAS SHALL ONLY BE LOCATED WHERE THEY MINIMIZE THEIR IMPACTS TO THE DEFINED LAND USES OF THE RCA;
- E. A NEW IDA OR A LDA IN A RCA SHALL BE LOCATED AT LEAST 300 FEET BEYOND THE LANDWARD EDGE OF TIDAL WETLANDS OR TIDAL WATERS; AND
- F. NEW IDAS OR LDAS TO BE LOCATED IN RCAS SHALL CONFORM TO ALL CRITERIA OF THE TOWN FOR SUCH AREAS, SHALL BE SO DESIGNATED ON THE TOWN'S CRITICAL AREA MAPS AND SHALL CONSTITUTE AN AMENDMENT TO THIS PART V SUBJECT TO REVIEW AND APPROVAL BY THE TOWN PLANNING COMMISSION, THE TOWN COMMISSIONERS AND THE CRITICAL AREA COMMISSION AS PROVIDED IN THIS SECTION.

6. ADDITIONAL FACTORS.

IN REVIEWING MAP AMENDMENTS OR REFINEMENTS INVOLVING THE USE OF GROWTH ALLOCATION, THE TOWN SHALL CONSIDER ALL OF THE FOLLOWING FACTORS:

- A. CONSISTENCY WITH THE TOWN'S ADOPTED COMPREHENSIVE PLAN AND WHETHER THE GROWTH ALLOCATION WOULD IMPLEMENT THE GOALS AND OBJECTIVES OF THE ADOPTED PLAN.
- B. FOR A MAP AMENDMENT OR REFINEMENT INVOLVING A NEW LDA, WHETHER THE DEVELOPMENT IS:
 - (1) TO BE SERVED BY A PUBLIC WASTEWATER SYSTEM OR SEPTIC SYSTEM THAT USES THE BEST AVAILABLE NITROGEN REMOVAL TECHNOLOGY;
 - (2) A COMPLETION OF AN EXISTING SUBDIVISION;
 - (3) AN EXPANSION OF AN EXISTING BUSINESS; OR
 - (4) TO BE CLUSTERED.
- C. FOR A MAP AMENDMENT OR REFINEMENT INVOLVING A NEW IDA, WHETHER THE DEVELOPMENT IS:
 - (1) TO BE SERVED BY A PUBLIC WASTEWATER SYSTEM;

(2) TO HAVE AN ALLOWED AVERAGE DENSITY OF AT LEAST 3.5 UNITS PER ACRE AS CALCULATED UNDER STATE FINANCE AND PROCUREMENT ARTICLE, §5-7B-03(H), ANNOTATED CODE OF MARYLAND;

(3) IF GREATER THAN 20 ACRES, TO BE LOCATED IN A DESIGNATED PRIORITY FUNDING AREA; AND

(4) TO HAVE A DEMONSTRABLE ECONOMIC BENEFIT.

D. THE USE OF EXISTING PUBLIC INFRASTRUCTURE, WHERE PRACTICAL.

E. CONSISTENCY WITH STATE AND REGIONAL ENVIRONMENTAL PROTECTION POLICIES CONCERNING THE PROTECTION OF THREATENED AND ENDANGERED SPECIES AND SPECIES IN NEED OF CONSERVATION THAT MAY BE LOCATED ON- OR OFF-SITE.

F. IMPACTS ON A PRIORITY PRESERVATION AREA.

G. ENVIRONMENTAL IMPACTS ASSOCIATED WITH WASTEWATER AND STORMWATER MANAGEMENT PRACTICES AND WASTEWATER AND STORMWATER DISCHARGES TO TIDAL WATERS, TIDAL WETLANDS, AND TRIBUTARY STREAMS.

H. ENVIRONMENTAL IMPACTS ASSOCIATED WITH LOCATION IN A COASTAL HAZARD AREA OR AN INCREASED RISK OF SEVERE FLOODING ATTRIBUTABLE TO THE PROPOSED DEVELOPMENT.

SECTION 130. GRANDFATHERING.

1. CONTINUATION OF EXISTING USES.

A. THE CONTINUATION, BUT NOT NECESSARILY THE INTENSIFICATION OR EXPANSION, OF ANY USE IN EXISTENCE ON JUNE 1, 1984, MAY BE PERMITTED UNLESS THE USE HAS BEEN ABANDONED FOR MORE THAN ONE (1) YEAR OR IS OTHERWISE RESTRICTED BY EXISTING TOWN ORDINANCES.

B. IF ANY EXISTING USE DOES NOT CONFORM WITH THE PROVISIONS OF THIS PART V, ITS INTENSIFICATION OR EXPANSION MAY BE PERMITTED ONLY IN ACCORDANCE WITH THE VARIANCE PROCEDURES IN SECTION 130 OF THIS PART V.

2. RESIDENTIAL DENSITY ON GRANDFATHERED LOTS.

A. 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 CHAPTER:

- (1) ANY LAND ON WHICH DEVELOPMENT ACTIVITY HAS PROGRESSED TO THE POINT OF POURING OF FOUNDATION FOOTINGS OR THE INSTALLATION OF STRUCTURAL MEMBERS;
- (2) A LEGAL PARCEL OF LAND, NOT BEING PART OF A RECORDED OR APPROVED SUBDIVISION, THAT WAS RECORDED AS OF DECEMBER 1, 1985;
- (3) LAND THAT RECEIVED A BUILDING PERMIT SUBSEQUENT TO JUNE 1, 1984, BUT PRIOR TO DECEMBER 1, 1985;
- (4) LAND THAT WAS SUBDIVIDED INTO RECORDED, LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION RECEIVED FINAL APPROVAL BETWEEN JUNE 1, 1984, AND DECEMBER 1, 1985; AND
- (5) LAND THAT WAS SUBDIVIDED INTO RECORDED, LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION RECEIVED THE FINAL APPROVAL AFTER DECEMBER 1, 1985, AND PROVIDED THAT EITHER DEVELOPMENT OF ANY SUCH LAND CONFORMS TO THE IDA, LDA OR RCA REQUIREMENTS IN THIS PART V OR THE AREA OF THE LAND HAS BEEN COUNTED AGAINST THE GROWTH ALLOCATION PERMITTED UNDER THIS PART V.

3. IMPLEMENTATION.

- A. FOR PURPOSES OF IMPLEMENTING THIS SECTION, THE TOWN SHALL HAVE DETERMINED, BASED ON LAND USES AND DEVELOPMENT IN EXISTENCE ON DECEMBER 1, 1985, WHICH LAND AREAS FALL WITHIN THE THREE (3) TYPES OF DEVELOPMENT AREAS DESCRIBED IN THIS PART V (IDA, LDA AND RCA).
- B. NOTHING IN THIS SECTION MAY BE INTERPRETED AS ALTERING ANY REQUIREMENTS OF THIS PART V RELATED TO WATER-DEPENDENT FACILITIES OR HPAS.

SECTION 131. VARIANCES.

1. APPLICABILITY.

THE TOWN HAS ESTABLISHED PROVISIONS WHERE, OWING TO SPECIAL FEATURES OF A SITE OR OTHER CIRCUMSTANCES, IMPLEMENTATION OF THIS PART V OR A LITERAL ENFORCEMENT OF PROVISIONS WITHIN THIS PART V WOULD RESULT IN UNWARRANTED HARDSHIP TO AN APPLICANT, A CRITICAL AREA VARIANCE MAY BE OBTAINED.

- A. IN CONSIDERING AN APPLICATION FOR A VARIANCE, THE TOWN SHALL PRESUME THAT THE SPECIFIC DEVELOPMENT ACTIVITY IN THE CRITICAL AREA, THAT IS SUBJECT TO THE APPLICATION AND FOR WHICH A VARIANCE IS REQUIRED, DOES NOT CONFORM WITH THE GENERAL PURPOSE AND INTENT OF NATURAL RESOURCES ARTICLE, TITLE 8 SUBTITLE 18, COMAR TITLE 27, AND THE REQUIREMENTS OF THIS PART V.
- B. UNWARRANTED HARDSHIP MEANS THAT WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.

2. 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 PROCEEDING FOR A VARIANCE UNDER THIS SECTION.

3. STANDARDS.

THE PROVISIONS FOR GRANTING A VARIANCE SHALL INCLUDE WRITTEN FINDINGS BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE THAT THE APPLICANT HAS OVERCOME THE PRESUMPTION ESTABLISHED UNDER SUBSECTION 1.A. ABOVE, AND THAT EACH OF THE FOLLOWING STANDARDS ARE MET:

- A. DUE TO SPECIAL FEATURES OF THE SITE OR SPECIAL CONDITIONS OR CIRCUMSTANCES PECULIAR TO THE LAND OR STRUCTURE INVOLVED, A LITERAL ENFORCEMENT OF PROVISIONS AND REQUIREMENTS OF THIS PART V WOULD RESULT IN UNWARRANTED HARDSHIP TO THE APPLICANT;
- B. A LITERAL INTERPRETATION OF THE PROVISIONS OF THIS PART V WILL DEPRIVE THE APPLICANT THE USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN ACCORDANCE WITH THE PROVISIONS OF THIS PART V;
- C. THE GRANTING OF A VARIANCE WILL NOT CONFER UPON AN APPLICANT ANY SPECIAL PRIVILEGE THAT WOULD BE DENIED BY THIS PART V TO OTHER LANDS OR STRUCTURES IN ACCORDANCE WITH THE PROVISIONS OF THIS PART V;
- D. THE VARIANCE REQUEST IS NOT BASED UPON CONDITIONS OR CIRCUMSTANCES WHICH ARE THE RESULT OF ACTIONS BY THE APPLICANT, INCLUDING THE COMMENCEMENT OF DEVELOPMENT ACTIVITY BEFORE AN APPLICATION FOR A VARIANCE HAS BEEN FILED;
- E. THE REQUEST DOES NOT ARISE FROM ANY CONDITION RELATING TO LAND OR BUILDING USE, EITHER PERMITTED OR NON-CONFORMING, ON

ANY NEIGHBORING PROPERTY;

F. THE GRANTING OF A VARIANCE WOULD NOT ADVERSELY AFFECT WATER QUALITY OR ADVERSELY IMPACT FISH, WILDLIFE OR PLANT HABITAT WITHIN THE CRITICAL AREA; AND

G. THE GRANTING OF THE VARIANCE WILL BE IN HARMONY WITH THE GENERAL SPIRIT AND INTENT OF THE STATE CRITICAL AREA LAW, COMAR TITLE 27, SUBTITLE 01, AND THIS PART V.

4. PROCESS.

APPLICATIONS FOR A VARIANCE SHALL BE MADE IN WRITING TO THE TOWN BOARD OF APPEALS WITH A COPY PROVIDED TO THE CRITICAL AREA COMMISSION. THE TOWN SHALL FOLLOW ITS ESTABLISHED PROCEDURES FOR ADVERTISING AND NOTIFICATION OF AFFECTED LANDOWNERS.

A. AFTER HEARING AN APPLICATION FOR A CRITICAL AREA PROGRAM VARIANCE, THE BOARD OF APPEALS SHALL MAKE WRITTEN FINDINGS REFLECTING ANALYSIS OF EACH STANDARD. WITH DUE REGARD FOR THE PERSON'S TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE, THE WRITTEN FINDINGS MAY BE BASED ON EVIDENCE INTRODUCED AND TESTIMONY PRESENTED BY:

(1) THE APPLICANT;

(2) OR ANY OTHER GOVERNMENT AGENCY; OR

(3) ANY OTHER PERSON DEEMED APPROPRIATE BY THE BOARD OF APPEALS.

B. IF THE VARIANCE REQUEST IS BASED ON CONDITIONS OR CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE APPLICANT, THE BOARD SHALL CONSIDER THAT FACT, AND WHETHER THE APPLICATION HAS MET THE REQUIREMENTS OF SUBSECTION 5 BELOW.

C. THE APPLICANT HAS THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION TO OVERCOME THE PRESUMPTION OF NONCONFORMANCE ESTABLISHED IN SUBSECTION 1.A. ABOVE.

D. THE TOWN SHALL NOTIFY THE CRITICAL AREA COMMISSION OF THE BOARD'S FINDINGS AND DECISION TO GRANT OR DENY THE VARIANCE REQUEST.

5. AFTER-THE-FACT REQUESTS.

A. THE BOARD OF APPEALS MAY NOT ACCEPT AN APPLICATION OF A VARIANCE TO LEGALIZE A VIOLATION OF THIS PART V, INCLUDING AN

UNPERMITTED STRUCTURE OR OTHER DEVELOPMENT ACTIVITY, UNTIL THE TOWN:

- (1) ISSUES A NOTICE OF VIOLATION; AND
- (2) ASSESSES AN ADMINISTRATIVE OR CIVIL PENALTY FOR THE VIOLATION.

B. THE BOARD OF APPEALS MAY NOT APPROVE AN AFTER-THE-FACT VARIANCE UNLESS AN APPLICANT HAS:

- (1) FULLY PAID ALL ADMINISTRATIVE, CIVIL AND CRIMINAL PENALTIES IMPOSED UNDER NATURAL RESOURCES ARTICLE, §8-1808(C)(L)(III)14-15 AND (2)(I), ANNOTATED CODE OF MARYLAND;
- (2) PREPARED A RESTORATION OR MITIGATION PLAN, APPROVED BY THE TOWN, TO ABATE IMPACTS TO WATER QUALITY OR NATURAL RESOURCES AS A RESULT OF THE VIOLATION; AND
- (3) PERFORMED THE ABATEMENT MEASURES IN THE APPROVED PLAN IN ACCORDANCE WITH THE TOWN'S CRITICAL AREA PROGRAM.

C. IF THE BOARD DENIES THE REQUESTED AFTER-THE-FACT VARIANCE, THEN THE TOWN SHALL:

- (1) ORDER REMOVAL OR RELOCATION OF ANY STRUCTURE; AND
- (2) ORDER RESTORATION OF THE AFFECTED RESOURCES.

6. APPEALS.

APPEALS FROM DECISION CONCERNING THE GRANTING OR DENIAL OF A VARIANCE UNDER THIS SECTION SHALL BE TAKEN IN ACCORDANCE WITH ALL APPLICABLE LAWS AND PROCEDURES OF THE TOWN FOR VARIANCES. VARIANCE DECISIONS BY THE BOARD OF APPEALS MAY BE APPEALED TO THE CIRCUIT COURT IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE. APPEALS MAY BE TAKEN BY ANY PERSON, FIRM, CORPORATION OR GOVERNMENTAL AGENCY AGGRIEVED OR ADVERSELY AFFECTED BY ANY DECISION MADE UNDER THIS SECTION. THE TOWN MAY NOT ISSUE A PERMIT, OR ANY OTHER TYPE OF AUTHORIZATION, UNTIL THE APPLICABLE 30-DAY APPEAL PERIOD HAS EXPIRED.

7. CONDITIONS AND MITIGATION.

THE BOARD OF APPEALS SHALL IMPOSE CONDITIONS ON THE USE OR DEVELOPMENT OF A PROPERTY WHICH IS GRANTED A VARIANCE AS THE BOARD

MAY FIND REASONABLE TO ENSURE THAT THE SPIRIT AND INTENT OF THIS ORDINANCE IS MAINTAINED INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- A. ADVERSE IMPACTS RESULTING FROM THE GRANTING OF THE VARIANCE SHALL BE MITIGATED AS RECOMMENDED BY THE TOWN PLANNING COMMISSION, BUT NOT LESS THAN BY PLANTING ON THE SITE PER SQUARE FOOT OF THE VARIANCE GRANTED AT NO LESS THAN A 3:1 BASIS.
- B. NEW OR EXPANDED STRUCTURES OR LOT COVERAGE SHALL BE LOCATED THE GREATEST POSSIBLE DISTANCE FROM MEAN HIGH WATER, THE LANDWARD EDGE OF TIDAL WETLANDS, TRIBUTARY STREAMS, NONTIDAL WETLANDS, OR STEEP SLOPES.

8. COMMISSION NOTIFICATION.

WITHIN TEN (10) WORKING DAYS AFTER A WRITTEN DECISION REGARDING A VARIANCE APPLICATION IS ISSUED, A COPY OF THE DECISION WILL BE SENT TO THE CRITICAL AREA COMMISSION.

SECTION 132. LOT CONSOLIDATION AND RECONFIGURATION.

1. APPLICABILITY.

THE PROVISIONS OF THIS SECTION APPLY TO A CONSOLIDATION OR A RECONFIGURATION OF ANY NONCONFORMING LEGAL GRANDFATHERED PARCEL OR LOT. THESE PROVISIONS DO NOT APPLY TO THE RECONFIGURATION OR CONSOLIDATION OF PARCELS OR LOTS WHICH ARE CONFORMING OR MEET ALL CRITICAL AREA REQUIREMENTS. NONCONFORMING PARCELS OR LOTS INCLUDE:

- A. THOSE FOR WHICH A CRITICAL AREA VARIANCE IS SOUGHT OR HAS BEEN ISSUED; AND
- B. THOSE LOCATED IN THE RCA AND ARE LESS THAN 20 ACRES IN SIZE.

2. PROCEDURE.

AN APPLICANT SEEKING A PARCEL OR LOT CONSOLIDATION OR RECONFIGURATION SHALL PROVIDE THE REQUIRED INFORMATION REQUIRED IN COMAR 27.01.02.08.E TO THE TOWN'S ZONING ADMINISTRATOR.

- A. THE ZONING ADMINISTRATOR MAY NOT APPROVE A PROPOSED PARCEL OR LOT CONSOLIDATION OR RECONFIGURATION WITHOUT MAKING WRITTEN FINDINGS IN ACCORDANCE WITH COMAR 27.01.02.08.F.
- B. THE ZONING ADMINISTRATOR SHALL ISSUE A FINAL WRITTEN DECISION OR ORDER GRANTING OR DENYING AN APPLICATION FOR A CONSOLIDATION OR RECONFIGURATION.

- (1) AFTER A FINAL WRITTEN DECISION OR ORDER IS ISSUED, THE ZONING ADMINISTRATOR SHALL SEND A COPY OF THE DECISION OR ORDER AND A COPY OF ANY APPROVED DEVELOPMENT PLAN WITHIN TEN (10) BUSINESS DAYS BY U.S. MAIL TO THE CRITICAL AREA COMMISSION'S BUSINESS ADDRESS.

SECTION 133. LOCAL DEVELOPMENT PROJECTS

1. APPLICABILITY

FOR ALL DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM ANY ACTION BY THE TOWN ON LOCAL OR PRIVATELY OWNED LANDS, THE TOWN SHALL ADHERE TO COMAR 27.02.02, COMAR 27.02.04 AND COMAR 27.02.06.

2. PROCEDURES.

- A. IF THE PROJECT MEETS THE PROVISIONS OF THIS PART V AND IS MINOR DEVELOPMENT, THE ZONING ADMINISTRATOR SHALL PREPARE A CONSISTENCY REPORT AND SUBMIT A COPY OF THE REPORT WITH RELEVANT PLANS AND INFORMATION ABOUT THE PROJECT TO THE CRITICAL AREA COMMISSION PER THE REQUIREMENTS OF COMAR 27.02.02.
- B. IF THE PROJECT DOES NOT MEET THE PROVISIONS OF THIS PART V, THE ZONING ADMINISTRATOR SHALL SEEK A CONDITIONAL APPROVAL BY THE CRITICAL AREA COMMISSION PER THE REQUIREMENTS OF COMAR 27.02.06.
- C. THE TOWN SHALL SUBMIT INFORMATION AS REQUIRED IN THE CRITICAL AREA COMMISSION'S *LOCAL PROJECT SUBMITTAL INSTRUCTIONS AND APPLICATION CHECKLIST*.

3. NOTICE REQUIREMENTS.

NOTICE AND POSTING REQUIREMENTS FOR PROJECTS REVIEWED AND APPROVED BY THE CRITICAL AREA COMMISSION.

- A. PUBLIC NOTICE IS REQUIRED FOR ALL DEVELOPMENT PROJECTS THAT QUALIFY UNDER COMAR 27.03.01.03. PUBLIC NOTICE SHALL BE THE RESPONSIBILITY OF THE TOWN AND EVIDENCE THAT THOSE REQUIREMENTS HAVE BEEN MET SHALL BE INCLUDED AS PART OF THE SUBMITTAL TO THE CRITICAL AREA COMMISSION.

SECTION 134. PROGRAM CHANGES

1. PROGRAM CHANGES

THE TOWN MAY FROM TIME TO TIME AMEND THE PROVISIONS OF THIS PART V. CHANGES MAY INCLUDE, BUT ARE NOT LIMITED TO AMENDMENTS, REVISIONS, AND MODIFICATIONS TO THESE ZONING REGULATIONS, CRITICAL AREA MAPS, IMPLEMENTATION PROCEDURES, AND LOCAL POLICIES THAT AFFECT THE TOWN'S CRITICAL AREA.

- A. 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.
- B. STANDARDS AND PROCEDURES FOR CRITICAL AREA COMMISSION APPROVAL OF PROPOSED AMENDMENTS ARE AS SET FORTH IN § 8-1809(I) AND § 8-1809(D), RESPECTIVELY, OF THE NATURAL RESOURCES ARTICLE.

2. COMPREHENSIVE REVIEW

THE TOWN SHALL REVIEW ITS ENTIRE CRITICAL AREA PROGRAM AND PROPOSE ANY NECESSARY AMENDMENTS TO ITS ENTIRE PROGRAM, INCLUDING THIS PART V, AT LEAST EVERY SIX YEARS IN ACCORDANCE WITH NATURAL RESOURCES ARTICLE, §8-1809(G).

3. ZONING MAP AMENDMENTS.

EXCEPT FOR PROGRAM AMENDMENTS OR PROGRAM REFINEMENTS DEVELOPED DURING A SIX-YEAR COMPREHENSIVE REVIEW, A ZONING MAP AMENDMENT IN THE CRITICAL AREA MAY ONLY BE GRANTED BY THE TOWN COMMISSIONERS UPON PROOF OF A MISTAKE IN THE EXISTING ZONING. THIS PROOF OF MISTAKE REQUIREMENT DOES NOT APPLY TO PROPOSED CHANGES TO A ZONING MAP IN THE CRITICAL AREA THAT MEET THE FOLLOWING CRITERIA:

- A. THE PROPOSED CHANGES ARE WHOLLY CONSISTENT WITH THE LAND CLASSIFICATIONS AS SHOWN ON THE ADOPTED CRITICAL AREA OVERLAY MAP; OR
- B. THE USE OF GROWTH ALLOCATION IN ACCORDANCE WITH THE GROWTH ALLOCATION PROVISIONS OF THIS PART V IS PROPOSED.
- C. ADOPTION OF A PROGRAM AMENDMENT OR REFINEMENT.

IF APPROVED BY THE CRITICAL AREA COMMISSION, THE TOWN COMMISSIONERS, BY ORDINANCE, SHALL INCORPORATE A PROGRAM AMENDMENT OR REFINEMENT INTO ITS ADOPTED CRITICAL AREA PROGRAM,

INCLUDING ANY CONDITIONS OF APPROVAL, WITHIN 120 DAYS OF RECEIVING NOTICE FROM THE CHAIRMAN OF THE COMMISSION.

SECTION 135. ENFORCEMENT.

1. CONSISTENCY.

THIS PART V SUPERSEDES ANY INCONSISTENT LAW OR PLAN OF THE TOWN. IN THE CASE OF CONFLICTING PROVISIONS, THE STRICTER PROVISIONS SHALL APPLY.

2. VIOLATIONS.

- A. NO PERSON SHALL VIOLATE ANY PROVISION OF THIS PART V. EACH VIOLATION THAT OCCURS AND EACH CALENDAR DAY THAT A VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE.
- B. EACH PERSON WHO VIOLATES A PROVISION OF THIS PART V SHALL BE SUBJECT TO SEPARATE ADMINISTRATIVE CIVIL PENALTIES, ABATEMENT AND RESTORATION ORDERS, AND MITIGATION FOR EACH OFFENSE.
- C. NON-COMPLIANCE WITH ANY PERMIT OR ORDER ISSUED BY THE TOWN RELATED TO THE CRITICAL AREA SHALL BE A VIOLATION OF THIS PART V AND SHALL BE ENFORCED AS PROVIDED HEREIN.
- D. IN ADDITION TO OTHER PENALTIES PROVIDED BY THIS PART V OR BY §8-1815 OF THE NATURAL RESOURCES ARTICLE, A VIOLATION OF THIS PART V IS A MUNICIPAL INFRACTION SUBJECT TO THE PENALTIES PROVIDED FOR IN SECTION 78 OF THIS CHAPTER.

3. RESPONSIBLE PERSONS.

THE FOLLOWING PERSONS MAY EACH BE HELD JOINTLY OR SEVERALLY RESPONSIBLE FOR A VIOLATION: (1) DEVELOPER OR ANY PERSONS WHO APPLY FOR OR OBTAIN ANY PERMIT OR APPROVAL, (2) CONTRACTORS, (3) SUBCONTRACTORS, (4) PROPERTY OWNERS, (5) MANAGING AGENTS, OR (6) ANY PERSON WHO HAS COMMITTED, ASSISTED, OR PARTICIPATED IN THE VIOLATION.

4. REQUIRED ENFORCEMENT ACTION.

IN THE CASE OF VIOLATIONS OF THIS PART V, THE TOWN, THROUGH THE TOWN'S ZONING ADMINISTRATOR, SHALL TAKE ENFORCEMENT ACTION INCLUDING:

- A. ASSESSING ADMINISTRATIVE CIVIL PENALTIES AS NECESSARY TO COVER THE COSTS ASSOCIATED WITH PERFORMING INSPECTIONS, SUPERVISING OR RENDERING ASSISTANCE WITH IDENTIFYING AND CITING THE VIOLATION, ISSUING ABATEMENT AND RESTORATION ORDERS, AND

REVIEWING MITIGATION PLANS AND ENSURING COMPLIANCE WITH THESE PLANS;

B. ISSUING ABATEMENT, RESTORATION, AND MITIGATION ORDERS AS NECESSARY TO:

(1) STOP UNAUTHORIZED ACTIVITY;

(2) 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

C. REQUIRING THE IMPLEMENTATION OF MITIGATION MEASURES, IN ADDITION TO RESTORATION ACTIVITIES, TO OFFSET THE ENVIRONMENTAL DAMAGE AND DEGRADATION OR LOSS OF ENVIRONMENTAL BENEFIT RESULTING FROM THE VIOLATION.

5. RESTORATION AND MITIGATION

A. A RESTORATION OR MITIGATION ORDER SHALL SPECIFY THE AMOUNT OF APPROPRIATE RESTORATION AND MITIGATION AS NECESSARY TO OFFSET THE ADVERSE IMPACTS TO THE CRITICAL AREA, RESULTING FROM THE VIOLATION, CONSISTENT WITH ALL OTHER REQUIREMENTS OF THIS ORDINANCE.

B. FOR RESTORATION OR MITIGATION THAT EXCEEDS 1,000 SQUARE FEET OR INVOLVES EXPENSES EXCEEDING \$1,000, THE TOWN SHALL COLLECT A BOND OR OTHER FINANCIAL SECURITY.

C. IF RESTORATION OR MITIGATION INVOLVES PLANTING, A BOND OR OTHER FINANCIAL SECURITY SHALL BE HELD FOR AT LEAST 2 YEARS AFTER THE DATE THE PLANTINGS WERE INSTALLED TO ENSURE PLANT SURVIVAL.

D. A PROPERTY OWNER MAY REQUEST THE TOWN TO SCHEDULE INSPECTIONS AS NECESSARY TO ENSURE COMPLIANCE AND THE RETURN OF THE BOND OR OTHER FINANCIAL SECURITY.

6. RIGHT TO ENTER PROPERTY.

EXCEPT AS OTHERWISE AUTHORIZED AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED HEREIN, THE ZONING ADMINISTRATOR OR THE ADMINISTRATOR'S DESIGNEE MAY OBTAIN ACCESS TO AND ENTER A PROPERTY IN ORDER TO IDENTIFY OR VERIFY A SUSPECTED VIOLATION, RESTRAIN A DEVELOPMENT ACTIVITY, OR ISSUE A CITATION IF THE TOWN HAS PROBABLE CAUSE TO BELIEVE THAT A VIOLATION OF THIS PART V HAS OCCURRED, IS OCCURRING, OR WILL OCCUR. THE ZONING ADMINISTRATOR OR DESIGNEE SHALL MAKE A REASONABLE EFFORT TO CONTACT A PROPERTY OWNER BEFORE OBTAINING ACCESS TO OR ENTERING THE PROPERTY. IF ENTRY IS

DENIED, THE TOWN MAY SEEK AN INJUNCTION TO ENTER THE PROPERTY TO PURSUE AN ENFORCEMENT ACTION.

7. ADMINISTRATIVE CIVIL PENALTIES.

IN ADDITION TO ANY OTHER PENALTY APPLICABLE UNDER STATE OR TOWN LAW, EVERY VIOLATION OF A PROVISION OF NATURAL RESOURCES ARTICLE, TITLE 8 SUBTITLE 18, OR THE PROVISIONS OF THIS PART V SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO \$1,000 PER CALENDAR DAY.

A. BEFORE IMPOSING ANY CIVIL PENALTY, THE PERSON(S) BELIEVED TO HAVE VIOLATED THIS PART V 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 ZONING ADMINISTRATOR SHALL CONSIDER:

- (1) THE GRAVITY OF THE VIOLATION;
- (2) THE PRESENCE OR ABSENCE OF GOOD FAITH OF THE VIOLATOR;
- (3) ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE VIOLATION INCLUDING A HISTORY OF PRIOR VIOLATIONS;
- (4) THE ENVIRONMENTAL IMPACT OF THE VIOLATION; AND
- (5) THE COST OF RESTORATION OF THE RESOURCE AFFECTED BY THE VIOLATION AND MITIGATION FOR DAMAGE TO THAT RESOURCE, INCLUDING THE COST TO THE TOWN FOR PERFORMING, SUPERVISING, OR RENDERING ASSISTANCE TO THE RESTORATION AND MITIGATION.

B. ADMINISTRATIVE CIVIL PENALTIES FOR CONTINUING VIOLATIONS SHALL ACCRUE FOR EACH VIOLATION, EVERY DAY EACH VIOLATION CONTINUES, WITH NO REQUIREMENTS FOR ADDITIONAL ASSESSMENTS, NOTICE, OR HEARINGS FOR EACH SEPARATE OFFENSE. THE TOTAL AMOUNT PAYABLE FOR CONTINUING VIOLATIONS SHALL BE THE AMOUNT ASSESSED PER DAY FOR EACH VIOLATION MULTIPLIED BY THE NUMBER OF DAYS THAT EACH VIOLATION HAS CONTINUED.

C. THE PERSON RESPONSIBLE FOR ANY CONTINUING VIOLATION SHALL PROMPTLY PROVIDE THE ZONING ADMINISTRATOR OR DESIGNEE WITH WRITTEN NOTICE OF THE DATE(S) THE VIOLATION HAS BEEN OR WILL BE BROUGHT INTO COMPLIANCE AND THE DATE(S) FOR FURTHER INSPECTION TO VERIFY COMPLIANCE. ADMINISTRATIVE CIVIL PENALTIES

FOR CONTINUING VIOLATIONS CONTINUE TO ACCRUE AS SET FORTH HEREIN UNTIL THE ZONING ADMINISTRATOR OR DESIGNEE RECEIVES SUCH WRITTEN NOTICE AND VERIFIES COMPLIANCE BY INSPECTION OR OTHERWISE.

D. ASSESSMENT AND PAYMENT OF ADMINISTRATIVE CIVIL PENALTIES SHALL BE IN ADDITION TO AND NOT IN SUBSTITUTION FOR RECOVERY BY THE TOWN OF ALL DAMAGES, COSTS, AND OTHER EXPENSES CAUSED BY THE VIOLATION.

E. PAYMENT OF ALL ADMINISTRATIVE CIVIL PENALTIES ASSESSED SHALL BE A CONDITION PRECEDENT TO THE ISSUANCE OF ANY PERMIT OR OTHER APPROVAL REQUIRED BY THIS PART V.

8. CUMULATIVE REMEDIES.

THE REMEDIES AVAILABLE TO THE TOWN UNDER THIS SECTION ARE CUMULATIVE AND NOT ALTERNATIVE OR EXCLUSIVE, AND THE DECISION TO PURSUE ONE REMEDY DOES NOT PRECLUDE PURSUIT OF OTHERS.

9. VARIANCES PURSUANT TO A VIOLATION.

FOR ANY VIOLATION THAT REQUIRES A VARIANCE TO THIS PART V, THE TOWN SHALL FOLLOW THE AFTER-THE-FACT VARIANCE PROVISIONS IN SUBSECTION 130.5 OF THIS PART V.

10. PERMITS PURSUANT TO A VIOLATION.

THE TOWN MAY NOT ISSUE ANY PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION, UNLESS THE PERSON SEEKING THE PERMIT HAS:

- A. FULLY PAID ALL ADMINISTRATIVE, CIVIL, OR CRIMINAL PENALTIES;
- B. PREPARED A RESTORATION OR MITIGATION PLAN, APPROVED BY THE ZONING ADMINISTRATOR, TO ABATE IMPACTS TO WATER QUALITY OR NATURAL RESOURCES AS A RESULT OF THE VIOLATION;
- C. PERFORMED THE ABATEMENT MEASURES IN THE APPROVED PLAN IN ACCORDANCE WITH THE TOWN'S REGULATIONS; AND
- D. UNLESS AN EXTENSION OF TIME IS APPROVED BY THE ZONING ADMINISTRATOR BECAUSE OF ADVERSE PLANTING CONDITIONS, ANY ADDITIONAL MITIGATION REQUIRED AS A CONDITION OF APPROVAL FOR THE PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION SHALL BE COMPLETED WITHIN NINETY (90) DAYS OF THE ISSUANCE OF A PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION FOR THE AFFECTED PROPERTY.

11. APPEALS.

AN APPEAL TO THE TOWN BOARD OF APPEALS MAY BE FILED BY ANY PERSON AGGRIEVED BY ANY ORDER, REQUIREMENT, DECISION OR DETERMINATION BY THE TOWN IN CONNECTION WITH THE ADMINISTRATION AND ENFORCEMENT OF THIS PART V.


- A. AN APPEAL IS TAKEN BY FILING A WRITTEN NOTICE OF APPEAL WITH THE BOARD OF APPEALS IN ACCORDANCE WITH THE PROVISIONS IN THE TOWN ZONING ORDINANCE AND ACCOMPANIED BY THE APPROPRIATE FILING FEE.
- B. AN APPEAL MUST BE FILED WITHIN 30 DAYS AFTER THE DATE OF THE DECISION OR ORDER BEING APPEALED; AND
- C. AN APPEAL STAYS ALL ACTIONS BY THE TOWN SEEKING ENFORCEMENT OR COMPLIANCE WITH THE ORDER OR DECISIONS BEING APPEALED, UNLESS THE ZONING ADMINISTRATOR CERTIFIES TO THE BOARD OF APPEALS THAT (BECAUSE OF FACTS STATED IN THE CERTIFICATE) SUCH STAY WILL CAUSE IMMINENT PERIL TO LIFE OR PROPERTY. IN SUCH A CASE, ACTION BY THE TOWN SHALL NOT BE STAYED EXCEPT BY ORDER OF THE BOARD OF APPEALS OR A COURT UPON APPLICATION OF THE PARTY SEEKING THE STAY.

SECTION 4. AND BE IT FURTHER ENACTED that this Ordinance shall take effect twenty (20) days following approval by the Mayor and Commissioners.

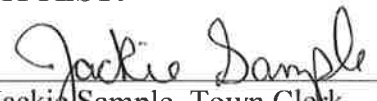
ADOPTED this 6th day of July, 2023, by a vote of 5 yeas, 0 nays, and 0 abstentions.

SEAL:

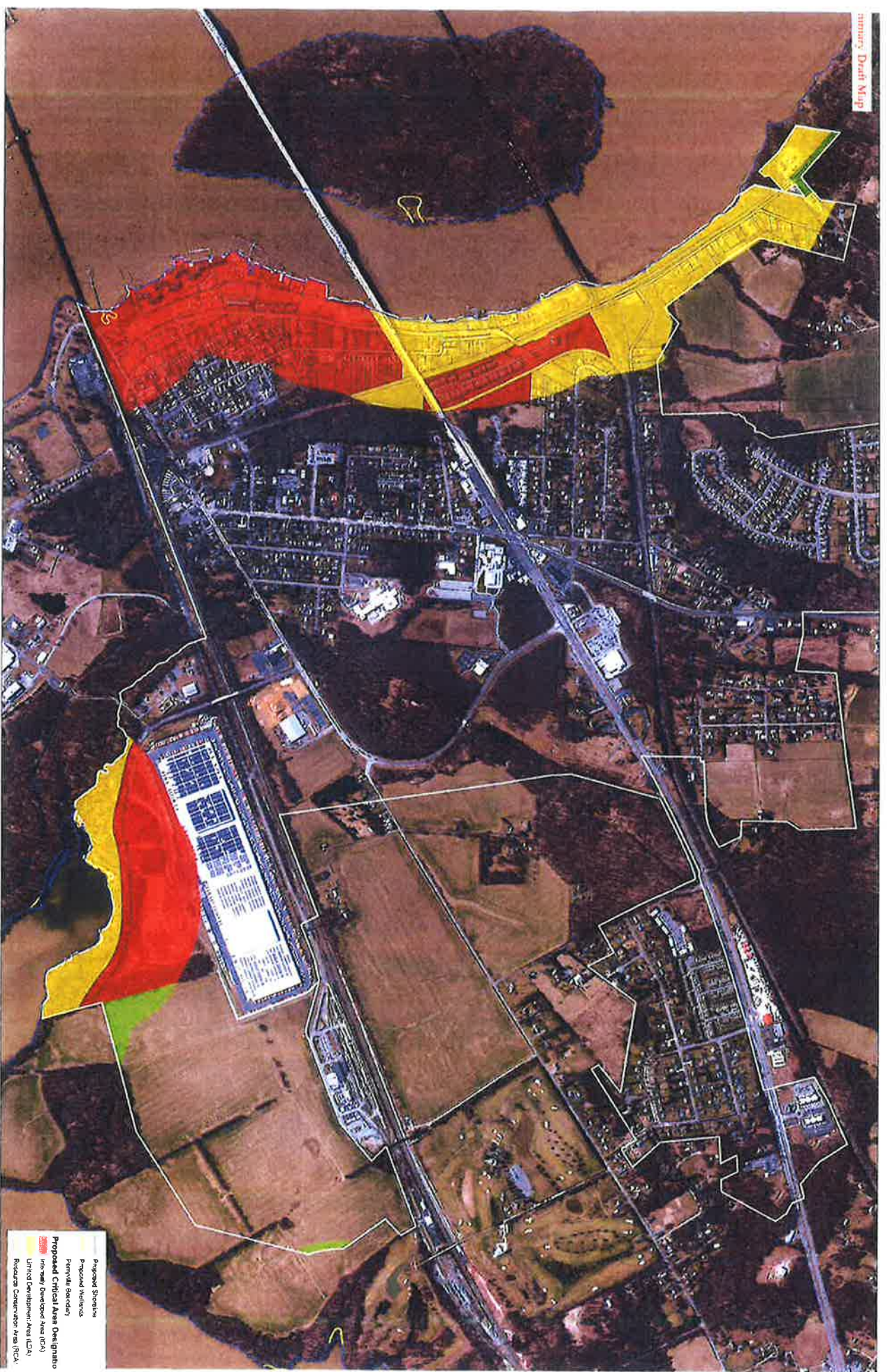
**MAYOR AND COMMISSIONERS OF
THE TOWN OF PERRYVILLE**

By: 
Matt Roath, Mayor

ATTEST:


Jackie Sample, Town Clerk

Date: 7/6/2023



PREPARED BY: GCS&A CONSULTANTS, INC. 1100 N. ...
 PROJECT: PURYSVILLE CRITICAL AREAS DESIGNATION ...
 DATE: 10/2013
 SCALE: 1" = 100'

Proposed Critical Areas:
Purysville, MD



- Proposed Structures
- Proposed Wetlands
- Purysville Boundary
- Proposed Critical Areas Designation
- Universal Development Area (UDA)
- Rural/Urban Conversion Area (UCA)

