

Somerset County Critical Area Ordinance

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Subtitle 1. Critical Area

Chapter 1-101. Definitions

- A. **Applicability.** The following words have the following meanings for the purposes of implementing the Critical Area Program and this ordinance, and the singular always include the plural, and vice versa, except where such construction would be unreasonable:
- (1) “Abatement” means the act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.
 - (2) “Accessory structure” means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
 - (3) “Addition” means construction that increases the size of a structure.
 - (4) “Afforestation” means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.
 - (5) "Agriculture" means the use of land for the purposes of farming, dairying, pasturing, agriculture, horticulture, viticulture, silvaculture, floriculture, fish culture, and animal and poultry husbandry. The processing, packaging or manufacture of agricultural products is not included
 - (6) "Agricultural easement" means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.
 - (7) "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.
 - (8) “Anadromous fish propagation waters” means those streams that are tributary to the Chesapeake Bay and Atlantic Coastal bays in which the spawning of anadromous species of fish (e.g., rockfish, striped bass, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are identified by the Department of Natural Resources.
 - (9) "Aquaculture" means: (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and

growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

- (10) "Barren land" means unmanaged land having sparse vegetation.
- (11) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.
- (12) "Buffer" means an area that based on conditions at the time of development, is immediately landward from mean high water of tidal waterways, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland; and the area exists in or is established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. The Buffer includes an area of at least 100-feet even if that area was previously disturbed by human activity or is currently developed and also includes any expansion for contiguous sensitive areas, such as a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.
- (13) "Buffer Management Plan" means a narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will affect a portion of the Buffer, affect Buffer vegetation, or require the establishment of a portion of the Buffer in vegetation. Buffer Management Plan includes a major Buffer Management Plan, a minor Buffer Management Plan, or a Simplified Buffer Management Plan as described in this ordinance.
- (14) "Bufferyard" means an area at least 25 feet wide, located between development activity and tidal waters, tidal wetlands, or a tributary stream, planted with vegetation consisting of native canopy trees, understory trees, shrubs, and perennial herbaceous plants that is used in Modified Buffer Areas to provide water quality and habitat benefits. This area is to be managed and maintained in a manner that optimizes these benefits.
- (15) "Canopy tree" means a tree that when mature commonly reaches a height of at least 35 feet.

- (16) "Clearcutting" means the removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut from advanced regeneration or stump sprouts or from planting of seeds or seedlings by man.
- (17) "Cluster development" means a residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.
- (18) "Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.
- (19) "COMAR" means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.
- (20) "Commercial harvesting" means a commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.
- (21) "Critical Area Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays and is also referred to as CAC.
- (22) "Community piers" means boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.
- (23) "Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.
- (24) "Conforming" means a parcel or lot that meets all Critical Area requirements. Conforming does not include a parcel or lot for which a Critical Area variance is sought or has been issued; or that is located in the Resource Conservation Area and is less than twenty acres.
- (25) "Conservation easement" means a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.

- (26) “Consolidation” means a combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. Consolidation includes a lot line abandonment, a boundary line adjustment, a replatting request, and a lot line adjustment.
- (27) "Cover crop" means the establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.
- (28) "Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
- (a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide as indicated on State wetland maps;
 - (b) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;
 - (c) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and
 - (d) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Critical Area Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.
- (29) "Density" means the number of dwelling units per acre of gross area of a development tract, unless otherwise specified.
- (30) “Designated Growth Areas” means the incorporated municipalities of Crisfield and Princess Anne, any area of the CA-1 Critical Area District that was mapped IDA or LDA in the initial Somerset County Critical Area Program approved by the Critical Area Commission, and major growth centers, community centers and villages as designated in the County Comprehensive Plan, as amended. The designated growth areas in the Comprehensive Plan are as follows:
- a. Major Growth Center – Suburban areas of Pocomoke City, Westover
 - b. Community Centers – Mt. Vernon, Deal Island, Upper Fairmount, Marion, and Ewell (on Smith Island)
 - c. Villages – Chance, Dames Quarter, Oriole, Rumbley, Manokin, Kingston, Rehobeth, and Rhodes Point and Tylerton on Smith Island.

- (31) “Department” means the Somerset County Department of Technical and Community Services (DTCS).
- (32) "Developed woodlands" means an area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial or recreational development
- (33) “Developer” means a person who undertakes development activity as defined in this ordinance; or a person who undertakes development activity as defined in the Criteria of the Critical Area Commission.
- (34) "Development activity" means human activity that results in disturbance to land, natural vegetation, or a structure. “Development activity” includes the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.
- (35) “Disturbance” means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintenance of an existing grass lawn.
- (36) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.
- (37) “Dwelling unit” In the Critical Area, dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.
- (38) "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.
- (39) “Endangered species” means any species of fish, wildlife, or plants that have been designated as endangered by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State’s resources are determined to be in jeopardy. This includes any species determined to be an “endangered” species pursuant to the Federal Endangered Species Act, 16 U.S.C. §et seq., as amended.
- (40) “Essential Services” means water lines, sewer lines, natural gas lines, propane gas, electric lines or poles, telephone lines and poles, underground conduits, including

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

- (41) "Establishment" means the planting or regeneration of native vegetation throughout the Buffer.
- (42) "Excess stormwater run-off" means all increases in stormwater resulting from:
 - a) An increase in the imperviousness or lot coverage of the site, including all additions to buildings, roads, and parking lots;
 - b) Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
 - c) Alteration of drainageways, or regrading of slopes;
 - d) Destruction of forest; or
 - e) Installation of collection systems to intercept street flows or to replace swales or other drainageways.
- (43) "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the County.
- (44) "Fisheries activities" means commercial water dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations.
- (45) "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre with at least 50% of those trees having two-inch or greater diameter at 4.5 feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.
- (46) "Forest Interior Dwelling Birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).
- (47) "Forest management" means the protection, manipulation, and utilization of the

forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.

- (48) "Forest practice" means the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.
- (49) "Fully established" means the Buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.
- (50) "Grandfathered parcel" or "Grandfathered lot" means a parcel of land that was created or a lot created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.
- (51) "Growth allocation" means:
 - a) An area of land calculated as 5 percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land), that the County may convert to more intense management areas to accommodate land development; and/or
 - b) An act of the Board of County Commissioners, such as approving the GA Growth Allocation Floating District, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the CA-1 Critical Area District that results in an increase in the permitted density/use. Such action is dependent upon the approval of the Critical Area Commission.
- (52) "Growth allocation envelope" means all of the proposed components of a growth allocation project that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.
- (53) "Habitat Protection Area (HPA)" means Buffer, Non-Tidal Wetlands, Threatened and Endangered Species, Plant and Wildlife Habitats, Anadromous Fish Spawning Propagation Waters and Species in Need of Conservation, i.e. colonial nesting waters, historic waterfowl staging and concentration areas, habitats of local significance, as defined in the County Critical Area Program.
- (54) "Habitat Protection Plan" means a plan that provides for the protection and conservation of the species and habitats identified as Habitat Protection Areas in

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

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

“Hazardous tree” does not include a tree for which the likelihood of personal injury, property damage, or soil erosion can reasonably be eliminated or significantly diminished with routine and proper arboricultural practices, such as regular watering, application of fertilizer or mulch, and pruning; or by relocation of property that is likely to be damaged.

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

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

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

- (59) "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils. A list of hydric soils is maintained by the Natural Resources Conservation Service and at the DTCS.
- (60) "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).
- (61) "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.
- (62) "In-kind replacement" means the removal of a structure and the construction of another structure that is smaller than or identical to the original structure in use, footprint area, width, and length.
- (63) "Intensely Developed Area" means an area of at least 20 acres or the entire upland portion of the critical area within a municipal corporation, whichever is less, where: residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include: an area with a housing density of at least four dwelling units per acre; an area with public water and sewer systems with a housing density of more than three dwelling units per acre.
- (64) "Invasive species" means a type of plant that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.
- (65) "K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.
- (66) "Land-based aquaculture" means the raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.
- (67) "Land clearing" means any activity that removes the vegetative ground cover.
- (68) "Landforms" means feature of the earth's surface created by natural causes.
- (69) "Landward edge" means the limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary stream.

- (70) “Large shrub” means a shrub that, when mature, reaches a height of at least six feet.
- (71) “Legally developed” means all physical improvements to a property that existed before Critical Area Commission approval of a local Program, or were properly permitted in accordance with the provisions of the local Program in effect at the time of construction.
- (72) “Limit of disturbance” means the area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance.
- (73) “Limited Development Area” means an area: with a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre; with a public water or sewer system; that is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space; or that is less than 20 acres and otherwise qualifies as an intensely developed area under the definition in this Chapter.
- (74) “Living shoreline” means a suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal process, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures, breakwaters, or other natural components.
- (75) “Local significance” means development of a minor scale, which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Program of the County; and is not considered to be major development as defined in this chapter.
- (76) “Lot coverage” means the percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with 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.

- (77) “Major Buffer Management Plan” means a type of Buffer Management Plan and all supporting documentation required under COMAR 27.01.09.01-3J.
- (78) “Major development” means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area Program of a local jurisdiction. This development includes, but is not limited to, airports, power plants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.
- (79) "Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.
- (80) "Mean High Water Line" (MHWL) means the average level of high tides at a given location.
- (81) “Minor Buffer Management Plan” means a type of Buffer Management Plan and all supporting documentation required under COMAR 27.01.09.01-3I
- (82) “Mitigation” means an action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity.
- (83) “Modified Buffer Area (MBA)” means an area officially mapped by the County and approved by the Critical Area Commission as a Modified Buffer Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional, or recreational development prevents the Buffer from fulfilling its water quality and habitat functions, and where development in accordance with specific MBA provisions can be permitted in the Buffer without a variance. MBAs have formerly been referred to as “Buffer Exempt Areas”.
- (84) “Native plant” means a species that is indigenous to the physiographic area in Maryland where the planting is proposed.
- (85) “Natural features” means components and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.
- (86) “Natural forest vegetation” means vegetation consisting of canopy trees,

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

- (87) "Natural Heritage Area" means any communities of plants or animals which are considered to be among the best statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.
- (88) "Natural parks" means areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.
- (89) "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.
- (90) "Natural vegetation" means those plant communities that develop in the absence of human activities.
- (91) "Nature-dominated" means a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.
- (92) "New development" means that for purposes of implementing specific provisions of this ordinance, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in IDA) or lot coverage (LDA and RCA) of less than 15 percent as of December 1, 1985.
- (93) "Non-point source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.
- (94) "Non-renewable resources" means resources that are not naturally regenerated or renewed.
- (95) "Nontidal wetlands" means those areas regulated under Subtitle 26 of the Environment Article that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under

normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended. Nontidal wetlands do not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.

- (96) "Offsets" means structures or actions that compensate for undesirable impacts.
- (97) "Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.
- (98) "Palustrine" means all non-tidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.
- (99) "Permanent disturbance" means a material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity. "Permanent disturbance" includes:
 - a) Construction or installation of any material that will result in lot coverage;
 - b) Construction of a deck;
 - c) Grading or clearing (except where it meets the definition of temporary disturbance); and
 - d) The installation of a septic system, in a forest or developed woodland on a grandfathered lot, if clearing is required.

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

- (100) "Person" means an individual, partnership, corporation, contractor, property owner, or any other person or entity.
- (101) "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.
- (102) "Pier" means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. Pier does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

- (103) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
- (104) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.
- (105) "Principal structure" means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.
- (106) "Private harvesting" means the cutting and removal of trees for personal use.
- (107) "Program amendment" means any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a Program refinement.
- (108) "Program refinement" means any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted Program, or that will not significantly affect the use of land or water in the Critical Area. Program refinement may include:
- a) A change to an adopted Program that results from State law;
 - b) A change to an adopted Program that affects local processes and procedures;
 - c) A change to a local ordinance or code that clarifies an existing provision; and
 - d) A minor change to an element of an adopted Program that is clearly consistent with the provisions of State Critical Area law and all the Criteria of the Critical Area Commission.
- (109) "Project approvals" means the approval of development, other than development by the State or local government, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.
- (110) "Property owner" means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.

- (111) "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.
- (112) "Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including water bodies.
- (113) "Reconfiguration" means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. Reconfiguration includes a lot line adjustment, a boundary line adjustment, and a replatting request.
- (114) "Redevelopment" means the process of developing land which is or has been developed. For purposes of implementing specific provisions of this ordinance, redevelopment (as opposed to new development) means a development activity that takes place on property with pre-development imperviousness (in IDA) or lot coverage (in LDA and RCA) of 15 percent or greater.
- (115) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.
- (116) "Renewable resource" means a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.
- (117) "Resource Conservation Area" means an area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource conservation areas include areas with a housing density of less than one dwelling per five acres.
- (118) "Resource utilization activities" means any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.
- (119) "Restoration" means the act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.
- (120) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.
- (121) "Road" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body. "Road" does not include a

drive aisle or driveway.

- (122) "Seasonally flooded water regime" means a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.
- (123) "Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.
- (124) "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area. More specifically, the term refers to:
- a) Nonstructural. Creation of an intertidal marsh fringe channelward of the existing bank by one of the following methods:
 - (1) Vegetation. Planting an existing shore with a wide band of vegetation;
 - (2) Bank Sloping/Vegetation. Sloping and planting a non-wooded bank to manage tidal water contact, using structures to contain sloped materials if necessary; and
 - (3) Contained Beach. Filling along shore with sandy materials, grading, and containing the new beach to eliminate tidal water contact with the bank.
 - b) Structural Erosion Control.
 - (1) Revetment. Facing laid on a sloping shore to reduce wave energy and contain shore materials;
 - (2) Bulkhead. Excluded due to adverse impacts to the near shore marine environment, except in the following special cases:
 - (a) Where erosion impact is severe and high bluffs and/or dense woodland preclude land access, bulkheads can be installed by shallow draft barge and pile driver; and
 - (b) In narrow, manmade lagoons for activities that require frequent interchange between boats and land.
- (125) "Significantly eroding areas" means areas that erode two feet or more per year.
- (126) "Simplified Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under COMAR 27.01.09.01-3H.

- (127) "Small shrub" means a shrub that, when mature, reaches a height no greater than six feet.
- (128) "Soil Conservation and Water Quality Plans" means land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:
- a) How the landowner plans to treat a farm unit;
 - b) Which best management practices the landowners plans to install to treat undesirable conditions; and
 - c) The schedule for applying those Best Management Practices.
- (129) "Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland.
- (130) "Spoil pile" means the overburden and reject materials as piled or deposited during surface mining.
- (131) "Steep slopes" means slopes of 15 percent or greater incline.
- (132) "Structure" means anything constructed or erected on or over land or water that may or may not result in lot coverage.
- (133) "Substantial alteration" means any repair, reconstruction, or improvement of a principal structure, where the proposed total footprint is at least 50 percent greater than that of the existing principal structure.
- (134) "Supplemental planting plan" means a description and landscape schedule that shows the proposed species type, quantity, and size of plants to be located within a buffer if natural regeneration does not meet the required stem density.
- (135) "Surface mining" means the breaking of the surface soil in order to extract or remove minerals in the Critical Area. Surface mining includes any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this ordinance, surface mining is also defined as operations engaged in processing minerals at the site of

extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.

- (136) “Temporary disturbance” means a short-term change in the landscape that occurs as part of a development or redevelopment activity. “Temporary disturbance” includes:
- a) Storage of materials that are necessary for the completion of the development or redevelopment activity;
 - b) Construction of a road or other pathway that is necessary for access to the site of the development or redevelopment activity, if the road or pathway is removed immediately after completion of the development or redevelopment activity and the area is restored to its previous vegetative condition;
 - c) Grading of a development site, if the area is restored to its previous vegetative condition immediately after completion of the development or redevelopment activity; and
 - d) Locating a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required.

“Temporary disturbance” does not include a violation.

- (137) "Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.
- (138) “Threatened species” means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources that appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a “threatened” species pursuant to the federal Endangered Species Act, 16 U.S.C. § 1431 et seq., as amended.
- (139) "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.
- (140) "Transitional habitat" means a plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.
- (141) "Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.

- (142) “Tree” means a large, woody plant having 1 or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.
- (143) "Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local program procedures approved by the Critical Area Commission.
- (144) “Understory” means the layer of forest vegetation typically located underneath the forest canopy.
- (145) “Understory tree” means a tree that, when mature, reaches a height between 12 and 35 feet.
- (146) “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.”
- (147) “Upland boundary” means the landward edge of a tidal wetland or nontidal wetland.
- (148) "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.
- (149) "Wash plant" means a facility where sand and gravel is washed during processing.
- (150) "Water-based aquaculture" means the raising of fish and shellfish in any natural, open, free-flowing water body.
- (151) “Water-dependent facilities” means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. Such activities 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.
- (152) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.
- (153) "Waterfowl" means birds that frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants

and animals.

- (154) "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passage for wildlife.
- (155) "Wildlife habitat" means those plant communities and physiographic features that provide food, water, cover, and nesting areas, as well as foraging and feeding conditions necessary to maintain populations of animals in the Critical Area.

Chapter 1-102. Purpose and Intent ⁽¹⁾

A. Intent.

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

B. Purpose.

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

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

C. Goals.

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

- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- (2) Conserve fish, wildlife, and plant habitat; and

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

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

Chapter 1-103. Implementation of the Critical Area Provisions ⁽²⁾

A. Local implementation.

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

B. Critical Area Program.

The County adopted its Critical Area Program on *September 10, 1988*. The Program consists of this ordinance, the County's Critical Area maps, and the County's zoning and subdivision regulations.

C. Regulated activities and applicability.

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

D. Notification of project applications ⁽³⁾.

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

² Natural Resources Article 8-1808. Program Development.

³ COMAR 27.03.01

shall be void.

E. Responsible agencies.

The County's Critical Area Program and all applicable provisions of this ordinance shall be implemented and enforced by the County *Department of Technical and Community Services*. Should an infraction of the provisions contained in any law, regulation, or plan related to the County's Critical Area Program be brought to the attention of any County official, said official shall contact the Director or designee who may consult with the County Attorney to determine the proper remedial course of action. If appropriate, the Director or designee shall inform the Critical Area Commission about the infraction and any decision made regarding remedial action. The Critical Area Commission, at its discretion, may also take remedial action under the authority it is given under State law.

Chapter 1-104. Administrative Enforcement⁽⁴⁾

A. Applicability.

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

B. Compliance officials.

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

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

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

violation, restore the property, and require appropriate mitigation. The Critical Area Commission, at its discretion, may also pursue its own remedial action or assist the County as provided for in State law.

C. Violations⁽⁵⁾.

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

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

- (1) The Director or designee shall order discontinuance of illegal use of land, buildings, or structure; removal of illegal buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.
- (2) For the purposes of this provision, a violation shall include but not be limited to the following:
 - (a) Violation of Somerset County Critical Area Program.
 - (b) Violation of Somerset County Zoning Ordinance.
 - (c) Violation of an existing Somerset County Board of Zoning Appeals order, condition or restriction.
 - (d) Violation of Somerset County Nuisance Ordinance.
 - (e) Violation of Somerset County Forest Conservation Ordinance.
 - (f) Violation of Somerset County Flood Plain Management Ordinance.
 - (g) Violation of Somerset County Subdivision Ordinance.
 - (h) Violation of Somerset County Building Code Ordinance.
 - (i) Any other violation including, but not limited to, non-compliance with any order of the Department of Technical and Community Services (DTCS), the Board of Zoning Appeals, or a court of competent jurisdiction including but not limited to an order to modify or remove a structure, to perform mitigation, or to pay fines or assessed penalty fees related to a citation or other violation issued by DTCS.
- (3) No zoning application, application to the Somerset County Board of Zoning

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

Appeals for administrative review, modification of an existing Board of Zoning Appeals order, special exception, variance or other application seeking action by the Board to Zoning Appeals or the Somerset County Planning and Zoning Commission shall be accepted or shall otherwise proceed if a violation as above described shall exist upon or be related to the subject parcel until the violation is corrected or a plan has been approved permitting the application to proceed⁽⁶⁾.

D. Complaints and Investigations of Violations.

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person, including a representative of Somerset County in the performance of their duties, may report a complaint. Such complaint shall state fully the causes and basis thereof and shall be documented by the Department of Technical and Community Services. DTCS shall promptly investigate the complaint and take appropriate action in accordance with this Ordinance. In the course of investigation of a complaint, DTCS is authorized to enter upon the subject property in order to identify or verify a reported violation. The authority to investigate a reported violation shall not include the entry into a dwelling, or other structure, on the subject property without the consent of the property owner, or the property owner's agent, unless a permit has been issued authorizing such entry as part of the ordinary inspection process.

When an investigation of a complaint requires entry upon private land where no permit, or permission from the owner, exists the following procedures shall apply:

- (1) The investigator shall use a marked Somerset County vehicle and have personal Somerset County identification visible.
- (2) The investigator may enter a driveway or other access on the property unless the property is posted "No Trespassing".
- (3) A posting of "No Trespassing" shall be honored and the investigator may use other means of contacting the owner.
- (4) If there is no visible posting of "No Trespassing" on private land with improvements such as buildings or enclosed structures, the investigator shall attempt contact, on site, with the owner including, but not limited to knocking on the door or ringing the door bell. The investigator, upon failing to make on site contact may also conduct a cursory inspection of the curtilage around the buildings or enclosed structures, but shall not enter any buildings or enclosed structures on the property.
- (5) If there is no visible posting of "No Trespassing" on private open land with

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

improvements such as buildings or enclosed structures, the investigator shall be authorized to enter upon the private open land and conduct a cursory inspection.

- (6) If entry is denied, the local authority may seek an injunction to enter the property to pursue an enforcement action ⁽⁷⁾.

E. Required enforcement action⁽⁸⁾.

If DTCS identifies a violation of this subtitle or any provision of the County's Critical Area ordinances or regulations, it shall take enforcement action including:

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

F. Responsible persons⁽⁹⁾.

The following persons may each be held jointly or severally responsible for a violation:

- (1) persons who apply for or obtain any permit or approval, (2) contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6) any person who has committed, assisted, or participated in the violation.

G. Administrative civil penalties⁽¹⁰⁾.

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

7 Natural Resources Article 8-1815(a)

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

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

10 Natural Resources Article 8-1808(c)(1)(iii)14 and (c)(2)

- (1) Before imposing any civil penalty, the person(s) believed to have violated this ordinance shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, the Director or designee shall consider:
 - (a) The gravity of the violation;
 - (b) The presence or absence of good faith of the violator;
 - (c) Any willfulness or negligence involved in the violation including a history of prior violations;
 - (d) The environmental impact of the violation; and
 - (e) The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to the State or local authorities for performing, supervising, or rendering assistance to the restoration and mitigation.
- (2) When a Chapter of this ordinance establishes a different maximum amount for a civil penalty for any violation, the larger amount shall apply.
- (3) Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
- (4) The person responsible for any continuing violation shall promptly provide the Director or designee with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for the County inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until the County receives such written notice and verifies compliance by inspection or otherwise.
- (5) Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by the County of all damages, costs, and other expenses caused by the violation, including the cost to correct any violation or repair, restore, or replace any County property.

- (6) Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Code.

H. Notice of violations and assessment of administrative civil penalties⁽¹¹⁾.

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

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

I. Administrative abatement, restoration, and mitigation orders⁽¹²⁾.

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

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

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

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

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

- (2) Director or designee may issue a restoration order to any person compelling the person to perform the following:
 - (a) To remove any construction materials, equipment, and any structures or other construction work built or erected in violation of this ordinance;
 - (b) To restore any property to its condition as it existed before any violation of this ordinance;
 - (c) To perform any condition or obligation required by this ordinance or by any permit, approval, special exception, variance, license, contract, deed, or other instrument required or executed pursuant to this ordinance;
- (3) Administrative abatement and restoration orders shall be sent to the alleged violator by certified mail, return receipt requested, and simultaneously by first-class mail, postage prepaid, bearing a return address. Service shall be effective upon mailing. In addition, any other method of service reasonably calculated to provide actual notice, and any method that does provide actual notice, shall be sufficient, including service by personal delivery to a responsible person at any construction site or posting the order in a conspicuous place on any structure, sign, land, or equipment.
- (4) The Director or designee shall issue a mitigation order to any person receiving notice of or issued a citation for conducting or having conducted an unauthorized action. Mitigation is required for all violations of the County's Critical Area Program and shall be in addition to any required abatement or restoration activities⁽¹³⁾. In evaluating the type and amount of mitigation, the Department shall consider the severity of the impact on water resources and habitat and the length of time necessary to restore the resources to their condition prior to the violation, or if that is not possible to recreate or establish and permanently protect similar resources in another location. The mitigation order shall compel the person to perform the following:
 - (a) To implement appropriate water quality improvement or habitat enhancement measures that are sufficient to offset adverse impacts to the Critical Area resulting from the violation as follows:

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

- (i) Mitigation is required at a three-to-one ratio for the area disturbed or the area of the development activity outside the 100-foot Buffer and expanded Buffer, and
- (ii) Mitigation is required at a four-to-one ratio for the area disturbed or the area of the development activity within the 100-foot Buffer or expanded Buffer;
- (b) To prepare or to have a qualified professional prepare a mitigation plan that includes water quality improvement or habitat enhancement measures to offset adverse impacts to the Critical Area resulting from the violation as specified in Paragraph (a) above; or
- (c) To pay a fee-in-lieu of mitigation that shall be deposited in a dedicated “Critical Area Restoration Fund” and used exclusively to conduct or facilitate activities or projects that promote the goals of the Critical Area Program and to ensure its effective implementation within the jurisdiction.

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

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

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

K. Bonding for restoration and mitigation orders⁽¹⁴⁾.

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

- (1) Collect a bond or other financial security to ensure that the restoration or mitigation is properly completed;

14 Natural Resources Article 8-1815

- (2) Hold a bond for at least two years if the restoration involves planting in order to ensure the survival of the plantings. The two years will run from the date the plantings are installed; and
- (3) Schedule and perform an inspection of the property at the property owner's request as necessary to ensure compliance and promptly release the bond or other financial security when compliance is confirmed.

L. Cumulative remedies⁽¹⁵⁾.

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

M. Injunctive relief⁽¹⁶⁾.

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

- (1) The pendency of an appeal to the Board of Zoning Appeals or subsequent judicial review shall not prevent the County from seeking injunctive relief to enforce an administrative order, permit, decisions, or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.
- (2) In an action for injunctive relief to enforce an administrative order, the court may also impose a civil fine up to \$10,000 for each day that an administrative order was violated, but not exceeding \$10,000, after considering:
 - (a) The willfulness for the violation;
 - (b) The harm to the environment or the community in which the violation occurred; and
 - (c) The cost to the County of enforcing the administrative order.

N. Permits pursuant to a violation⁽¹⁷⁾.

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

- (1) Fully paid all administrative, civil, or criminal penalties as set forth in Section E.

15 Natural Resources Article 8-1808 and 8-1815

16 Natural Resources Article 8-1815

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

above;

- (2) Prepared a restoration or mitigation plan, approved by the Department, to abate impacts to water quality or natural resources as a result of the violation;
- (3) Performed the abatement measures in the approved plan in accordance with the local Critical Area regulations; and
- (4) Unless an extension of time is approved by the Department because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

O. Variations pursuant to a violation⁽¹⁸⁾.

No zoning application, application to the Somerset County Board of Zoning Appeals for administrative review, modification of an existing Board of Zoning Appeals order, special exception, variance or other application seeking action by the Board of Zoning Appeals or the Somerset County Planning and Zoning Commission shall be accepted or shall otherwise proceed if a violation as above described shall exist upon or be related to the subject parcel until the violation is corrected or a plan has been approved permitting the application to proceed.

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

The Director or designee may decline to issue or renew, or may suspend or revoke any permit or license issued under the authority of, or required by this ordinance.

- (1) Such action may be taken on the following grounds:
 - (a) False, misleading, inaccurate, incomplete, or incorrect information given on any application; or
 - (b) Serious or repeated violations of this ordinance, or any terms, conditions, or restrictions in the permit or license itself.
- (2) The Director or designee shall give written notice and opportunity to be heard before any non-issuance, non-renewal, suspension, or revocation and shall render a written decision on the matter, which shall be considered an administrative order and may be appealed to the Board of Zoning Appeals.

18 Natural Resources Article 8-1808(d)(7)

Q. Enforcement costs⁽¹⁹⁾.

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

R. Appeals.

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

Chapter 1-105. Development in the Critical Area⁽²⁰⁾

A. Description.

The provisions of this chapter apply generally to all development, redevelopment and development activities throughout the Critical Area, except where specifically noted.

B. General policies.

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

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

19 Natural Resources Article 8-1815

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

C. Implementation.

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

D. Activities not permitted except in IDA.

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

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

E. Activities not permitted.

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

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

F. Continuation of existing, permitted facilities.

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

G. Reasonable accommodations for the needs of disabled citizens.

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

- (1) An applicant shall have the burden of demonstrating by a preponderance of evidence that:
 - (a) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
 - (b) Literal enforcement of the requirements of this chapter would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;
 - (c) A reasonable accommodation would reduce or eliminate the discriminatory effect of the requirements or restore the disabled resident's or user's reasonable use or enjoyment of the property;
 - (d) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property; and
 - (e) The accommodation would
 - (i) Be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or
 - (ii) Allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.
- (2) The Board of Zoning Appeals shall determine the nature and scope of accommodation under this section and may award different or other relief than requested after giving due regard to:
 - (a) The standards given in this section;

- (b) The purpose, intent, or effect of the requirements from which relief is requested; and
 - (c) The size, location, nature, and type of accommodation proposed and whether alternatives exist which could accommodate the need with less adverse effect.
- (3) The Board of Zoning Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the County's ability to restore the property should the applicant fail to do so.

Chapter 1-106. Intensely Developed Areas⁽²¹⁾.

A. Description.

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

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

B. Additional requirements.

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

C. General policies.

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

- (1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
- (2) Accommodate additional development of the type and intensity designated by the

21 COMAR 27.01.02.03

County in this Program provided that water quality is not impaired;

- (3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;
- (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat Protection Area Chapters of this ordinance, to the extent possible within Intensely Developed Areas; and
- (5) Encourage the use of retrofitting measures to address existing stormwater management problems.

D. Development standards.

The following criteria are hereby adopted for intensely developed areas:

- (1) All development plans shall be assessed for their impacts on water quality and other biological resources;
- (2) For redevelopment plans, opportunities to reduce impacts on water quality generated by existing development shall be analyzed;
- (3) A part of all plans for development and redevelopment, urban best management practices shall be considered and, where appropriate, implemented;
- (4) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in those Chapters of this ordinance;
- (5) All roads, bridges, and utilities are prohibited in a Habitat Protection Area, unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction, and maintenance shall:
 - (a) Provide maximum erosion protection;
 - (b) Minimize negative impact on wildlife, aquatic life, and their habitats; and
 - (c) Maintain hydrologic process and water quality.
- (6) All development activities that must cross or affect streams shall be designed to:
 - (a) Reduce increases in flood frequency and severity that are attributable to development;

- (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
 - (c) Provide a natural substrate for stream beds; and
 - (d) Minimize adverse water quality and quantity impacts of stormwater.
- (7) Stormwater shall be addressed in accordance with the following provisions:
- (a) The County shall require, at the time of development or redevelopment, that technologies as required by applicable State and local ordinances be applied by anyone undertaking development activities in order to minimize adverse impacts to water quality caused by stormwater.
 - (b) In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least 10 percent below the level of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for compliance with this requirement is provided in the *Critical Area 10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.
 - (c) In the case of new development, offsets as determined by the County shall be used if they reduce pollutant loadings by at least 10 percent of the pre-development levels. Guidance for compliance with this requirement is provided in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003* and as may be subsequently amended.
 - (d) Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures. Guidance regarding offsets is provided in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003*.
- (8) If practicable, permeable areas shall be established in vegetation and whenever possible, redevelopment shall reduce existing levels of pollution.
- (9) Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within Intensely Developed Areas.
- (10) Ports and industries which use water for transportation and derive economic

benefits from shore access shall be located near existing port facilities. The County may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or County and is consistent with the provisions of the Water Dependent Facilities Chapter of this ordinance and other State and Federal regulations.

- (11) The County shall promote, with the assistance from State agencies, participation in programs and activities for the enhancement of biological resources within the Critical Area for their positive effects on water quality and urban wildlife habitat. These programs may include urban forestry, landscaping, gardens, wetland and aquatic habitat restoration elements.
- (12) To the extent practicable, future development in the Critical Area shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.
- (13) When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, the following shall be required:
 - (a) Participation in programs established by the County for the enhancement of forest and developed woodland resources, such as programs for urban forestry that involve street tree plantings, gardens, landscaping, and open land buffer plantings;
 - (b) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
 - (c) Development activities shall address the protection of existing forests and developed woodlands identified as Habitat Protection Areas in the applicable chapters of this ordinance.

E. Public education program.

The County shall use a public education program to alert developers and property owners to potential impacts, mitigation measures and urban best management practices that should be considered as part of projects proposed in intensely developed areas from individual dwellings through major development projects.

Chapter 1-107. Limited Development Areas⁽²²⁾.

A. Description.

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

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

B. General policies.

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

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

C. Development standards.

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

- (1) Adherence to the provisions of the applicable Chapters of this ordinance regarding

Habitat Protection Areas and water-dependent facilities;

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

of woodland vegetation; and

- (c) Provide protection for forests and developed woodlands identified as Habitat Protection Areas in this Program.
- (6) For the alteration of forest and developed woodland in the Limited Development Area, the County shall apply all of the following requirements:
- (a) The total acreage in forest coverage within the County in the Critical Area shall be maintained or preferably increased;
 - (b) All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
 - (c) For clearing up to 1,000 square feet of forests or developed woodlands, mitigation shall be provided on an equal area basis.
 - (d) For clearing over 1,000 square feet of forests or developed woodlands, no more than 20 percent of any forest or developed woodland may be removed from forest use, except as provided in paragraph (d) below. The remaining 80 percent shall be maintained through recorded, restrictive covenants or similar instruments approved by the County Attorney;
 - (e) The County may authorize clearing more than 20 percent of forest and develop woodlands, but not more than 30 percent, provided that the afforested area shall consist of 1.5 times the total surface acreage of the cleared forest or developed woodland are or both; and
 - (f) Developed woodland vegetation shall be conserved to the greatest extent practicable.
- (7) Clearing in excess of 30 percent of an existing forest or developed woodland is prohibited without a variance.
- (8) In addition, applicants shall adhere to the following criteria for forest and woodland development:
- (a) Grading permits shall be required before forest or developed woodland is cleared;
 - (b) Forests which have been cleared before obtaining a grading permit or that exceed the maximum area allowed in subsection (7) above shall be replanted at three times the areal extent of the cleared forest;

- (c) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent;
 - (d) All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants or other protective instruments approved by the County Attorney;
 - (e) The applicant shall designate, subject to the approval of the County, a new forest area on a part of the site not forested; and
 - (f) The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the County Attorney.
- (9) Applicants shall adhere to the following standards for development on steep slopes. Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas set forth above.
- (10) Except as otherwise provided in this sub-Chapter, for stormwater runoff, man-caused lot coverage shall be limited to 15 percent of the site.
- (a) If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
 - (b) If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
 - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
 - (d) Lot coverage limits provided in Paragraphs (a) and (b) above may be exceeded, upon findings by the Planning Director or his designee that the following conditions exist:
 - (i) Lot coverage associated with new development activities on the

- property have been minimized;
- (ii) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in Paragraph (a) by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
- (iii) For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in Paragraph (b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
- (iv) The following table summarizes the limits set forth in paragraphs 1 through 3 above:

Table 1-107.C(7)(d) Lot Coverage Limits

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

If the *Planning Director or his designee* makes the findings set forth in Paragraph (d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:

- (i) Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
- (ii) Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.
- (iii) If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the County may require the property owner to pay a fee to the County in lieu of performing the on-site mitigation. The amount of the fee shall be \$1.00 per square foot of the required mitigation. The County shall use all fees collected under this provision to fund projects that improve water quality within the Critical Area, consistent with the County’s Critical Area Program and Zoning Ordinance.

- (f) A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements. For the purpose of increasing lot coverage on these parcels, the lot coverage limitations may not be construed to apply to a development activity for which a building permit was issued before July 1, 2008 and construction was initiated and an inspection was performed before July 1, 2009.
- (11) The County may allow for modifications in road standards on a case-by-case basis to reduce potential impacts to the site and Critical Area resources, where the reduced standards do not significantly affect safety.
- (12) To reduce the extent of lot coverage and maximize areas of natural vegetation, cluster development shall be considered when planning for future development.
- (13) Development may be allowed on soils having development constraints if the development includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish or wildlife habitat.

D. Complementary State laws and regulations.

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

- (1) For soil erosion and sediment control (COMAR 26.17.01)
 - (a) In order to prevent soil erosion and sedimentation, a Soil Erosion and Sedimentation Control Plan shall be required whenever a development within the Critical Area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the requirements of the Natural Resources Article and Environment Article of the Annotated Code of Maryland and local ordinances. Sediment control practices shall be appropriately designed to reduce adverse water quality impacts.
- (2) For stormwater runoff (COMAR 26.17.02)
 - (a) The County requires limitations on stormwater runoff such that applicants for development must ensure that downstream property, watercourses, channels or conduits do not receive stormwater runoff at a higher volume or rate than would have resulted from a 10-year storm were the land in its predevelopment state.

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

Chapter 1-108. Resource Conservation Areas⁽²³⁾.

A. Description.

Resource Conservation Areas are those areas characterized by nature-dominated environments (that is wetlands, forests, abandoned fields) and resource-utilization activities (that is agriculture, forestry, fisheries activities or aquaculture). At the time of the initial mapping, these areas shall have had at least one of the following features:

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

B. General policies.

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

- (1) Conserve, protect and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;

23 COMAR 27.01.02.05

- (2) Provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the Chesapeake Bay, the Atlantic Coastal Bays, their tributaries or coastal habitats in order to sustain populations of those species;
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities and aquaculture; and
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

C. Development standards.

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

- (1) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area Chapter, the Agricultural Chapter, and the Forest and Woodlands Protection Chapter of this ordinance.
- (2) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.
- (3) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the County. Such mechanisms as cluster development, transfer of development rights, maximum lot size provisions and/or additional means to maintain the land area necessary to support the protective uses will be encouraged by the County and implemented as necessary.
- (4) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture or residential development not exceeding the density specified above, shall be allowed in Resource Conservation Areas.
- (5) If any existing use does not conform to the provisions of the Resource Conservation Area, its intensification or expansion may be permitted only in accordance with the variance provisions outlined in Chapter 1-115
- (6) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the County's growth allocation provisions or as listed in Part E. below. Additional land may not be zoned or used for industrial, commercial, or institutional development, except as

provided by the County's growth allocation provisions.

- (7) Development activity within the Resource Conservation Areas shall be consistent with the requirements for Limited Development Areas as specified in this ordinance.
- (8) An essential service, provided the essential public service is publicly owned and operated.
- (9) For all subdivisions in an RCA, located on parcels or tracts that are not immediately adjacent to IDA or LDA, the following notation shall be placed on the final plat and shall be a recorded covenant for each lot:

“This subdivision is denoted as a “Residential Farm Community.” The purpose of the Residential Farm Community denotation is to place all lot owners in this development on notice that it is the intent of Somerset County to promote the preservation of the County's valuable and irreplaceable farmland and commercial forests by discouraging intense development in Resource Conservation Areas (RCA) that are not adjacent to designated growth areas. In these areas, the County intends to preserve, encourage and protect farm and forest resources and their productivity to ensure that agriculture and forestry enterprises will continue to have the necessary flexibility to adjust as economic conditions change. There, it is the specific intent of the County to give priority to agriculture and forestry activities in these areas. Furthermore, it is the intent of the County that there shall be no basis, under this Ordinance, for recourse against the effects of normal farming and forestry operations as permitted including, but not limited to noise, odor, vibration, fumes, dust, or glare.”

- (10) Permitted uses in open space areas on parcels of land located in Resource Conservation Areas that are not immediately adjacent to an LDA or IDA shall be limited to agriculture, forestry, natural cover, or recreation except that individual wells, septic drainfields, or shared facilities may be located in the open space area, consistent with the density limitations in the RCA.

D. Calculation of 1-in-20 acre density of development⁽²⁴⁾.

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

- (1) Shall count each dwelling unit;
- (2) May permit the area of any private wetlands located on the property to be included

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under the following conditions:

- (a) The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and
 - (b) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the County, the Critical Area Commission, and the State Department of the Environment.
- (3) May consider one additional dwelling unit as part of a primary dwelling unit for the purpose of the density calculation under this section in accordance with the following provisions:
- (a) Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit; does not exceed 900 square feet in total enclosed area; and is served by the same sewage disposal system as the primary dwelling unit; or
 - (b) Is located within the primary dwelling unit; by its construction, does not increase the amount of lot coverage already attributed to the primary dwelling unit; and is served by the same sewage disposal system as the primary dwelling unit;
 - (c) An additional dwelling unit meeting all of the provisions of this 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 in Chapter 1-115 “Variances.”

E. Land use in the RCA.

In addition to the uses specified above, certain nonresidential uses may be permitted in Resource Conservation Areas if it is determined by the Director or designee that the proposed use is one of the following:

- (1) A home occupation as an accessory use on a residential property and as provided for in the County’s zoning ordinance;
- (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 impervious surfaces are limited to 15 percent of the site or 20,000 square feet, whichever is less;
- (4) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility;
- (5) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;
- (6) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;
- (7) A group home or assisted living facility with no more than eight residents;
- (8) An essential services, provided the service meets a public need and is not solely for the purposes of a commercial enterprise;
- (9) Other uses determined by the County and the Critical Area Commission to be similar to those listed above.

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

Existing industrial, institutional and commercial facilities, including those directly supporting agriculture, forestry, aquaculture, or residential development shall be allowed in RCAs,

Chapter 1-109. Forest and Woodland Protection⁽²⁵⁾.

A. General Policies.

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

- (1) Maintain and increase the forested vegetation in the Critical Area;
- (2) Conserve forests and developed woodlands and provide for expansion of forested areas;
- (3) Provide that the removal of trees associated with development activities shall be

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minimized and, where appropriate, shall be mitigated; and

- (4) Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation, and other resources can be maintained, even when they are mutually exclusive.

B. Identification.

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

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

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

- (1) Vegetation shall be maintained in its natural condition along all streams to provide wildlife corridors.
- (2) A minimum 100-foot Buffer shall extend landward from the mean high water line of tidal water, and the edge of tributary streams and tidal wetlands. This area is to be conserved for wildlife protection.
- (3) Non-tidal wetland forests should be left in a natural state for wildlife and water quality protection.
- (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with these areas) shall be conserved.
- (5) Existing riparian forests (for example, those relatively mature forest of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline) and/or which are documented breeding areas shall be conserved.

D. Process.

If a forest is to be developed or to be harvested, a site-specific field investigation shall be conducted to determine if important sensitive species present and to make sure that appropriate protection measures are incorporated into the development plan or Timber Harvest Plan. When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants are advised to review and utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In

addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development. In general, the following measures are recommended:

- (1) Minimize forest and woodlands disturbance from off-road vehicles, public use or logging from May through August of each year;
- (2) Focus all development on the periphery of the forest or woodlands;
- (3) Retain the forest canopy as well as shrub understory;
- (4) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
- (5) Discourage the creation of small clearings and expansion of forest edge habitats;
- (6) Encourage re-establishment of native forests and woodlands; and
- (7) Adopt harvest techniques to maintain or improve habitat.

E. Policies for the establishment or replacement of forest.

The following policies should be used for afforestation and reforestation:

- (1) The replacement or establishment of forest or developed woodlands should ensure a diversified plant community and should include canopy trees, understory trees, shrubs and herbaceous plants.
- (2) Native species should be used for all reforestation and afforestation.

F. Enforcement.

Unauthorized clearing, cutting, or removal of vegetation; unauthorized clearing, cutting, or removal of vegetation in the Buffer; and clearing, cutting or removal of vegetation in excess of the area permitted to be cleared by this ordinance is considered a civil violation of this ordinance and shall result in enforcement action as specified in Chapter 1-104.

G. Specific Criteria.

Specific development standards are detailed in Chapter 1-109 and Chapter 1-120 relating to criteria for altering existing forests and woodlands.

Chapter 1-110. Reforestation and Afforestation Standards Beyond the Buffer⁽²⁶⁾.

The following are considered minimum standards related to planting and mitigation for

²⁶ Existing County procedures.

forests and developed woodlands. These standards do not replace those standards specified for planting the Buffer as described in Chapter 1-124. These standards may be increased at the discretion of the Planning Commission in consideration of special circumstances that demand a higher standard of protection based on findings on the record.

A. Planting Plan Requirements for Subdivision and Site Plan Approval

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

- (1) The site plan, building outlines, walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements, and the general location of structures and uses of abutting properties;
- (2) Existing and proposed grades;
- (3) Existing vegetative cover to be retained and the location, general size and type of such vegetation;
- (4) The methods for protecting existing plant materials during and after construction;
- (5) A planting schedule and plan listing plants to be used giving their scientific and common names, type of planting stock and size at time of planting and quantity of each;
- (6) An indication of the spacing and location of all plantings
- (7) When the planting plan agreement requires signs and/or fencing, show on plat the location and show samples and specifications.

B. Planting Plan Requirements for all other Permit Approvals.

For cutting or clearing of forests or developed woodlands not associated with subdivision or site plan approval the following is required:

- (1) Reforestation and afforestation plans will be incorporated as a condition of the building permit.
- (2) If the cutting or clearing will disturb less than 1,000 sq ft of forest or developed woodlands, the applicant will be required to replace the removed area on a not less than equal basis.

- (3) If the cutting or clearing will disturb 1,000 sq ft to 5,000 sq ft of forest or developed woodland, the applicant will be required to comply with planting standards that will be provided as an attachment to the building permit. Alternate planting plans must have prior approval of the DTCS. The applicant may submit a planting plan agreement with the building permit application to the County DTCS. The DTCS will review the planting plan agreement and if necessary, will forward the agreement to the Maryland Forest Service for comments. The approved agreement will be attached as a condition to the building permit.
- (4) For cutting or clearing that will disturb 5,000 square feet or more of forest or developed woodland, a planting plan agreement must be submitted with the project application to the County DTCS. In addition, the applicant will be required to provide a financial guarantee or surety. The surety must be sufficient to cover labor, plant stock and maintenance for a period of 2 years. Replanting must occur by the owner if the survival rate falls below the survival rates specified in this Table 1-110.F.: Plant Stocking and Survival Requirements.
- (5) Grading permits must be obtained before 5,000 or more square feet of forest or developed woodlands may be cleared. The permit application should be submitted to the County Department of Technical and Community Services along with a project Soil Erosion and Sedimentation Control Plan approved by the County Soil Conservation District.
- (6) If forests or developed woodlands are cleared before the grading permit is obtained, or if the cleared area exceeds the maximum allowed, the forest or developed woodland must be replanted at 3 times the area extent of the cleared forest.
- (7) On proposed development sites where no forest exists, plantings must be done to provide forest or developed woodland cover of at least 15 % of the site and must be directed to the Buffer.
- (8) The afforested area must be maintained as forest or developed woodland through easements, restrictive covenants, or other protective instruments.
- (9) The DTCS must be consulted for the species appropriate for each site and for the best planting plan for protection of water quality, wildlife habitat and corridors. An approved Planting Plan Agreement must be in place, and may or may not require signs and/or fencing.

C. Planting Plan Agreement

The planting plan agreement submitted by the applicant shall delineate the planting area

and shall specify the planting and maintenance standards that will be followed, including the bond. Planting and maintenance should be based on the site-specific situation. Applicants are required to diversify their tree planting plans with at least 3 different species. Planting plans should attempt to create natural areas. The plant stocking, quantity, spacing and survivability of the planting shall be in accordance with the Table 1-110.F: Plant Stocking and Survival Requirements. Applicants will receive a handout that recommends species for planting, planting dates and proper maintenance.

D. Plant Materials, Spacing and Schedule

- (1) Plantings shall consist of trees and/or native shrub species spaced approximately at 8 foot interval in rows 8 feet apart, or other suitable spacing as determined by the DTCS on a site-by-site basis. The plant stocking, quantity, spacing and survivability of the planting shall be in accordance with Table 1-110. F: Plant Stocking and Survival Requirements.
- (2) Tree or shrub species for afforestation or reforestation shall be approved the Somerset County Forest Conservation Planner or County designee.
- (3) All planting should be completed between the month of October and the month of May. For the first 2 years, steps must be taken to control competing vegetation.

E. Estimates of Cost.

The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and the cost estimate, the developer or owner may be required by the County to enter into a Public Works Agreement with the County as established in the County Subdivision Regulations to provide plantings as may be required. The agreement shall be accompanied by a surety bond or other approved surety executed by the owner or developer in the amount of 120 percent of the proposed plant material, labor and maintenance costs. The following provisions shall apply to the Public Works Agreement for the Planting Plan:

- (1) If all afforestation or reforestation is not completed within 1 year after the first spring planting date following recordation, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited (or if a bond or surety has been posted, payment in full to the County shall be ordered). The funds, so received, shall be used by the County to defray the cost of providing the approved afforestation or reforestation for the site.
- (2) If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be a continuing obligation of the property owner. The County may file a lien.
- (3) All bonds or other forms of surety shall be in a form acceptable to and approved

by the County Commissioners.

- (4) All security posted will be held for a period of 2 years after installation of the planting, to assure the proper survival and maintenance. Failure to maintain or replace the dead portions of the planting shall result in a forfeiture of the surety posted for the amount necessary to replace the dead plant materials.
- (5) Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be waived. However, to the extent that existing vegetation, at least five years old, is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted and approved.
- (6) All plantings shall be inspected by the County upon notification by the developer or owner and shall be approved if they follow the Planting Plan.

F. Plant Stocking and Survival Requirements.

Table 1-110.F: Plant Stocking and Survival Requirements

Size of Planting Stock	Size of Planting Area	Quantity Per Acre	Approximate Spacing	Survivability Requirement at End of Second Growing Season
Bare Root Seedlings or Whips	<=4,000 SF	700	8' x 8'	75% or 525 Per Acre
Bare Root Seedlings or Whips	> 4,000 SF	700	8' x 8'	65% or 455 Per Acre
Container Growth 1-5 Gallon	Any	435	10' x 10'	80% or 348 Per Acre
Balled and Burlapped 1"-2" Caliper	Any	300	12' x 12'	95% or 285 Per Acre

G. Reforestation Area Unavailable on Site.

When an area for reforestation is not available on the site, the developer shall either select an alternative off-site location or shall pay an in-lieu-of fee to the County in accordance with the requirements set forth in Section I. below. The County acknowledges that the fees collected cover the cost of planting only. The County acknowledges that it will require the property owner to execute a planting plan agreement. The County

acknowledges that, pursuant to the executed planting plan agreement, it will require the property owner to assume all responsibility for, and costs associated with identifying and acquiring appropriate planting locations or easements; maintaining the planting for a period of two-years; replacing plantings as necessary at the end of the two-years to meet the survival requirements specified in Table.1-110.F in this Chapter; and providing appropriate recorded plats, deed restrictions, or easements as necessary to ensure the long-term protection of these areas. The County is responsible for all tasks associated with administering a fee-in-lieu program, shall maintain all funds collected in a separate account, and shall provide information regarding the collection and expenditure of these funds upon request by the Critical Area Commission.

H. Fees and Standards.

- (1) For clearing up to 20% of forest or developed woodland, the fee is \$1,350 per acre of the total area removed.
- (2) For clearing over 20%, and no more than 30%, of forest or developed woodland, the fee is \$2,025 per acre of the total area removed.
- (3) If a parcel of one half acre or less in size was in residential use or zoned for residential purposes on or before December 1, 1985, the fees in lieu shall be as follows:
 - (a) For clearing up to 20% of forest or developed woodland, the fee is \$450 per acre of forest removed.
 - (b) For clearing over 20%, and no more than 30%, of forest or developed woodland, the fee is \$675 per acre of the total area removed.

Chapter 1-111. Growth Allocation⁽²⁷⁾.

A. Description.

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

B. Growth allocation acreage and dedicated acreage for municipalities.

At the time of Critical Area Program adoption there were 30,070 acres classified as RCA.

27 Natural Resources Article 8-1808.1 and COMAR 27.01.02.06

The County's original growth allocation acreage was 1,503.5 acres. To date, 326.49 acres have been used, and 100 acres have been dedicated to each of the County's two municipalities. Remaining growth allocation for use by the County is 977.01 acres.

C. Standards.

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

- (1) Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area;
- (2) Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area;
- (3) New Intensely Developed Areas shall be at least 20 acres in size unless:
 - (a) They are contiguous to an existing IDA or located in an LDA; or
 - (b) They are a grandfathered commercial or industrial use, which existed as of the September 10, 1988. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.
- (4) No more than one-half of the County's growth allocation may be located in Resource Conservation Areas except as provided in Subsection (9) below;
- (5) Locate a new Limited Development Area or Intensely Developed Area in a manner that minimizes impacts to Habitat Protection Area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
- (6) Locate new Intensely Developed Areas where they minimize their impacts to the defined land uses of the Resource Conservation Area;
- (7) Locate a new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;
- (8) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the County for such areas, shall be so designated on the County Critical Area Maps and shall constitute an amendment to this program subject to review and approval by the County Planning Commission, the County Commissioners and the Critical Area Commission.

- (9) If the County is unable to utilize a portion of its growth allocation as set out in paragraphs (1) and (2) above within or adjacent to existing Intensely Developed or Limited Development Areas, then that portion of the allocated expansion which cannot be so located may be located in the Resource Conservation Areas in addition to the expansion allowed in (4) above. An applicant shall be required to cluster any development in an area of expansion authorized under this paragraph.

D. Additional Factors.

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

- (1) Consistency with the County's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan. "Consistency with" means that a standard or factor will further, and not be contrary to the following items in the comprehensive plan:
 - (a) Policies;
 - (b) Timing of the implementation of the plan, of development, and of rezoning;
 - (c) Development patterns;
 - (d) Land uses; and
 - (e) Densities or intensities.
- (2) For a map amendment or refinement involving a new Limited Development Area, whether the development is:
 - (a) To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
 - (b) A completion of an existing subdivision;
 - (c) An expansion of an existing business; or
 - (d) To be clustered;
- (3) For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:

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

E. Application of Standards and Additional Factors.

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

F. Deduction methodology.

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

- (1) Subdivision of any parcel of land that was recorded as of December 1985, and classified as RCA where all or part of the parcel is identified by the County as a growth allocation area, shall result in the acreage of the entire parcel, not in tidal wetlands, being deducted from the jurisdiction's growth allocation, unless the

development envelope concept outline in paragraph (2) below, is used.

- (2) In order to allow some flexibility in the use of growth allocation when development is only proposed on a portion of the property, the following methodology may be used. On a parcel proposed for the use of growth allocation, a single growth allocation development envelope may be specified, and the acreage of the development envelope rather than the acreage of the entire parcel shall be deducted from the County's growth allocation if the development envelope meets the following criteria:
 - (a) The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The required buffers refer to the minimum 100-foot Buffer and the 25-foot nontidal wetlands buffer;
 - (b) Only one development envelope shall be established per parcel of land;
 - (c) If a development envelope is proposed in the RCA, a minimum of 20 acres must remain outside of the development envelope or the acreage of the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the acreage of the entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by easement) adjacent and contiguous to a residue that is less than 20 acres, that will result in a minimum 20-acre residue, then the entire parcel does not have to be deducted; and
 - (d) The minimum 20-acre residue outside of the development envelope may be developed at an RCA density unless some type of permanent protection exists that restricts development.
- (3) For growth allocation proposed in the RCA, a 300-foot naturally vegetated Buffer is strongly encouraged and where it is provided, it shall not be deducted even if the Buffer does not meet the 20-acre requirement.

G. Process.

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

- (1) All applications for growth allocation shall be submitted to DTCS. Requests shall

be accompanied by a concept plan and appropriate environmental reports and studies so as to provide sufficient information to permit the Planning Commission to review the application for consistency with the County's Critical Area regulations. The subdivision history of parcels designated as RCA must be provided as part of the growth allocation application. The date of December 1, 1985 is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.

- (2) All applications for growth allocation shall be forwarded to the Planning Commission for review and shall include comments and recommendations from the staff. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the County Commissioners.
- (3) The applicant shall address the Planning Commission's comments and recommendations and may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the County Commissioners with a recommendation for approval or denial from the Planning Commission.
- (4) The County Commissioners shall hold a public hearing on the request for growth allocation and any revisions to the concept plan.
- (5) The County Commissioners may establish conditions of approval that are consistent with the intent of the County's Critical Area Program.
- (6) Upon approval of the growth allocation request by the County Commissioners, the County shall send a request to the Critical Area Commission to utilize a portion of their growth allocation. The request shall be accompanied by pertinent plans and environmental reports and studies. Upon receipt of the request from the County, the Critical Area Commission shall notify the County regarding the processing of the request as an amendment or refinement to the County's Program. Refinements shall be acted on within 130 days of the Critical Area Commission's notification to the County of a complete submission. Amendments will be acted on within 30 days of the Critical Area Commission's notification of a complete submission.
- (7) Following approval of the growth allocation request by the Critical Area Commission, the County Commissioners shall implement the change, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recording in the County land records.
- (8) Prior to approving the final site plan or subdivision plat, the Planning Commission or their designee shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

- (9) Final subdivision plats and site plans shall be processed in accordance with the requirements of this ordinance and the County's subdivision regulations.
- (10) The County's official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.
- (11) As a condition of approval, the County may require that all projects approved for the use of growth allocation shall demonstrate that they are substantially completed within three years of the date of growth allocation approval by the Critical Area Commission. Substantially completed shall be determined by the Planning Commission and is defined as projects in which all public improvements such as roads, sewer and/or water facilities, etc. have been built as required by the County.

H. General submittal requirements⁽²⁸⁾.

Applications for growth allocation shall include the following information:

- (1) All information and documentation relevant to the local jurisdiction's determination that the project meets the standards listed under Natural Resources Article, §8-1808.1(c)(1), Annotated Code of Maryland;
- (2) All information and documentation that addresses the factors to be considered by the Critical Area Commission under Natural Resources Article, §8-1808.1(c)(3), Annotated Code of Maryland;
- (3) A conceptual site development plan;
- (4) An environmental features map;
- (5) An environmental report that demonstrates that the project has been designed and will be constructed in compliance with all requirements of the proposed Critical Area land classification;
- (6) For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Department of the Environment, Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:
 - (a) Rare, threatened, and endangered species;
 - (b) Forest interior dwelling birds and colonial water birds;

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- (c) Anadromous fish and their propagation waters and any other aquatic species located onsite;
 - (d) Plant and wildlife habitat and historic waterfowl staging and concentration areas;
 - (e) Submerged aquatic vegetation;
 - (f) Riparian forests and tidal and nontidal wetlands; and
 - (g) Natural heritage areas and other historical and cultural resources;
- (7) A map that shows the land area for which the local jurisdiction proposes a change of Critical Area land classification; and
 - (8) Verification that the amount of proposed growth allocation indicated on the map submitted under subsection A(7) of this regulation is accurate and equal to the amount of growth allocation to be deducted from the local jurisdiction's existing total allotment of growth allocation.

I. Site plan and environmental features map requirements.

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

- (1) The name of the project and its street address;
- (2) Tax map information that includes, as applicable, the tax map number, the block number, the parcel number, and lot number;
- (3) A site plan with a scale provided at 1"=10', 1"=20', 1"=30', 1"=40', 1"=50', 1"=60', or 1"=100';
- (4) Orientation;
- (5) A vicinity map with the project site clearly identified;
- (6) Existing parcel and tract boundaries or lot lines;
- (7) The project boundary;
- (8) The limits of disturbance;
- (9) Any proposed development envelope;
- (10) All Critical Area boundaries, including existing and proposed land classifications and the land classification of all lots or parcels adjacent to the project site;

- (11) The boundaries of the 100-year floodplain;
- (12) The field-run topography;
- (13) Vegetative cover information by acre or square footage, including field determination of existing forest and developed woodland cover, location of proposed forest and developed woodland clearing; and as applicable, the location of proposed afforestation and reforestation areas;
- (14) Soil features of the project and where each soil type is located;
- (15) Field determination of each intermittent stream and each perennial stream;
- (16) A delineation of the minimum 100-foot buffer as measured from the mean high water line of tidal waters or the landward edge of a tidal wetland or a tributary stream;
- (17) As applicable and in accordance with the requirements of COMAR 27.01.09.01 or the local program, a delineation of any expanded buffer that is necessary because of a contiguous slope of 15 percent or greater or the presence of hydric soil, highly erodible soil, or a nontidal wetland;
- (18) When converting from a resource conservation area to a limited development area or an intensely developed area, the location and extent of the 300-foot minimum setback;
- (19) Unless the Critical Area Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a nontidal wetland, that is less than 2 years old, including the 25-foot buffer from that nontidal wetland;
- (20) Unless the Critical Area Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a tidal wetland, that is less than 2 years old, including the delineation of State and private tidal wetland boundaries;
- (21) Identification and location of all wildlife habitat and plant habitat, including a nesting site of colonial nesting water birds, an historic waterfowl staging and concentration area, riparian habitat, habitat of forest interior dwelling birds, an area of State or local significance, and a natural heritage area;
- (22) Identification and location of habitat of threatened and endangered species, including a species in need of conservation;
- (23) Identification and location of anadromous fish propagation waters;

- (24) Location of existing and proposed area of lot coverage, including identification of a building, road, parking lot, and any other area that contributes to lot coverage;
- (25) Location of any other proposed development feature, including an outlet, storm drain and outfall, utility connection, septic system, stormwater management system, shore erosion control measure, and pier;
- (26) Location of a path or walkway, including those exempt from lot coverage requirements;
- (27) Location of an existing or proposed mitigation area that is required because of an impact on forest, developed woodland, wetland, buffer, or other habitat protection area; and
- (28) If applicable, the identification and location of agricultural land, a surface mining site, natural park, dredging activity, and dredge material disposal area, as well as the boundary and area of an existing easement, the identity of the easement holder, and any restriction on development as a result of the easement.

J. Environmental Report⁽²⁹⁾.

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

- (1) A project description;
- (4) The subdivision history since December 1, 1985 (June 1, 2002 in the Atlantic Coastal Bays Critical Area);
- (5) A brief narrative that describes the type of project, the proposed change of Critical Area land classification, and how the growth allocation would support the County's overall planning goals, including reference to the relevant sections of the County's adopted Comprehensive Plan, Water and Sewer plan, and adopted Zoning Ordinance;
- (6) Total acreage in the Critical Area and total acreage for which Critical Area designation is proposed to be changed;
- (7) Total forest, developed woodland, and vegetated area proposed to be cleared;
- (8) Method and description of proposed stormwater management, including all qualitative and quantitative management measures;
- (9) In the Intensely Developed Area, the preliminary plan for compliance with the 10

29 COMAR 27.01.02.05-2

percent pollutant reduction rule, including all worksheets and all supporting documentation;

- (10) Measures proposed for soil erosion and sediment control, including implementation strategy;
- (11) In the Limited Development Area and Resource Conservation Area, existing and proposed lot coverage information, calculated by square feet of coverage for each lot and total area of lot coverage within the limited development area and the total area of lot coverage within the resource conservation area;
- (12) Mitigation required for clearing of forest area, developed woodland, or vegetation in accordance with the requirements of this ordinance;
- (13) If applicable, the proposed afforestation area;
- (14) Identification of the local zoning district and that district's defining characteristics;
- (15) A Buffer Management Plan, consistent with Chapter 1-124 of this Ordinance;
- (16) A Habitat Protection Plan, consistent with Chapter 1-128, if the proposed development will impact an identified Habitat Protection Area. The Developer shall ensure that full implementation of the Habitat Protection Plan can be achieved on the project site and execute all necessary long-term protective agreements. The Habitat Protection Plan shall:
 - (a) Identify any habitat or species on the project site, as set forth in this Ordinance;
 - (b) Include recommendations that are based on consultation with the Department of Natural Resources and any other appropriate federal or State agency; and
 - (c) Include all protective measures necessary and appropriate to provide for long-term conservation of the identified habitat and species

K. Project Evaluation Point System⁽³⁰⁾

- (1) Project Point Scoring System Thresholds.

Points will be awarded to projects based on the following scoring system. The

30 Existing County procedure.

award of points is contingent upon the proposal including the required performance standards listed below. These points were developed to ensure development design which maximizes habitat protection, enhances water quality, minimizes disturbance to the natural environment and fulfills objectives of the Chesapeake Bay Critical Area Act's Criteria. Applications for GA must receive at least 250 points (minimum scoring threshold) to be considered for an award of Growth Allocation and a land management reclassification.

- (2) The following general provisions shall apply to all submittals for Growth Allocation:
 - (a) In an RCA to LDA conversion, which involves land only in the Critical Area, calculation of the maximum permitted density will be based on Critical Area acreage. The maximum permitted density within the Critical Area portion of the site may not exceed the base district density for the Critical Area portion of the site or 3.99 units per acre, whichever is less.
 - (b) In an RCA to LDA conversion, where non-Critical Area portions of a site are included in the development, the maximum permitted density may not exceed the base zoning density calculated for the entire site, or 3.99 units per acre as calculated based on the size of the Critical Area portion of the site, whichever is less.
 - (c) In a RCA or LDA conversion to IDA, the permitted maximum density or intensity shall not exceed that permitted by the base zoning and the minimum land area in the Critical Area shall be at least 20 acres in size, unless contiguous to existing IDA or LDA; or the proposed IDA is a grandfathered commercial, industrial or institutional use which existed as of September 10, 1988.
 - (d) Sewage. Community sewer facilities shall be required for conversion to IDA. If a public sewer facility or other central facility approved by the Health Department is not present or not proposed as part of the development, conversion to IDA shall not be permitted.
 - (e) Water Dependence. In projects that include water-dependent facilities, locating such facilities in the Buffer will not be reason for denying Buffer points, if a Buffer is provided on portions of the site that are not required for locating such facilities. In such cases, Buffer points for water-dependent facilities will be awarded provided non-water dependent facilities are not located in the Buffer and further provided there is a single point of access to water-dependent facilities.

L. Project Evaluation Points

The County Project Evaluation Point System shall be the basis for qualifying proposed development projects for Growth Allocation and the Growth Allocation floating district. The point criteria and values are summarized in the following provisions and the Table included in this subsection.

- (1) The Minimum Scoring Threshold shall be 250 points.
- (2) Points may be awarded in any and all categories applicable to the project.
- (3) Partial points may be awarded as determined by the Planning Staff and/or Planning Commission.
- (4) Clustering is defined as concentrating dwelling units in a selected area of the development tract so as to provide natural habitat or other open space uses on the remainder of at least 20 percent or 10 acres of the site area, whichever is greater. At least three quarters of the open space shall be upland.
- (5) Planned Unit Development shall provide a minimum of 30 percent or 20 acres of the site area in common open space, whichever is greater.
- (6) Large Scale Development is defined as a residential project of 25 dwelling units or more.
- (7) Bonus Point:
 - (a) Shoreline Access Bonus Points. The proposed development project shall provide free public access to the shoreline in perpetuity.
 - (b) Natural Park Bonus Points. Where a natural park of at least 10 acres is designated and approved by the County Planning Commission, and provisions are made to permit limited access to the natural park for education purposes (e.g.; periodically permitting the local school system to conduct field trips to the park), points will be credited. To receive these points, a natural park management plan and program must be developed and include the recommendations of the Maryland Forest, Park and Wildlife Service.
 - (c) The proposed project results in a significant economic benefit for Somerset County. "Significant economic benefit" is defined as the creation of at least 20 permanent full time jobs.

Table 1-111 L. Somerset County Growth Allocation Points Table

Point Categories/Point Criteria - Residential	Maximum Points
I. Location and Access to Facilities	
A. Adjacency	
1. New LDA adjacent to LDA	75
2. New LDA adjacent to IDA	70
3. New IDA adjacent to IDA	75
4. New IDA adjacent to LDA	70

B Growth Areas	
1. Within Primary Growth Area	75
2. Within Secondary Growth Area	70
3. Within Existing Village	65
C. Access to Facilities	
1. Access provided by service or other road if on a major collector	20
2. Interior road provided	30
3. Located in an existing sewer and/or water service area; S1 and/or W2	50
4. Located in a planned sewer and/or water service area; S3 and or W3 or above	30
II. Development Type	
1. Cluster Development	50
2. Planned Unit Development	50
3. Large Scale Development	40
4. Small Scale Development in infill areas	40
Point Categories/Point Criteria – Residential (cont.)	Maximum Points
III. Site Design for Site Factors and Resource Protection	
A. Resource Protection	
1. Retaining more than 30% in agriculture	40
2. Clearing less than 30% of forest, if available	40
3. 1 point for every one foot of average Buffer width greater than 100 feet	Varies
4. Less than 40% disturbance in 100 year floodplain	30
5. Best management practices to improve water quality	30
6. Any agricultural land remaining is protected by a 300 foot Buffer and BMP's	20
7. No Habitat Protection Areas (HPA) on the site other than the Buffer	20
B. Site Factors	
1. Few or no environmental factors	35
2. Less than 40% of soils with development constraints	35
3. Provides 30% of open space for PUD and multi-family development	30
4. Provides 20% of open space for other single family development	30
5. Open Space retained in forest with at least an average 100 foot wildlife corridor	30
IV. Average Lot Size	
1. 3 to 5 acres	10
2. less than 3 but greater than or equal to 2 acres	30
3. less than 2 but greater than or equal to 1 acre	35
4. less than 1 acre	40
Table 1-111 L. Somerset County Growth Allocation Points Table (cont.)	
V. Bonus Points	
1. A contiguous area of at least 20 acres is retained as a permanent Resource Conservation Area and does not have to be deducted from the County's Growth Allocation	100
2. A contiguous area of at least 20 acres is located adjacent to and contiguous with a permanently protected Resource Conservation Area resulting in a minimum 20 acre residue and the acreage in the development does not have to be deducted	75

from the County's Growth Allocation	
3. Either bonus points 1 or 2 is achieved and a minimum 300 foot average Buffer is provided	175
4. Project provides public access to the shoreline	50
5. Project includes creation of a Natural Park	100

Chapter 1-112. Grandfathering⁽³¹⁾.

A. Continuation of existing uses.

The County shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of this ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in the Chapter 1-113 of this ordinance.

B. Residential density.

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

- (1) A legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;
- (2) Land that received a building permit subsequent to December 1, 1985, but prior to September 10, 1988;
- (3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; and
- (4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.

C. Consistency.

Nothing in this Chapter may be interpreted as altering any requirements for development activities set out in the Water-Dependent Facilities Chapter or the Habitat Protection

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

Areas Chapter of this ordinance.

Chapter 1-113. Lot Consolidation and Reconfiguration⁽³²⁾

A. Applicability.

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

Nonconforming parcels or lots include:

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

B. Goals.

Any consolidation or reconfiguration of any nonconforming legal parcel of land or recorded legally buildable will meet the goals of the County Critical Area Program set forth in Chapter 1-102 “Purpose and Intent” of this ordinance, to the extent possible, and shall not increase or intensify development activities or human activities in the Buffer or any other Habitat Protection Area beyond what would have resulted from the existing lot configuration.

C. Procedures.

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

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

32 COMAR 27.01.02.08

buildable lot and the number of proposed lots or parcels or dwelling units to be derived.

D. Standards.

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

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

- (6) The proposed consolidation or reconfiguration provides:
 - (a) Stormwater management for all proposed development activities; and
 - (b) Benefits to fish, wildlife, and plant habitat that are clearly identified.

E. Approval and notification.

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

Chapter 1-114. Intrafamily Transfers⁽³³⁾.

A. Applicability.

"Bona fide intrafamily transfer" means a transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member. "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter. The Director of DTCS or his designee shall permit bona fide intrafamily transfers to be made only from parcels of land that:

- (1) Were of record on March 1, 1986; and
- (2) Are seven acres or more and less than 60 acres in size.

B. Required subdivision.

A bona fide intrafamily transfer from a parcel of land shall be a subdivision of the parcel of land that is subject to approval under the Subdivision Regulations of the County.

C. Approval of subdivision of parcels.

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

- (1) A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.

33 Natural Resources Article 8-1808.2

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

D. Conditions of approval.

As a condition of approval the Director of DTCS or his designee shall require that:

- (1) Any deed for a lot that is created by a bona fide intrafamily transfer shall contain a covenant approved by the County Attorney stating that the lot is created subject to the provisions of Natural Resources Article Chapter 8-1808.2, Annotated Code of Maryland, and
- (2) A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family, except under provisions set forth in Section E. of this chapter.
- (3) This chapter does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.

E. Standards and procedures for subsequent conveyance of lots.

The Director of DTCS or his designee has established standards and procedures for bona fide intrafamily transfers as part of this program which will permit the subsequent conveyance of lots to persons other than immediate family members. The standards and procedures shall assure that:

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

Chapter 1-115. Variances⁽³⁴⁾

A. Applicability.

The County has established provisions where, owing to special features of a site or other circumstances, implementation of this program or a literal enforcement of provisions

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

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

B. Standards.

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

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

make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.

- (10) That the written findings may be based on evidence introduced and testimony presented by the applicant, the County or any other government agency, or any other person deemed appropriate by the County.

C. Application.

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

D. Administrative Review Process.

- (1) The Director of the DTCS is authorized to grant administrative variances from the provisions of the Somerset County Critical Area Program as implemented in this Ordinance.
- (2) A variance shall only be granted if the applicant proves to the satisfaction of the Director of DTCS, based upon written application and testimony that all of the standards in sub-section B above are met.
- (3) The Director shall hold a public hearing. The owner of the property, or his agent, for which the variance is sought shall receive by mail notice at least 10 days in advance of the public hearing. The DTCS shall post notice of the Public Hearing 10 days prior to the hearing on the subject property. In addition, notice shall be posted at the County Courthouse by DTCS and be published in a newspaper of general circulation within the County at least 10 days prior to the hearing.
- (4) The decision shall be in writing providing findings of fact and conclusions of law. Any conditions incorporated into the decision shall become a part of the written record for the variance request. The hearing shall remain open 10 days after being heard for further public comment. The applicant shall receive decision within 30 days of the closure of the hearing.

E. Conditions and Mitigation.

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

- (1) Having determined that the necessary standards for a Critical Area variance have been met the applicant will take steps to mitigate impacts including:

- (a) Reforestation on the site to offset disturbed forest or developed woodlands on at least equal area basis.
 - (b) Afforestation to mitigate any impervious surface created and to mitigate for all disturbance to the Buffer, measured as, a calculation of square feet disturbed, on at least a 3 to 1 ratio; and
 - (c) Implementation of any mitigation measures that relate to Habitat Protection Areas as delineated in the County Critical Area Ordinance, or as recommended by State and/or County agencies.
- (2) The approving authority shall prescribe time limits within which any conditions to a variance must be completed. Failure to complete any of the prescribed conditions within the time limits set shall be a violation of this Ordinance, and at the discretion of the Director of DTCS, after notice and hearing, shall be grounds for termination or revocation of the variance. Under no circumstance, unless otherwise specified by the Director of DTCS, or extended by order of DTCS, shall the time limits exceed two (2) years from the date of the variance decision.

F. Standing.

In accordance with Natural Resources Article, §8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.

G. Commission notification.

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

H. Appeal to the Board of Zoning Appeals.

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

I. Appeals to Circuit Court.

Variance decisions by the Board of Zoning Appeals may be appealed to the Circuit Court

in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Chapter.

Chapter 1-116. State and Local Development Projects⁽³⁵⁾

A. Applicability.

For all development in the Critical Area resulting from State and local agency projects, the County shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06. If applicable, consistency reports shall be submitted to the Critical Area Commission.

B. Procedures.

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

C. Standards for projects of local significance.

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

D. Standards for major development.

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

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

³⁵ COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06

E. Notice requirements for major development.

Public notice is required for all major development projects unless the development is covered by a general approval from the Critical Area Commission. Public notice shall be the responsibility of the DTCS proposing the project and the agency shall, as part of its submittal to the Critical Area Commission, provide evidence that:

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

F. Posting requirements for major development⁽³⁶⁾.

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

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

Chapter 1-117. Program Changes⁽³⁷⁾.

A. Program changes.

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

B. Comprehensive reviews.

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

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

C. Zoning map amendments.

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

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

³⁷ Natural Resources Article 8-1809(g) through (s)

D. Process.

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

E. Critical Area Commission review.

When the County submits a request for review and approval of changes to any element of the County's Critical Area Program, including, but not limited to, the zoning ordinance, subdivision regulations, or Critical Area Maps, the request will include all relevant information necessary for the Chairman of the Critical Area Commission, and as appropriate, the Critical Area Commission, to evaluate the changes. The Chairman, and as appropriate, the Critical Area Commission, shall determine if the requests for Program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Critical Area Commission.

F. Critical Area Commission decision.

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

- (1) Approve the proposed program refinement or amendment and notify the local jurisdiction;
- (2) Deny the proposed program refinement or amendment;
- (3) Approve the proposed program refinement or amendment subject to one or more conditions; or
- (4) Return the proposed program refinement or amendment to the County with a list of changes to be made.

Chapter 1-118. Water Dependent Facilities⁽³⁸⁾.

A. Applicability.

The provisions of this chapter apply to those structures or works associated with

38 COMAR 27.01.03

industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.

B. Identification.

Water dependent facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision that provides community piers.

C. General policies.

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

D. Standards.

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

- (1) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:
 - (a) That they are water-dependent;
 - (b) That the project meets a recognized private right or public need;
 - (c) That adverse effects on water quality, fish, plant and wildlife habitat are minimized;
 - (d) That, insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and
 - (e) That the facilities are consistent with an approved local plan as set forth below.
- (2) Except as otherwise provided in this program, new or expanded development

activities may not be permitted in those portions of the Buffer, which occur in Resource Conservation Areas.

E. Implementation.

Applicants for new or expanded water-dependent facilities in Intensely Developed Areas or Limited Development Areas shall set out in the application how the above requirements are met. Applicants for water-dependent facilities in a Resource Conservation Area, other than those specifically permitted herein, must apply for a portion of the County's growth allocation as set forth in this ordinance.

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

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

- (1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- (2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;
- (3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- (4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;
- (5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
- (6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area, generally;
- (7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:
 - (a) Backfill for permitted shore erosion protection measures;

- (b) Use in approved vegetated shore erosion projects;
 - (c) Placement on previously approved channel maintenance spoil disposal areas; and
 - (d) Beach nourishment.
- (8) That interference with the natural transport of sand will be minimized; and
 - (9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in the Habitat Protection Area Chapters of this ordinance.

G. Availability of information.

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

H. Industrial and port-related facilities.

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

I. Marinas and other commercial maritime facilities.

New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements set forth in this Chapter. New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except as provided in this Chapter. Expansion of existing marinas may be permitted by the DTCS within Resource Conservation Areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina. New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

J. Community piers.

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

- (1) These facilities may not offer food, fuel, or other goods and services for sale and

shall provide adequate and clean sanitary facilities;

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

K. Number of slips or piers permitted.

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

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

Table1-118.K(2) Number of Slips Permitted

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

L. Public beaches and other public recreation or education areas.

Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may

be permitted in the Buffer in Intensely Developed Areas. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:

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

M. Research areas.

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

N. Fisheries activities.

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

Chapter 1-119. Shore Erosion Protection⁽³⁹⁾.

A. Applicability.

Shore erosion protection includes nonstructural shoreline stabilization measures and structural shoreline stabilization measures authorized by Maryland Department of the Environment, the Board of Public Works, or the Army Corps of Engineers, as

39 COMAR 27.01.04 and COMAR 26.24.04

appropriate. The provisions of this Chapter shall apply to areas of the shoreline that are mapped as Modified Buffer Areas and areas of the shoreline that are not mapped as Modified Buffer Areas. The criteria set forth in this section are not intended to apply to those structures necessarily associated with Water-dependent Facilities as discussed in Chapter 1-118.

B. Process.

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

- (1) Upon authorization by Maryland Department of the Environment, an applicant for a shore erosion protection measure shall submit an application to the DTCS containing the following information:
 - (a) Photographs of the erosion problem;
 - (b) The specific location of the site indicated on a 7 ½ Minute USGS Topographic Quadrangle Map;
 - (c) Soil type and erodibility;
 - (d) The proposed and existing land use; and
 - (e) Appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.
- (2) The application shall include a Buffer Management Plan per the requirements of Chapter 1-124. The plan will identify all associated disturbance, including grading and clearing, above Mean High Water.

C. Mitigation

Most shore erosion control projects involve disturbance to the shoreline and the 100-foot Buffer. Applicants shall be required to mitigate for this disturbance in accordance with the provisions of Chapter 1-124. Shore erosion control projects that are installed completely from the water and involve only offshore measures, such as breakwaters, may not require mitigation if the applicant demonstrates that the construction does not affect the Buffer.

Chapter 1-120. Commercial Timber Harvesting⁽⁴⁰⁾.

40 COMAR 27.01.05

A. General policies.

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

B. Process.

Landowners proposing to harvest timber within any one year interval and affecting one or more acres in the Critical Area shall submit a "Timber Harvest Plan." This plan shall be prepared by a registered professional. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources and the District Forestry Board. The approved plan shall be filed with the County Soil Conservation District and the approved plan shall be sent to the DTCS prior to beginning timbering operations.

C. Timber Harvest Plan contents.

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

D. Sediment Control Plans.

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

- (1) If cuts and fills are three feet or more, if grades for roads are 15 percent or more, or if landings are on slopes of 10 percent or more, then the landowner must get a custom Sediment Control Plan for the operation. These are prepared by Registered Professional Foresters and include controls necessary to prevent site erosion and to ensure site stabilization. This plan shall be submitted to the local Soil Conservation District for approval and notice of approval sent to the Department of Technical and Community Services.
- (2) If a custom Sediment Control Plan is not required, a Standard Erosion and Sediment Control Plan is available through the Soil Conservation District. The landowner shall provide the following information:

- A. Location description;
 - B. Harvest operation description;
 - C. Sketch map of the property showing acres to be cleared;
 - D. Identification of the landowner, licensed timber harvest operator, and other operators or subcontractors.
- (3) Either the owner or the operator shall take responsibility for implementation of the Sediment Control Plan or each subcontractor must file a separate plan.
- (4) The landowner must sign the agreement to certify that he understands the terms of the plan and is responsible for preventing erosion and sedimentation during the forest harvesting.

E. Buffer protection standards for timber harvests.

Timber harvests are permitted in the Buffer in accordance with the provisions of Section E. of Chapter 120.

Chapter 1-121. Agriculture⁽⁴¹⁾.

A. Purpose.

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

B. General policies.

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

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

41 COMAR 27.01.06

its tributaries.

- (3) Assure that the creation of new agricultural lands is not accomplished:
 - (a) By diking, draining or filling of any class or subclass of palustrine wetlands, as described in this program which have a seasonally flooded or wetter water regime, unless mitigation is accomplished in accordance with as applicable State and County regulations;
 - (b) By clearing of forests or woodlands on soils with a slope greater than 15 percent; or on soils with a "K" value greater than .35 and slope greater than 5 percent;
 - (c) If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in this ordinance; or
 - (d) By the clearing of existing natural vegetation within the Buffer as defined in this ordinance.
- (4) Assure that the drainage of non-tidal wetlands for the purpose of agriculture be done in accordance with a Soil Conservation and Water Quality Plan, approved by the County Soil Conservation District.
- (5) Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and further, shall minimize adverse effects on plants, fish and wildlife resources.
- (6) Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage and manure storage minimize the contamination of water bodies.
- (7) Assure that agricultural activity permitted within the Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the County Soil Conservation District.

C. Performance standards for agriculture.

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

- (1) The County hereby incorporates the agricultural components of the State 208 Water Quality Plan into this program. These components shall be applicable to all agricultural activities in the Critical Area.

- (2) Soil Conservation and Water Quality Plans and Best Management Practices shall be developed and implemented for those portions of farms which lie within the Critical Area. Local farmers shall cooperate with the local Soil Conservation District for approval of their proposed plans. Landowners who have signed up as Conservation District operators but who do not have a Conservation Plan prepared for them by the local Conservation District shall be allowed to continue to farm until a Conservation Plan is developed provided that the goals of this program are being met.
- (3) A landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several best management practices that minimize impacts to water quality, conserve fish, wildlife, and plant habitat, and integrate best with the farming operation.
- (4) Until such time as the farm plans are developed and implemented farmers shall as a part of the program be encouraged to use the following practices:
 - (a) Cover crops shall be planted to reduce erosion;
 - (b) Nutrients shall be applied at the appropriate time and appropriate methods shall be used;
 - (c) Reduced tillage (e.g.) no till practices shall be utilized where practical; and
 - (d) Crop rotations shall be implemented where effective.

D. Agricultural activities in the Buffer.

Agricultural activities are permitted in the Buffer in accordance with the provisions of Chapter 1-124.

Chapter 1-122. Surface Mining in the Critical Area⁽⁴²⁾.

A. Applicability.

The provisions of this chapter apply to all existing and proposed operations engaged in the extraction or removal of minerals, sand, gravel, rock, stone, earth or fill and activities related to surface mining. These activities include, but are not limited to, operations engaged in processing minerals at the site, removal and mining when done for the purpose of prospecting, washing mined material, and loading and transporting mined material.

42 COMAR 27.01.07

B. General policies.

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

C. Mineral Resource Plan and Program.

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

D. Standards.

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

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

monitoring maintenance, replacement, operation and other follow-up activities.

- (c) An applicant's previous experience with similar operations which indicates that the operation will not result in substantial deposits of sediment in stream beds or lakes, landslides, or other causes of water pollution.

E. Location of future sites.

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

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

- (c) To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot Buffer of natural vegetation between the operation and the mean high water line of tidal waters or the edges of streams and tidal wetlands, whichever is further inland

Chapter 1-123. Habitat Protection⁽⁴³⁾.

A. Description.

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

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

B. Identification.

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

43 COMAR 27.01.09

Chapter 1-124. The 100-foot Buffer⁽⁴⁴⁾.

A. Applicability and delineation.

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

- (1) The minimum 100-foot Buffer is delineated landward from:
 - (a) The mean high water line of tidal water;
 - (b) The edge of each bank of a tributary stream; and
 - (c) The upland boundary of a tidal wetland.
- (2) The Buffer shall be expanded beyond the minimum 100-foot Buffer as described in §A(1) above and the minimum 200-foot Buffer as described in §A(3) below, to include the following contiguous land features:
 - (a) A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
 - (b) A non-tidal wetland to the upland boundary of the non-tidal wetland;
 - (c) The 100-foot Buffer that is associated with a Non-tidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
 - (d) For an area of hydric soils or highly erodible soils, the lesser of:
 - (i) The landward edge of the hydric or highly erodible soils; or
 - (ii) Three hundred feet where the expansion area includes the minimum 100-foot Buffer.
- (3) Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include:
 - (a) An expanded Buffer in accordance with §A(2) above; or

44 COMAR 27.01.09.01 through .01-8

- (b) A Buffer of at least 200 feet from a tidal waterway or tidal wetlands; and a Buffer of at least 100-feet from a tributary stream, whichever is greater.
- (4) The provisions of §A(3) above do not apply if:
 - (a) The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans), by July 1, 2010;
 - (b) The application involves the use of growth allocation.

B. Permitted activities.

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

- (1) A new development or redevelopment activity associated with a water-dependent facility or located in an approved Buffer Management Area;
- (2) A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Ordinance;
- (3) A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance;
- (4) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
 - (a) The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;
 - (b) The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- (5) A new or replacement septic system on a lot created before September 10, 1988, where:

- (a) The Somerset County Health Department has determined the Buffer is the only available location for the septic system; and
- (b) Mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.

C. Buffer establishment in vegetation.

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

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

D. Mitigation for impacts to the Buffer.

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

- (1) Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, septic system approved by the Somerset County Health Department on a lot created before September 8, 1988, and special exception.
- (2) All authorized development activities shall be mitigated according to COMAR

27.01.09.01-2.

- (3) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
- (4) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then DTCS may permit planting in the following order of priority:
 - (a) On-site and adjacent to the Buffer; and
 - (b) On-site elsewhere in the Critical Area.
 - (c) A fee in lieu as referenced in §G below.

E. Buffer planting standards.

- (1) An applicant that is required to plant the Buffer for Buffer establishment or Buffer mitigation shall apply the planting standards set forth in COMAR 27.01.09.01-2.
- (2) A variance to the planting and mitigation standards of this Ordinance is not permitted.

F. Required submittal of Buffer Management Plans.

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

- (1) A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials, clearly specify the area to be planted and state if the applicant is:
 - (a) Fully establishing the Buffer;
 - (b) Partially establishing an area of the Buffer equal to the net increase in lot coverage, or
 - (c) Partially establishing an area of the Buffer equal to the total lot coverage.

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

G. Fees-In-Lieu of Buffer mitigation.

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

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

H. Shore erosion control projects.

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

- (1) An applicant for a shore erosion control project that affects the Buffer in any way, including, but not limited to access, vegetation removal and pruning, or backfilling shall submit a Buffer Management Plan in accordance with the requirements of this section; and
- (2) Comply fully with all of the policies and criteria for a shore erosion control project stated in COMAR 27.01.04 and COMAR 27.01.09.01-6

I. Agriculture in the Buffer.

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

- (1) The following activities associated with agriculture are prohibited in the Buffer and other Habitat Protection Areas as set forth in COMAR 27.01.09 and Chapters

123 and 124 through 130:

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

water quality and protect plant and wildlife habitat;

- (b) Insofar as possible due to its narrower width, achieve the water quality and habitat protection objectives of the 100-foot Buffer; and
- (c) Include the implementation of grassland and manure management program, where appropriate.

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

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

reestablished the wildlife corridor function of the Buffer; and

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

Chapter 1-125. Modified Buffer Area Provisions⁽⁴⁵⁾.

A. Description.

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

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

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

- (1) Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
- (2) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
- (3) Convenience or expense were not factors considered when evaluating the extent of allowable impacts to the Buffer.
- (4) New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50-foot setback shall be maintained for all subsequent development or redevelopment of the property.

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- (5) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25-foot setback should be maximized.
- (6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (7) Modified Buffer Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional build able land for new development or redevelopment.
- (8) No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- (9) Mitigation for development or redevelopment in the in the Modified Buffer Area approved under the provisions of this subchapter shall be implemented as follows:
 - (a) A forested or landscaped buffer yard, 25 feet wide, shall be established on the project site between the development and the distance to the water. This buffer yard shall be densely planted with trees and shrubs in accordance with Table 1.
 - (b) Redevelopment sites, where existing structures or those rebuilt on an existing footprint limit the area available for planting, appropriate modifications to the width of the planted buffer yard may be made on a case by case basis. The DTCS maintains a list of approved species and afforestation standards that are to be used in the Modified Buffer Area.
- (10) In addition to establishing a 25-foot buffer yard on site as described above, one of the following mitigation measures shall be implemented based on the following order of preference:
 - (a) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the DTCS.

- (b) Applicants who cannot fully comply with the planting requirement in A. above, may use offsets to meet the mitigation requirement. Offsets include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
- (c) Applicants who cannot comply with either the planting or offset requirements in (a) or (b) above shall pay into a fee-in-lieu program as follows:
 - (i) Applicants shall submit to the DTCS one cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a two year guarantee.
 - (ii) The DTCS shall determine the amount of the fee-in-lieu based on one cost estimate.
- (d) Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the Critical Area Program. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported in the jurisdiction's quarterly reports.
- (e) Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of Somerset County.

C. Single Family Residential Development and Redevelopment Standards.

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

- (1) New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
- (2) Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this policy.
- (3) New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:
 - (a) New accessory structures may be located closer to the water or edge of tidal wetlands than the principal dwelling only if it has been determined by the DTCS or their designee that there are no other locations for the accessory structures.
 - (b) The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.
- (4) Variances to other local setback requirements shall have been considered before additional intrusion into the Buffer.
- (5) Development may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (6) No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
- (7) Modified Buffer Area designation shall not be used to facilitate the filling of nontidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.
- (8) Mitigation for development or redevelopment in the Modified Buffer Areas approved under this chapter shall be implemented as follows:
 - (a) Natural vegetation of an area twice the extent of the footprint of the

development activity within the 100-foot Buffer shall be planted on site in the Buffer or other location as may be determined by the DTCS. If it is not possible to carry out offsets or other mitigation within the Critical Area, any plantings or other habitat/water quality improvements should occur within the affected watershed.

- (b) Applicants who cannot comply with the planting requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of existing impervious surface within the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
- (c) Applicants who cannot comply with either the planting or offset requirements in Paragraph (a) and (b) above shall pay into a fee-in-lieu program as follows:
 - (i) Applicants shall submit to the DTCS one cost estimates from qualified landscape businesses for planting the equivalent of an area twice the extent of the footprint of the development activity within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a two- year survival guarantee.
 - (ii) The DTCS shall determine the amount of the fee-in-lieu based on one cost estimate.
- (d) Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes, or other instrument and recorded among the land records of Somerset County.

D. Notification Requirements.

All new commercial, industrial, institutional, recreational, multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.

E. Review Process.

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

F. Modified Buffer Area Mapping Standards.

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

- (1) Only lots of record as of December 1, 1985 are eligible for mapping as Modified Buffer Areas (MBAs).
- (2) The parcel or lot being considered for MBA status shall contain a Buffer that was significantly impacted by development at the time of program adoption and that prevent the Buffer from fulfilling its functions.
- (3) Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).
- (4) Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a MBA if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.
- (5) If only part of a parcel or lot meets the criteria for designation as a Modified Buffer Area, then only portions of the parcel or lot shall be designated as a Modified Buffer Area. The portion of the parcel designated as a Modified Buffer Area will be subject to the Modified Buffer Area requirements. Portions of the property that are not designated as a Modified Buffer Area shall comply fully with the 100-foot Buffer restrictions.
- (6) Any proposal by the County for designation of an area as a MBA shall include, at a minimum, a written evaluation and supporting reasons which demonstrate the degree to which the proposed MBA does not perform each of the following Buffer functions:
 - (a) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
 - (b) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
 - (c) Maintain an area of transitional habitat between aquatic and upland communities;
 - (d) Maintain the natural environment of streams; and

- (e) Protect riparian wildlife habitat.

Chapter 1-126. Nontidal Wetlands⁽⁴⁶⁾.

A. Identification.

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

B. General policies.

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

- (1) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
- (2) Facilitate the control, infiltration, and absorption of floodwaters associated with extreme high tides and storm events;
- (3) Minimize the adverse effects of human activities on waterways and aquatic resources;
- (4) Maintain an area of transitional habitat between aquatic and upland communities;
- (5) Maintain the natural environment of streams;
- (6) Provide wildlife habitat for wetland species.

C. Standards for non-tidal wetland protection.

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

- (1) New development activity is prohibited in nontidal wetlands unless the development activity is water dependent and requires access to a nontidal wetland as a central element of its basic function, or is not water dependent, and has no

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practicable alternative;

- (2) A 25-foot buffer shall be established around all nontidal wetlands and development activities or other activities that may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities will not adversely affect the wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands;
- (3) The hydrologic regime and water quality of identified nontidal wetlands shall be protected by providing that development activities or other land disturbances in the drainage area of the wetlands shall minimize alterations to the surface or subsurface flow of water into and from the wetlands and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland;
- (4) New development activity will first avoid and then minimize adverse impacts to the nontidal wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions;
- (5) New development activity affecting nontidal wetlands must be designed so that it does not cause or contribute to a degradation of ground waters or surface waters; and
- (6) Development activity permitted in accordance with these standards must be consistent with any comprehensive watershed management plan developed or approved by the Department under Environment Article, §5-908, Annotated Code of Maryland.

D. Review process.

Applicants for approval of development projects that involve disturbance or alteration to nontidal wetlands or the 25-foot buffer shall demonstrate to the appropriate approving authority:

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

Chapter 1-127. Threatened and Endangered Species/Species in Need of Conservation⁽⁴⁷⁾.

A. Identification.

The approximate location of rare, threatened and endangered species, and species in need of conservation are shown on the 1" = 600' scale resource inventory maps filed with the County Department of Technical and Community Services. These maps will be used as a flagging device

B. General policies.

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

C. Standards.

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

- (1) If a development activity is proposed for a site within the Critical Area, then the DTCS shall review the proposed activities on a case-by-case basis and seek technical advice from the by the Department of Natural Resources, Wildlife & Heritage Division. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.
- (2) Pursuant to recommendations from the Department of Natural Resources, when development is proposed on or near sites which serve as, include, or are adjacent to, a habitat of a threatened or endangered species or a species in need of conservation, the County will require that an applicant perform an appropriate ecological survey to verify the presence of the protected habitat or species.
- (3) If the presence of a protected habitat or species is confirmed, the County shall require that an applicant develop a Habitat Protection Plan that provides for the protection and conservation of the species and habitats identified. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be implemented on the specific site.
- (4) The applicant shall obtain approval of the Habitat Protection Plan from the DTCS or the appropriate designated approving authority. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

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- (5) It is the policy of the County and the State policy to encourage cooperative management agreements with private landowners as the best way to preserve and protect critical habitats for threatened and endangered species and species in need of conservation. It is acknowledged that in the long term, easements or acquisition of the lands for preservation of these habitats should be sought. Management agreements, easements, and acquisition efforts shall be coordinated with the Maryland Department of Natural Resources and other appropriate public agencies, private organizations and affected landowners.

D. Public notice.

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

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

Chapter 1-128. Plant and Wildlife Habitat Protection Plan⁽⁴⁸⁾.

A. Description.

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

- (1) Colonial water bird nesting sites;
- (2) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;
- (3) Existing riparian forests (example: relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the bay shoreline and which

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are documented breeding areas);

- (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (example: relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);
- (5) Other areas which may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat areas;
- (6) Other plant and wildlife habitats determined to be of local significance; and
- (7) Natural Heritage Areas which have been designated;

B. General policies.

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

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

C. Standards.

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

- (1) Any development or significant land use change of property located within the Critical Area of the County will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property

owner proposes to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.

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

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

applicant to resubmit the analysis. The initial review between the DTCS and State Department of Natural Resources should be completed within sixty (60) days from submission.

D. Public notice.

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

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

Chapter 1-129. Anadromous Fish Propagation Waters⁽⁴⁹⁾.

A. Applicability.

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

B. Identification.

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

C. General policies.

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

- (1) Protect the in stream and stream bank habitat of anadromous fish propagation waters;

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- (2) Promote land use policies and practices in the watershed of spawning streams within the Critical Area which will minimize the adverse impacts of development on the water quality of the streams; and
- (3) Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

D. Standards.

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

- (1) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
- (2) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
- (3) The County shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
 - (a) Minimize development activities or land disturbances within the watershed;
 - (b) Maintain, or if practicable, improve water quality in affected streams or other water bodies;
 - (c) Minimize to the extent possible the discharge of sediments into affected streams or other water bodies;
 - (d) Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams;
- (4) The County shall ensure coordination and compliance with complementary State laws and regulations:
 - (a) Prohibit the construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams or other designated water bodies. If practical, existing structures shall be removed; and

- (b) Ensure that the construction, repair or maintenance activities associated with bridges, or other stream crossing or with utilities and roads, which involve disturbance within the buffer or which occur in stream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

Chapter 1-130. Natural Parks⁽⁵⁰⁾.

A. Identification.

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

B. Policies.

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

50 COMAR 27.01.08

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