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COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND

BILL 21-8

BY: Commissioners Nordstrom and Purnell
INTRODUCED: September 21, 2021

A BILL ENTITLED

AN ACT Concerning

Natural Resources - ~~Atlantic Coastal Bays~~ WORCESTER COUNTY Critical Area LAW

For the purpose of ~~repealing and reenacting~~ AMENDING the Worcester County CHESAPEAKE AND Atlantic Coastal Bays Critical Area Law to ~~amend this Resource Protection Program for~~ UPDATE AND COMBINE the CHESAPEAKE AND Atlantic Coastal Bays and their tributaries to comply with State law.

Section 1. BE IT ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND that Subtitle I - Coastal Bays Critical Area, of Title 3 - Land and Water Resources of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland be repealed and reenacted to read as follows:

Title 3

LAND AND WATER RESOURCES

SUBTITLE I

~~Atlantic Coastal Bays~~ **WORCESTER COUNTY Critical Area LAW**

§ NR 3-101. Intent; purpose; findings; severability.

- (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. In 2002 the Maryland General Assembly passed the Atlantic Coastal Bays Protection Act for the purpose of preserving, protecting, and improving the water quality and natural habitats of the Atlantic Coastal Bays and their tributaries. The Legislature has determined that the CHESAPEAKE AND Atlantic Coastal Bays require especially sensitive consideration with regard to development. It is the intent of the County Commissioners to establish a local Program to implement the requirements of the Act THESE ACTS.
- (1) NOTWITHSTANDING ANY PROVISION IN THIS ORDINANCE, OR THE LACK OF A PROVISION IN THIS ORDINANCE, ALL OF THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE 8-1801 THROUGH 8- 1817 AND COMAR TITLE 27 SHALL APPLY TO, AND BE APPLIED BY, [COUNTY] AS MINIMUM STANDARDS.
- (2) IN THE CASE OF CONFLICTING PROVISIONS, THE STRONGER PROVISION APPLIES.

(b) Purpose. It is the purpose of the County Commissioners in enacting this Subtitle:

- (1) To establish a Resource Protection Program for the CHESAPEAKE AND Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats;
- (2) To implement the Resource Protection Program; and
- (3) To authorize, ordain, and impose a critical area protection program to provide for reasonable restrictions, reasonably enforced on properties in the ~~Atlantic Coastal Bays~~ Critical Area.

(c) Findings. The County Commissioners find and declare that:

- (1) The CHESAPEAKE AND Atlantic Coastal Bays and their tributaries are natural resources of great significance to the County;
- (2) The shoreline and adjacent lands constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;
- (3) The capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited;
- (4) Studies have documented that the quality and productivity of the waters of the CHESAPEAKE AND Atlantic Coastal Bays and their tributaries have declined due to the cumulative effects of human activity that have caused increased levels of pollutants, nutrients, and toxins in the bay systems and declines in more protective land uses such as forestland and agricultural land in the watershed.
- (5) Those portions of the Atlantic Coastal Bays and their tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Ocean City, West Ocean City, Ocean Pines, St. Martins Neck, South Point, and Maryland Route 611 Corridor areas. **THOSE PORTIONS OF THE CHESAPEAKE BAY AND THEIR TRIBUTARIES WITHIN MARYLAND ARE PARTICULARLY STRESSED BY THE CONTINUING POPULATION GROWTH AND DEVELOPMENT ACTIVITY CONCENTRATED IN THE SNOW HILL, BERLIN, AND POCOMOKE AREAS;**
- (6) The quality of life for the citizens of Worcester County would be enhanced through the restoration of the quality and productivity of the waters of the CHESAPEAKE AND Atlantic Coastal Bays and their tributaries;
- (7) The preservation of the CHESAPEAKE AND Atlantic Coastal Bays and their tributaries is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;
- (8) The cumulative impact of current development practices is inimical to these purposes;
- (9) It is in the County's interest for the benefit of current and future generations to foster

more sensitive development activity in a consistent and uniform manner along shoreline areas of the CHESAPEAKE AND Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality and natural habitats; and

- (10) It is the public policy of the County Commissioners of Worcester County that, where possible, a setback of one hundred feet from the mean high water line of tidal waters, the edge of the bank of tributary streams, and the landward extent of tidal wetlands be provided on all lots and for all structures and other improvements created or erected after the effective date of this Subtitle. To that end it is hereby declared that any private restriction or covenant heretofore or hereinafter enacted which has the effect of precluding, impeding or encumbering the ability of the owner of a lot to maximize a yard setback on the waterfront and/or wetlands side of a lot in order to achieve the setback of one hundred feet or as much thereof that may be reasonable is hereby declared void as against public policy, provided zoning minimums are met.
 - (11) Because of the limited distance between the headwaters of the watershed of the CHESAPEAKE AND Atlantic Coastal Bays and the Bays themselves, upstream activities have a direct impact on the quality and function of the water bodies of the ~~Atlantic Coastal Bays~~ Critical Area. Therefore, additional protections of certain areas beyond the limits of the ~~Atlantic Coastal Bays~~ Critical Area are necessary.
 - ~~(12) Existing State regulations do not require mitigation for impacts to nontidal wetlands and their associated buffers under all circumstances. Therefore, the County Commissioners find it advisable to provide for additional protection for impacts to nontidal wetlands and their buffers beyond the limits of the Atlantic Coastal Bays Critical Area but within the watershed of that Critical Area.~~
- (d) Goals. The goals of the ~~Atlantic Coastal Bays~~ Critical Area Law are to accomplish the following:
- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or runoff from surrounding lands;
 - (2) Conserve fish, wildlife, and plant habitat; and
 - (3) Establish land use policies for development in the ~~Atlantic Coastal Bays~~ 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.
- (e) Citing. This Subtitle may be cited as the “Worcester County ~~Atlantic Coastal Bays~~ Critical Area Law.”
- (f) Territory affected. Within Worcester County, the ~~Atlantic Coastal Bays~~ Critical Area shall mean all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland, as from time to time amended. They include:
- (1) All waters of and lands under the CHESAPEAKE AND Atlantic coastal bays and their tributaries to the head of tide as indicated by the more restrictive of either the State Wetlands Maps or the 1989 Maryland Department of Natural Resources wetland maps and all state and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland, as from time to time amended, and including all land and water areas within one thousand 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, as from time to time amended. The boundaries of the

~~Atlantic Coastal Bays~~ Critical Area and the limits of each of the land classification designations will be as shown on maps adopted by resolution of the County Commissioners after a duly advertised public hearing in accordance with the provisions of § ZS 1-114 of the Worcester County Zoning Ordinance and approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

- (2) Nontidal wetlands and their buffers beyond the limits established in subsection (f)(1) hereof only as provided for in § NR 3-127 of this Subtitle.

(g) REGULATED ACTIVITIES AND APPLICABILITY. ~~Except as provided herein, the requirements of this Subtitle shall not apply to:~~ EXCEPT AS PROVIDED IN SUBSECTION (H) AND (I) THE PROVISIONS OF THIS ORDINANCE SHALL APPLY AS FOLLOWS:

- (1) THE DEPARTMENT SHALL REVIEW A PERMIT OR LICENSE FOR A DEVELOPMENT OR REDEVELOPMENT ACTIVITY IN THE CRITICAL AREA FOR COMPLIANCE WITH THIS SUBTITLE PRIOR TO ISSUANCE OF THAT PERMIT OR LICENSE.
- (2) DEVELOPMENT AND REDEVELOPMENT ACTIVITIES REVIEWED SHALL INCLUDE, BUT ARE 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 DEPARTMENT.

(h) APPLICABILITY EXCEPTIONS. Except as provided herein, the requirements of this Subtitle shall not apply to THE FOLLOWING TYPES OF DEVELOPMENT IN THE ATLANTIC COASTAL BAYS:

- (1) The initial development of a planned unit development or residential planned community for which the following were issued prior to June 1, 2002 and which is subdivided into recorded and legally buildable lots:
 - A. A valid Step III approval in accordance with the provisions of the Zoning and Subdivision Control Article and at least three of the following State permits:
 - i. Groundwater or surface water discharge permit.
 - ii. Nontidal wetlands permit.
 - iii. Water quality certification permit.
 - iv. Water appropriation permit.
 - B. Any planned unit development as described in subsection (hg)(1)(A) above which includes an inland marina built after April 8, 2002 shall meet the following

requirements, except for those dwelling units immediately adjacent to tidal waters of the inland marina:

- i. At least eighty-five percent (85%) of the dwelling units in the planned unit development shall comply with the 100-foot Buffer requirements contained herein; and
 - ii. No dwelling unit may have a buffer of less than fifty feet from existing or proposed tidal waters, tidal wetlands or tributary streams.
- (2) A fairground or racetrack in an A-1 Agricultural District as defined by the Zoning and Subdivision Control Article which received special exception approval for that use prior to January 1, 2002 only for the purpose of making improvements consistent with said special exception.
- (3) The initial development of a Young Men’s Christian Association (YMCA) facility located on property identified on the Atlantic Coastal Bays Critical Area Maps adopted pursuant to § NR 3-103(b) hereof provided that prior to July 1, 2003:
- A. The property described in subsection (g)(3) above has been acquired by the YMCA; and
 - B. Three of the four following State permits has been issued to the YMCA:
 - i. Groundwater or surface water discharge permit.
 - ii. Nontidal wetlands permit.
 - iii. Water quality certification permit.
 - iv. Water appropriation permit.

(H) (i) Applicability to pending approvals. The provisions of this subtitle shall not apply to the granting of an approval or activity pursuant thereto for the initial development of land pursuant to any approval listed herein as limited herein and strictly subject to the time limitations hereof.

Approval	Date of approval/issuance (On or before)	Limitation
§ ZS 1-325 site plan approval	Effective date of this subtitle (JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA)	A building permit is issued and construction commenced as evidenced by the placement of the building foundation within six months of the date of adoption of this law. Growth allocation is deducted where necessary.
Building permit, zoning permit, shoreline construction,	Effective date of this subtitle (JUNE 1, 2002 IN THE	Notwithstanding the provisions of zs 1-115(g) if the work described in any permit as described in this subsection

application accepted for review	ATLANTIC COASTAL BAYS CRITICAL AREA)	has not begun within 6 months of the effective date of this law, such permit shall expire. Thereafter no work shall begin until the applicant has filed for and received a new permit which may only be issued in conformance with the requirements of this subtitle. For the purposes of this subsection the placement and approval of the building foundation shall be considered “beginning of construction”.
Special exception by the Board of Zoning Appeals	Effective date of this law (JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA)	A building permit is issued and construction commenced as evidenced by the placement of the building foundation within 12 months of the date of adoption of this law. Growth allocation is deducted where necessary.
Preliminary plat	JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA	All provisions except density limitations shall apply. Plat recorded within one year from the date of adoption of this law. Growth allocation is deducted where necessary.

⊕ (j) Underlying zoning. This subtitle is supplemental and is applicable in addition to underlying zoning and land use provisions of this Code and other applicable land use laws and regulations. Where such provisions are in conflict with the provisions of this subtitle, the stricter provisions shall prevail, provided, however, that the minimum requirements of this subtitle must always be met even when a stricter standard is applicable.

⊕ (k) Severability. Should any section or provision of this Subtitle be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Subtitle as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

§ NR 3-102. Definitions.

(a) Applicability. The following words have the following meanings for the purposes of implementing the CHESAPEAKE AND Atlantic Coastal Bays Critical Area Law but shall not be applicable to other portions of the Code of Public Local Laws of Worcester County, Maryland:

ABATEMENT - THE ACT OF PUTTING AN END TO A LAND ALTERATION OR DEVELOPMENT ACTIVITY OR REDUCING THE DEGREE OR INTENSITY OF THE ALTERATION OR ACTIVITY.

ACCESSORY STRUCTURE - A STRUCTURE THAT IS DETACHED FROM THE PRINCIPAL STRUCTURE, LOCATED ON THE SAME LOT AND CUSTOMARILY INCIDENTAL AND SUBORDINATE TO A PRINCIPAL STRUCTURE.

ADDITION -CONSTRUCTION THAT INCREASES THE SIZE OF A STRUCTURE.

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

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

AGRICULTURAL EASEMENT - A non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.

ANADROMOUS FISH - Fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

ANADROMOUS FISH PROPAGATION WATERS - Those streams that are tributary to the CHESAPEAKE AND Atlantic Coastal Bays where the spawning of anadromous species (e.g., rockfish or striped bass, yellow perch, white perch, shad, and river herring) occurs or has occurred.

AQUACULTURE - (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow-out facilities, fish ponds, shellfish rafts, racks 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.

AREAS WITH SPECIES IN NEED OF CONSERVATION - Those areas where these species, as designated by the Secretary of the Department of Natural Resources, are found or have historically been found and their surrounding habitats.

AREAS OF THREATENED AND ENDANGERED SPECIES - Those areas where these species, as designated by the Secretary of the Department of Natural Resources, are found or have historically been found and their surrounding habitats.

ATLANTIC COASTAL BAYS - Means and includes the Assawoman Bay, Isle of Wight Bay, Sinepuxent Bay, Newport Bay, Chincoteague Bay, associated smaller bays forming parts thereof and other bodies of water between Assateague Island and Ocean City on the east and the mainland on the west and including their tidal tributaries.

ATLANTIC COASTAL BAYS CRITICAL AREA - All waters of and lands under the Atlantic Coastal Bays and their tributaries to the head of tide as indicated on the State Wetlands Maps and all State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland, as from time to time amended, and including 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, as from time to time amended.

BARREN LAND - Unmanaged land having sparse vegetation.

BAYSIDE MIXED USE DISTRICT - An area of existing large bayside parcels that are essentially undeveloped with permanent structures, suitable for large-scale mixed use development and offer the opportunity for well-planned, efficient, and diversified unified development and that received approval for the establishment of a residential planned community floating zone prior to June 1, 2002.

BEST MANAGEMENT PRACTICES (BMPs) - Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

BONA FIDE INTRAFAMILY TRANSFER - A transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.

~~BUFFER—An existing, naturally vegetated area or an area established in native vegetation and managed to protect aquatic, wetland, shoreline, and terrestrial environments from manmade disturbances.~~

BUFFER - AN AREA THAT BASED ON CONDITIONS AT THE TIME OF DEVELOPMENT, IS IMMEDIATELY LANDWARD FROM MEAN HIGH WATER OF TIDAL WATERWAYS, THE EDGE OF BANK OF A TRIBUTARY STREAM, OR THE EDGE OF A TIDAL WETLAND; AND THE AREA EXISTS OR MAY BE ESTABLISHED IN, NATURAL VEGETATION TO PROTECT A STREAM, TIDAL WETLAND, TIDAL WATERS OR TERRESTRIAL ENVIRONMENTS FROM HUMAN DISTURBANCE. THE BUFFER INCLUDES AN AREA OF AT LEAST 100-FEET, EVEN IF THAT AREA WAS PREVIOUSLY DISTURBED BY HUMAN ACTIVITY, AND ALSO INCLUDES ANY EXPANSION FOR CONTIGUOUS AREAS, INCLUDING A STEEP SLOPE, HYDRIC SOIL, HIGHLY ERODIBLE SOIL, NONTIDAL WETLAND, OR A NONTIDAL WETLAND OF SPECIAL STATE CONCERN AS DEFINED IN COMAR 26.23.01.01.

BUFFER MANAGEMENT PLAN - A NARRATIVE, GRAPHIC DESCRIPTION, OR PLAN OF THE BUFFER THAT IS NECESSARY WHEN AN APPLICANT PROPOSES A DEVELOPMENT ACTIVITY THAT WILL AFFECT A PORTION OF THE BUFFER, AFFECT BUFFER VEGETATION, OR REQUIRE THE ESTABLISHMENT OF A PORTION OF THE BUFFER IN VEGETATION. BUFFER MANAGEMENT PLAN INCLUDES A MAJOR BUFFER MANAGEMENT PLAN, A MINOR BUFFER MANAGEMENT PLAN, OR A SIMPLIFIED BUFFER MANAGEMENT PLAN AS DESCRIBED IN WITH COMAR 27.01.09.01-3.

CANOPY TREE - A tree that, when mature, commonly reaches a height of at least 35 feet.

CLEARCUTTING - The removal of an 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 the planting of seeds or seedlings by man.

CLUSTER DEVELOPMENT - A residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural

habitat or other open space uses on the remainder.

COLONIAL NESTING WATER BIRDS - Herons, egrets, terns, glossy ibis, and other such birds that for the purpose of nesting congregate (that is, "colonize") in a limited number of areas which can be susceptible to local disturbances.

COMAR - The Code of Maryland Regulations.

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

COMMISSION - The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

COMMISSIONERS - The County Commissioners of Worcester County.

COMMUNITY PIERS - Boat docking facilities associated with subdivisions or similar residential areas and with townhouse, condominium, apartment, and other multiple family dwelling units. Individual private piers are excluded from this definition.

COMPREHENSIVE or MASTER PLAN - A compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the Planning Commission and County Commissioners.

CONSERVATION EASEMENT - A non-possessory interest in land which restricts the manner in which the land may be developed in an effort to preserve natural resources for future use.

CONSISTENT WITH - MEANS THAT A STANDARD OR FACTOR WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE COMPREHENSIVE PLAN:

- (1) POLICIES;
- (2) TIMING OF THE IMPLEMENTATION OF THE PLAN OF DEVELOPMENT AND REZONING;
- (3) DEVELOPMENT PATTERNS;
- (4) LAND USES; AND
- (5) DENSITIES OR INTENSITIES.

CONSOLIDATION - A COMBINATION OF ANY LEGAL PARCEL OF LAND OR RECORDED LEGALLY BUILDABLE LOTS INTO FEWER LOTS OR PARCELS THAN ORIGINALLY EXISTED. CONSOLIDATION INCLUDES ANY TERM USED BY THE COUNTY FOR A DEVELOPMENT APPLICATION THAT PROPOSES TO COMBINE LEGAL PARCELS OF LAND OR RECORDED, LEGALLY BUILDABLE LOTS INTO FEWER PARCELS OR LOTS THAN THE NUMBER THAT EXISTED BEFORE THE APPLICATION, A LOT LINE ABANDONMENT, A BOUNDARY LINE ADJUSTMENT, A REPLATTING REQUEST, AND A LOT LINE ADJUSTMENT.

COVER CROP - The establishment of a vegetative cover to protect soils from erosion and to

restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat, or soybean stubble, which maximize infiltration and prevent runoff from reaching erosive velocities.

CRITICAL AREA - MEANS ALL LANDS AND WATERS DEFINED IN §8-1807 OF THE NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND. CRITICAL AREA INCLUDES:

- (1) ALL WATERS OF AND LANDS UNDER THE CHESAPEAKE BAY AND ATLANTIC COASTAL BAYS AND THEIR TRIBUTARIES TO THE HEAD OF TIDE;
- (2) ALL STATE AND PRIVATE WETLANDS DESIGNATED UNDER TITLE 16 OF THE NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND;
- (3) 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 NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND; AND
- (4) MODIFICATION TO THESE AREAS THROUGH INCLUSIONS OR EXCLUSIONS PROPOSED BY LOCAL JURISDICTIONS AND APPROVED BY THE COMMISSION AS SPECIFIED IN §8-1807 OF THE NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND.

CRITICAL HABITAT - Habitat necessary for the survival of threatened or endangered species or species in need of conservation.

DENSITY - The number of dwelling units within a defined and measurable area expressed in units per acre.

DEPARTMENT - The county department designated by the County Commissioners to administer and enforce this Title.

DEVELOPED WOODLANDS - AN AREA OF TREES OR OF TREES AND NATURAL VEGETATION THAT IS INTERSPERSED WITH RESIDENTIAL, COMMERCIAL, INDUSTRIAL OR RECREATIONAL DEVELOPMENT. ~~Those areas of one acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.~~

DEVELOPER - A PERSON WHO UNDERTAKES DEVELOPMENT ACTIVITY AS DEFINED IN THIS ORDINANCE; OR A PERSON WHO UNDERTAKES DEVELOPMENT ACTIVITY AS DEFINED IN THE CRITERIA OF THE COMMISSION.

DEVELOPMENT - Any activity that materially affects the condition or use of dry land, land underwater, or any structure.

DEVELOPMENT ACTIVITIES - The construction or substantial alteration of residential, commercial, industrial, agricultural, institutional, or transportation facilities or structures.

DEVELOPMENT ENVELOPE - INCLUDES AN INDIVIDUALLY OWNED LOT, THE LOT COVERAGE ON THAT INDIVIDUALLY OWNED LOT, A ROAD, A UTILITY, A STORMWATER MANAGEMENT MEASURE, AN ONSITE SEWAGE DISPOSAL

MEASURE, ANY AREA SUBJECT TO HUMAN USE SUCH AS AN ACTIVE RECREATION AREA, ANY REQUIRED BUFFERS, AND ANY ADDITIONAL ACREAGE NECESSARY TO MEET THE REQUIREMENTS OF THIS TITLE.

DISTURBANCE - ANY ALTERATION OR CHANGE TO THE LAND, INCLUDING ANY AMOUNT OF CLEARING, GRADING, OR CONSTRUCTION ACTIVITY. DISTURBANCE DOES NOT INCLUDE GARDENING OR MAINTENANCE OF AN EXISTING GRASS LAWN.

DOCUMENTED BREEDING BIRD AREAS - Forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

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

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

ENDANGERED SPECIES - Any species of fish, wildlife, or plants that have been designated as such 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 USC §1531 et seq., as from time to time amended.

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

EXCESS STORMWATER RUN-OFF - All increases in stormwater resulting from:

- (1) An increase in the imperviousness of the site, including all additions to buildings, roads, driveways, and parking lots;
- (2) Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
- (3) Alteration of drainageways, or regrading of slopes;
- (4) Destruction of forest or developed woodlands; or
- (5) Installation of collection systems to intercept street flows or to replace swales or other drainageways.

EXPANDED NONTIDAL WETLAND BUFFER - A regulated area one hundred feet in width surrounding a nontidal wetland, measured from the outer edge of a nontidal wetland, and established by the Maryland Department of the Environment as nontidal wetlands of special State concern.

FISHERIES ACTIVITIES - Commercial water-dependent fisheries facilities including structures

for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations but not including wholesale and retail sales.

FOREST - A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND OTHER WOODY PLANTS COVERING A LAND AREA OF 10,000 SQUARE FEET OR GREATER. FOREST INCLUDES AREAS THAT HAVE AT LEAST 100 TREES PER ACRE WITH AT LEAST 50% 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. ~~A biological community dominated by trees and other woody plants covering a land area of one acre or more. This also includes forests that have been cut, but not cleared.~~

FOREST INTERIOR DWELLING BIRDS - Species of birds that require relatively large forested tracts in order to breed successfully, including but not limited to various species of flycatchers, warblers, vireos, and woodpeckers.

FOREST MANAGEMENT - The protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.

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

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

GRANDFATHERED 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, IN THE CHESAPEAKE BAY CRITICAL AREA AND JUNE 1, 2002, IN THE ATLANTIC COASTAL BAYS CRITICAL AREA.

GROWTH ALLOCATION - The number of acres of land in the ~~Atlantic Coastal Bays~~ Critical Area that a local jurisdiction may use to create new Intensely Developed Areas and Limited Development Areas.

GROWTH ALLOCATION ENVELOPE - ALL OF THE PROPOSED COMPONENTS OF A GROWTH ALLOCATION THAT ARE NECESSARY TO SERVE THE PROPOSED DEVELOPMENT, INCLUDING AN INDIVIDUALLY OWNED LOT, LOT COVERAGE, A ROAD, A UTILITY, A STORMWATER MANAGEMENT MEASURE, AN ON-SITE SEWAGE DISPOSAL MEASURE, AN ACTIVE RECREATION AREA, AND ADDITIONAL ACREAGE NEEDED TO MEET THE DEVELOPMENT REQUIREMENTS OF THE CRITICAL AREA CRITERIA.

HABITAT PROTECTION PLAN - A PLAN THAT PROVIDES FOR THE PROTECTION AND CONSERVATION OF THE SPECIES AND HABITATS IDENTIFIED AS HABITAT PROTECTION AREAS IN THE CRITICAL AREA. THE PLAN SHALL BE SPECIFIC TO THE SITE OR AREA WHERE THE SPECIES OR ITS HABITAT IS LOCATED 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

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SHALL COORDINATE WITH THE DEPARTMENT OF NATURAL RESOURCES TO ENSURE THAT THE PLAN IS ADEQUATE TO PROVIDE FOR LONG-TERM CONSERVATION AND CAN BE EFFECTIVELY IMPLEMENTED ON THE SPECIFIC SITE.

HAZARDOUS TREE - A TREE WITH A STRUCTURAL DEFECT, SUCH AS A CRACK, CANKER, WEAK BRANCH UNION, DECAY, DEAD WOOD, ROOT DAMAGE, OR ROOT DISEASE, THAT DECREASES THE STRUCTURAL INTEGRITY OF THE TREE AND WHICH, BECAUSE OF ITS LOCATION, IS LIKELY TO FALL AND CAUSE PERSONAL INJURY OR PROPERTY DAMAGE, INCLUDING ACCELERATION OF SOIL EROSION; OR BASED ON ITS LOCATION IN THE LANDSCAPE, A HEALTHY TREE THAT, WITH CONTINUED NORMAL GROWTH, WILL DAMAGE AN EXISTING PERMANENT STRUCTURE OR SIGNIFICANTLY INCREASE THE LIKELIHOOD OF SOIL EROSION. "HAZARDOUS TREE" DOES NOT INCLUDE A TREE FOR WHICH THE LIKELIHOOD OF PERSONAL INJURY, PROPERTY DAMAGE, OR SOIL EROSION CAN REASONABLY BE ELIMINATED OR SIGNIFICANTLY DIMINISHED WITH ROUTINE AND PROPER ARBORICULTURAL PRACTICES, SUCH AS REGULAR WATERING, APPLICATION OF FERTILIZER OR MULCH, AND PRUNING; OR BY RELOCATION OF PROPERTY THAT IS LIKELY TO BE DAMAGED.

HIGHLY ERODIBLE SOILS - Those soils with a slope greater than fifteen percent (15%) or those soils with a K value greater than 0.35 and with slopes greater than five percent (5%).

HISTORIC WATERFOWL STAGING AND CONCENTRATION AREA - An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are historic in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

~~HOME IMPROVEMENT - 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.~~ 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.

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

HYDROPHYTIC VEGETATION - 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 wet habitats).

INCLUDES - Includes or including by way of illustration and not by way of limitation.

INITIAL DEVELOPMENT - In a planned unit development or residential planned community, the original construction of those uses as originally contemplated on the Step I and Step II plans which require approval of a § ZS 1-325 site plan in accordance with the Worcester County Zoning Ordinance and subsequently shown on such approved § ZS 1- 325 site plan or for single-family residential structures, the residential structure itself as originally approved and not including any uses or structures accessory to the residential structure, unless authorized by a building or zoning permit in conjunction with the original residential structure.

IMMEDIATE FAMILY - A father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

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

INTENSELY DEVELOPED AREA (IDA)- AN AREA OF AT LEAST TWENTY (20) ACRES OR THE ENTIRE UPLAND PORTION OF THE CRITICAL AREA WITHIN A MUNICIPAL CORPORATION, WHICHEVER IS LESS, WHERE: RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, OR INDUSTRIAL DEVELOPED LAND USES PREDOMINATE; AND A RELATIVELY SMALL AMOUNT OF NATURAL HABITAT OCCURS. THESE AREAS INCLUDE AN AREA WITH A HOUSING DENSITY OF AT LEAST FOUR (4) DWELLING UNITS PER ACRE; AN AREA WITH PUBLIC WATER AND SEWER SYSTEMS WITH A HOUSING DENSITY OF MORE THAN THREE (3) DWELLING UNITS PER ACRE.

INTRAFAMILY TRANSFER - the subdivision of a parcel of land for the purpose of transferring title to an immediate family member that would otherwise not be allowed by the density limitations of the resource conservation area.

INVASIVE SPECIES - A TYPE OF PLANT THAT IS NON-NATIVE TO THE ECOSYSTEM UNDER CONSIDERATION AND WHOSE INTRODUCTION CAUSES, OR IS LIKELY TO CAUSE, ECONOMIC OR ENVIRONMENTAL HARM OR HARM TO HUMAN HEALTH.

K VALUE - The soil erodibility factor in the Universal Soil Loss Equation. It is a value that has been experimentally determined.

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

LAND CLASSIFICATION AREA - The designation of land in the ~~Atlantic Coastal Bays~~ Critical Area in accordance with the criteria adopted by the County Commissioners as an intensely developed area or district, a limited development area or district, or a resource conservation area or district.

LAND CLEARING - Any activity that removes the vegetative ground cover.

LANDWARD EDGE - THE LIMIT OF A SITE FEATURE THAT IS FARTHEST AWAY FROM A TIDAL WATER, TIDAL WETLAND, OR TRIBUTARY STREAM.

LARGE SHRUB - A SHRUB THAT, WHEN MATURE, REACHES A HEIGHT OF AT LEAST SIX (6) FEET.

LEGALLY DEVELOPED - ALL PHYSICAL IMPROVEMENTS TO A PROPERTY THAT

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EXISTED BEFORE CRITICAL AREA COMMISSION APPROVAL OF A LOCAL PROGRAM, OR WERE PROPERLY PERMITTED IN ACCORDANCE WITH THE PROVISIONS OF THE WORCESTER COUNTY CRITICAL AREA PROGRAMS IN EFFECT AT THE TIME OF CONSTRUCTION.

LIMIT OF DISTURBANCE - THE AREA OF A DEVELOPMENT OR REDEVELOPMENT ACTIVITY THAT INCLUDES TEMPORARY DISTURBANCE AND PERMANENT DISTURBANCE.

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

LIVING SHORELINE - A SUITE OF STABILIZATION AND EROSION CONTROL MEASURES THAT PRESERVE THE NATURAL SHORELINE AND ARE DESIGNED TO MINIMIZE SHORELINE EROSION, MAINTAIN COASTAL PROCESS, AND PROVIDE AQUATIC HABITAT. MEASURES MUST INCLUDE MARSH PLANTINGS AND MAY INCLUDE THE USE OF SILLS, SAND CONTAINMENT STRUCTURES, BREAKWATERS, OR OTHER NATURAL COMPONENTS.

LOCAL SIGNIFICANCE - 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 TITLE.

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

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

MARINA - Any facility for the mooring, berthing, storing, or securing of watercraft, but not

including community piers, piers serving single-family dwellings, and other non-commercial boat docking and storage facilities.

MATURE TREE - A large woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least twenty feet at maturity.

MEAN HIGH WATER LINE (MHWL) - The average level of high tides at a given location.

MITIGATION - Creation, restoration, or enhancement of forest or other plant communities that were or will be lost due to regulated activities.

MODIFIED BUFFER AREA (MBA) - 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 BMA PROVISIONS CAN BE PERMITTED IN THE BUFFER WITHOUT A VARIANCE.

NATURAL FEATURES - Components and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

NATURAL FOREST VEGETATION - VEGETATION CONSISTING OF CANOPY TREES, UNDERSTORY TREES, SHRUBS, AND HERBACEOUS PLANTS THAT ARE TYPICALLY FOUND IN RIPARIAN AREAS IN THE STATE OF MARYLAND. AREAS OF NATURAL FOREST VEGETATION PLANTED TO MEET THE MITIGATION REQUIREMENTS IN THIS ORDINANCE SHALL RESEMBLE THE STRUCTURE AND SPECIES COMPOSITION OF NATURAL FORESTS.

NATURAL HERITAGE AREA - Any community of plants or animals which is considered to be among the best Statewide examples of its kind and is designated by regulation by the Secretary of the Department of Natural Resources.

NATURAL VEGETATION - Those plant communities that develop in the absence of human activities.

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

NEW DEVELOPMENT - THAT FOR PURPOSES OF IMPLEMENTING SPECIFIC PROVISIONS OF THIS SUBTITLE, 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 IN THE CHESAPEAKE BAY CRITICAL AREA AND JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA.

NON-WATER DEPENDENT PROJECT - A TEMPORARY OR PERMANENT STRUCTURE THAT, BY REASON OF ITS INTRINSIC NATURE, USE, OR OPERATION, DOES NOT REQUIRE LOCATION IN, ON, OR OVER STATE OR PRIVATE WETLANDS.

- (1) NON-WATER DEPENDENT INCLUDES:

- A. A DWELLING UNIT ON A PIER;
 - B. A RESTAURANT, A SHOP, AN OFFICE, OR ANY OTHER COMMERCIAL BUILDING OR USE ON A PIER;
 - C. A TEMPORARY OR PERMANENT ROOF OR COVERING ON A PIER;
 - D. A PIER USED TO SUPPORT A NON-WATER-DEPENDENT USE; AND
 - E. A SMALL-SCALE RENEWABLE ENERGY SYSTEM ON A PIER, INCLUDING:
 - I. A SOLAR ENERGY SYSTEM AND ITS PHOTOVOLTAIC CELLS, SOLAR PANELS, OR OTHER NECESSARY EQUIPMENT;
 - II. A GEOTHERMAL ENERGY SYSTEM AND ITS GEOTHERMAL HEAT EXCHANGER OR OTHER NECESSARY EQUIPMENT; AND
 - III. A WIND ENERGY SYSTEM AND ITS WIND TURBINE, TOWER, BASE, OR OTHER NECESSARY EQUIPMENT.
- (2) A NON-WATER DEPENDENT PROJECT DOES NOT INCLUDE:
- A. A FUEL PUMP OR OTHER FUEL-DISPENSING EQUIPMENT ON A PIER;
 - B. A SANITARY SEWAGE PUMP OR OTHER WASTEWATER REMOVAL EQUIPMENT ON A PIER; OR
 - C. AN OFFICE ON A PIER FOR MANAGING MARINA OPERATIONS, INCLUDING MONITORING VESSEL TRAFFIC, REGISTERING VESSELS, PROVIDING DOCKING SERVICES, AND HOUSING ELECTRICAL OR EMERGENCY EQUIPMENT RELATED TO MARINA OPERATIONS.

NON-POINT SOURCE POLLUTION - Pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge.

NON-RENEWABLE RESOURCES - Resources that are not naturally regenerated or renewed.

NONTIDAL WETLANDS - An area that is inundated or saturated by surface water or groundwater at a frequency or 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.

NONTIDAL WETLANDS BUFFER - A regulated area no less than twenty-five feet in width surrounding a nontidal wetland, measured from the outer edge of the nontidal wetland.

NONTIDAL WETLANDS OF SPECIAL STATE CONCERN - The areas designated based on criteria in COMAR 26.23.01.04, as from time to time amended, and listed in COMAR 26.23.06.01, as from time to time amended, as having an exceptional ecological or educational value of Statewide significance.

OFFSETS - Structures or actions that compensate for undesirable impacts.

OPEN SPACE - Land and water areas retained in an essentially undeveloped state.

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

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

PERMANENT DISTURBANCE - A MATERIAL, ENDURING CHANGE IN THE TOPOGRAPHY, LANDSCAPE, OR STRUCTURE THAT OCCURS AS PART OF A DEVELOPMENT OR REDEVELOPMENT ACTIVITY. "PERMANENT DISTURBANCE" INCLUDES:

- (1) CONSTRUCTION OR INSTALLATION OF ANY MATERIAL THAT WILL RESULT IN LOT COVERAGE;
- (2) CONSTRUCTION OF A DECK;
- (3) GRADING OR CLEARING (EXCEPT WHERE IT MEETS THE DEFINITION OF TEMPORARY DISTURBANCE); AND
- (4) THE INSTALLATION OF A SEPTIC SYSTEM, IN A FOREST OR DEVELOPED WOODLAND ON A GRANDFATHERED LOT, IF CLEARING IS REQUIRED.

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

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

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

PLANT HABITAT - A community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.

PORT - A facility or area established or designated by the State or local jurisdiction for purposes of waterborne commerce.

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

PROGRAM – The CHESAPEAKE AND Atlantic Coastal Bays Critical Area Protection Program of the County, including all laws, resolutions, maps, and plans necessary for the implementation, application, and enforcement of this Subtitle.

- (1) “Program” includes any amendments to the Program.

~~PROGRAM AMENDMENT - Any change OR PROPOSED CHANGE to the adopted Program that IS NOT DETERMINED BY THE CHAIRMAN OF THE CRITICAL AREA COMMISSION TO BE A PROGRAM REFINEMENT the County Commissioners determine will result in a use of land or water in the Atlantic Coastal Bays Critical Area in a manner not provided for in the adopted Program.~~

- ~~(1) “Program amendment” includes a change to a zoning map that is not consistent with the method for using the growth allocation contained in the adopted Program.~~

~~PROGRAM REFINEMENT - Any change OR PROPOSED CHANGE to the adopted Program that the County Commissioners determine will result in a use of land or water in the Atlantic Coastal Bays Critical Area in a manner consistent with the adopted Program. 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:~~

- (1) A CHANGE TO AN ADOPTED PROGRAM THAT RESULTS FROM STATE LAW;
- (2) A CHANGE TO AN ADOPTED PROGRAM THAT AFFECTS LOCAL PROCESSES AND PROCEDURES;
- (3) A CHANGE TO A LOCAL ORDINANCE OR CODE THAT CLARIFIES AN EXISTING PROVISION; AND
- (4) A MINOR CHANGE TO AN ELEMENT OF AN ADOPTED CRITICAL AREA PROGRAM THAT IS CONSISTENT WITH THE PROVISIONS OF STATE CRITICAL AREA LAW AND ALL THE CRITERIA OF THE COMMISSION.

- ~~(1) “Program refinement” includes:~~

- ~~A. A change to a zoning map that is consistent with the land classification designation of the adopted Program.~~
- ~~B. The use of the growth allocation in accordance with the adopted Program.~~
- ~~C. A change in the Program text to correct omissions or to provide~~

~~clarification to the adopted Program.~~

PROJECT APPROVAL - The approval of development, other than development by the State or local government, in the ~~Atlantic Coastal Bays~~ Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans, the inclusion of areas within floating zones, issuance of variances, special exceptions or expansions of non-conformities; and issuance of zoning permits. The term does not include building permits.

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

PUBLIC WATER-ORIENTED RECREATION - Shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.

RECLAMATION - The reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including water bodies.

RECONFIGURATION - A CHANGE OF THE CONFIGURATION OF AN EXISTING LOT OR PARCEL LINE OF ANY LEGAL PARCEL OF LAND OR RECORDED LEGALLY BUILDABLE LOT. RECONFIGURATION INCLUDES A LOT LINE ADJUSTMENT, A BOUNDARY LINE ADJUSTMENT, AND A REPLATTING REQUEST.

REDEVELOPMENT - The process of developing land which is or has been developed.

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

REGULATED ACTIVITY - With the exception of an agricultural or forestry activity, any of the following activities which are directly undertaken or originate in a nontidal wetland or within the buffer or expanded buffer of a nontidal wetland:

- (1) Removal, excavation or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;
- (2) Changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- (3) Disturbance of the water level or water table by drainage, impoundment or other means;
- (4) Dumping, discharging of material, or filling with material, including the driving of piles or placing of obstructions;
- (5) Grading or removal of material that would alter existing topography; or
- (6) Destruction or removal of plant life that would alter the character of a nontidal wetland.

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

RESOURCE CONSERVATION AREA (RCA) - AN AREA THAT IS CHARACTERIZED BY NATURE DOMINATED ENVIRONMENTS, SUCH AS WETLANDS, SURFACE WATER,

FORESTS, AND OPEN SPACE; AND RESOURCE-BASED ACTIVITIES, SUCH AS AGRICULTURE, FORESTRY, FISHERIES, OR AQUACULTURE. RESOURCE CONSERVATION AREAS INCLUDE AREAS WITH A HOUSING DENSITY OF LESS THAN ONE DWELLING PER FIVE (5) ACRES.

RESOURCE UTILIZATION ACTIVITIES - ANY ACTIVITIES ASSOCIATED WITH THE UTILIZATION OF NATURAL RESOURCES SUCH AS AGRICULTURE, FORESTRY, SURFACE MINING, AQUACULTURE, AND FISHERIES ACTIVITIES.

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

RIPARIAN HABITAT - A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, or wetlands.

SEASONALLY FLOODED WATER REGIME - A condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.

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

SHORELINE EROSION PROTECTION WORKS - Those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the ~~Atlantic Coastal Bays~~ Critical Area.

SIGNIFICANTLY ERODING AREAS - Areas that erode two feet or more per year.

SPECIAL EVENTS - PERSONAL OR BUSINESS SOCIAL ENGAGEMENTS OR OTHER ACTIVITIES CONDUCTED ON A FARM WHERE GUESTS ASSEMBLE FOR PARTIES, WEDDING EVENTS, BIRTHDAY OR ANNIVERSARY CELEBRATIONS, CHILDREN'S PARTIES, CORPORATE AND EMPLOYEE APPRECIATION PARTIES, OR OTHER SIMILAR EVENTS FOR COMPENSATION, DURING WHICH FOOD AND BEVERAGES MAY BE SERVED TO GUESTS AND MUSIC OR OTHER ENTERTAINMENT IS ALLOWED.

SPECIES IN NEED OF CONSERVATION - Those fish and wildlife species 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 Articles, §§ 10-2A-903 and 4-2A-03, Annotated Code of Maryland, as from time to time amended.

SPOIL PILE - The overburden and reject materials as piled or deposited during surface mining.

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

- (1) How the landowner plans to treat a farm unit;
- (2) Which best management practices the landowner plans to install to treat undesirable conditions; and

- (3) The schedule for applying those Best Management Practices.

STEEP SLOPES - Slopes of fifteen percent (15%) or greater incline.

SUBWATERSHED - A smaller geographic section of a larger watershed unit with a typical drainage area generally of between two and fifteen square miles and whose boundaries include all the land area draining to a point where two second-order streams combine to form a third-order .
~~For the purposes of this Subtitle, the five subwatersheds of Worcester County's Atlantic Coastal Bays are those of the Assawoman Bay, the Isle of Wight Bay, Sinepuxent Bay, Newport Bay, and Chicoteague Bay.~~

STRUCTURE - ANYTHING CONSTRUCTED OR ERECTED ON OR OVER LAND OR WATER THAT MAY OR MAY NOT RESULT IN LOT COVERAGE.

SUBSTANTIAL ALTERATION - ANY REPAIR, RECONSTRUCTION, OR IMPROVEMENT OF A PRINCIPAL STRUCTURE, WHERE THE PROPOSED TOTAL FOOTPRINT IS AT LEAST 50 PERCENT GREATER THAN THAT OF THE EXISTING PRINCIPAL STRUCTURE.

SUPPLEMENTAL PLANTING PLAN - A DESCRIPTION AND LANDSCAPE SCHEDULE THAT SHOWS THE PROPOSED SPECIES TYPE, QUANTITY, AND SIZE OF PLANTS TO BE LOCATED WITHIN A BUFFER IF NATURAL REGENERATION DOES NOT MEET THE REQUIRED STEM DENSITY.

SURFACE MINING – THE EXCAVATION, DIGGING OR DREDGING FOR SAND, GRAVEL, SOIL AND OTHER MINERALS. IT SHALL INCLUDE SAND AND GRAVEL PITS, BORROW PITS, CLAY PITS, QUARRIES, SURFACE MINES AND THE PROCESSING OR COMPOUNDING OF PRODUCTS COMPOSED OF ON-SITE MATERIALS. IT SHALL NOT INCLUDE CONCRETE OR ASPHALT MIXING PLANTS OR MATERIAL REMOVED FROM A DEVELOPMENT SITE AS PART OF A NORMAL CUT AND FILL OPERATION.

TEMPORARY DISTURBANCE - A SHORT-TERM CHANGE IN THE LANDSCAPE THAT OCCURS AS PART OF A DEVELOPMENT OR REDEVELOPMENT ACTIVITY.
TEMPORARY DISTURBANCE INCLUDES:

- (1) STORAGE OF MATERIALS THAT ARE NECESSARY FOR THE COMPLETION OF THE DEVELOPMENT OR REDEVELOPMENT ACTIVITY;
- (2) 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;
- (3) 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
- (4) LOCATING A SEPTIC SYSTEM ON A LOT CREATED BEFORE LOCAL

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PROGRAM APPROVAL IF THE SEPTIC SYSTEM IS LOCATED IN
EXISTING GRASS OR CLEARING IS NOT REQUIRED.

TEMPORARY DISTURBANCE DOES NOT INCLUDE A VIOLATION.

THINNING - A forest practice used to accelerate tree growth of quality trees in the shortest interval of time by the selective removal of certain trees.

THREATENED SPECIES - Any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources which 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 USC §1531 et seq., as from time to time amended.

TOPOGRAPHY - The existing configuration of the earth's surface, including the relative relief, elevation, and position of land features.

TRANSITIONAL HABITAT - A plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

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

TREE - A LARGE, WOODY PLANT HAVING 1 OR SEVERAL SELF-SUPPORTING STEMS OR TRUNKS AND NUMEROUS BRANCHES THAT REACH A HEIGHT OF AT LEAST 20 FEET AT MATURITY.

TRIBUTARY STREAMS - 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. ~~Those perennial and intermittent streams in the Atlantic Coastal Bays Critical Area, which are so noted on the most recent U.S. Geological Survey 7.5 minute topographic quadrangle maps (scale 1:24,000) or more detailed maps or studies at the discretion of the local jurisdictions.~~

UNDERSTORY - THE LAYER OF FOREST VEGETATION TYPICALLY LOCATED UNDERNEATH THE FOREST CANOPY.

UNDERSTORY TREE - A TREE THAT, WHEN MATURE, REACHES A HEIGHT BETWEEN 12 AND 35 FEET.

UNWARRANTED HARDSHIP - A situation wherein without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

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

WASH PLANT - A facility where sand and gravel is washed during processing.

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

WATER-DEPENDENT FACILITIES - Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in § NR 3-104 of this Subtitle. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. SUCH ACTIVITIES INCLUDE, BUT ARE NOT LIMITED TO, PORTS, THE INTAKE AND OUTFALL STRUCTURES OF POWER PLANTS, WATER-USE INDUSTRIES, MARINAS, AND OTHER BOAT DOCKING STRUCTURES, PUBLIC BEACHES AND OTHER PUBLIC WATER-ORIENTED RECREATION AREAS, AND FISHERIES ACTIVITIES.

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

WATERFOWL - Birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

WATERSHED - The area of land that drains into a specific body of water.

WILDLIFE CORRIDOR - A strip of land having vegetation that provides habitat and safe passage for wildlife.

WILDLIFE HABITAT - Those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Atlantic Coastal Bays Critical Area.

§ NR 3-103. Development in the ~~Atlantic Coastal Bays~~ Critical Area.

- (a) Generally. In order to accommodate already existing land uses and growth in the ~~Atlantic Coastal Bays~~ Critical Area while providing for the conservation of habitat and the protection of water quality, the County Program has set out three land classification areas within the ~~Atlantic Coastal Bays~~ Critical Area, which are as follows: the Intensely Developed Areas (IDAs), the Limited Development Areas (LDAs), and the Resource Conservation Areas (RCAs).
 - (1) While any intense development should be directed outside of the ~~Atlantic Coastal Bays~~ Critical Area, future intense development activities, when proposed in the ~~Atlantic Coastal Bays~~ 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.
- (b) Implementation. For the purposes of implementing these regulations the County Commissioners have determined, based on land uses and development in existence on DECEMBER 1, 1985 FOR THE CHESAPEAKE BAY AND ON June 1, 2002 FOR THE ATLANTIC COASTAL BAYS, which land areas fall within the three types of land classification areas in accordance with COMAR Title 27, as from time to time amended, and as described in this Program. These three types of land classification areas are designated on maps on file in the Department or its successor.

- (1) OFFICIAL CRITICAL AREA OVERLAY DISTRICT MAP(S) SHALL BE MAINTAINED IN FORCE AS PART OF THE OFFICIAL ZONING MAPS REFERRED TO IN THE COUNTY'S ZONING ORDINANCE. THE OFFICIAL CRITICAL AREA MAP(S) DELINEATE THE EXTENT OF THE CRITICAL AREA OVERLAY DISTRICT THAT SHALL INCLUDE:
 - A. ALL WATERS OF AND LANDS UNDER THE CHESAPEAKE BAY AND ITS TRIBUTARIES TO THE HEAD OF TIDE AS INDICATED ON THE STATE WETLANDS MAPS AND ALL STATE AND PRIVATE WETLANDS DESIGNATED UNDER TITLE 9 OF THE NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND;
 - B. ALL LAND AND WATER AREAS WITHIN ONE THOUSAND FEET BEYOND THE LANDWARD BOUNDARIES OF STATE OR PRIVATE WETLANDS AND THE HEADS OF TIDES DESIGNATED UNDER TITLE 9 OF THE NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND; AND
 - C. ALL WATERS OF AND LANDS UNDER THE ATLANTIC COASTAL BAYS AND THEIR TRIBUTARIES TO THE HEAD OF TIDE AS INDICATED ON THE STATE WETLANDS MAPS AND ALL STATE AND PRIVATE WETLANDS DESIGNATED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, AS FROM TIME TO TIME AMENDED, AND INCLUDING ALL LAND AND WATER AREAS WITHIN ONE THOUSAND 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, AS FROM TIME TO TIME AMENDED.
 - (2) WITHIN THE DESIGNATED CRITICAL AREA OVERLAY DISTRICT, ALL LAND IS ASSIGNED ONE OF THE FOLLOWING LAND MANAGEMENT AND DEVELOPMENT AREA CLASSIFICATIONS, BASED ON LAND USES AND DEVELOPMENT IN EXISTENCE ON DECEMBER 1, 1985 [IN THE CHESAPEAKE BAY CRITICAL AREA AND JUNE 1, 2002, IN THE ATLANTIC COASTAL BAYS CRITICAL AREA.
 - A. INTENSELY DEVELOPED AREA (IDA).
 - B. LIMITED DEVELOPMENT AREA (LDA).
 - C. RESOURCE CONSERVATION AREA (RCA).
 - (3) THE CRITICAL AREA OVERLAY DISTRICT MAP MAY BE AMENDED BY THE COUNTY COMMISSIONERS IN COMPLIANCE WITH AMENDMENT PROVISIONS IN THIS SUBTITLE, CRITICAL AREA LAW, NATURAL RESOURCES ARTICLE 8, SUBTITLE 18, AND COMAR TITLE 27 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS.
- (c) Application and interpretation of land classification area boundaries.
- (1) Where uncertainty exists about the boundaries of land classification areas as shown on

the official ~~Atlantic Coastal Bays~~ Critical Area maps due to errors in map and/or overlay registration, the following rules shall apply:

- A. Where a known upland lot or parcel is shown as being tidally influenced, the land classification area of the closest upland lot or parcel shall apply.
 - B. Where a land classification area district boundary, as shown on the maps does not exactly coincide with the actual property line in existence as of the date of adoption of this Subtitle, it shall be deemed to coincide with the property line.
- (2) For development activities on properties bisected by the ~~Atlantic Coastal Bays~~ Critical Area line which have at least fifty percent (50%) of their land area contained within the Atlantic Coastal Bays Critical Area, the entire property may be developed in accordance with this Subtitle if the owner so chooses and, if so, the requirements of Subtitle 4 (Forest Conservation) of the Natural Resources Article of the Code of Public Local Laws of Worcester County, Maryland shall not apply.
- (d) Activities not permitted except in Intensely Developed Areas. 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 ~~Atlantic Coastal Bays~~ Critical Area except in Intensely Developed Areas under regulations of this section 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 ~~Atlantic Coastal Bays~~ Critical Area, except in the 100-foot Buffer;
- (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 ~~Atlantic Coastal Bays~~ Critical Area unless no environmentally acceptable alternative exists outside of the ~~Atlantic Coastal Bays~~ 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;
 - (2) Sanitary landfills; or
 - (3) Sewage sludge composting, storage or disposal facilities, or land application.
- (f) Continuation of existing permitted facilities. Existing, permitted facilities of the type noted in § NR 3-103(d)(1) and (2) hereof shall be subject to the standards and requirements of the Department of the Environment, under COMAR Title 26, as from time to time amended.

- (g) REASONABLE ACCOMMODATIONS FOR THE NEEDS OF DISABLED CITIZENS. THE BOARD OF APPEALS MAY MAKE REASONABLE ACCOMMODATIONS TO AVOID DISCRIMINATION ON THE BASIS OF A PHYSICAL DISABILITY. REASONABLE ACCOMMODATIONS FOR THE NEEDS OF DISABLED CITIZENS MAY BE PERMITTED IN ACCORDANCE WITH THE EVIDENTIARY REQUIREMENTS SET FORTH IN THE FOLLOWING PARAGRAPHS.
- (1) AN APPLICANT SHALL HAVE THE BURDEN OF DEMONSTRATING BY A PREPONDERANCE OF THE 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 ANOTHER 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 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 APPEALS MAY REQUIRE, AS A CONDITION OF APPROVAL, THAT UPON THE TERMINATION OF THE NEED FOR ACCOMMODATION, THAT THE PROPERTY BE RESTORED TO COMPLY WITH ALL APPLICABLE PROVISIONS OF THIS ORDINANCE. APPROPRIATE BONDS MAY BE

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COLLECTED, OR LIENS PLACED IN ORDER TO ENSURE THE COUNTY'S ABILITY TO RESTORE THE PROPERTY SHOULD THE APPLICANT FAIL TO DO SO.

§ NR 3-104. The 100-Foot Buffer.

(a) ~~Identification of the Buffer.~~ A 100-foot Buffer is hereby established from the mean high water line of tidal waters, the edge of the bank of tributary streams, and the landward extent of tidal wetlands.

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

- (1) A BUFFER OF AT LEAST 100 FEET IS DELINEATED, AND EXPANDED AS DESCRIBED IN A(3), BASED ON EXISTING FIELD CONDITIONS LANDWARD FROM:
 - A. THE MEAN HIGH WATER LINE OF A TIDAL WATER;
 - B. THE EDGE OF EACH BANK OF A TRIBUTARY STREAM; AND
 - C. THE UPLAND BOUNDARY OF A TIDAL WETLAND.
- (2) APPLICATIONS FOR A SUBDIVISION OR DEVELOPMENT ACTIVITY ON LAND LOCATED WITHIN THE RCA REQUIRING SITE PLAN APPROVAL AFTER JULY 1, 2008, SHALL INCLUDE A MINIMUM BUFFER OF AT LEAST 200 FEET FROM A TIDAL WATERWAY OR TIDAL WETLANDS. IN THE FOLLOWING INSTANCES, THE 200-FOOT BUFFER DOES NOT APPLY AND THE BUFFER SHALL BE DELINEATED IN ACCORDANCE WITH A(1) AND A(3):
 - (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; OR
 - (B) THE APPLICATION INVOLVES THE USE OF GROWTH ALLOCATION.
- (3) THE BUFFER SHALL BE EXPANDED BEYOND 100 FEET AS DESCRIBED IN A(1) ABOVE, AND BEYOND 200 FEET AS DESCRIBED IN §A(2) ABOVE, TO INCLUDE THE FOLLOWING CONTIGUOUS LAND FEATURES:
 - A. A STEEP SLOPE AT A RATE OF FOUR FEET FOR EVERY ONE PERCENT (1%) OF SLOPE OR THE ENTIRE STEEP SLOPE TO THE TOP OF THE SLOPE, WHICHEVER IS GREATER;
 - B. A NONTIDAL WETLAND TO THE UPLAND BOUNDARY OF THE NONTIDAL WETLAND;
 - C. THE BUFFER THAT IS ASSOCIATED WITH A NONTIDAL WETLAND OF SPECIAL STATE CONCERN AS STATED IN COMAR §26.23.06.01; AND/OR

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 BUFFER.

(b) General requirements. The functions of the Buffer with regard to the protection of the ~~Atlantic Coastal Bays~~ CRITICAL AREA include the following:

- (1) Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bays and their tributaries;
- (2) Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters, and aquatic resources;
- (3) Maintain an area of transitional habitat between aquatic and upland communities;
- (4) Maintain the natural environment of streams; and
- (5) Protect riparian wildlife habitat.

(c) DEVELOPMENT ACTIVITIES IN THE BUFFER. THE DEPARTMENT MAY AUTHORIZE DISTURBANCE TO THE BUFFER FOR THE FOLLOWING ACTIVITIES, PROVIDED MITIGATION IS PERFORMED IN ACCORDANCE WITH SUBSECTION (E), AND AN APPROVED BUFFER MANAGEMENT PLAN IS SUBMITTED AS REQUIRED PER SUBSECTION (H) OF THIS PART:

- (1) A NEW DEVELOPMENT OR REDEVELOPMENT ACTIVITY ASSOCIATED WITH A WATER-DEPENDENT FACILITY AS DESCRIBED IN § NR 3-124.
- (2) IN ACCORDANCE WITH COMAR 26.24.02, A SHORE EROSION CONTROL MEASURE UNDER COMAR 26.24.04 AND THIS SUBTITLE.
- (3) A DEVELOPMENT OR REDEVELOPMENT ACTIVITY APPROVED IN ACCORDANCE WITH THE VARIANCE PROVISIONS OF THIS SUBTITLE.
- (4) A NEW DEVELOPMENT OR REDEVELOPMENT ACTIVITY ON A LOT OR PARCEL THAT WAS CREATED BEFORE JANUARY 1, 2010, IN THE ATLANTIC COASTAL BAYS, OR DECEMBER 1, 1985, IN THE CHESAPEAKE COASTAL BAYS WHERE:
 - A. THE BUFFER IS EXPANDED FOR HIGHLY ERODIBLE SOIL ON A SLOPE LESS THAN FIFTEEN (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 SEPTIC SYSTEM ON A LOT CREATED BEFORE DECEMBER 1, 1985, IN THE CHESAPEAKE BAY CRITICAL AREA AND JUNE 1, 2002, IN THE ATLANTIC COASTAL BAYS CRITICAL AREA, WHERE MITIGATION IS PROVIDED AT A 1:1 RATIO FOR THE AREA OF CANOPY CLEARED OF ANY FOREST OR DEVELOPED WOODLAND.

(ed) Standards. The following criteria apply to land use activities within the Buffer:

(1) The Buffer shall be established at a minimum distance of one hundred feet landward from the mean high water line of tidal waters, the edge of the bank of tributary streams, and the landward edge of tidal wetlands; within the ~~Atlantic Coastal Bays~~ Critical Area.

(2) The Buffer shall be expanded beyond one hundred feet to include contiguous sensitive areas such as steep slopes, hydric soils or highly erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of fifteen percent (15%) or greater the Buffer shall be expanded four feet for every one percent (1%) of slope or to the top of the slope, whichever is greater in extent. Buffer expansion for steep slopes is not required when the slopes are wholly within the 100-foot Buffer.

(3) The Buffer shall also be required along both sides of all drainage ditches if adjacent agricultural lands do not have in place Best Management Practices cited and approved under the Agricultural Protection Section of this Subtitle. The Buffer may be used to establish wildlife corridors as defined under this Program.

(4) New development activities including structures, roads, parking areas and other LOT COVERAGE ~~impervious surfaces~~, mining and related facilities or septic systems may not be allowed in the Buffer except for those necessarily associated with water-dependent facilities approved under § NR 3-124 of this Subtitle.

(5) The Buffer shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the shoreline. When lands are proposed to be developed or converted to new uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that ensures the Buffer functions as set forth in this section.

(6) APPLICATIONS FOR A SUBDIVISION OR DEVELOPMENT ACTIVITY ON LAND LOCATED WITHIN THE RESOURCE CONSERVATION AREA (RCA) REQUIRING SITE PLAN APPROVAL AFTER JULY 1, 2008, SHALL INCLUDE A MINIMUM BUFFER OF AT LEAST TWO HUNDRED (200) FEET FROM A TIDAL WATERWAY OR TIDAL WETLANDS. IN THE FOLLOWING INSTANCES, THE 200-FOOT BUFFER DOES NOT APPLY, AND THE BUFFER SHALL BE DELINEATED IN ACCORDANCE WITH (1)A AND B:

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; OR

B. THE APPLICATION INVOLVES THE USE OF GROWTH ALLOCATION.

~~(e) Buffer management areas (BMAs). The County Commissioners may designate and map certain areas as Buffer management areas. These maps and the associated Buffer management plan shall be adopted by resolution of the County Commissioners after a duly advertised public hearing in accordance with § ZS 1-114 of the Worcester County Zoning Ordinance. Any measures approved as outlined herein shall be subject to the approval of the Critical Area Commission of the Chesapeake and Atlantic Coastal Bays.~~

(de) Tree cutting in the Buffer. The Buffer shall be managed to achieve or enhance the standards stated in § NR 3-104(c) hereof. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:

(1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install, repair or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits. Such cutting of trees or removal of natural vegetation shall be in accordance with the following:

A. Access shall be provided in such a manner as to minimize clearing within the Buffer.

B. Access shall not be in excess of six feet in width.

C. The trees or vegetation cleared shall be replaced within the 100-foot Buffer on a two to one basis.

~~(2) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer as set forth in the policies of this plan and provided that the trees are replaced within the Buffer on an equal basis for each tree cut.~~

(32) Individual trees may be removed, which are dead, diseased, or which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.

(43) Horticultural practices may be used to maintain the health of individual trees.

(54) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

(65) Notwithstanding any other provisions of this Subtitle, tree cutting or clearing in the Buffer may be permitted with a Critical Area site plan where the applicant demonstrates that Buffer impacts have been minimized for the initial development of a lot or parcel legally existing as of DECEMBER 1, 1985 FOR THE CHESAPEAKE BAY AND June 1, 2002 FOR THE ATLANTIC COASTAL BAYS when done in conjunction with a valid and approved forest conservation plan approved prior to the date of adoption of this Subtitle.

(gf) BUFFER ESTABLISHMENT.

- (1) THE REQUIREMENTS OF THIS REGULATION APPLY TO:
- A. A DEVELOPMENT OR REDEVELOPMENT ACTIVITY THAT OCCURS ON A LOT OR PARCEL THAT INCLUDES A BUFFER TO TIDAL WATERS, A TIDAL WETLAND, OR A TRIBUTARY STREAM IF THAT DEVELOPMENT OR REDEVELOPMENT ACTIVITY IS LOCATED OUTSIDE THE BUFFER; AND
 - B. THE APPROVAL OF A SUBDIVISION THAT INCLUDES A BUFFER TO TIDAL WATERS, A TIDAL WETLAND, OR A TRIBUTARY STREAM.
- (2) THE REQUIREMENTS OF THIS REGULATION DO NOT APPLY TO AN IN-KIND REPLACEMENT OF A STRUCTURE.
- (3) THE DEPARTMENT SHALL REQUIRE AN APPLICANT TO ESTABLISH THE BUFFER IN VEGETATION IN ACCORDANCE WITH THE TABLE BELOW AND SUBSECTION (GF)(5) AND TO PROVIDE A BUFFER MANAGEMENT PLAN UNDER SUBSECTION (K) WHEN AN APPLICANT APPLIES FOR:
- A. APPROVAL OF A SUBDIVISION;
 - B. CONVERSION FROM ONE LAND USE TO ANOTHER LAND USE ON A LOT OR A PARCEL; OR
 - C. DEVELOPMENT ON A LOT OR A PARCEL CREATED BEFORE JANUARY 1, 2010.
- (4) WITHIN THE INTENSLEY DEVELOPED AREA, LIMITED DEVELOPMENT AREA, OR RESOURCE CONSERVATION AREA, WHEN THE BUFFER IS NOT FULLY FORESTED OR IS NOT FULLY ESTABLISHED IN EXISTING, NATURALLY OCCURRING WOODY OR WETLAND VEGETATION, AN APPLICANT SHALL ESTABLISH THE BUFFER TO THE EXTENT REQUIRED IN THE FOLLOWING TABLE:

TABLE (gf)(5). BUFFER ESTABLISHMENT REQUIREMENTS.

DEVELOPMENT CATEGORY	LOT CREATED BEFORE JUNE 1, 2002, IN, THE ATLANTIC COASTAL BAYS CRITICAL AREA or DECEMBER 1, 1985, IN THE CHESAPEAKE BAY CRITICAL AREA	LOT CREATED AFTER JUNE 1, 2002, IN THE ATLANTIC COASTAL BAYS CRITICAL AREA or DECEMBER 1, 1985, IN THE CHESAPEAKE BAY CRITICAL AREA
DEVELOPMENT ON A VACANT LOT	ESTABLISH THE BUFFER BASED ON THE TOTAL SQUARE FOOTAGE OF LOT COVERAGE OUTSIDE THE BUFFER	FULLY ESTABLISH THE BUFFER
SUBDIVISION	FULLY ESTABLISH THE BUFFER	
NEW LOT WITH AN EXISTING DWELLING UNIT	ESTABLISH THE BUFFER BASED ON THE TOTAL SQUARE FOOTAGE OF LOT COVERAGE OUTSIDE THE BUFFER	

CONVERSION OF LAND USE ON A PARCEL OR LOT TO ANOTHER LAND USE	FULLY ESTABLISH THE BUFFER
ADDITION, ACCESSORY STRUCTURE, OR REDEVELOPMENT	ESTABLISH THE BUFFER BASED ON NET SQUARE FOOTAGE INCREASE IN LOT COVERAGE OUTSIDE THE BUFFER
SUBSTANTIAL ALTERATION	ESTABLISH THE BUFFER BASED ON TOTAL SQUARE FOOTAGE OF LOT COVERAGE OUTSIDE THE BUFFER

- (6) ANY LOT COVERAGE REMOVED FROM THE BUFFER MAY BE DEDUCTED FROM THE TOTAL CUMULATIVE AMOUNT OF ESTABLISHMENT REQUIRED IF:
- A. THE LOT COVERAGE EXISTED BEFORE JUNE 1, 2002 IN THE ATLANTIC COASTAL BAY CRITICAL AREA OR DECEMBER 1, 1985 IN THE CHESAPEAKE BAY CRITICAL AREA OR WAS ALLOWED BY LOCAL PROCEDURES; AND
 - B. THE TOTAL AREA IS STABILIZED.
- (h) 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 SUBSECTION.
- (1) ALL AUTHORIZED DEVELOPMENT ACTIVITIES SHALL BE MITIGATED BASED ON THE RATIOS NOTED IN THE TABLE BELOW, IN ADDITION TO THE AREA OF CANOPY COVERAGE REMOVED FOR AN INDIVIDUAL TREE, DEVELOPED WOODLAND OR FOREST:

TABLE (h)(1) BUFFER MITIGATION RATIOS.

ACTIVITY	MITIGATION RATIO	
	PERMANENT DISTURBANCE	TEMPORARY DISTURBANCE
SEPTIC ON A LOT CREATED BEFORE LOCAL PROGRAM APPROVAL IF LOCATED IN EXISTING GRASS OR IF CLEARING IS NOT REQUIRED	NOT APPLICABLE	0
SEPTIC SYSTEM IN A FOREST OR DEVELOPED WOODLAND ON A LOT CREATED BEFORE LOCAL PROGRAM APPROVAL IF CLEARING IS REQUIRED	1:1	NOT APPLICABLE
SHORE EROSION CONTROL	1:1	1:1
RIPARIAN WATER ACCESS	2:1	1:1
WATER-DEPENDENT FACILITY	2:1	1:1
VARIANCE	3:1	1:1

- (2) ALL VIOLATIONS IN THE BUFFER SHALL BE MITIGATED AT A RATIO OF 4:1 FOR THE AREA OF PERMANENT DISTURBANCE IN THE BUFFER.
 - (3) ANY LOT COVERAGE REMOVED FROM THE BUFFER MAY BE DEDUCTED FROM THE TOTAL CUMULATIVE AMOUNT OF MITIGATION REQUIRED IF:
 - A. THE LOT COVERAGE EXISTED BEFORE THE DATE OF LOCAL PROGRAM ADOPTION OR WAS ALLOWED BY LOCAL PROCEDURES; AND
 - B. THE TOTAL AREA IS STABILIZED.
 - (4) PLANTING FOR MITIGATION SHALL BE PLANTED ONSITE WITHIN THE BUFFER. IF MITIGATION PLANTING CANNOT BE LOCATED WITHIN THE BUFFER, THE DEPARTMENT MAY ALLOW PLANTING IN THE FOLLOWING ORDER OF PRIORITY:
 - A. ON-SITE AND ADJACENT TO THE BUFFER; AND
 - B. ON-SITE ELSEWHERE IN THE CRITICAL AREA.
 - (5) THE INSTALLATION OR CULTIVATION OF NEW LAWN OR TURF IN THE BUFFER IS PROHIBITED.
- (h) BUFFER PLANTING STANDARDS. AN APPLICANT THAT IS REQUIRED TO PLANT THE BUFFER TO MEET ESTABLISHMENT OR MITIGATION REQUIREMENTS SHALL APPLY THE FOLLOWING PLANTING CREDITS AND STANDARDS:
- (1) IF PLANTING TO MEET A MITIGATION REQUIREMENT, THE FOLLOWING COMBINATION OF PLANTINGS MAY BE USED:
 - A. IF REQUIRED TO PLANT LESS THAN ONE (1) ACRE, THE ENTIRE REQUIREMENT MUST BE MET USING LANDSCAPE STOCK, AS NOTED IN TABLE (I)(1).
 - B. IF REQUIRED TO PLANT ONE (1) ACRE OR MORE, AT LEAST 50% OF THE PLANTING REQUIREMENT MAY BE MET IN LANDSCAPE STOCK PER TABLE (I)(1), AND THE REMAINDER MAY BE MET IN FLEXIBLE STOCK PER TABLE (I)(2).
 - (2) IF PLANTING TO MEET AN ESTABLISHMENT REQUIREMENT, THE FOLLOWING COMBINATION OF PLANTINGS MAY BE USED:
 - A. IF REQUIRED TO PLANT LESS THAN ¼ ACRE, THE ENTIRE REQUIREMENT MUST BE MET USING LANDSCAPE STOCK PER TABLE (I)(1).
 - B. IF REQUIRED TO PLANT AT LEAST ¼ ACRE AND UP TO 1 ACRE, AT LEAST 25% OF THE REQUIREMENT MUST BE MET USING LANDSCAPE STOCK PER TABLE (I)(1) AND THE REMAINDER MAY BE MET IN FLEXIBLE STOCK PER TABLE (I)(2).

C. IF REQUIRED TO PLANT MORE THAN ONE (1) ACRE, AT LEAST 10% OF THE REQUIREMENT MUST BE MET USING LANDSCAPE STOCK PER TABLE (I)(1) AND THE REMAINDER MAY BE MET IN FLEXIBLE STOCK PER TABLE (I)(2).

(3) A VARIANCE TO THE PLANTING AND MITIGATION STANDARDS OF THIS ORDINANCE IS NOT PERMITTED.

(j) PLANTING CREDITS.

(1) IF REQUIRED TO PLANT USING LANDSCAPE STOCK, THE FOLLOWING PLANTING SIZES AND CREDIT SHALL BE USED:

TABLE (I)(1) LANDSCAPE STOCK CREDIT.

VEGETATION TYPE	MINIMUM SIZE ELIGIBLE FOR CREDIT	MAXIMUM CREDIT ALLOWED (SQUARE FEET)	MAXIMUM PERCENTAGE OF LANDSCAPE STOCK CREDIT
Canopy TREE	2-INCH CALIPER	200	NOT APPLICABLE
Canopy TREE	¾-INCH CALIPER	100	NOT APPLICABLE
Understory Tree	¾-inch caliper	75	Not Applicable
LARGE SHRUB	3 feet high	50	30%
SMALL SHRUB	18 inches high	25	20%
HERBACEOUS PERENNIAL	1 quart OR BASED ON THE AREA COVERED BY PLUGS OR SEED MIX	2	10%
PLANTING CLUSTER FOR BUFFER ESTABLISHMENT OR MITIGATION OF LESS THAN ½ ACRE	1 CANOPY TREE; AND 3 LARGE SHRUBS OR 6 SMALL SHRUBS OF SIZES LISTED ABOVE	300	NOT APPLICABLE
PLANTING CLUSTER FOR BUFFER ESTABLISHMENT OR MITIGATION OF LESS THAN ½ ACRE	2 UNDERSTORY TREES; AND 3 LARGE SHRUBS OR 6 SMALL SHRUBS OF SIZES LISTED ABOVE	350	NOT APPLICABLE

A. THE DEPARTMENT MAY AUTHORIZE AN APPLICANT TO INCREASE THE PERCENTAGE OF LARGE SHRUBS, SMALL SHRUBS, OR HERBACEOUS PERENNIALS IF:

i. THE BUFFER HAS EXISTING CANOPY COVERAGE OF AT LEAST 50 PERCENT; OR

- ii. THERE ARE VERIFIED SITE CONSTRAINTS THAT PRECLUDE CANOPY PLANTINGS, INCLUDING SEVERELY ERODING SLOPES, SALTWATER INTRUSION, PREDOMINATELY SANDY SOILS, OR UNCONSOLIDATED FILL.

- (2) THE FOLLOWING FLEXIBLE PLANTING STOCK MAY BE USED IF AUTHORIZED UNDER SECTION E(1) OR (2) OF THIS PART:

TABLE (i)(2) FLEXIBLE PLANTING STOCK.

STOCK SIZE OF TREES ONLY	REQUIRED # OF STEMS/ACRE	SURVIVABILITY REQUIREMENT	MINIMUM FINANCIAL ASSURANCE PERIOD AFTER PLANTING
BARE-ROOT SEEDLINGS OR WHIP	700	50 PERCENT	5 YEARS
½-INCH TO 1-INCH CONTAINER GROWN TREES	450	75 PERCENT	2 YEARS
MORE THAN 1-INCH CONTAINER GROWN TREES	350	90 PERCENT	2 YEARS

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

- (1) ANY PERMIT FOR A DEVELOPMENT ACTIVITY THAT REQUIRES BUFFER ESTABLISHMENT OR BUFFER MITIGATION WILL NOT BE ISSUED UNTIL A BUFFER MANAGEMENT PLAN IS APPROVED BY THE DEPARTMENT.
- (2) AN APPLICANT MAY NOT OBTAIN THE FINAL APPROVAL OF A SUBDIVISION APPLICATION UNTIL THE BUFFER MANAGEMENT PLAN HAS BEEN REVIEWED AND APPROVED BY THE DEPARTMENT.
- (3) THE DEPARTMENT MAY NOT APPROVE A BUFFER MANAGEMENT PLAN UNLESS:
 - A. THE PLAN INDICATES THAT ALL PLANTING STANDARDS UNDER SUBSECTION (3-104 (i)) WILL BE MET; AND
 - B. APPROPRIATE MEASURES ARE IN PLACE FOR THE LONG-TERM PROTECTION AND MAINTENANCE OF ALL BUFFER AREAS.
- (4) 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.
- (5) CONCURRENT WITH RECORDATION OF A SUBDIVISION PLAT, AN APPLICANT SHALL RECORD A PROTECTIVE EASEMENT FOR THE BUFFER.
- (6) IF AN APPLICANT FAILS TO IMPLEMENT A BUFFER MANAGEMENT PLAN, THAT FAILURE SHALL CONSTITUTE A VIOLATION OF THIS SUBTITLE. A PERMIT FOR ANY DEVELOPMENT ACTIVITY WILL NOT BE ISSUED FOR A PROPERTY THAT HAS A VIOLATION.
- (7) AN APPLICANT SHALL POST A SUBDIVISION WITH PERMANENT SIGNS PRIOR TO FINAL RECORDATION IN ACCORDANCE WITH COMAR 27.01.09.01-2.
- (8) BUFFER MANAGEMENT PLANS THAT INCLUDE NATURAL REGENERATION SHALL FOLLOW THE PROVISIONS OF COMAR 27.01.09.01-4.
- (L) FEE-IN-LIEU OF BUFFER MITIGATION. A FEE-IN-LIEU FOR MITIGATION WILL BE COLLECTED IF THE PLANTING REQUIREMENTS OF SUBSECTION (E) 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 THE WORCESTER 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 WORCESTER COUNTY AND THE CRITICAL AREA COMMISSION.
- (M) Buffer management areas (BMAs). The County Commissioners may designate and map certain areas as Buffer management areas. These maps and the associated Buffer management plan shall

be adopted by resolution of the County Commissioners after a duly advertised public hearing in accordance with § ZS 1-114 of the Worcester County Zoning Ordinance. Any measures approved as outlined herein shall be subject to the approval of the Critical Area Commission of the Chesapeake and Atlantic Coastal Bays. FOR BMAS WITHIN THE ATLANTIC COASTAL BAYS CRITICAL AREA, REFERENCE APPENDIX ADOPTED BY WORCESTER COUNTY COMMISSIONERS ON MARCH 18, 2003.

§ NR 3-105. Grandfathered uses structures and density.

(a) Continuation of existing uses. The Department shall permit the continuation, but not necessarily the intensification or expansion, of any permitted use or structure legally existing on the date of Program approval unless the use has been discontinued for more than one year or is otherwise restricted by existing local ordinances. If any existing use or structure does not conform with the provisions of the Program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in § NR 3-111 of this Subtitle.

(b) Residential density. Except as herein provided, the Department shall permit the types of land described in the following subsections to be developed notwithstanding the density provisions of this Subtitle provided it is in accordance with the following subsections.

(1) A vacant single lot or parcel of land legally existing as of the date of adoption of this Subtitle, DECEMBER 1, 1985 IN THE CHESAPEAKE BAYS CRITICAL AREA AND JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA, may be improved with a single-family dwelling provided that the lot or parcel is brought into conformance with the terms of this Subtitle to the extent possible, including the consolidation or reconfiguration of adjoining lots owned by the same individual or entity and the measures proposed are approved by the Commission.

(2) IT IS ON LAND WHERE DEVELOPMENT ACTIVITY HAS PROGRESSED TO THE POINT OF THE POURING OF FOUNDATION FOOTINGS OR THE INSTALLATION OF STRUCTURAL MEMBERS.

~~(2-3) Vacant land that was subdivided into recorded and legally buildable lots which received final plat approval as described in the Zoning and Subdivision Control Article after June 1, 2002 but prior to the effective date of this Subtitle may be improved with a single-family dwelling provided that development of the land conforms to the requirements of this Subtitle and COMAR Title 27, as from time to time amended, or the area of land is deducted from the County's growth allocation.~~

IT IS A LEGAL PARCEL OF LAND, NOT BEING PART OF A RECORDED OR APPROVED SUBDIVISION, THAT WAS RECORDED AS OF DECEMBER 1, 1985 IN THE CHESAPEAKE BAY CRITICAL AREA; JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA, AND LAND THAT WAS SUBDIVIDED INTO RECORDED, LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION RECEIVED THE COUNTY'S FINAL APPROVAL PRIOR TO JUNE 1, 1984 IN THE CHESAPEAKE BAY CRITICAL AREA; JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA IF:

A. AT THE TIME OF DEVELOPMENT, THE LAND IS BROUGHT INTO CONFORMANCE WITH THE CRITICAL AREA PROGRAM INsofar AS POSSIBLE, INCLUDING MEETING THE LOT CONSOLIDATION AND RECONFIGURATION REQUIREMENTS OF NR 3-115, IF APPLICABLE;
OR

- B. WITHIN THE CHESAPEAKE BAYS CRITICAL AREA, THE LAND HAS RECEIVED A BUILDING PERMIT SUBSEQUENT TO DECEMBER 1, 1985, BUT PRIOR TO LOCAL PROGRAM APPROVAL.
- (4) IT IS ON LAND THAT WAS SUBDIVIDED INTO RECORDED, LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION RECEIVED THE COUNTY'S FINAL APPROVAL BETWEEN JUNE 1, 1984 AND DECEMBER 1, 1985 IN THE CHESAPEAKE BAY CRITICAL AREA AND JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA; AND
- (5) IT IS ON LAND THAT WAS SUBDIVIDED INTO RECORDED, LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION RECEIVED THE FINAL APPROVAL AFTER DECEMBER 1, 1985 IN THE CHESAPEAKE BAY CRITICAL AREA AND JUNE 1, 2002 IN THE ATLANTIC COASTAL BAY CRITICAL AREA, AND PROVIDED THAT EITHER DEVELOPMENT OF ANY SUCH LAND CONFORMS TO THE IDA, LDA OR RCA REQUIREMENTS IN THIS CHAPTER OR THE AREA OF THE LAND IS COUNTED AGAINST THE GROWTH ALLOCATION PERMITTED UNDER THIS ORDINANCE.
- (36) WITHIN THE ATLANTIC COASTAL BAYS, a planned unit development in a bayside mixed use district that receives final site plan approval and/or for which a subdivision plat has been recorded after June 1, 2002 but prior to the effective date of this Subtitle may be developed provided that:
 - A. Development of the land conforms to the requirements of this Subtitle and Title 27 of the Code of Maryland Regulations, as from time to time amended, and the land area is deducted from the County's growth allocation in accordance with § NR 3-112 hereof and COMAR 27.01.02.06, as from time to time amended; or
 - B. The land is:
 - i. Designated as an Intensely Developed Area;
 - ii. Exempted from the Buffer designation in COMAR 27.01.09, as from time to time amended, pursuant to § NR 3-104(e) hereof; and
 - iii. Part of a project that complies with Title 4, Subtitle 2 of the Environment Article of the Annotated Code of Maryland as may be amended from time to time.

§ NR 3-106. Intensely Developed Areas.

- (a) Description. Intensely Developed Areas are areas where residential, commercial, institutional, and/or industrial uses predominate and where relatively little natural habitat occurs or remains. At the time of the initial mapping, these areas shall have 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.

- (4) In addition, these features shall be concentrated in an area of at least twenty adjacent acres or that entire upland portion of the ~~Atlantic Coastal Bays~~ Critical Area within the boundary of a municipality, whichever is less, UNLESS:
 - A. THE COMMISSION HAS APPROVED AN ALTERNATIVE STANDARD FOR DESIGNATION OF AN INTENSELY DEVELOPED AREA; AND
 - B. THE AREA IS PART OF A GROWTH ALLOCATION APPROVED BY THE COMMISSION.

- (b) General requirements. In addition to the 100-foot Buffer, new or expanded development or redevelopment within Intensely Developed Areas shall:
 - (1) Improve the quality of runoff from developed areas that enter the ~~Atlantic Coastal Bays~~ Critical Area or its tributary streams;
 - (2) Accommodate additional development of the type and intensity designated by the County Commissioners in this Subtitle provided that water quality is not impaired;
 - (3) Minimize the expansion of Intensely Developed Areas into portions of the ~~Atlantic Coastal Bays~~ Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;
 - (4) Conserve and enhance Habitat Protection Areas to the extent possible within Intensely Developed Areas; and
 - (5) Use retrofitting measures to the extent feasible to address existing stormwater management problems.

- (c) Development standards. The following criteria are hereby adopted for Intensely Developed Areas:
 - (1) All plans shall be assessed for their impacts on water quality and other biological resources.
 - (2) Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life, and their habitats and maintain hydrologic processes and water quality.
 - (3) Best Management Practices shall be considered and, where appropriate, implemented as part of all plans for development or redevelopment.
 - (4) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in § NR 3-120 through 3-123 of this Subtitle.
 - (5) 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. The technologies shall be developed in accordance with the guidelines published by the ~~Chesapeake Bay~~ Critical Area

Commission.

- B. In the case of redevelopment, if the technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least ten percent (10%) below the level of pollution on the site prior to redevelopment, then offsets shall be provided to achieve a ten percent (10%) reduction.
 - C. In the case of new development, offsets as determined by the Department shall be used if they reduce pollutant loadings by at least ten percent (10%) of the pre-development levels.
 - D. Offsets may be located either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures as specified in the ~~“10% Rule Compliance—Urban Stormwater Quality Guidance for Maryland Chesapeake Bay Critical Area” (Kumble, Peter, et al, 1993)~~ CRITICAL AREA 10% RULE GUIDANCE MANUAL – FALL 2003 AND AS MAY BE SUBSEQUENTLY AMENDED.
- (6) WITHIN THE ATLANTIC COASTAL BAYS CRITICAL AREA, proposed development sites shall provide a forest or developed woodland cover of at least fifteen percent (15%) after development, which may be comprised all or in part of typical landscaping as approved by the Department, with the following exceptions:
- A. Development of a single lot for the purpose of constructing a dwelling intended for the use of the owner, a child or grandchild of the owner, if the development does not result in the cutting, clearing or grading of more than forty thousand square feet of forest and the lot was legally recorded prior to July 31, 1994; or
 - B. Development of a single lot that is part of a project that has otherwise complied with the Forest Conservation Act.
- (7) If practicable, permeable areas shall be established in vegetation and whenever possible, redevelopment shall reduce existing levels of pollution.
- (8) Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities and open spaces, should be maintained and, if possible, encouraged to be established within Intensely Developed Areas.
- (9) Ports and industries which use water for transportation and derive economic benefits from shore access shall be located near existing port facilities. The County Commissioners may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or County and is consistent with the provisions of the Water Dependent Facilities Section of this Subtitle and other State and Federal regulations.
- (10) To the extent practicable, future development in the ~~Atlantic Coastal Bays~~ Critical Area shall use cluster development as a means to reduce ~~impervious areas~~ LOT COVERAGE and to maximize areas of natural vegetation.
- (11) 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. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
- B. Development activities shall address the protection of existing forests and developed woodlands identified as Habitat Protection Areas in the Habitat Protection Section of this Subtitle.

§ NR 3-107. Limited Development Areas.

- (a) Description. Limited Development Areas are those areas that are currently developed in low or moderate-intensity uses. They also contain areas of natural plant and animal habitats. 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 at least one of the following features:
 - (1) Housing density ranging from one dwelling unit per five 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 an Intensely Developed Area but comprising less than twenty acres; or
 - (4) Areas having public sewer or public water, or both.
- (b) General requirements. In addition to the ~~100-foot~~ Buffer, the ~~Atlantic Coastal Bays~~ Critical Area law hereby incorporates the following requirements 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 Atlantic Coastal Bays and their 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 subsection 3-107(c) hereof; and
 - B. The overall intensity of development within the Limited Development Areas 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 established in the area at the time of adoption of this Subtitle.
- (c) Development standards. The following criteria apply for Limited Development Areas:
 - (1) For all development activities in the Limited Development Areas, the applicant shall identify any environmental or natural feature described below and shall meet all of the following standards of environmental protection:
 - A. Adherence to the provisions of § NR 3-104 and 3-120 through 3-123 of this Subtitle.

- B. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life, and their habitats and maintain hydrologic processes and water quality.
 - C. All development activities that must cross or affect streams shall be designed to:
 - 1. Reduce increases in flood frequency and severity that are attributable to development;
 - 2. Retain tree canopy so as to maintain stream water temperature within normal variation;
 - 3. Provide a natural substrate for stream beds; and
 - 4. Minimize adverse water quality and quantity impacts of stormwater.
 - D. All development sites receiving project approval shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetated 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 Subtitle. The Department shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the County Commissioners through which the corridor is preserved by public or private groups, including homeowners associations, land trusts, nature trusts, and other organizations.
- (2) For the cutting or clearing of trees in forests and developed woodland areas which are associated with current or planned development activities, but not including building permits for individual lots, in a Limited Development Area, the Department shall:
- A. Require that the applicant seek the comments of and comply with the recommendations of the Maryland Department of Natural Resources to the extent possible 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 Subtitle.
 - D. Planting associated with the required replacement of forest or developed woodland shall be performed prior to the issuance of any zoning certificate or certificate of use and occupancy or shall be bonded in accordance with the provisions of § ZS 1-124 of the Worcester County Zoning Ordinance.
 - E. IF AN APPLICANT IS AUTHORIZED TO CLEAR LESS THAN TWENTY (20) PERCENT OF A FOREST OR DEVELOPED WOODLANDS ON A LOT OR PARCEL, THE APPLICANT SHALL REPLACE THE FOREST OR DEVELOPED WOODLANDS AT A RATE OF ONE (1) TIMES THE ENTIRE AREAL EXTENT OF THE FOREST OR DEVELOPED WOODLAND

CLEARED;

- F. IF AN APPLICANT IS AUTHORIZED TO CLEAR MORE THAN TWENTY (20) PERCENT OF A FOREST OR DEVELOPED WOODLANDS ON A LOT OR PARCEL, THE APPLICANT SHALL REPLACE THE FOREST OR DEVELOPED WOODLANDS AT 1.5 TIMES THE ENTIRE AREAL EXTENT OF THE FOREST OR DEVELOPED WOODLANDS CLEARED, INCLUDING THE FIRST TWENTY (20) PERCENT OF THE FOREST OR DEVELOPED WOODLANDS CLEARED;
- G. AN APPLICANT MAY NOT CLEAR MORE THAN THIRTY (30) PERCENT OF A FOREST OR DEVELOPED WOODLANDS ON A LOT OR PARCEL UNLESS THE VARIANCE IS GRANTED AND THE APPLICANT REPLACES FOREST OR DEVELOPED WOODLANDS AT A RATE OF THREE (3) TIMES THE ENTIRE AREAL EXTENT OF THE FOREST OR DEVELOPED WOODLANDS CLEARED.
- H. IF AN APPLICANT IS AUTHORIZED TO CLEAR ANY PERCENTAGE OF FOREST OR DEVELOPED WOODLAND THE REMAINING PERCENTAGE SHALL BE MAINTAINED THROUGH RECORDED, RESTRICTIVE COVENANTS OR SIMILAR INSTRUMENTS APPROVED BY THE COUNTY.

~~(3) For the alteration of forest and developed woodland in the Limited Development Area, the following requirements shall apply:~~

- ~~A. The total acreage in forest coverage within the County in the Atlantic Coastal Bays Critical Area shall be maintained or preferably increased;~~
- ~~B. All forests that are allowed to be cleared or developed shall be replaced in the Atlantic Coastal Bays Critical Area on not less than an equal area basis on sites with similar characteristics to those on which the original forests were growing;~~
- ~~C. No more than twenty percent (20%) of any forest or developed woodland may be removed from forest use, except as provided in paragraph (c)(4) below. The remaining eighty percent (80%) shall be maintained through recorded, restrictive covenants or similar instruments approved by the County Commissioners; and~~
- ~~D. Developed woodland vegetation shall be conserved to the greatest extent practicable.~~

~~(4) For replacement of forest and developed woodland, if more than twenty percent (20%) is to be removed from forest use, an applicant may clear or develop not more than thirty percent (30%) of the total forest area provided that the afforested area shall consist of one and a half times the total surface acreage of the disturbed forest or developed woodland area, or both.~~

(53) In addition, applicants seeking project approval shall adhere to the following criteria for forest and woodland development:

- A. A performance bond in an amount determined by the Department to ensure satisfactory replacement as required by paragraph (c)(2) ~~(3) and (4)~~ above shall be posted, if necessary;

- B. A stormwater management permit and sediment and erosion control plan approval shall be required before forest or developed woodland is cleared;
 - C. Forests which have been cleared before obtaining a stormwater management permit and sediment and erosion control plan approval or that exceed the maximum area allowed in paragraph (c)(2) above shall be replanted at three times the areal extent of the cleared forest;
 - D. If the areal extent of the site limits the application of the reforestation guidelines in paragraph (c)(2) ~~(3), (4) and (5)~~ above, alternative provisions or reforestation guidelines may be permitted by the Department if they are consistent with the intent of the Forest and Woodland element of this Subtitle to conserve the forest and developed woodland resources of the ~~Atlantic Coastal Bays~~ Critical Area. Alternative provisions may include use of a forest mitigation bank if the provisions are adequate to ensure the restoration or establishment of an equivalent forest area;
 - E. If no forest exists on the proposed development site, this site shall be planted to provide a forest or developed woodland cover of at least fifteen percent (15%);
 - F. 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;
 - G. The applicant shall designate, subject to the approval of the Department, a new forest area on a part of the site not forested; and
 - H. The afforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments approved by the County Commissioners.
- (64) Projects which receive Forest Conservation Plan approval in accordance with the provisions of Subtitle 4 (Forest Conservation) of the Worcester County Code of Public Local Laws prior to JUNE 1, 2002 FOR THE ATLANTIC COASTAL BAYS ~~the date of adoption of this Subtitle~~ may develop under the terms of that Forest Conservation Plan approval with a Critical Area site plan where the applicant demonstrates that resource impacts have been minimized, notwithstanding the provisions of § NR 3-107(c)(1) through (5) above.
- (75) Development on slopes greater than fifteen percent (15%), 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 in Section 3-107(b) above.
- (8) Except as otherwise provided in this subsection, for stormwater runoff, LOT COVERAGE ~~impervious areas~~ shall be limited to fifteen percent (15%) of the site.
- A. If a parcel or lot of one-half acre or less in size existed on or before DECEMBER 1, 1985, IN THE CHEAPEAKE BAY, OR June 1, 2002, IN THE ATLANTIC COASTAL BAYS, then LOT COVERAGE IS ~~manmade impervious surfaces are~~ limited to twenty-five percent (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, IN THE CHEAPEAKE BAY, OR June 1,

2002, IN THE ATLANTIC COASTAL BAYS, then LOT COVERAGE IS ~~manmade impervious surfaces are~~ 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, IN THE CHEAPEAKE BAY, OR June 1, 2002, IN THE ATLANTIC COASTAL BAYS, then ~~manmade impervious surfaces of the lot~~ COVERAGE may ~~not exceed twenty-five percent (25%) of the lot and the total impervious surfaces of the entire subdivision may not exceed fifteen percent (15%)~~ EXCEED FIFTEEN (15%) OF THE INDIVIDUAL LOT; HOWEVER THE TOTAL LOT COVERAGE FOR THE ENTIRE SUBDIVISION MAY NOT EXCEED FIFTEEN PERCENT (15%).

D. ~~Impervious surface~~ LOT COVERAGE limits provided in subsections (c)(8)A through C above may be exceeded, ~~upon findings by the Director of the Department or his designee that~~ IF all of the following conditions exist:

1. THE LOT OR PARCEL IS LEGALLY NONCONFORMING. A LOT OR PARCEL LEGALLY DEVELOPED AS OF JULY 1, 2008 MAY BE CONSIDERED LEGALLY NONCONFORMING FOR THE PURPOSES OF LOT COVERAGE REQUIREMENTS;
2. LOT COVERAGE ASSOCIATED WITH NEW DEVELOPMENT ACITIVITIES ~~New impervious surfaces~~ on the property have been minimized;
32. For a lot or parcel one-half acre or less in size, total LOT COVERAGE ~~impervious surface area~~ does not exceed ~~impervious surface~~ LOT COVERAGE limits in subsection (c)(8)A by more than twenty-five percent (25%) or five hundred (500) square feet, whichever is greater;
43. For a lot or parcel greater than one-half acre and less than one acre in size, total LOT COVERAGE ~~impervious surface area~~ does not exceed LOT COVERAGE ~~impervious surface~~ limits in subsection (c)(8)B or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
54. Water quality impacts associated with runoff from new ~~impervious surfaces~~ LOT COVERAGE can be and have been minimized through site design considerations or the use of best management practices to improve water quality; and
65. The property owner performs on-site mitigation to offset potential adverse water quality impacts from the new ~~impervious surfaces~~ LOT COVERAGE.

E. THE FOLLOWING TABLE SUMMARIZES THE LIMITS SET FORTH IN PARAGRAPHS A THROUGH D ABOVE:

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

F. IF THE DEPARTMENT MAKES THE FINDINGS SET FORTH IN SECTION E ABOVE AND AUTHORIZES AN APPLICANT TO USE THE LOT COVERAGE LIMITS SET FORTH IN THAT PARAGRAPH, THE APPLICANT SHALL:

- (1) DEMONSTRATE THAT WATER QUALITY IMPACTS ASSOCIATED WITH RUNOFF FROM THE DEVELOPMENT ACTIVITIES THAT CONTRIBUTE TO LOT COVERAGE HAVE BEEN MINIMIZED THROUGH SITE DESIGN CONSIDERATIONS OR THE USE OF BEST MANAGEMENT PRACTICES TO IMPROVE WATER QUALITY; AND
- (2) THE PROPERTY OWNER PERFORMS ON-SITE MITIGATION, IN THE FORM OF PLANTINGS, TO OFFSET POTENTIAL ADVERSE WATER QUALITY IMPACTS FROM THE NEW LOT COVERAGE.
- (3) 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. SUCH A FEE IS ESTABLISHED BY RESOLUTION OF THE COUNTY COMMISSIONERS AND MAY BE AMENDED FROM TIME TO TIME. 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.

(9) To reduce the extent of ~~impervious areas~~ LOT COVERAGE and maximize areas of natural vegetation, cluster development shall be considered when planning for future development.

(10) 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 ~~Atlantic Coastal Bays~~ Critical Area Law, the Program refers to all of the following complementary existing State laws and regulations:

- (1) For soil erosion and sediment control (COMAR 26.17.01, as from time to time amended):
 - A. In order to prevent soil erosion and sedimentation, a Soil Erosion and Sedimentation Control Plan shall be required whenever a development within the ~~Atlantic Coastal Bays~~ Critical Area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the requirements of Natural Resources Article §§ 8-1101 through 8-1108 and Environment Article §§ 4-103 through 4-108 and § 4-

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116, Annotated Code of Maryland, as from time to time amended, and local ordinances, as may be amended from time to time. Sediment control practices shall be appropriately designed to reduce adverse water quality impacts.

- B. The Program requires erosion control as the basis of sediment control plans within the ~~Atlantic Coastal Bays~~ Critical Area.
- (2) For stormwater runoff (COMAR 26.17.02, as from time to time amended):
- A. Post-development discharges may not cause downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a 10-year storm at the predevelopment state.
 - B. All stormwater storage facilities shall be designed with sufficient capacity to achieve the water quality goals of this Section and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.
 - C. Stormwater management measures shall be consistent with the requirements of Environment Article 4-201 et seq., Annotated Code of Maryland, as may be amended from time to time.

§ NR 3-108. Resource Conservation Areas.

- (a) Description. Resource Conservation Areas are areas characterized by nature-dominated environments (including, but not limited to, wetlands, forests, abandoned fields) and resource-utilization activities (including, but not limited to, agriculture, forestry, fisheries activities or aquaculture). At the time of the initial mapping, these areas shall have at least one of the following features:
 - (1) Existing density is less than one dwelling unit per five acres; or
 - (2) The dominant land use is in agriculture, wetland, forest, barren land, surface water, and/or open space.
- (b) General requirements. In addition to the ~~100-foot~~ Buffer, the ~~Atlantic Coastal Bays~~ Critical Area Law hereby incorporates the following requirements 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 ~~Atlantic Coastal Bays~~ Critical Area, its biological productivity and its diversity;
 - (2) Provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the CHESAPEAKE AND 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. The following criteria apply for Resource Conservation Areas:

- (1) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area Section, the Agricultural Section, and the Forest and Woodlands Protection Section of this Subtitle.
- (2) Agricultural and conservation easements shall be encouraged 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 twenty acres. Within this limit of overall density, minimum lot sizes shall be as prescribed by the terms of the Zoning and Subdivision Control Article. Such mechanisms as cluster development, 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 Commissioners 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 in Section 3-108(c)(2) above, shall be allowed in Resource Conservation Areas.
- (5) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas. Additional land may not be zoned or used for industrial, commercial, or institutional development except as provided by § NR 3-108(d) and § NR 3-112 below. Non-industrial activities which support surface mining, agriculture, and forestry may be established or expanded, provided they conform with the other requirements of this Subtitle.
- (6) The Department shall ensure that the overall acreage of forest and woodland within the Resource Conservation Areas does not decrease.
- (7) Development activity within the Resource Conservation Areas shall be consistent with the requirements for Limited Development Areas in this Subtitle as specified in § NR 3-107 hereof.
- (8) Nothing in this section shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than one dwelling unit per twenty acres.
- (9) In calculating the one dwelling unit per twenty-acre density of development that is permitted on a parcel located within the Resource Conservation Area, the Department may permit the area of any private wetlands located on the property to be included under the following conditions:
 - A. The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and
 - B. The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the Department and the State Department of Environment.
- (10) In consideration of additional dwelling units per lot or parcel as part of the primary dwelling unit, the County shall adhere to the following:
 - A. Within a Resource Conservation Area, the County may consider one additional

dwelling unit per lot or parcel as part of the primary dwelling unit for the purpose of the density calculation under this subsection if the additional dwelling unit meets either of the following set of conditions:

1. The additional dwelling unit is located within the primary dwelling unit, or its entire perimeter is within 100 feet of the primary dwelling unit, it does not exceed 900 square feet in total enclosed area, and it is served by the same sewage disposal system as the primary dwelling unit; or
 2. The additional dwelling unit is located within the primary dwelling unit, is built so that its construction does not increase the amount of ~~impervious surface~~ LOT COVERAGE already attributed to the primary dwelling unit, and it is served by the same sewage disposal system as the primary dwelling unit.
- B. An additional dwelling unit meeting all the criteria of this section that is separate from the primary dwelling unit may not be subdivided or conveyed separately from the primary dwelling unit.
- C. The provisions of this section apply to density calculations only and may not be construed to authorize the County to grant a variance, unless the variance is granted in accordance with the requirements and standards in this Subtitle for variances in the Atlantic Coastal Bays Critical Area.
- D. The County shall maintain records of all building permits issued under this section for additional dwelling units considered part of a primary dwelling unit and shall provide this information on a quarterly basis to the Critical Area Commission.

(d) Land use in the Resource Conservation Area. In addition to the uses specified above, certain nonresidential uses may be permitted in Resource Conservation Areas if permitted by the terms of the Zoning and Subdivision Control Article and if it is determined by the Department that the proposed use is one of the following:

- (1) A home occupation as an accessory use on a property used for residential purposes and as provided for in the County's Zoning Ordinance;
- (2) A golf course, excluding principal buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;
- (3) A cemetery that is an accessory use to a church ~~existing as of June 1, 2002~~ if ~~impervious surfaces~~ LOT COVERAGE ~~are~~ IS limited to 20,000 square feet or 15% of the site, whichever is less;
- (4) A bed and breakfast facility located in a residential structure existing as of DECEMBER 1, 1985, IN THE CHESAPEAKE COASTAL BAY, OR June 1, 2002, IN THE ATLANTIC COASTAL BAYS, 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 daycare 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) A public or private non-commercial dock or pier and passive recreational areas.
[Added 3-17-2015 by Bill No. 15-1]
 - A. Dock or pier and passive recreational areas may include:
 - 1. Floating platforms for the launching and retrieval of non-motorized watercraft;
 - 2. A pervious storage structure for non-motorized watercraft not to exceed twenty thousand square feet in area; and
 - 3. Passive recreation such as walking, hiking, bicycle paths and trails, wildlife observation areas, and picnic areas.
 - B. Dock or pier and passive recreational areas may not include principal uses and structures or accessory uses and structures, including but not limited to: gazebos, pavilions, clubhouses, restrooms, and parking areas.
 - C. Lot coverage shall be limited to fifteen percent of the site.
- (9) An office and/or establishment utilized by a nonprofit environmental conservation and land preservation organization, subject to the following:
[Added 4-19-2016 by Bill No. 16-3]
 - A. Organizations shall maintain a non-profit and/or tax-exempt status; and
 - B. The total use area shall not exceed twenty thousand square feet in area. Areas of passive recreation such as walking, hiking, bicycle paths and trails, wildlife observation areas, and picnic areas shall not be subject to this limitation.
- (10) SPECIAL EVENTS SHALL BE PERMITTED IN THE RCA IN THE ESTATE, AGRICULTURAL AND RESOURCE PROTECTION ZONING CLASSIFICATIONS, SUBJECT TO THE FOLLOWING ADDITIONAL STANDARDS:
 - A. ALL LOT COVERAGE PERTAINING TO THE SPECIAL EVENTS ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, TEMPORARY STRUCTURES, TEMPORARY TENTS, PARKING AREAS (IMPROVED AND UNIMPROVED), AND OTHERWISE MUST OCCUR OUTSIDE THE BUFFER OR OTHER HABITAT PROTECTION AREA UNLESS THE LOT COVERAGE IS LEGALLY DEVELOPED EXISTED AT THE TIME OF SPECIAL EXCEPTION APPLICATION AND THE PROVISIONS OF SECTION NR 3-107(C)(8)(A-D) SHALL STILL APPLY.
 - B. A SCALED DRAWING OF THE SITE SHOWING THE LOCATION OF THE PROPOSED STRUCTURES AND DEMONSTRATING THE SITE REQUIREMENTS IN SECTION ZS 1-203(C)(21) FOR SPECIAL EVENTS, INCLUDING ANY TEMPORARY STRUCTURES, TEMPORARY TENTS AND TEMPORARY PARKING SPACES MUST BE SUBMITTED WITH THE SPECIAL EXCEPTION APPLICATION. THE SCALED DRAWING MUST DEMONSTRATE HOW THE SPECIAL EVENT USE WILL MINIMIZE IMPACTS TO NATURAL RESOURCES AND PROTECTS THE DEFINED LAND USES IN THE RCA FOUND IN THIS CHAPTER AND

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MUST ALSO DEPICT THE REQUIREMENTS LISTED UNDER SECTION NR 3-109(D)(1).

- C) PROVISIONS PERTAINING TO LOT COVERAGE AND CLEARING LIMITS IN THE RCA CONTAINED IN THIS CHAPTER APPLY TO SPECIAL EVENT ACTIVITIES. SPECIAL EVENT ACTIVITIES SHALL BE IN CLOSE PROXIMITY TO EXISTING STRUCTURES AND FACILITIES ON THE PROPERTY TO MINIMIZE ADVERSE IMPACTS TO NATURAL RESOURCES AND ARE ACCESSORY TO THE PRINCIPAL USE OF THE PROPERTY.
- D) THIS USE IS LIMITED TO ONLY PROPERTIES THAT ARE 25 ACRES OR GREATER IN SIZE AND ARE LIMITED TO NO MORE THAN 40 EVENTS PER CALENDAR YEAR. AN EVENT HAS A MAXIMUM DURATION OF TWO CONSECUTIVE DAYS CONSISTING OF 48 HOURS.
- E) ALL LOT COVERAGE AND PROPOSED TEMPORARY STRUCTURES ASSOCIATED WITH THE SPECIAL EVENT MUST COMPLY WITH HABITAT PROTECTION AREAS, PER NR 3-120. THIS INCLUDES PROTECTION OF THE ONE HUNDRED FOOT BUFFER, THREATENED AND ENDANGERED SPECIES AND SPECIES IN NEED OF CONSERVATION, PLANT AND WILDLIFE HABITAT PROTECTION AREA INCLUDING NON-TIDAL WETLANDS, AND ANADROMOUS FISH PROPAGATION WATERS.

§ NR 3-109. Implementation of the ~~Atlantic Coastal Bays~~ Critical Area provisions.

- (a) Regulated activities and applicability. In shall be unlawful to pursue any new, expanded or intensified activities within the ~~Atlantic Coastal Bays~~ Critical Area, such as development or redevelopment, grading, clearing, 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 agriculturally-related activities, without first obtaining approval by the Department after review under the provisions of this Subtitle.
- (b) Responsible agency. All applications for such County permits and licenses that are issued by the County shall be made to the pertinent department. The Department shall make available to all agencies involved in overseeing regulated activities a set of maps showing the location so that these agencies may identify affected properties subject to said referrals. Applications for timber harvesting shall be reviewed by the Department of Natural Resources through the District Forestry Board. Applications for mining and quarrying shall be reviewed by the Department and appropriate State agencies. Applications for farming or other agriculture-related activities shall be reviewed by the Department or the County Soil Conservation District, depending on the nature of the proposed activity.
- (c) Process. Upon receiving the referred application, the Department shall review the application for compliance of the activity with the requirements of this Subtitle. The ~~Atlantic Coastal Bays~~ Critical Area review includes, but is not limited to, evaluating the 100-foot Buffer, area of ~~impervious surface~~ LOT COVERAGE, area of forest cover, area of steep slopes, location of tidal or nontidal wetlands and their buffers, and the mitigation plan if required.
- (d) Application requirements. In order for the Department to make findings and specific

recommendations as to the compliance of a project with the goals of the ~~Atlantic Coastal Bays~~ Critical Area Law, information on land and water disturbing activities must be submitted by the applicant. This information shall include an ~~Atlantic Coastal Bays~~ Critical Area site plan and a written ~~Atlantic Coastal Bays~~ Critical Area report.

- (1) ~~Atlantic Coastal Bays Critical Area site plan.~~ The ~~Atlantic Coastal Bays~~ Critical Area site plan must be drawn to scale and shall include, but not be limited to, the following information:
 - A. Topography (if property is flat or gently sloping, state this on the plan).
 - B. Mean high water line.
 - C. Tidal wetlands (private and State).
 - D. Tributary streams.
 - E. Nontidal wetlands.
 - F. Soils.
 - G. Forest cover (show individual trees or a tree line defining wooded areas).
 - H. ~~100-foot~~ CRITICAL AREA Buffer (drawn from mean high water, the edge of tidal wetlands or tributary streams).
 - i. The Buffer may be required to be expanded beyond 100-feet to include contiguous sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments.
 - I. Habitat protection areas.
 - J. All LOT COVERAGE ~~impervious surfaces~~ (including all structures, sidewalks, sheds, decks, driveways, pools, etc.) labeled as existing or proposed.
 - K. All proposed clearing, grading, and disturbance (e.g., septic areas, wells, lawns, etc.).
 - L. Computation of the amount of existing and proposed LOT COVERAGE ~~impervious surfaces~~, existing forest cover and proposed clearing, and total area of disturbance.
 - M. BUFFER MANAGEMENT PLAN, IF APPLICABLE.
 - N. 10 PERCENT POLLUTION REDUCTION CALCULATIONS IF LOCATED IN AN INTENSELY DEVELOPED AREA (IDA).
- (2) ~~Atlantic Coastal Bays Critical Area report.~~ The ~~Atlantic Coastal Bays~~ Critical Area report must include a description of the project and an environmental assessment of the site. This report shall include but not be limited to the following information:
 - A. Forest cover, generally describing the size and species of trees and shrubs.

- B. Shoreline condition, including any existing or proposed piers, bulkheads, revetments, or other shoreline stabilization methods.
- C. Proposed or existing stormwater management measures.
- D. Site topography and soil conditions, including any areas of erosion or run-off.
- E. Proposed clearing, excavation, and grading.
- F. Discussion of the proposed development, including the number of residential units, amount of proposed ~~impervious surface~~ LOT COVERAGE, proposed sewer treatment and water supply, and total square footage of clearing, grading, and disturbance.
- G. Discussion of the proposed development's impacts on water quality and Habitat Protection Areas AND ANY PROPOSED OFFSET OR MITIGATION.
- H. Documentation of all correspondence and findings received from any County, State or Federal Agency.

(e) NOTIFICATION OF PROJECT APPROVAL.

- (1) CRITICAL AREA NOTIFICATION. THE DEPARTMENT SHALL SEND COPIES OF APPLICATIONS FOR ALL DEVELOPMENTS, SUBDIVISIONS, AND SITE PLANS WHOLLY OR PARTIALLY WITHIN THE CRITICAL AREA AS SPECIFIED IN COMAR 27.03.01.04 TO THE CRITICAL AREA COMMISSION FOR REVIEW AND COMMENT.
 - A. THE APPLICATION SHALL BE ACCOMPANIED BY A COMPLETED "PROJECT NOTIFICATION APPLICATION" FORM.
 - B. THE DEPARTMENT MAY NOT PROCESS AN APPLICATION THAT HAS BEEN SENT TO THE COMMISSION FOR NOTIFICATION UNTIL IT HAS RECEIVED NOTICE OF RECEIPT BY THE COMMISSION.
 - C. ANY ACTION BY THE COUNTY IN VIOLATION OF THESE PROCEDURES SHALL BE VOID.

§ NR 3-110. Amendments and refinements.

- (a) Generally. The regulations, restrictions, definitions, districts, classifications, and boundaries as set forth in this Subtitle may, from time to time be amended, supplanted, modified, or repealed by the County Commissioners with the ~~concurrence~~ APPROVAL of the CRITICAL AREA Commission. The reclassification of any property, the relocation of any district boundary, the designation or future modification of any Buffer management area and its accompanying regulations, and the award of growth allocation shall be done by resolution of the County Commissioners after a duly advertised public hearing in accordance with the provisions of § ZS 1-114 of the Worcester County Zoning Ordinance and approval of the CRITICAL AREA Commission. Amendments to the text of this Subtitle shall be passed by the County Commissioners as public local laws according to legally required procedures and with the ~~concurrence~~ APPROVAL of the CRITICAL AREA Commission.
- (b) Applications and procedures. Amendments and refinements shall be processed in the following

manner:

- (1) Proposals for any amendment or refinement may be made by any interested person who is a resident or taxpayer in the County or by any government agency of the County. Proposals shall be addressed to and filed with the County Commissioners in such form as they may prescribe. ~~Applications shall only be accepted from January 1 to January 30 and July 1 to July 31 of each calendar year.~~
 - (2) Any application for growth allocation shall be reviewed by the Planning Commission but shall first be referred to the Department for review. Comments and recommendations shall be prepared by the Department for consideration by the Planning Commission in its review. The Planning Commission shall review the application in accordance with the provisions of § NR 3-112 hereof and forward a recommendation to the County Commissioners within a reasonable period of time as determined by the County Commissioners. Upon receipt of the Planning Commission's recommendation, the County Commissioners shall hold at least one public hearing in accordance with the provisions of § NR 3-112(c)(4) et seq. hereof.
 - (3) All amendments other than requests for growth allocation shall be reviewed and acted upon by the County Commissioners but shall first be referred to the Department for review.
 - A. Upon receipt of the application, the Department shall examine the application and information submitted therewith. If the application and information are insufficient for the purposes of review the Department may:
 - i. Return the application to the applicant with a letter describing the deficiencies in the submittal; or
 - ii. Request any additional information as may be necessary to review the application.
 - B. Any application returned as being insufficient may only be resubmitted within the application periods, as identified in § NR 3-110(b)(1) herein.
 - C. The Department shall review the application in a reasonable period of time as determined by the County Commissioners and forward a report and recommendation to the County Commissioners.
 - D. After receipt of the Department's recommendation, the County Commissioners shall hold at least one public hearing in relation to the proposed amendment, at which parties and interested citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing and the nature of the proposed amendment shall be published in an official paper or a paper of general circulation in the County in accordance with the provisions of § ZS 1-114 of the Worcester County Zoning Ordinance. In the case of amendments to the text of this Subtitle, if no County Commissioner is willing to introduce the proposed amendment as a bill, it need not be considered, and a public hearing need not be held.
- (C) COMPREHENSIVE REVIEWS. WORCESTER COUNTY WILL REVIEW ITS ENTIRE PROGRAM AS CONTAINED IN THIS SUBTITLE AND PROPOSE ANY NECESSARY AMENDMENTS AT LEAST EVERY SIX (6) YEARS. THE ANNIVERSARY OF THE DATE THAT THE PROGRAM BECAME EFFECTIVE SHALL BE USED TO DETERMINE WHEN

THE REVIEW SHALL BE COMPLETED. WITHIN SIXTY (60) DAYS AFTER THE COMPLETION OF THE REVIEW, THE COUNTY WILL SEND THE FOLLOWING INFORMATION IN WRITING TO THE COMMISSION:

- (1) A STATEMENT CERTIFYING THAT THE REQUIRED REVIEW HAS BEEN ACCOMPLISHED;
 - (2) ALL NECESSARY REQUESTS FOR PROGRAM AMENDMENTS, PROGRAM REFINEMENTS, OR OTHER MATTERS THAT THE COUNTY WISHES THE 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.
- (D) OFFICIAL CRITICAL AREA MAP AMENDMENTS. EXCEPT FOR AMENDMENTS OR REFINEMENTS TO THIS SUBTITLE DEVELOPED DURING A SIX-YEAR COMPREHENSIVE REVIEW, AN AMENDMENT OF THE OFFICIAL CRITICAL AREA MAP MAY ONLY BE GRANTED BY THE COUNTY COMMISSIONERS UPON PROOF OF A MISTAKE IN THE EXISTING LAND USE AREA. THIS REQUIREMENT DOES NOT APPLY TO PROPOSED CHANGES TO THE OFFICIAL CRITICAL AREA MAP THAT MEET THE FOLLOWING CRITERIA:
- (1) ARE WHOLLY CONSISTENT WITH THE LAND CLASSIFICATION IN THIS SUBTITLE OR
 - (2) PROPOSE THE USE OF GROWTH ALLOCATION IN ACCORDANCE WITH THE GROWTH ALLOCATION PROVISIONS OF THIS SUBTITLE.

§ NR 3-111. Variances.

- (a) Applicability. ~~An Atlantic Coastal Bays~~ A Critical Area Program variance may be granted to the terms of this Subtitle in accordance with the provisions of § ZS 1-116(c)(4) of the Worcester County Zoning Ordinance where, owing to special features of a site or other circumstances, implementation of this Program or a literal enforcement of provisions within the Program would result in unwarranted hardship to an applicant.
- (B) STANDING. IN ACCORDANCE WITH NATURAL RESOURCES ARTICLE, §8-1808(D)(2), ANNOTATED CODE OF MARYLAND, IF A PERSON MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW, THE PERSON SHALL HAVE STANDING TO PARTICIPATE AS A PARTY IN A LOCAL ADMINISTRATIVE PROCEEDING.
- (cb) Standards. The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:
 - (1) Special conditions or circumstances exist that are peculiar to the applicant's land or structure and a literal enforcement of provisions and requirements of the County's ~~Atlantic Coastal Bays~~ Critical Area Program would result in unwarranted hardship;

- (2) A literal interpretation of the provisions of the County's ~~Atlantic Coastal Bays~~ Critical Area Program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Atlantic Coastal Bays Critical Area;
- (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the County's ~~Atlantic Coastal Bays~~ Critical Area Program to other lands or structures within the ~~Atlantic Coastal Bays~~ Critical Area;
- (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property;
- (5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the ~~Atlantic Coastal Bays~~ Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the County's ~~Atlantic Coastal Bays~~ Critical Area Program;
- ~~(6) The Board of Zoning Appeals shall not make a decision relative to a request for such a variance without reviewing the comments of the Department and finding that the applicant has satisfied each of the provisions and standards contained herein.~~

(de) Process. Applications for a variance shall be made in writing to the Board of Zoning Appeals on forms prescribed by the Department.

- (1) THE BOARD OF ZONING APPEALS SHALL NOT MAKE A DECISION RELATIVE TO A REQUEST FOR SUCH A VARIANCE WITHOUT REVIEWING THE COMMENTS OF THE DEPARTMENT AND FINDING THAT THE APPLICANT HAS SATISFIED EACH OF THE PROVISIONS AND STANDARDS CONTAINED HEREIN.
- (2) AFTER HEARING AN APPLICATION FOR A CRITICAL AREA PROGRAM VARIANCE, THE BOARD OF ZONING APPEALS SHALL MAKE FINDINGS REFLECTING ANALYSIS OF EACH STANDARD BEFORE MAKING A DECISION ON THE REQUESTED VARIANCE.

(ed) Board procedures. The following procedures shall be adhered to by the Board of Zoning Appeals when considering variance requests to this Subtitle:

- (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, as from time to time amended, and the requirements of the County's ~~Atlantic Coastal Bays~~ Critical Area Program.
- (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board of Zoning Appeals may consider that fact, AND WHETHER THE APPLICATION HAS MET THE REQUIREMENTS OF SECTION (g) BELOW.
- (3) An applicant has the burden of proof and the burden of persuasion to overcome the

presumption of nonconformance established in subsection (1) hereof.

- (4) Based on competent and substantial evidence, the Board of Zoning Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
- (5) With due regard for the person’s experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - A. The applicant;
 - B. Any agency of the local, state or federal government; or
 - C. Any other person deemed appropriate by the Board of Zoning Appeals.

(fe) Appeals. Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the County for variances. 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, including, but not limited to, the County Commissioners, aggrieved or adversely affected by any decision made under this section.~~

- A. A PERSON WITH STANDING UNDER SUBSECTION (b) OF THIS CHAPTER MAY:
 - (1) PARTICIPATE AS A PARTY IN AN ADMINISTRATIVE PROCEEDING AT A BOARD OF APPEALS EVEN IF THE PERSON WAS NOT A PARTY TO THE ORIGINAL ADMINISTRATIVE PROCEEDING; AND
 - (2) PETITION FOR JUDICIAL REVIEW AND PARTICIPATE AS A PARTY EVEN IF THE PERSON WAS NOT A PARTY TO THE ACTION WHICH IS THE SUBJECT OF THE PETITION.
- B. AN APPEAL MAY BE FILED BY:
 - (1) A PERSON AGGRIEVED OR ADVERSELY AFFECTED BY A DECISION MADE UNDER THIS CHAPTER, INCLUDING A GOVERNMENT AGENCY; AND
 - (2) THE CHAIRMAN, EVEN IF THE CHAIRMAN WAS NOT A PARTY TO OR IS NOT SPECIFICALLY AGGRIEVED BY THE ACTION OR DECISION.
- C. A LOCAL JURISDICTION MAY NOT ISSUE A PERMIT FOR THE ACTIVITY THAT WAS THE SUBJECT OF THE VARIANCE APPLICATION UNTIL THE APPLICABLE 30-DAY APPEAL PERIOD HAS ELAPSED.

(gf) Conditions and mitigation. The Board of Zoning Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the ~~Atlantic Coastal Bays~~ Critical Area Law is maintained, including, but not

limited to, the following:

- (1) Adverse impacts resulting from the granting of the variance shall be mitigated AS RECOMMENDED BY THE NATURAL RESOURCE DIVISION, BUT NO ~~by the planting of trees and shrubs on the site at an amount equal to not less than A THREE TO ONE BASIS. three times the square footage of the area of disturbance allowed by the variance or as recommended by the Department.~~
- (2) New or expanded structures or ~~impervious surfaces~~ LOT COVERAGE shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

(h) AFTER-THE-FACT REQUESTS.

(1) THE BOARD OF ZONING APPEALS WILL NOT ACCEPT AN APPLICATION OF VARIANCE TO LEGALIZE A VIOLATION OF THIS SUBTITLE, INCLUDING AN UNPERMITTED STRUCTURE OR OTHER DEVELOPMENT ACTIVITY UNTIL THE DEPARTMENT:

- A. ISSUES A NOTICE OF VIOLATION; AND
- B. ASSESSES AN ADMINISTRATIVE OR CIVIL PENALTY FOR THE VIOLATION.

(2) THE BOARD OF ZONING APPEAL MAY NOT APPROVE AN AFTER-THE-FACT VARIANCE UNLESS AN APPLICANT HAS:

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

(3) IF THE BOARD OF ZONING APPEALS DENIES THE REQUESTED AFTER-THE-FACT VARIANCE, THEN THE DEPARTMENT SHALL:

- A. ORDER REMOVAL OR RELOCATION OF ANY STRUCTURE; AND
- B. ORDER RESTORATION OF THE AFFECTED RESOURCES.

(i) COMMISSION NOTIFICATION. WITHIN TEN (10) WORKING DAYS AFTER A WRITTEN DECISION REGARDING A VARIANCE APPLICATION IS ISSUED, A COPY OF THE DECISION WILL BE SENT TO THE CRITICAL AREA COMMISSION. THE DEPARTMENT MAY NOT ISSUE A PERMIT FOR THE ACTIVITY THAT WAS THE SUBJECT OF THE APPLICATION UNTIL THE APPLICABLE 30-DAY APPEAL PERIOD HAS ELAPSED.

§ NR 3-112. Growth allocation.

(a) Description.

(1) FOR THE CHESAPEAKE COASTAL BAYS CRITICAL AREA. THE UPLAND AREA OF THE COUNTY WITHIN THE CRITICAL AREA COMPRISES ABOUT NINE THOUSAND EIGHT HUNDRED TWENTY NINE (9,829) ACRES. WITHIN THE CRITICAL AREA, TWO HUNDRED NINETY EIGHT AND SEVEN TENTHS (298.7) ACRES OF LAND WERE CLASSIFIED AS IDA OR LDA. THE REMAINING NINE THOUSAND FIVE HUNDRED THIRTY (9,530) ACRES WERE CLASSIFIED AS RCA. THE STATE CRITICAL AREA LAW PERMITTED THE COUNTY TO ALLOCATE FIVE PERCENT OF THIS AREA, OR FOUR HUNDRED SEVENTY SIX AND FIVE TENTHS (476.5) ACRES. FOR USE FOR FUTURE GROWTH AS EITHER IDA OR LDA. AMOUNT AVAILABLE FOR FUTURE GROWTH ALLOCATION IS FOUR HUNDRED ELEVEN AND FIFTY TWO HUNDREDTHS (411.52) ACRES. THIS ACREAGE SHALL BE USED FOR THE EXPANSION OF EXISTING OR THE CREATION OF NEW LDAS AND IDAS UNDER THE FOLLOWING GENERAL GUIDELINES:

(A) THE TOTAL AREA OF EXPANSION OF INTENSELY DEVELOPED OR LIMITED DEVELOPMENT AREAS, OR BOTH, SHALL NOT EXCEED FOUR HUNDRED SEVENTY SIX AND FIVE TENTHS (476.5) ACRES.

(B) WHEN PERMITTING FUTURE EXPANSION OF INTENSELY DEVELOPED AND LIMITED DEVELOPMENT AREAS NEAR THE MUNICIPALITIES OF SNOW HILL AND POCOMOKE CITY, THE COUNTY SHALL NOTIFY THE APPROPRIATE LOCAL OFFICIALS TO ALLOW THEM AN OPPORTUNITY TO COMMENT ON HOW THE EXPANSION MAY AFFECT THESE MUNICIPALITIES.

(2) FOR THE ATLANTIC COASTAL BAYS CRITICAL AREA. The upland area of the County within the Atlantic Coastal Bays Critical Area comprises about twenty-two thousand nine hundred and fifty-five (22,955) acres. Within the Atlantic Coastal Bays Critical Area, three thousand four hundred and sixty (3,460) acres of land are classified as Intensely Developed Area and three thousand one hundred sixteen (3,116) acres as Limited Development Area. The remaining sixteen thousand three hundred and seventy-nine (16,379) acres are classified as Resource Conservation Area. The Atlantic Coastal Bays Protection Act permits the County Commissioners to allocate five percent (5%) of this area, or eight hundred and nineteen (819) acres, for use for future growth as either Intensely Developed Areas or Limited Development Areas. This acreage shall be used for the expansion of existing or the creation of new Limited Development Areas and Intensely Developed Areas under the following general guidelines:

(A) The total area of expansion of Intensely Developed or Limited Development Areas, or both, shall not exceed eight hundred nineteen (819) acres.

(B) When permitting future expansion of Intensely Developed and Limited Development Areas within one mile of an incorporated municipality, the Department shall notify the appropriate local officials to allow them an opportunity to comment on how the expansion may affect the municipality.

(C) NO MORE THAN ONE-HALF OF THE ALLOCATED EXPANSION MAY BE LOCATED IN THE ATLANTIC COASTAL BAY RESOURCE

CONSERVATION AREAS EXCEPT AS PROVIDED IN PARAGRAPH (C)(7) BELOW.

- (3) UP TO 150 ACRES OF GROWTH ALLOCATION MAY BE TRANSFERRED FROM THE ATLANTIC COASTAL BAYS CRITICAL AREA TO THE CHESAPEAKE BAY CRITICAL AREA, OR VICE-VERSA, PROVIDED THE REMAINING ACERAGE IN THE DESIGNATED POT IS INSUFFICIENT TO ALLOW APPROVAL OF THE GROWTH ALLOCATION PROPOSAL FOR WHICH THE COUNTY IS SEEKING APPROVAL.

(b) Requirements. THE COUNTY COMMISSIONERS SHALL REQUIRE AN APPLICATION FOR A NEW INTENSELY DEVELOPED AREA OR LIMITED DEVELOPMENT AREA TO BE:

- (1) IN CONFORMANCE WITH THE REQUIREMENTS OF THIS CODE AND COMAR TITLE 27;
- (2) DESIGNATED ON THE LOCALLY APPROVAL CRITICAL AREA MAP THAT IS SUBMITTED AS PART OF THE APPLICATION TO THE CRITICAL AREA COMMISSION;
- (3) FOR A GROWTH ALLOCATION APPLICATION FOR A RESIDENTIAL SUBDIVISION, IN COMPLIANCE WITH THE REQUIREMENTS AND PROCEDURES UNDER ENVIRONMENT ARTICLE, §9-206, ANNOTATED CODE OF MARYLAND, AND LAND USE ARTICLE, TITLE 1, SUBTITLE 5, AND §5-104, ANNOTATED CODE OF MARYLAND; AND
- (4) CONSTITUTE AN AMENDMENT TO THIS PROGRAM SUBJECT TO REVIEW AND APPROVAL BY THE PLANNING COMMISSION, THE COUNTY COMMISSIONERS AND THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS.

(cb) STANDARDS Requirements. When locating new Intensely Developed or Limited Development Areas, the County Commissioners shall use these guidelines:

- (1) New Intensely Developed Areas SHALL ~~should~~ be located in Limited Development Areas or adjacent to existing Intensely Developed Areas;
- (2) New Limited Development Areas SHALL ~~should~~ be located adjacent to existing Limited Development Areas or Intensely Developed Areas;
- (3) New Intensely Developed Areas shall be at least twenty acres in size unless:
 - A. They are contiguous to an existing Intensely Developed Area or Limited Development Area; or
 - B. They are a grandfathered commercial or industrial use that was permitted and legally existing as of the date of local Program approval. 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 allocated expansion may be located in Resource Conservation Areas ~~except as provided in paragraph (b)(9) below;~~

- (5) New Intensely Developed Areas and Limited Development Areas SHALL ~~should~~ be located in such a manner as to minimize impacts to Habitat Protection Areas as specified in this Subtitle and in an area and in a manner that optimizes benefits to water quality;
 - (6) New Intensely Developed Areas should be located where they minimize their impacts on the defined land uses of the Resource Conservation Area;
 - (7) New Intensely Developed Areas and Limited Development Areas in the Resource Conservation Area SHALL ~~should~~ be located at least three hundred feet landward of the limits of tidal wetlands or tidal waters; , UNLESS THE COUNTY PROPOSES AND THE COMMISSION APPROVES ALTERNATIVE MEASURES FOR WATER QUALITY AND HABITAT THAT PROVIDE GREATER BENEFIT TO THE RESOURCES;
 - (8) New Intensely Developed or Limited Development Areas shall conform to all criteria of the Department for such areas, shall be so designated on the County's Atlantic Coastal Bays Critical Area Maps and shall constitute an amendment to this Program subject to review and approval by the Planning Commission, the County Commissioners and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
 - ~~(9) If the County Commissioners are unable to utilize a portion of its growth allocation as set out in paragraphs (b)(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 (b)(4) above. An applicant shall be required to cluster any development in an area of expansion authorized under this paragraph.~~
- (d) FACTORS. IN REVIEWING MAP AMENDMENTS OR REFINEMENTS INVOLVING THE USE OF GROWTH ALLOCATION, THE COUNTY COMMISSIONERS SHALL CONSIDER THE FOLLOWING FACTORS:
- (1). CONSISTENCY WITH WORCESTER COUNTY COMPREHENSIVE PLAN AND WHETHER THE GROWTH ALLOCATION WOULD IMPLEMENT ITS GOALS AND OBJECTIVES.
 - (2) FOR A MAP AMENDMENT OR REFINEMENT INVOLVING A NEW INTENSELY DEVELOPED AREA, WHETHER THE DEVELOPMENT IS:
 - (A) TO BE SERVED BY A PUBLIC WASTEWATER SYSTEM;
 - (B) HAVE AN ALLOWED AVERAGE DENSITY OF AT LEAST 3.5 UNITS PER ACRE;
 - (C). IF GREATER THAN 20 ACRES, BE LOCATED IN A PRIORITY FUNDING AREA; AND
 - (D) HAVE A DEMONSTRABLE ECONOMIC BENEFIT TO THE AREA;
 - (3) 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;
 - (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.
- (ee) Process. Applicants for growth allocation shall submit a request for growth allocation in accordance with the provisions of § NR 3-110 hereof which shall be accompanied by appropriate plans and environmental reports in accordance with the following process:
- (1) All applications for growth allocation shall be submitted to the Department. 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 Atlantic Coastal Bays Critical Area regulations and the Comprehensive Plan. The subdivision history of parcels designated as Resource Conservation Area must be provided as part of the growth allocation application. The date of June 1, 2002, is the date used for the original Atlantic Coastal Bays Critical Area mapping and shall be used as a beginning point of analysis. THE DATE OF DECEMBER 1, 1985, IS THE DATE USED FOR THE ORIGINAL CHESAPEAKE BAY 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 consider 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 by the Planning Commission with a recommendation for either approval or denial.

- (4) The County Commissioners shall hold a public hearing following due notice in accordance with § ZS 1-114 of the Zoning and Subdivision Control Article 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 ~~Atlantic Coastal Bays~~ Critical Area Program.
- (6) Upon approval of the growth allocation request by the County Commissioners, the County Commissioners shall send a request to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays 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 Commissioners, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays shall notify the County Commissioners regarding the processing of the request as an amendment or refinement to the County's Program. Refinements shall be acted on AT THE NEXT SCHEDULED CRITICAL AREA COMMISSION MEETING ~~within thirty days of the Commission's notification to the County Commissioners of a complete submission.~~ Amendments shall be acted on within ONE HUNDRED THIRTY ~~ninety~~ days of the Commission's notification of a complete submission.
- (7) Following approval of the growth allocation request by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 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 Subtitle and the County's subdivision regulations.
- (10) The County's official ~~Atlantic Coastal Bays~~ Critical Area maps shall be amended to reflect the new land classification area, and a copy of the new map shall be provided to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (11) As a condition of approval, the County Commissioners may require that any project approved for the use of growth allocation shall demonstrate that it is substantially completed within three years of the date of growth allocation approval by the Commission. Substantially completed is defined as projects in which all public improvements such as roads, sewer and/or water facilities, etc. have been built and approved as required by the County Commissioners.
- (12) A CONCEPTUAL SITE DEVELOPMENT PLAN AND ENVIRONMENTAL FEATURES MAP ARE REQUIRED, AND SHALL INCLUDE:
 - A. ALL REQUIREMENTS AS NOTED IN COMAR 27.01.02.06-1.B.
 - B. AN ENVIRONMENTAL REPORT IN ACCORDANCE WITH COMAR 27.01.02.06-2, INCLUDING THE FOLLOWING:

- i. IF APPLICABLE, A BUFFER MANAGEMENT PLAN AND/OR HABITAT PROTECTION PLAN IN ACCORDANCE WITH COMAR 27.01.02.06-2.B AND C; AND
- ii. IF APPLICABLE, THE PRELIMINARY STORMWATER MANAGEMENT PLAN FOR COMPLIANCE WITH THE 10% POLLUTANT REDUCTION RULE, INCLUDING ALL WORKSHEETS AND SUPPORTING DOCUMENTATION.

(fd) ADDITIONAL COUNTY Standards. Applicants for growth allocation shall demonstrate that the following design standards will be met or exceeded by the proposed project:

- (1) All requirements of the County's ~~Atlantic Coastal Bays~~ Critical Area Program, zoning ordinance, and subdivision regulations can be met.
- (2) In addition to meeting the minimum requirements of the ~~Atlantic Coastal Bays~~ Critical Area regulations, the project design shall enhance the habitat value or improve water quality in the area.
- (3) For residential development, where possible, a community pier shall be provided rather than individual piers.

(ge) 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, ALSO STATED WITHIN COMAR 27.01.02.06-4:

- (1) Subdivision of any lot of record existing as of DECEMBER 1, 1985, WITHIN THE CHESAPEAKE COASTAL BAY, OR AS OF June 1, 2002, WITHIN THE ATLANTIC COASTAL BAYS and which is classified as Resource Conservation Area or Limited Development Area, where all or part of the parcel is identified by the County Commissioners as a growth allocation area, shall result in the acreage of the entire parcel, excluding tidal wetlands, being deducted from the jurisdiction's growth allocation, unless the development envelope concept outlined in paragraph (ge)(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 for parcels designated as Resource Conservation Area. On a parcel proposed for the use of growth allocation, a single 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~~ LOT COVERAGE, 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 Resource Conservation Area, a minimum of twenty acres must remain outside of the development envelope, or the acreage of the entire parcel must be deducted. If the original parcel in the Resource Conservation Area is less than twenty acres, then the acreage of the

entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by recorded easement) adjacent and contiguous to an undeveloped remainder which totals less than twenty acres and which together will result in a minimum twenty acre undeveloped area, then only that portion of the parcel which is to be developed has to be deducted.

- D. The minimum twenty-acre undeveloped remainder outside of the development envelope may be developed at Resource Conservation Area density unless some type of permanent protection exists that restricts development.
- (3) For growth allocation proposed in the Resource Conservation Area, a three hundred-foot naturally vegetated buffer is ~~strongly encouraged~~ IS REQUIRED, and ~~where it is provided, it shall not be deducted even if the buffer does not meet the twenty-acre requirement.~~

§ NR 3-113. Intrafamily transfers.

- (a) Applicability. The Department shall permit bona fide intrafamily transfers to be made only from parcels of land that:
 - (1) Were of legal record on MARCH 1, 1986, WITHIN THE CHESAPEAKE BAY, OR June 1, 2002, WITHIN THE ATLANTIC COASTAL BAYS; and
 - (2) Are seven acres or more and less than sixty acres in size.
- (b) Required subdivision. A bona fide intrafamily transfer from a portion of 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 Department may approve the subdivision of a parcel of land into the number of lots indicated in this subsection 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 twelve acres in size may be subdivided into two lots.
 - (2) A parcel that is twelve acres or more and less than sixty acres in size may be subdivided into three lots.
 - (3) The lots may be created at different times.
- (d) Conditions of approval. As a condition of approval, the Department 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 Commissioners stating that the lot is created subject to the provisions of Natural Resources Article Section 8-1801, Annotated Code of Maryland, as from time to time amended; 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 subsection (e) of this section.
 - (3) This subsection does not prevent the conveyance of the lot to a third party as security for

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a mortgage or deed of trust or any subsequent conveyance as a result of any bona fide foreclosure or sale of any such mortgage or deed of trust or other bona fide and valid legal lien.

- (e) Standards and procedures for the subsequent conveyance of lots created by intrafamily transfer to persons other than immediate family members. Prior to the conveyance of such lots to persons other than immediate family members, the current owner shall make application on forms prescribed by the Department in accordance with the following procedures:
- (1) The request shall be accompanied by a title history of the parcel originally approved as an intrafamily transfer and any fee as established by prior resolution of the County Commissioners.
 - (2) The Department shall review the application and accompanying documents and provide a report and recommendation to the County Commissioners with regard to the consistency of the application with the requirements and standards as established by this subsection.
 - (3) The County Commissioners shall provide for an opportunity for the applicant to be heard and may, where determined necessary, hold a public hearing relative to the matter following due notice in accordance with § ZS 1-114 of the Zoning and Subdivision Control Article. In evaluating the request and prior to approving any such transfer, the County Commissioners shall make findings of fact with respect to the following:
 - A. The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and
 - B. A change in circumstances has occurred since the original transfer was made that is not inconsistent with this Subtitle and that warrants an exception; or
 - C. Other circumstances exist that are consistent with this Subtitle and with the Atlantic Coastal Bays 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.
 - (4) The County Commissioners, by resolution, may approve the request and may furthermore establish conditions of approval consistent with the intent of the ~~Atlantic Coastal Bays~~ Critical Area Program. Any resolution so passed by the County Commissioners shall be recorded in the land records of Worcester County and shall render null and void any previously recorded covenants limiting non-intrafamily transfers.

§ NR 3-114. Administration and enforcement.

- (a) Responsible agencies. The responsibility for the administration and enforcement of this Subtitle shall be vested in such Department (hereinafter called the “Department”) as designated or created for such purpose by the County Commissioners. The Department may be provided with such personnel and resources as the County Commissioners may direct. The Department may delegate to its personnel and other persons such duties and responsibilities in connection with the administration and enforcement of this Subtitle as are appropriate in the Department’s judgement.
- (b) Enforcement provisions. Violation of any provision hereof or any program adopted hereunder shall be a civil infraction, and each day of a violation shall be a separate offense. Violators of the

provisions of programs approved or adopted by the Commissioners shall be subject to prosecution or suit by the Commissioners, who may invoke the sanctions and remedies afforded by State or local law. The Commissioners may invoke any sanction or remedy available, in any court of competent jurisdiction in which the Commissioners would be authorized to prosecute or sue the violator. In addition to any other sanction or remedy available, the Commissioners may bring an action in equity to compel compliance or restrain noncompliance with the requirements of approved project plans and compel restoration of lands or structures to their condition prior to any modification which was done in violation of approved project plans. Notwithstanding any other provision of this section, whenever a development in the ~~Atlantic Coastal Bays~~ Critical Area is proceeding in violation of approved project plans and threatens to immediately and irreparably degrade the quality of tidal waters or fish, wildlife or plant habitat, the Commissioners may bring an action to restrain the violation and, as appropriate, to compel restoration of any land or water areas affected by the development.

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

(d) RIGHT TO ENTER PROPERTY. EXCEPT AS OTHERWISE AUTHORIZED AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED HEREIN, THE DEPARTMENT OR ITS DESIGNEE MAY OBTAIN ACCESS TO AND ENTER A PROPERTY, IN ORDER TO IDENTIFY OR VERIFY A SUSPECTED VIOLATION, RESTRAIN A DEVELOPMENT ACTIVITY, OR ISSUE A CITATION IF WORCESTER COUNTY HAS PROBABLE CAUSE TO BELIEVE THAT A VIOLATION OF THIS SUBTITLE HAS OCCURRED, IS OCCURRING, OR WILL OCCUR. THE DEPARTMENT SHALL MAKE A REASONABLE EFFORT TO CONTACT A PROPERTY OWNER BEFORE OBTAINING ACCESS TO OR ENTERING THE PROPERTY. IF ENTRY IS DENIED, THE DEPARTMENT MAY SEEK AN INJUNCTION TO ENTER THE PROPERTY TO PURSUE AN ENFORCEMENT ACTION.

(e) Additional penalties. In addition to any other penalty applicable under State or County law, a person who violates a provision of Natural Resources Article, Title 8, Subtitle 18, as from time to time amended, or the County's ~~Atlantic Coastal Bays~~ Critical Area Law is subject to a fine not exceeding \$10,000.00. ~~In determining the amount of the penalty to be assessed under this subsection, the County may consider the following:~~

(1) BEFORE IMPOSING ANY CIVIL PENALTY, THE PERSON(S) BELIEVED TO HAVE VIOLATED THIS ORDINANCE SHALL RECEIVE: 1) WRITTEN NOTICE OF THE ALLEGED VIOLATION(S), INCLUDING WHICH, IF ANY, ARE CONTINUING VIOLATIONS; AND 2) 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 PENALTY TO BE ASSESSED UNDER THIS SUBSECTION, THE COUNTY MAY CONSIDER THE FOLLOWING:

- 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; ~~and~~

- D. The environmental impact of the violation; AND
 - E. THE COST OF RESTORATION OF THE RESOURCE AFFECTED BY THE VIOLATION AND MITIGATION FOR DAMAGE TO THAT RESOURCE, INCLUDING THE COST TO THE COUNTY FOR PERFORMING, SUPERVISING, OR RENDERING ASSISTANCE TO THE RESTORATION AND MITIGATION.
- (2) ADMINISTRATIVE CIVIL PENALTIES FOR CONTINUING VIOLATIONS SHALL ACCRUE FOR EACH VIOLATION, EVERY DAY EACH VIOLATION CONTINUES, WITH NO REQUIREMENTS FOR ADDITIONAL ASSESSMENTS, NOTICE, OR HEARINGS FOR EACH SEPARATE OFFENSE. THE TOTAL AMOUNT PAYABLE FOR CONTINUING VIOLATIONS SHALL BE THE AMOUNT ASSESSED PER DAY FOR EACH VIOLATION MULTIPLIED BY THE NUMBER OF DAYS THAT EACH VIOLATION HAS CONTINUED.
 - (3) THE PERSON RESPONSIBLE FOR ANY CONTINUING VIOLATION SHALL PROMPTLY PROVIDE THE DEPARTMENT WITH WRITTEN NOTICE OF THE DATE(S) THE VIOLATION HAS BEEN OR WILL BE BROUGHT INTO COMPLIANCE AND THE DATE(S) FOR DEPARTMENT INSPECTION TO VERIFY COMPLIANCE. PENALTIES FOR CONTINUING VIOLATIONS MAY CONTINUE TO ACCRUE AS SET FORTH HEREIN UNTIL DEPARTMENT RECEIVES SUCH WRITTEN NOTICE AND VERIFIES COMPLIANCE BY INSPECTION OR OTHERWISE.
 - (4) ASSESSMENT AND PAYMENT OF PENALTIES SHALL BE IN ADDITION TO AND NOT IN SUBSTITUTION FOR PAYMENT TO WORCESTER COUNTY FOR ALL DAMAGES, COSTS, AND OTHER EXPENSES CAUSED BY THE VIOLATION.
 - (5) PAYMENT OF ALL PENALTIES ASSESSED SHALL BE A CONDITION PRECEDENT TO THE ISSUANCE OF ANY PERMIT OR OTHER APPROVAL REQUIRED BY THIS SUBTITLE.

(f) UNAUTHORIZED CLEARING

- (1) FOR UNAUTHORIZED CLEARING, CUTTING, OR REMOVAL OF VEGETATION THAT DOES NOT EXCEED THE AREA THAT COULD BE AUTHORIZED IN ACCORDANCE WITH THIS SUBTITLE, FINES SHALL BE ASSESSED IN THE AMOUNT OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH DAY THE VIOLATION CONTINUES, AND REFORESTATION SHALL BE REQUIRED ON AN EQUAL AREA BASIS IF LESS THAN TWENTY PERCENT (20%) OF THE FOREST COVER IS REMOVED. FOR CLEARING BETWEEN TWENTY PERCENT (20%) AND THIRTY PERCENT (30%) OF THE EXISTING FOREST COVER, REFORESTATION SHALL BE REQUIRED AT A THREE TO ONE BASIS.
- (3) FOR UNAUTHORIZED CLEARING, CUTTING, OR REMOVAL OF VEGETATION THAT EXCEEDS THE AREA THAT COULD BE AUTHORIZED IN ACCORDANCE WITH THIS SUBTITLE, FINES SHALL BE ASSESSED AT FIVE HUNDRED DOLLARS (\$500.00) FOR EACH DAY THE VIOLATION CONTINUES AND REFORESTATION SHALL BE REQUIRED AT THREE TIMES THE TOTAL SURFACE ACREAGE OF FOREST CLEARED.
- (4) FOR UNAUTHORIZED DISTURBANCE INCLUDING CLEARING, CUTTING, OR

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REMOVAL OF VEGETATION IN THE BUFFER OR ANOTHER HABITAT PROTECTION AREA, FINES SHALL BE ASSESSED AT ONE THOUSAND DOLLARS (\$1,000.00) FOR EACH DAY THE VIOLATION CONTINUES AND ONE THOUSAND DOLLARS (\$1,000.00) FOR EACH SEPARATE OCCURRENCE OF DISTURBANCE IN THE BUFFER AND REFORESTATION SHALL BE REQUIRED AT FOUR TIMES THE TOTAL SURFACE ACREAGE OF FOREST CLEARED AND SUCH REPLANTINGS SHALL BE WITHIN THE BUFFER WHEREVER POSSIBLE. PLUS AN ADDITIONAL 1:1 FOR CANOPY COVERAGE REMOVED.

- (5) ~~FINES COLLECTED FROM ENFORCEMENT ACTIONS IN THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL BE MAINTAINED IN A SEPARATE ACCOUNT TO BE USED BY THE COUNTY COMMISSIONERS FOR REFORESTATION OR OTHER HABITAT ENHANCING EFFORTS WITHIN THE SAME SUB WATERSHED OF THE ATLANTIC COASTAL BAYS CRITICAL AREA AS THE SITE.~~
- (6) IF A PERSON CUTS OR CLEARS OR PLANS TO CUT OR CLEAR TREES WITHIN THE ~~ATLANTIC COASTAL BAYS~~ CRITICAL AREA IN VIOLATION HEREOF OR ANY PROGRAM ADOPTED BY THE COMMISSIONERS, THE COMMISSIONERS MAY BRING AN ACTION:
- A. TO REQUIRE THE PERSON TO REPLANT TREES WHERE THE CUTTING OR CLEARING OCCURRED IN EXCESS OF THAT AMOUNT APPROVED ON THE PLAN PREPARED BY THE STATE FORESTER, A REGISTERED PROFESSIONAL FORESTER OR A REGISTERED LANDSCAPE ARCHITECT;
 - B. TO RESTRAIN THE PLANNED VIOLATION; OR
 - C. FOR DAMAGES:
 - I. TO BE ASSESSED BY THE CIRCUIT COURT IN AN AMOUNT EQUAL TO THE ESTIMATED COST OF REPLANTING TREES; AND
 - II. TO BE PAID TO THE COMMISSIONERS BY THE PERSON FOUND TO HAVE VIOLATED THE PROVISIONS OF THIS SUBSECTION.
- (7) ~~PREPARATION, APPROVAL, ETC. OF A PLAN TO REPLANT TREES. ON THE REQUEST OF THE COMMISSIONERS, THE STATE FORESTER, A REGISTERED PROFESSIONAL FORESTER OR A REGISTERED LANDSCAPE ARCHITECT MAY PREPARE, OVERSEE, AND APPROVE THE FINAL IMPLEMENTATION OF A PLAN TO REPLANT TREES IN ANY PART OF THE ATLANTIC COASTAL BAYS OR CHESAPEAKE BAY CRITICAL AREA WHERE TREES ARE CUT OR CLEARED IN VIOLATION OF THIS SUBSECTION.~~
- (g) VARIANCES PURSUANT TO A VIOLATION. WORCESTER COUNTY MAY ACCEPT AN APPLICATION FOR A VARIANCE REGARDING A PARCEL OR LOT THAT IS SUBJECT TO A CURRENT VIOLATION OR ANY PROVISIONS OF AN ORDER, PERMIT, PLAN, OR THIS SUBTITLE IN ACCORDANCE WITH THE VARIANCE PROVISIONS OF THIS SUBTITLE. HOWEVER, THE APPLICATION SHALL NOT BE REVIEWED, NOR SHALL A FINAL DECISION BE MADE, UNTIL ALL ABATEMENT, RESTORATION, AND MITIGATION MEASURES, A NOTICE OF VIOLATION, AND ADMINISTRATIVE OR

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CIVIL PENALTY HAVE BEEN ASSESSED, IMPLEMENTED, AND INSPECTED BY THE DEPARTMENT.

- (h) PERMITS PURSUANT TO A VIOLATION. THE DEPARTMENT OR ANY COUNTY AGENCY OR BOARD WILL 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 (F) ABOVE;
 - (2) PREPARED A RESTORATION OR MITIGATION PLAN, APPROVED BY THE DEPARTMENT, TO ABATE IMPACTS TO WATER QUALITY OR NATURAL RESOURCES DUE TO THE VIOLATION;
 - (3) PERFORMED THE ABATEMENT MEASURES IN THE APPROVED PLAN IN ACCORDANCE WITH THIS SUBTITLE; AND
 - (4) UNLESS AN EXTENSION OF TIME IS APPROVED BY THE DEPARTMENT BECAUSE OF ADVERSE PLANTING CONDITIONS, WITHIN NINETY (90) DAYS OF THE ISSUANCE OF A PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION FOR THE AFFECTED PROPERTY, ANY ADDITIONAL MITIGATION REQUIRED AS A CONDITION OF APPROVAL FOR THE PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION SHALL BE COMPLETED.

§ NR 3-115. — Cutting or clearing trees.

(a) Supplemental applicability.

~~(1) The provisions of this section are in addition to any other sanction, remedy, or penalty provided by law.~~

~~(2) This section does not apply to any cutting or clearing of trees that is allowed under regulations adopted by the Commissioners under this Subtitle.~~

(b) Additional remedies. If a person cuts or clears or plans to cut or clear trees within the Atlantic Coastal Bays Critical Area in violation hereof or any program adopted by the Commissioners, the Commissioners may bring an action:

~~(1) To require the person to replant trees where the cutting or clearing occurred in excess of that amount approved on the plan prepared by the State Forester, a registered professional forester or a registered landscape architect;~~

~~(2) To restrain the planned violation; or~~

~~(3) For damages:~~

~~A. To be assessed by the Circuit Court in an amount equal to the estimated cost of replanting trees; and~~

~~B. To be paid to the Commissioners by the person found to have violated the provisions of this subsection.~~

(c) Actions by the Commissioners. The Commissioners may invoke the remedies available to the

~~local jurisdiction under subsection (b) of this section in any court of competent jurisdiction.~~

~~(d) Preparation, approval, etc. of a plan to replant trees. On the request of the Commissioners, the State Forester, a registered professional forester or a registered landscape architect may prepare, oversee, and approve the final implementation of a plan to replant trees in any part of the Atlantic Coastal Bays Critical Area where trees are cut or cleared in violation of this subsection.~~

§ NR 3-115. LOT CONSOLIDATION AND RECONFIGURATION.

(a) APPLICABILITY. THE PROVISIONS OF THIS SUBSECTION APPLY TO CONSOLIDATION OR A RECONFIGURATION OF ANY NONCONFORMING LEGAL GRANDFATHERED PARCEL OR LOT. THESE PROVISIONS DO NOT APPLY TO THE RECONFIGURATION OR CONSOLIDATION OF PARCELS OR LOTS WHICH ARE CONFORMING OR MEET ALL REQUIREMENTS OF THIS SUBTITLE. 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 TWENTY (20) ACRES IN SIZE.

(b) PROCEDURE.

- (1) AN APPLICANT SEEKING A PARCEL OR LOT CONSOLIDATION OR RECONFIGURATION SHALL PROVIDE THE REQUIRED INFORMATION IN SECTION (C) BELOW TO THE DEPARTMENT.
- (2) THE DEPARTMENT MAY NOT APPROVE A PROPOSED PARCEL OR LOT CONSOLIDATION OR RECONFIGURATION WITHOUT MAKING WRITTEN FINDINGS IN ACCORDANCE WITH SECTION (D) BELOW AND COMAR 27.01.02.08.F.
- (3) THE DEPARTMENT SHALL ISSUE A FINAL WRITTEN DECISION OR ORDER GRANTING OR DENYING AN APPLICATION FOR CONSOLIDATION OR RECONFIGURATION. AFTER A FINAL WRITTEN DECISION OR ORDER IS ISSUED, THE DEPARTMENT SHALL SEND A COPY OF THE DECISION OR ORDER AND A COPY OF ANY APPROVED DEVELOPMENT PLAN WITHIN TEN (10) BUSINESS DAYS BY U.S. MAIL TO THE COMMISSION'S BUSINESS ADDRESS.
- (4) THE DEPARTMENT MAY NOT ISSUE A BUILDING PERMIT UNTIL THE APPEAL TIME HAS EXPIRED.

(c) APPLICATION. AN APPLICATION FOR THE CONSOLIDATION OR RECONFIGURATION OF ANY NONCONFORMING LEGAL PARCEL OF LAND OR RECORDED LEGALLY BUILDABLE LOT SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION:

- (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 THAT SHOWS ALL EXISTING AND PROPOSED LOT OR PARCEL BOUNDARIES;
 - (3) INFORMATION SUFFICIENT FOR THE DEPARTMENT TO MAKE THE FINDINGS SET FORTH IN SECTION (D) BELOW; AND
 - (4) A TABLE THAT LISTS THE NUMBER OF ALL LEGAL PARCELS OF LAND OR RECORDED LEGALLY BUILDABLE LOT AND THE NUMBER OF PROPOSED LOTS OR PARCELS OR DWELLING UNITS TO BE DERIVED.
- (d) STANDARDS. THE DEPARTMENT 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 A 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 IDENTIFIED.

§ NR 3-116. Forest and woodland protection.

- (a) General requirements. Recognizing the value of forested land for its water quality benefits and habitat protection while accommodating the utilization of forest resources, the following policies for forest and woodland protection should be adhered to wherever possible:
 - (1) Maintain and increase the forested vegetation in the ~~Atlantic Coastal Bays~~ Critical Area;
 - (2) Conserve forests and developed woodlands and provide for expansion of forested areas;
 - (3) Provide that the removal of trees associated with development activities shall be minimized and, where appropriate, shall be mitigated; and
 - (4) Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation, and other resources can be maintained, even when they are mutually exclusive.
- (b) Identification. The County Commissioners may identify and map forests and developed woodlands within the ~~Atlantic Coastal Bays~~ Critical Area and may identify and map habitat protection areas as described in § NR 3-104 and 3-121 through 3-123 hereof. A 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) Requirements for the protection of riparian and forest habitat. The purpose of the following requirements is to protect habitat:
 - (1) Vegetation within the 100-foot Buffer shall be maintained in its natural condition along all streams to provide wildlife corridors and for water quality protection.
 - (2) A minimum 100-foot Buffer shall extend landward from the mean high water line of tidal water, the banks of tributary streams, and the landward boundary of tidal wetlands. This area is to be conserved for wildlife protection and water quality protection.
 - (3) Nontidal wetland forests shall 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 shall be conserved.
 - (5) Existing riparian forests that 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 are present and to make sure that appropriate protection measures are incorporated into the development plan or Timber Harvest Plan. The Department may seek a recommendation of the Department of Natural Resources based on an evaluation of the site and the proposed development. In general, the following measures are required:

- (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) Requirements for the establishment or replacement of forest. The following policies shall be used for afforestation and reforestation:
- (1) The replacement or establishment of forests or developed woodlands should ensure a diversified plant community and should include canopy trees, understory trees, shrubs, and herbaceous plants.
 - (2) Native species must be used for all reforestation and afforestation, except as otherwise approved by the Department, but in no case shall less than seventy-five percent (75%) of the plant material be native species.
- ~~(f) Buffer protection standards for timber for personal use. Individual trees may be cut for personal use if the trees cut are replaced on an equal basis and provided the cutting does not impair the water quality or existing habitat value or other functions of the Buffer set forth in § NR 3-104. Cutting or clearing of trees and natural vegetation within the Buffer shall be prohibited except that:~~
- ~~(1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide pedestrian access of no more than six feet in width to private piers, or to install or construct a shore erosion protection device or measure, or a water dependent facility, providing the device, measure or facility has received all necessary County, State and Federal permits.~~
 - ~~(2) Individual trees may be removed, which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.~~
 - ~~(3) Horticultural practices may be used to maintain the health of individual trees.~~
 - ~~(4) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.~~

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(g) 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 Subtitle is considered a civil infraction.~~

~~(1) For unauthorized clearing, cutting, or removal of vegetation that does not exceed the area that could be authorized in accordance with this Subtitle, fines shall be assessed in the amount of five hundred dollars (\$500.00) for each day the violation continues, and reforestation shall be required on an equal area basis if less than twenty percent (20%) of the forest cover is removed. For clearing between twenty percent (20%) and thirty percent (30%) of the existing forest cover, reforestation shall be required at a three to one basis.~~

~~(2) For unauthorized clearing, cutting, or removal of vegetation that exceeds the area that could be authorized in accordance with this Subtitle, fines shall be assessed at five hundred dollars (\$500.00) for each day the violation continues and reforestation shall be required at three times the total surface acreage of forest cleared.~~

~~(3) For unauthorized clearing, cutting, or removal of vegetation in the Buffer or another Habitat Protection Area, fines shall be assessed at one thousand dollars (\$1,000.00) for each day the violation continues and one thousand dollars (\$1,000.00) for each separate occurrence of clearing, cutting or removal of vegetation in the Buffer and reforestation shall be required at three times the total surface acreage of forest cleared and such replantings shall be within the Buffer wherever possible.~~

~~(4) Fines collected from enforcement actions in the Atlantic Coastal Bays Critical Area shall be maintained in a separate account to be used by the County Commissioners for reforestation or other habitat enhancing efforts within the same sub watershed of the Atlantic Coastal Bays Critical Area as the site.~~

§ NR 3-117. Commercial timber harvesting.

- (a) General requirements. A goal of the ~~Atlantic Coastal Bays~~ 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 AND Atlantic Coastal Bays and their tributaries. The problems of sedimentation and erosion can occur when poorly managed timber operations take place in the watershed. These problems can be substantially reduced by proper management of harvest operations.
- (b) Process. Landowners proposing to harvest timber on one or more acres in the ~~Atlantic Coastal Bays~~ Critical Area shall submit a "Timber Harvest Plan". This plan shall be prepared by a registered professional forester. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources through the District Forestry Board. The approved plan shall be filed with the Soil Conservation District, and a copy of the approved plan shall be sent to the Department 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 § NR 3-104 and 3-121 through 3-123 of this Subtitle and shall incorporate protection measures for these areas as specified in those sections. 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 Worcester County ~~Atlantic Coastal Bays~~ Critical Area, any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more,

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including harvesting on agricultural lands shall submit a Sediment Control Plan for approval. This plan is also required for any harvests which will cross perennial or intermittent streams.

- (1) If cuts and fills are three feet or more, if grades for roads are fifteen percent (15%) or more, or if landings are on slopes of ten percent (10%) 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.
 - (2) Either the owner or the operator shall take responsibility for implementation of the Sediment Control Plan, or each subcontractor must file a separate plan.
 - (3) 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. ~~A minimum 50-foot Buffer shall be maintained in natural, native vegetation between tidal waters, wetlands and streams, and uplands. The Buffer is measured landward from the mean high water line (MHWL) of tidal waters, from each bank of perennial tributary streams and from the landward edge of tidal wetlands. Where necessary the Buffer can be planted to protect, stabilize or enhance the shoreline.~~ TIMBER HARVESTS ARE PERMITTED IN THE BUFFER IN ACCORDANCE WITH THE PROVISIONS OF COMAR 27.01.09.01-7.

§ NR 3-118. Surface Mining.

- (a) Definition. Surface mining is defined as the breaking of the surface soil in order to extract or remove minerals in the ~~Atlantic Coastal Bays~~ 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 ~~Atlantic Coastal Bays~~ Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or other facilities. For the purpose of this section, 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. SURFACE MINING DOES NOT INCLUDE AN ACITIVITY OR PROCESS THAT IS EXCLUDED UNDER THE PROVISIONS OF ENVIRONMENTAL ARTICLE, §15-807, ANNOTATED CODE OF MARYLAND OR COMAR 26.21.01.08.
- (b) General requirements. The Department shall ensure that all available measures are taken to protect the ~~Atlantic Coastal Bays~~ 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 Department shall further ensure 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 County mineral resources plan and program are included in the Comprehensive Plan.
- (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. Permits for surface mining are also issued by the Department and permits for such operations in

the ~~Atlantic Coastal Bays~~ 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 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 Department 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 freshwater, 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.
 - (4) Adequate consideration shall be given by the Board of Zoning Appeals 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.
- (1) New surface mining operations are permitted within the ~~Atlantic Coastal Bays~~ 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. Areas where important natural resources such as threatened and endangered species, areas of scientific value, or rare assemblages of 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 (twenty five 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 one hundred 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 Subtitle.
 - 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.

§ NR 3-119. Agriculture.

- (a) General requirements. The County Commissioners and the Department shall follow all of the following requirements with regard to agriculture in the ~~Atlantic Coastal Bays~~ Critical Area:
 - (1) Ensure that agricultural lands are identified and that programs are established for the ~~Atlantic Coastal Bays~~ 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 CHESAPEAKE AND Atlantic Coastal Bays and their tributaries.
 - (3) Ensure 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 has a seasonally flooded or wetter water regime, unless mitigation is accomplished in accordance with applicable State and County regulations;
 - B. By clearing of forests or woodlands on soils with a slope greater than fifteen percent (15%) or on soils with a "K" value greater than 0.35 and slope greater than five percent (5%);
 - C. If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in this Subtitle; or
 - D. By the clearing of existing natural vegetation within the Buffer as defined in this Subtitle.
 - (4) Ensure that the drainage of nontidal wetlands for the purpose of agriculture is done in accordance with a Soil Conservation and Water Quality Plan, approved by the Soil Conservation District AND IN ACCORDANCE WITH THE MITIGATION REQUIREMENTS IN COMAR 26.23.04.
 - (5) Ensure 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) Ensure that animal feeding operations, including retention and storage ponds, feedlot waste storage, and manure storage minimize the contamination of water bodies.
 - (7) Ensure that agricultural activity permitted within the ~~Atlantic Coastal Bays~~ Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the Soil Conservation district.
- (b) Inventory of agricultural lands. Worcester County's intent is to maintain agriculture and forestry as viable and productive land uses within the CHESAPEAKE AND Atlantic Coastal Bays Watershed. The County Commissioners may inventory and map the general extent of agricultural lands within the ~~Atlantic Coastal Bays~~ Critical Area and also map the Habitat Protection Areas referenced in § NR 3-120 through 3-123 of this Subtitle. When developed, these maps shall be used to make an initial determination regarding how a proposed agricultural activity may adversely impact a Habitat Protection Area.
- (c) Performance standards for agriculture. The following performance standards shall apply to all land in agricultural use or to be converted to agricultural use within the ~~Atlantic Coastal Bays~~ Critical Area:
- (1) The County Commissioners hereby incorporate the agricultural components of the Clean Water Act and other Federal, State, and local water quality plans into this Program. These components shall be applicable to all agricultural activities in the ~~Atlantic Coastal~~ ~~Bays~~ Critical Area.
 - (2) Soil Conservation and Water Quality Plans and Best Management Practices shall be developed and implemented for those portions of farms that lie within the ~~Atlantic~~ ~~Coastal Bays~~ Critical Area. Landowners shall cooperate with the Worcester County 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 Soil 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 practices, 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) Cover crops shall be planted to reduce erosion where practical.
 - (5) Nutrients shall be applied at the appropriate time, and appropriate methods shall be used where practical.
 - (6) Reduced tillage (e.g., "no-till) practices shall be utilized where practical.
 - (7) Crop rotations shall be implemented where practical.
 - (8) Agricultural activities are permitted in the Buffer, if, as a minimum Best Management Practice, a 25-foot vegetated filter strip 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, is established and further provided that:
 - A. The filter strip shall be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated above. Noxious weeds,

including Johnson grass, Canada thistle, and multiflora rose, which occur in the filter strip, may be controlled by authorized means.

- B. The filter strip shall be expanded by a distance of four feet for every one percent (1%) of slope, for slopes greater than six percent (6%).
- C. The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of Best Management Practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip.
- D. The Best Management Practices shall include a requirement for the implementation of a grassland and manure management program where appropriate and that the feeding or watering of livestock may not be permitted within fifty feet of the mean high water line of tidal water and the edge of the bank of tributary streams and the landward edge of tidal wetlands within the ~~Atlantic Coastal Bays~~ Critical Area.
- E. Clearing of existing natural vegetation in the Buffer is not allowed.
- F. Farming activities, including the grazing of livestock, shall not disturb stream banks, tidal shorelines, or other Habitat Protection Areas as described in this Subtitle.
- G. Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses; the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that ensures the Buffer functions as set forth in § NR 3-104 of this Subtitle, which shall not preclude normal agricultural drainage ditch maintenance in accordance with best management practices.

§ NR 3-120. Habitat Protection.

- (a) Description. The Habitat Protection Section of the Worcester County Atlantic Coastal Bays Critical Area Law addresses protection of the following four habitats:
 - (1) The 100-foot Buffer
 - (2) Threatened and Endangered Species and Species in Need of Conservation;
 - (3) Plant and Wildlife Habitat Protection Areas including nontidal wetlands; and
 - (4) Anadromous Fish Propagation Waters
- (b) Identification. Maps illustrating the general location, extent, and configuration of Habitat Protection Areas in Worcester County may be developed and filed with the Department. If developed, they will be used as a "flagging" device to assist property owners, developers, any person proposing development activity, the Department, the Planning Commission, 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

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establishing to the satisfaction of the Department whether or not the property or activity will affect the element of habitat to be protected. Prior to the time of development activity on the site the applicant will be responsible for providing an on-site analysis and inventory.

§ NR 3-121. Threatened and Endangered Species and Species in Need of Conservation.

- (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 Department. These maps will be used as a flagging device. **LOCALLY SIGNIFICANT HABITAT AREAS INCLUDE:**
- (1) POCOMOKE SAND RIDGE. THIS AREA IS COMPRISED OF A SYSTEM OF ANCIENT SAND DUNES AND ASSOCIATED NON-TIDAL WETLANDS WHICH SUPPORTS AN ENDANGERED SPECIES AND SEVERAL UNCOMMON SPECIES.
 - (2) POORHOUSE BRANCH. THIS AREA ENCOMPASSES RIPARIAN FOREST, WETLANDS, AND THE HABITATS OF SEVERAL THREATENED AND ENDANGERED SPECIES.
- (b) General requirements. The Department shall provide for the protection of the known habitats of species in need of conservation and threatened and endangered species and also the habitats of these species that may be identified in the future. Protection measures for these Habitat Protection Areas are to be developed in the following way:
- (1) The Department shall review the proposed activities on a case-by-case basis and seek technical advice from the Department of Natural Resources. Development of property located within the ~~Atlantic Coastal Bays~~ Critical Area of Worcester County will require a site specific survey to be submitted along with design plans and a written description of the measures the property owner proposes to take to protect any habitats identified. This information concerning habitats will be incorporated into the County's Resource Inventory Maps for future reference.
- ~~(c) Standards for Bald Eagle protection. A three zone protection area of 1/4 mile (thirteen hundred twenty feet) in radius around each Bald Eagle nest shall be established and within the zones the following protection measures shall apply:~~
- ~~(1) Zone 1 shall include the area extending from the nest out to a radius of three hundred thirty feet from the nest. In this zone timber cutting, land clearing, and development activities are prohibited. Hiking, fishing, and agricultural activities may be permitted from June 16 to December 14. These activities and human activity in general shall not be permitted in this zone from December 15 to June 15.~~
 - ~~(2) Zone 2 extends from the outer limit of Zone 1 to a radius of six hundred sixty feet from the nest. In this zone, major habitat changes shall be avoided including clear cutting, land clearing, and development activity. Hunting, hiking, fishing, and agricultural activities may be permitted from June 16 to December 14. These activities and human activity in general shall not be permitted in this zone from December 15 to June 15. Agricultural activities may be permitted if Department of Natural Resources data indicate that the nesting eagles are tolerant of these activities. From August 16 to November 14, selective thinning and maintenance of timber stands and building and road maintenance may be permitted.~~
 - ~~(3) Zone 3 extends from the outer limit of Zone 2 to a radius of thirteen hundred twenty feet from the nest. Timber cutting, land clearing, and development activities shall~~

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be restricted from December 15 to June 15. Other activities in this zone that are within sight of the eagles on the nest may need to be restricted during this time period in accordance with Department of Natural resources recommendations.

~~(4) If a Bald Eagle nest has not been used for three successive nesting seasons, then any protective regulations applied to the specific site may be removed after verification by the Department of Natural Resources that the nest has been abandoned.~~

- (dc) Implementation. The owner of any property containing a portion of, or adjacent to, a habitat of a threatened or endangered species or a species in need of conservation on which a land altering or land development activity is proposed shall prepare and submit a Habitat Protection Plan, as described in subsection (e) hereof, to the Department prior to beginning the activity. The Department will request a review and comments from the Department of Natural Resources. A land altering activity shall include, but not be limited to, such activities as subdivision, timbering, sand, and gravel mining, clearing new farmlands, grading and the construction of homes or commercial structures.
- (ed) Habitat Protection Plans. Habitat Protection Plans shall consist of the following elements:
- (1) Designation of a protection area or “buffer” around each of the habitats occurring on a particular site or in the jurisdiction where development activities are proposed. Development activities and other disturbances shall be prohibited within the protection areas unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats.
 - (2) Development and implementation of specific protection measures or Best Management Practices such as time of year restrictions, landscaped buffers, water quality control structures, etc. designed to protect the habitat from adverse impacts associated with a change in land: use, development activity, or increased human activity.
- (fe) Public notice. The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the Department and public agencies or private organizations. Designation of habitat and protective measures may not be accomplished unless the affected public is given an adequate opportunity to be heard. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, a public hearing, as appropriate, shall be held to consider comments on 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, 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.

§ NR 3-122. Plant and Wildlife Habitat ~~and Nontidal Wetlands~~ Protection Plan.

- (a) Description. The following plant and wildlife habitats shall be identified in the ~~Atlantic Coastal Bays~~ Critical Area:
- (1) Colonial waterbird nesting sites;

- (2) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
 - (3) Existing riparian forests, for example relatively mature forests of at least three hundred feet in width which occur adjacent to streams, wetlands, or the bay shoreline and which are documented breeding areas;
 - (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species, for example relatively mature forested areas within the ~~Atlantic Coastal Bays~~ Critical Area of one hundred acres or more or forest connected with such areas;
 - (5) Other plant and wildlife habitats determined to be of local significance and so designated by resolution of the County Commissioners;
 - (6) Natural Heritage Areas which have been designated; and
 - ~~(7) Nontidal wetlands.~~
- (b) General requirements. The requirements of Worcester County regarding plant and wildlife habitat in the ~~Atlantic Coastal Bays~~ Critical Area shall be to:
- (1) Conserve wildlife habitat in the Atlantic Coastal Bays 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 Commissioners to be of local significance;
 - (5) Protect Natural Heritage Areas; and
 - (6) Protect and conserve nontidal wetlands.
- (c) Standards. In addition to the standards set forth in § NR 3-104 hereof for the protection of the Buffer, the following standards shall apply to new development and redevelopment within the ~~Atlantic Coastal Bays~~ Critical Area:
- (1) Any development or significant land use change on property located within the ~~Atlantic Coastal Bays~~ Critical Area of Worcester 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 into the Resource Inventory Maps for future reference.
 - (2) The Department may seek additional information and comments from the Department of Natural Resources and other appropriate agencies and adjacent jurisdictions.
 - (3) For development activities in the Resource Conservation Area and Limited Development Area, wildlife corridors shall be established and used to connect the area 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 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. Tree planting, which serves only as a visual screening, does not meet these requirements.

- (4) Buffer areas for colonial waterbird nesting sites shall be established (if such birds are found to exist in the ~~Atlantic Coastal Bays~~ Critical Area) so that these sites are protected from the adverse impacts of development activities and disturbance during the breeding season.
- (5) 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.
- (6) Protection measures, including a buffer area, shall be established where appropriate for other plant and wildlife habitat sites identified in this Subtitle.
- (7) Forested areas required to support wildlife species identified above in § NR 3-122(a)(1) and (4) shall be protected and conserved by developing management programs that 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 these 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 that 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 recorded easements in perpetuity and other similar techniques.
- (8) When development activities or the cutting or clearing of trees occurs in forested areas, corridors of existing forest or woodland vegetation shall be maintained to the extent practical to provide effective connections between wildlife habitat areas.
- (9) Those plant and wildlife habitats considered to be of local significance by the County Commissioners 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.
- (10) 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.

A. THE FOLLOWING AREAS WITHIN THE CRITICAL AREA OF WORCESTER COUNTY ARE OFFICIALLY IDENTIFIED AND DESIGNATED AS NATURAL HERITAGE AREAS:

1. HICKORY POINT CYPRESS SWAMP.
2. LOWER NASSAWANGO CREEK.
3. MATAPONI.

AB. Development activities or cutting and clearing in Natural Heritage Areas shall be prohibited unless an analysis is performed and measures

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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.

BC. The analysis shall be submitted to the Department, 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 Department 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 State Department of Natural Resources shall make a recommendation for consideration by the Department in making its decision as to whether to find against or in favor of the activities.

(d) Public notice. The determination of the existence and extent of plant and wildlife habitats shall result from a cooperative effort between the County Commissioners and public agencies or private organizations. Designation of habitat and protective measures may not be accomplished unless the affected public is given an adequate opportunity to be heard. If additional plant and wildlife habitat areas are to be designated in the future, local public hearings, as appropriate, shall be held to consider comments on the areas and protection measures proposed.

§ NR 3-123. Anadromous fish propagation waters.

(a) Identification. The County Commissioners may identify and map anadromous fish propagation waters as defined in § NR 3-102 hereof, and, if developed, these maps will be available at the Department.

(b) General requirements. The requirements of the Program with regard to anadromous fish propagation waters shall be to:

(1) Protect the instream and streambank habitat of anadromous fish propagation waters;

(2) Promote land use policies and practices in the watershed of spawning streams within the ~~Atlantic Coastal Bays~~ 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.

(c) Standards. Within anadromous fish propagation watersheds, the following criteria shall apply:

(1) The installation or introduction of concrete or stone 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 Department 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;
- E. Indicate how any portion of the development activity outside the ~~Atlantic Coastal Bays~~ Critical Area will maintain or improve the water quality of the affected watershed;

(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 WATERBODIES. IF PRACTICAL, EXISTING STRUCTURES SHALL BE REMOVED; AND
- (B) ENSURE THAT THE CONSTRUCTION, REPAIR OR MAINTENANCE ACTIVITIES ASSOCIATED WITH BRIDGES, OR OTHER STREAM CROSSING OR WITH UTILITIES AND ROADS, WHICH INVOLVE DISTURBANCE WITHIN THE BUFFER OR WHICH OCCUR INSTREAM, AS DESCRIBED IN COMAR 08.05.03.11B(5), SHALL BE PROHIBITED BETWEEN MARCH 1 AND JUNE 15 OF EACH YEAR.

§ NR 3-124. Water dependent facilities.

- (a) 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, which are located in a subdivision that does not provide community piers.
- (b) General requirements. The requirements of the Program 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 ~~Atlantic Coastal Bays~~ Critical Area.
 - (1) In order to protect water quality and fish, wildlife and plant habitats, water-dependent facilities as defined herein shall not extend more than two hundred fifty feet over State or private wetlands.
 - (2) Without further action by the County Commissioners, the provisions of § NR 3-124(b)(1) above shall be abrogated and of no further force and effect, one year after the effective

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date of this Subtitle unless modified or amended as a public local law in accordance with legally required procedures.

- (c) 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 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 Subtitle, new or expanded development activities may not be permitted in those portions of the Buffer, which occur in Resource Conservation Areas.
- (d) 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. Other than those cited in subsections (h) through (k) of this section, water-dependent facilities in Resource Conservation Areas shall only be allowed through the award of growth allocation in accordance with the provisions of § NR 3-112.
- (e) Evaluating plans for new and expanded water-dependent facilities. The Department shall evaluate on a case-by-case basis all proposals for the expansion of existing or new water-dependent facilities. The Department 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 runoff, sewage discharge from land activities or vessels, or 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 Atlantic Coastal Bays Critical Area, generally;

- (7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the ~~Atlantic Coastal Bays~~ 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 § NR 3-104 and 3-121 through 3-123 of this Subtitle.
- (f) 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 buffer management areas in Intensely Developed Areas.
- (g) Marinas and other commercial maritime facilities. New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements set forth in this section. New marinas or related maritime facilities may not be permitted in the Buffer within Resource -Conservation Areas except as provided in subsections (i) through (k) hereof. Expansion of existing marinas may be permitted by the Department 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 or as amended from time to time. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.
- (h) 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 following requirements:
 - (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 only of a platted and recorded riparian subdivision;
 - (3) The facilities are associated with a residential development approved by the Department for the Atlantic Coastal Bays Critical Area and consistent with all State requirements for the Atlantic Coastal Bays 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 or slips are provided as part of the new development, private piers in the development are not allowed.
- (6) The number of slips, or piers, permitted at the facility shall be the lesser of paragraph (h)(6)A or B below:
 - A. One slip for every 50 feet of shoreline in the subdivision in the Intensely Developed and Limited Development Areas and one slip for every 300 feet of shoreline in the subdivision in the Resource Conservation Area; or
 - B. A density of slips or piers to platted lots or dwellings within the subdivision in the ~~Atlantic Coastal Bays~~ Critical Area according to the following schedule:

Platted Lots or Dwellings in the Atlantic Coastal Bays 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

- (i) 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.
- (j) 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.
- (k) Fisheries activities. Lands and water areas with high aquacultural potential will be identified by the County Commissioners in cooperation with the State when applications for new or expanded

fisheries or aquaculture facilities in these areas are submitted to the County Commissioners. 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, Limited Development, and Resource Conservation Areas.

§ NR 3-125. Individual private piers and docks

- (a) General requirements. Individual private piers or docks may be installed or maintained when in conformance with all other applicable laws and regulations by riparian landowners of lots or parcels legally existing on the effective date of this Subtitle.
- (b) Standards. The following standards shall apply in addition to any other applicable laws or regulations to the construction, expansion, replacement or modification of an existing or newly constructed private pier or dock:
 - (1) New piers or docks shall not extend more than one hundred feet in length over State or private wetlands.
 - (2) Existing piers or docks shall not be expanded, altered, replaced, or modified in whole or in part so as to cumulatively exceed more than one hundred feet in length over State or private wetlands.
 - (3) Any disturbance of the Buffer shall be the minimum necessary for the construction and/or maintenance of the pier or dock.
 - (4) A reasonable pedestrian access path to an individual pier or dock may be located in the Buffer subject to the following:
 - A. A maximum of one access path shall be permitted per lot or parcel.
 - B. The access path may include clearing and stabilization of no more than six feet in width.
 - C. ~~Impervious areas~~ LOT COVERAGE constructed within the six-foot width identified in B. above are limited to three feet in width. The ~~impervious area~~ LOT COVERAGE created is subject to all other limitations as established by this Subtitle.
 - D. All access paths shall be located to minimize impacts from the pier or dock to the principal structure on the same lot or parcel or the path's point of exit from the Buffer.
- (c) Without further action by the County Commissioners, the provisions of § NR 3-125(b)(1) and (2) hereof shall be abrogated and of no further force and effect one year after the effective date of this Subtitle unless otherwise modified or amended as a public local law in accordance with legally required procedures.

§ NR 3-126. NON-WATER DEPENDENT PROJECTS ON PIERS

- (a) THE DEPARTMENT MAY APPROVE A NON-WATER DEPENDENT PROJECT LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE PROJECT:
- (1) INVOLVES A COMMERCIAL ACTIVITY THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE TO A PERMITTED PRIMARY COMMERCIAL USE;
 - (2) IS NOT LOCATED ON A PIER THAT IS ATTACHED TO RESIDENTIALLY, INSTITUTIONALLY, OR INDUSTRIALLY USED PROPERTY;
 - (3) IS LOCATED IN:
 - A. AN INTENSELY DEVELOPED AREA (IDA) AND THE PROJECT IS AUTHORIZED UNDER AN AMENDMENT TO THIS SUBTITLE APPROVED ON OR AFTER JULY 1, 2013, IF THE APPROVED AMENDMENT INCLUDES NECESSARY CHANGES TO COUNTY'S ZONING, SUBDIVISION AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH, OR MORE RESTRICTIVE THAN, THE REQUIREMENTS REQUIRED UNDER THIS PARAGRAPH; OR
 - B. AN AREA THAT HAS BEEN EXCLUDED FROM A WORCESTER COUNTY CRITICAL AREA PROGRAM IF THE EXCLUSION HAS BEEN ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS;
 - (4) IS APPROVED BY THE DEPARTMENT OR THE BOARD OF ZONING APPEALS AFTER THE AMENDMENT UNDER SUBPARAGRAPH (a)(3)(A) ABOVE, IF APPLICABLE, HAS BEEN APPROVED;
 - (5) ALLOWS OR ENHANCES PUBLIC ACCESS TO STATE WETLANDS;
 - (6) DOES NOT EXPAND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE PIER ON WHICH THE PROJECT IS CONSTRUCTED;
 - (7) HAS A HEIGHT OF UP TO EIGHTEEN (18) FEET UNLESS THE PROJECT IS LOCATED AT A MARINA; AND
 - (8) IS UP TO 1,000 SQUARE FEET IN TOTAL AREA; OR
 - A. IS LOCATED ON A PIER THAT WAS IN EXISTENCE ON OR BEFORE DECEMBER 31, 2012;
 - B. SATISFIES ALL OF THE REQUIREMENTS UNDER SECTION (1)(A)-(G) OF THIS PARAGRAPH; AND
 - C. IF APPLICABLE, HAS A TEMPORARY OR PERMANENT ROOF STRUCTURE OR COVERING THAT IS UP TO 1,000 SQUARE FEET IN TOTAL AREA.

- (b) THE DEPARTMENT MAY APPROVE A NON-WATER DEPENDENT PROJECT FOR A SMALL SCALE RENEWABLE ENERGY SYSTEM ON A PIER LOCATED ON STATE OR PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE PROJECT:
 - (1) INVOLVES THE INSTALLATION OR PLACEMENT OF A SMALL-SCALE RENEWABLE ENERGY SYSTEM THAT IS PERMITTED AS A SECONDARY OR ACCESSORY USE ON A PIER THAT IS AUTHORIZED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE;
 - (2) IS LOCATED IN:
 - A. THE CRITICAL AREA AND THE PROJECT IS AUTHORIZED UNDER AN AMENDMENT TO THIS SUBTITLE APPROVED ON OR AFTER JULY 1, 2013, IF THE APPROVED PROGRAM AMENDMENT INCLUDES NECESSARY CHANGES TO COUNTY'S ZONING, SUBDIVISION, AND OTHER ORDINANCES SO AS TO BE CONSISTENT WITH OR MORE RESTRICTIVE THAN THE REQUIREMENTS PROVIDED UNDER THIS PARAGRAPH; OR
 - B. AN AREA THAT HAS BEEN EXCLUDED FROM THE COUNTY'S CRITICAL AREA PROGRAM THAT HAS BEEN ADOPTED OR APPROVED BY THE CRITICAL AREA COMMISSION;
 - (3) IS APPROVED BY THE PLANNING COMMISSION OR BOARD OF ZONING APPEALS AFTER AN AMENDMENT IN ACCORDANCE WITH SUBPARAGRAPH (E)(1)(C) ABOVE, IF APPLICABLE, HAS BEEN APPROVED;
 - (4) A BUILDING PERMIT OR OTHER APPROVAL ISSUED UNDER THE REQUIREMENTS IN SUBPARAGRAPH (2) ABOVE MAY INCLUDE THE INSTALLATION OR PLACEMENT OF:
 - A. A SOLAR ENERGY SYSTEM ATTACHED TO A PIER OF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT EXTEND MORE THAN: [1] FOUR (4) FEET ABOVE OR EIGHTEEN (18) INCHES BELOW THE DECK OF THE PIER; OR [2] ONE (1) FOOT BEYOND THE LENGTH OR WIDTH OF THE PIER;
 - B. A SOLAR ENERGY SYSTEM ATTACHED TO A PILING IF THERE IS ONLY ONE SOLAR PANEL PER BOAT SLIP;
 - C. A SOLAR ENERGY SYSTEM ATTACHED TO A BOATHOUSE ROOF IF THE DEVICE OR EQUIPMENT ASSOCIATED WITH THAT SYSTEM DOES NOT EXTEND BEYOND THE LENGTH, WIDTH, OR HEIGHT OF THE BOATHOUSE ROOF;
 - D. A CLOSED-LOOP GEOTHERMAL HEAT EXCHANGER UNDER A PIER IF THE GEOTHERMAL HEAT EXCHANGER OR ANY ASSOCIATED DEVICES OR EQUIPMENT DO NOT: [1] EXTEND BEYOND THE LENGTH, WIDTH, OR CHANNELWARD ENCROACHMENT OF THE

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PIER; [2] DELETERIOUSLY ALTER LONGSHORE DRIFT; OR [3] CAUSE SIGNIFICANT INDIVIDUAL OR CUMULATIVE THERMAL IMPACTS TO AQUATIC RESOURCES; OR

- E. A WIND ENERGY SYSTEM ATTACHED TO A PIER IF THERE IS ONLY ONE WIND ENERGY SYSTEM PER PIER FOR WHICH: [1] THE HEIGHT FROM THE DECK OF THE PIER TO THE BLADE EXTENDED AT ITS HIGHEST POINT IS UP TO TWELVE (12) FEET; [2] THE ROTOR DIAMETER OF THE WIND TURBINE IS UP TO FOUR (4) FEET; AND [3] THE SETBACKS OF THE WIND ENERGY SYSTEM FROM THE NEAREST PROPERTY LINE AND FROM THE CHANNELWARD EDGE OF THE PIER TO WHICH THAT SYSTEM IS ATTACHED ARE AT LEAST 1.5 TIMES THE TOTAL HEIGHT OF THE SYSTEM FROM ITS BASE TO THE BLADE EXTENDED AT ITS HIGHEST POINT.

§ NR 3-1267. Shore erosion protection works.

- (a) Generally. As an alternative to structural erosion controls, which can disturb the aquatic environment and increase erosion downstream, the County Commissioners encourage the use of non-structural controls such as marsh creation, maintenance of buffer zones, and the establishment of natural barriers to prevent intrusion on fragile vegetated shorelines. The criteria set forth in this chapter are not intended to apply to those structures necessarily associated with water-dependent facilities, as discussed in § NR 3-124 of this Subtitle.
- (b) General requirements. In protecting shore areas from erosion the Department shall follow these requirements:
- (1) Encourage the protection of rapidly eroding portions of the shoreline in the ~~Atlantic Coastal Bays~~ Critical Area by public and private landowners;
 - (2) Where such measures can effectively and practically reduce or prevent shore erosion, encourage the use of non-structural shore protection measures in order to conserve and protect plants, fish, and wildlife habitat.
- (c) Implementation. Each application for shore erosion protection shall demonstrate how it complies with the following objectives:
- (1) Structural control measures shall only be used in areas with significantly eroding shorelines and where non-structural measures would not be practical or effective in controlling erosion.
 - (2) Where structural erosion control is required, the measure that best provides for the conservation of fish and plant habitat and which is practical and effective shall be used;
 - (3) Non-structural measures shall be utilized in areas of erosion where they would be a practical and effective method of erosion control;
 - (4) Structural erosion measures shall not be encouraged in areas where no significant erosion occurs;
 - (5) If significant alterations in the characteristics of a shoreline occur, the measure that best fits the change may be used for sites in that area.

- (6) Vegetation removed in the Buffer for construction of shore erosion control measures shall be replaced on an equal basis.
- (7) A BUFFER MANAGEMENT PLAN FOR A SHORE EROSION CONTROL MEASURE SHALL BE PROVIDED AND APPROVED BY THE DEPARTMENT.
- (d) Process. The Department, in reviewing any application for a permit for structural erosion control devices, may refer the application to the Soil Conservation District, the Department of Natural Resources and the department of the environment for field verification of the need for the structural erosion control as well as for recommendations on proposed erosion control mechanisms.
 - (1) Any application made to the Department for the installation of an erosion control device must, at a minimum, include the following information:
 - A. Photograph of erosion problem;
 - B. The specific location of the site on a USGS 7.5 topographic map;
 - C. Soil type and erodibility;
 - D. Proposed and existing land use.
 - (2) Applications must include appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.

~~§ NR 3-127. Nontidal wetland and nontidal wetland buffer regulations.~~

- ~~(a) Generally. For development activities located on lots and parcels created after June 1, 2002 within the Atlantic Coastal Bays watershed lying outside the Atlantic Coastal Bays Critical Area where the State permits nontidal wetland buffer impacts without mitigation, mitigation as provided for below is required by this subsection. For activities in these areas that the State classifies as “temporary impacts”, mitigation is not required.~~
- ~~(b) Site plan requirements. For any project that impacts the nontidal wetland or its buffer, the following must be shown in addition to the other site plan requirements of this Subtitle on any site plan submitted to the Department:
 - ~~(1) The boundary of any nontidal wetlands and any nontidal wetlands buffers.~~
 - ~~(2) The limits of disturbance within the nontidal wetlands and nontidal wetlands buffer.~~
 - ~~(3) The location and boundaries of any onsite mitigation project proposed or required by this subsection.~~
 - ~~(4) The location and boundaries of any offsite mitigation project proposed or required by this subsection.~~~~
- ~~(c) Required mitigation. For regulated activities that impact the nontidal wetland and nontidal wetland buffer, mitigation will be required at an equal basis onsite and at an areal extent twice that offsite. Natural vegetation similar to the vegetation destroyed by the impact shall be used, either through regeneration of the disturbed area or through planting. Mitigation of nontidal wetland and nontidal wetland buffer impacts shall not be allowed to count toward a project’s~~

~~afforestation and/or reforestation requirements.~~

~~(d) Priority sequence for mitigation site selection. All mitigation sites proposed for compliance with this subsection shall be accomplished in accordance with the following preferred locational sequence:~~

~~(1) Onsite adjacent to a nontidal wetland or its buffer.~~

~~(2) Onsite between and connecting existing forested areas.~~

~~(3) Onsite where establishing or enhancing forest buffers adjacent to critical habitats where appropriate.~~

~~(4) Onsite within the one hundred year floodplain.~~

~~(5) Offsite mitigation will only be allowed if it is demonstrated to the satisfaction of the Department that onsite mitigation is not practicable. Offsite mitigation shall be on a two to one ratio and shall take place in accordance with the locational sequence specified in subsection (d)(1) through (4) above.~~

~~(e) Planting methodology. If the mitigation project requires planting, the planting shall take place in accordance with the provisions of the current Forest Conservation Manual with respect to planting techniques and specifications. Planting associated with required mitigation shall be performed prior to the issuance of any zoning certificate or certificate of use and occupancy or shall be bonded in accordance with the provisions of § ZS 1-124 of the Worcester County Zoning Ordinance. Natural regeneration may be permitted in lieu of planting where:~~

~~(1) Seventy five percent (75%) of the proposed mitigation area is located within 50 feet of adjoining forest, or the proposed planting area is a forest opening less than one acre in size; and~~

~~(2) Adjoining forest has a maximum of twenty percent (20%) cover of invasive exotic species.~~

~~(f) Perpetual protective agreements. Any person required to mitigate impacts to a nontidal wetland or nontidal wetland buffer in accordance with the provisions of this subsection shall enter into a perpetual protective agreement as prescribed by § NR 1-415(g) and (h) hereof to ensure that the vegetation used for mitigation shall be protected against clearing and the detrimental effects of invasive species.~~

§ NR 3-128. RENEWABLE ENERGY GENERATING SYSTEMS.

(a) GENERALLY. ON OR AFTER APRIL 1, 2021, THE DEPARTMENT MAY AUTHORIZE A SOLAR ENERGY GENERATING SYSTEM WITHIN THE CRITICAL AREA PURSUANT TO COMAR 27.01.14.

Section 2. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, that this Bill shall take effect forty-five (45) days from the date of its passage.

PASSED this _____ day of _____, 2021.

ATTEST:

COUNTY COMMISSIONERS OF
WORCESTER COUNTY, MARYLAND

Weston S. Young, P.E.
Chief Administrative Officer

Joseph M. Mitrecic, President

Theodore J. Elder, Vice President

Anthony W. Bertino, Jr.

Madison J. Bunting, Jr.

James C. Church

Joshua C. Nordstrom

Diana Purnell