

ARTICLE XI OVERLAY ZONES
Part I Critical Area District

Section 191. Statement of Intent, Purpose, Applicability and Findings Requirements

1. The purpose of the Critical Area District is to implement zoning regulations and measures designed to protect and enhance water quality and habitat resources located within the County's Chesapeake Bay Critical Area. These regulations and measures govern development activities and resource utilization activities, e.g., agriculture and forestry, with the Critical Area. They supplement existing land use regulations by imposing specific standards and requirements as set forth in the Critical Area Act and Criteria. The Critical Area regulations and measures as set forth herein and in any other applicable regulations, supersede any inconsistent law, section, plan or program of the County. In the case of conflicting provisions, the stricter provisions shall apply. The geographic area for which the following district regulations apply shall be those lands and waters located within one thousand (1,000) feet of the landward boundaries of all tidal waters and tidal wetlands as designated on the Official Cecil County Chesapeake Bay Critical Area Maps.
2. No person shall develop, alter, or use any land for residential, commercial, industrial, or institutional uses, nor conduct agricultural, fishery or forestry activities in the Cecil County Critical Area except in compliance with the applicable provisions contained herein.
3. The intent of the Critical Area District is to provide special regulatory protection for the natural resources located within the County's Chesapeake Bay Critical Area and to foster more sensitive development activity in shoreline areas that minimizes adverse impacts to water quality and natural habitats. To ensure this end, no development or resource utilization activity shall be permitted until the applicable approving authority shall make specific findings that the proposed development or activity is consistent with the goals and objectives of the Cecil County Critical Area Program.

Section 192. Official Critical Area District Maps

1. Official Critical Area District Maps shall be prepared and maintained in force as part of the Official Zoning Maps of the County. They shall delineate the extent of the Critical Area District that shall correspond to the Chesapeake Bay Critical Area. Within the Critical Area District, there shall be three land use management area classifications, which shall be shown on the Official Critical Area Maps:
 - a. Intensely Developed Areas (IDA's);
 - b. Limited Development Areas (LDA's); and
 - c. Resource Conservation Areas (RCA's).

Note - These land use management areas correspond to the definitions established in the Chesapeake Bay Critical Area law and Criteria, as amended, for each area and specifically as identified on the Official Cecil County Chesapeake Bay Critical Area maps, adopted as part of the Cecil County Critical Area Program. Mapped land use management area

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classifications are based on land uses established on or before December 1, 1985, except for areas where the land use classification may be changed by granting the Growth Allocation (GA) or the Special Growth Allocation (SGA) floating zone district classification as provided in Sections 204 through 213. The Critical Area District Maps may be amended by the County Commissioners in compliance with amendment provisions in this Ordinance, the Maryland Critical Area Law and Critical Area Criteria.

2. The Critical Area shall include all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They 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 16 of the Environment Article, Annotated Code of Maryland.
 - b. All land and water areas within 1,000 feet beyond the landmark boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and
 - c. Modification to these areas through inclusions or exclusion proposed by local jurisdictions and approved by the commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.
3. The County Commissioners may elect to adjust the Critical Area Boundary to delete areas of the County from the Critical Area District only at such time as new Official Wetland Maps are adopted by the State of Maryland or an area of the Critical Area has been approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays for exclusion. The County Commissioners may also elect to add areas to the Critical Area at any time, subject to approval by the Critical Area Commission. Such changes shall be treated as amendments to the Critical Area District.

Section 193. Density Provisions

1. Density in the Intensely Developed Areas (IDAs) shall be as established in the underlying base zone.
2. The development density and minimum lot sizes permitted within a Limited Development Area (LDA) shall be governed by prescriptive densities within the applicable underlying base zoning districts that permit residential use, however in no case may the permitted density exceed 3.99 units per acre. Determination of density shall be based on the gross site area of the parcel prior to development.

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- 3.** Residential densities (not lot sizes) in Resource Conservation Areas (RCAs) shall not exceed one (1) unit per twenty (20) acres regardless of densities permitted in applicable underlying base zones, except as provided below. Determination of density shall be based on the gross site area of the parcel, excluding tidal wetlands. 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 sets of conditions:
- a.** (1) Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit;
 - (2) Does not exceed 900 square feet in total enclosed area; and
 - (3) Is served by the same sewage disposal system as the primary dwelling unit; or
 - b.** (1) Is located within the primary dwelling unit;
 - (2) By its construction, does not increase the amount of impervious surface already attributed to the primary dwelling unit; and
 - (3) Is served by the same sewage disposal system as the primary dwelling unit.
 - c.** 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.
 - d.** 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 ordinance for variances in the Critical Area.
 - e.** 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.
- 4.** In determining residential densities for a site, private wetlands may be included in the calculation of one (1) unit per twenty (20) acre density provided the development density on the upland portion of the site does not exceed one (1) dwelling unit per eight (8) acres. The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetland maps.

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- a.** Minimum lot sizes shall be governed by standards applicable to the underlying base zoning districts.
- b.** The one (1) unit per twenty (20) acre density limitation shall not prevent a bona fide intrafamily transfer subject to the following limitations:
 - (1)** Intrafamily transfers will be permitted on portions of certain parcels in the Critical Area where it is shown that the parcel was recorded on or before March 1, 1986 and where such parcel is at least seven (7) acres and not more than sixty (60) acres in size.
 - (2)** A bona fide intrafamily transfer shall be subject to all requirements of the Cecil County Subdivision Regulations. A notation shall be placed on the final subdivision plat denoting the lot(s) that are created under these provisions.
 - (3)** Subdivision of land under the bona fide intrafamily transfer provision contained herein shall be subject to the following limitations:
 - (a)** Parcels 7 acres to less than 12 acres cannot be subdivided into more than a total of 2 lots.
 - (b)** Parcels 12 acres to less than 60 acres cannot be subdivided into more than a total of 3 lots.
 - (4)** A lot created pursuant to these provisions may not be subsequently conveyed to any person except as provided herein:
 - (a)** Where the conveyance is to a member of the owner's immediate family.
 - (b)** Where the conveyance of the lot is as part of a default on a mortgage or deed of trust.

- (5) Lots created pursuant to these provisions shall not be created for purposes of ultimate commercial sale. In addition, any lot created under this section may not be transferred or sold to a third party that is not a member of the owner's immediate family or a holder of a mortgage or deed of trust on the property, unless and until the Planning Commission has determined that the following can be conclusively proved:
 - (a) A change in circumstances has occurred since the original transfer, not of the owner's own doing, that would warrant permitting a subsequent transfer, when such circumstances are consistent with the warrants and exceptions contained herein; or
 - (b) Other circumstances necessary to maintain land areas to support protective uses of agriculture, forestry, open space, and natural habitats in RCA's warrant an exception.
- c. Deeds of transfer shall include the provisions contained in (5) above as covenants. Such covenants shall prevent the subsequent transfer or sale of a lot or lots created pursuant to the intra-family transfer provisions contained herein to a third party, not a member of the owner's immediate family or a holder of a mortgage or deed of trust on the property, except as provided in (5) above.

Section 194. Nonconforming Development in the Critical Area District (Grandfathering Provisions)

An individual unimproved lot or parcel of land located within the Cecil County Critical Area District may be improved in a Resource Conservation Area (RCA) in accordance with Section 201 and otherwise developed in accordance with Section 200 in a Limited Development Area (LDA) and Section 199 in an Intensely Developed Area (IDA) provided they comply with the provisions of Section 197 and 198 and further, provided they comply with the following criteria:

1. Any legally buildable single lot or parcel of record established in Cecil County prior to July 5, 1988 may be improved, developed or redeveloped with a single-family residence, if a dwelling is not already located there.
2. Any lot on which development activity has legally progressed to the point of pouring foundation footing or installation of structural members, prior to adoption of the Cecil County Critical Area Program, will be permitted to complete construction as per existing development approvals (e.g., building permit).
3. Development may take place on lots created prior to June 1, 1984, subject to the limitations on permitted uses contained in this Ordinance and subject to the provisions of this Part in-so-far-as possible. As a condition of approval the Planning Commission

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may require the consolidation or reconfiguration of lots not individually owned in existing subdivisions.

4. Development may take place on lots subdivided between June 1, 1984 and July 5, 1988 for which "interim findings" (Critical Area Law, Section 8-1813) have been made by the Cecil County Planning Commission, Board of Appeals, or County Commissioners.
5. All development permitted under this section shall comply with the Habitat Protection Area and Water-Dependent Facilities standards of this Part.

Section 195. Modified Buffer Areas

1. Definitions. For the purpose of implementing this subsection, the following words have the following meanings. (In the case of conflicts with other definitions, the stricter provisions shall apply.):
 - (a) *Accessory Structure* means a structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.
 - (b) *Modified Buffer Area* includes the minimum 110-foot Buffer and means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Modified Buffer Area (MBA), where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.
 - (c) *Bufferyard* means an area, at least 50 feet wide, located between development activity and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these goals such as mowing or applying herbicides.
 - (d) *Grandfathered Parcel/Lot* means a parcel of land or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985.
 - (e) *Development Activity* means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision.
 - (f) *Natural Forest Vegetation* means vegetation consisting of canopy trees,

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

- (g) *New Development* means a development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985.
- (h) *Principal Structure* means, for the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system.
- (i) *Redevelopment* means a development activity that takes place on a property with pre-development imperviousness percent of 15% or greater as of December 1, 1985.

2. Description. The following provisions are intended to accommodate limited use of shoreline areas that have been mapped as Modified Buffer Areas (MBAs) under the provisions of Section 195 while protecting water quality and wildlife habitat to the greatest extent possible. This section applies only to new development or redevelopment within 110 feet of tidal waters, tidal wetlands and tributary streams on lots of record as of December 1, 1985 that have been identified as Modified Buffer Areas in the Cecil County Critical Area Program and approved by the Critical Area Commission.

3. Permitted Uses:

- a. New development or redevelopment, provided that the Development and Redevelopment Rules and Offsetting Requirements set forth below are observed.
- b. Shore Erosion Protection Measures provided that such measures are consistent with the County's shore erosion protection policies and provided that the measure has obtained all applicable State and federal permits.
- c. Cutting or clearing of trees or natural vegetation under an approved Timber Harvesting Plan or Buffer Management Plan for the following purposes only:
 - (1) For personal use provided that Buffer functions are not impaired and trees cut are replaced at a one-to one ratio and that the clearing or cutting of trees will not impair water quality or existing habitat value;
 - (2) To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
 - (3) In conjunction with horticultural practices used to maintain the health of individual trees;
 - (4) To provide access to private piers;

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- (5) To install or construct an approved shore erosion protection device or measure;
 - (6) To protect trees from extensive pest or disease infestation if approved by the Department of Agriculture or the Department of Natural Resources; or
 - (7) To permit the development or redevelopment allowed above to be constructed or installed.
4. Prohibited Uses: Water polluting activities including, but not limited to, storage of vehicles, fuel or chemicals.

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- 5. Commercial, Industrial, Institutional, Recreational, and Multi-Family Residential Development and Redevelopment Standards:** New development or redevelopment including structures, roads, parking areas, and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission or the Director of Planning and Zoning finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:
- a. Proposed development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams. New subdivisions to accommodate new development shall provide a full 110-foot Buffer and be expanded, as required. Consolidation or reconfiguration of grandfathered lots in a Modified Buffer Area shall result in an overall environmental improvement within the MBA. New structures and impervious surfaces in the MBA that result from consolidation or reconfiguration of grandfathered lots shall not be located within 50 feet of the edge of tidal waters or tidal wetlands.
 - b. Variances to other County setback requirements shall be considered before additional intrusion into the Buffer,
 - c. Convenience or expense shall not be factors considered when evaluating the extent of allowable impacts to the Buffer.
 - d. New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. In cases where the applicant has demonstrated that there is no feasible alternative, new development shall not be located closer to the water (or edge of tidal wetlands) than the setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50-foot setback shall be maintained for all subsequent development or redevelopment of the property.
 - e. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. In cases where the applicant has demonstrated that there is no feasible alternative, redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25-foot setback shall be maximized.
 - f. Development and redevelopment shall not impact any Habitat Protection Area

(HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.

- g. Buffer Modification Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
- h. No natural vegetation may be removed in the Buffer except that required by the proposed construction and as shown on a Buffer Management Plan.
- i. Mitigation for development or redevelopment in the Buffer Modification Area approved under the provisions set forth herein shall be implemented through a Buffer Management Plan as follows:
 - (1) A forested or landscaped bufferyard, 25 feet wide, shall be established on the project site between the development and the distance to the water. This bufferyard shall be densely planted with trees and shrubs in accordance with Table 1.
 - (2) Redevelopment sites, where existing structures or those rebuilt on an existing footprint limit the area available for planting, appropriate modifications to the width of the planted bufferyard may be made on a case by case basis.

**Table 1
Required Bufferyard Planting**

Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of bufferyard	5 Trees and	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Cedar
	10 Understory Trees/Large Shrubs, and	Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry
	30 Small Shrubs and	Pepperbush, Chokeberry, Strawberry Bush, Sweetspire
	40 Herbaceous Plants, Grasses, Etc.	Wild Columbine, Butterflyweed, Common Milkweed, Asters

- j. In addition to establishing a 25-foot bufferyard on site as described above, one of the following mitigation measures shall be implemented based on the following order of preference:
- (1) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 110-foot Buffer shall be planted on site in the Buffer or at another approved location.
 - (2) Applicants who cannot fully comply with the planting requirements in (1) above, may use offsets to meet the mitigation requirement. Offsets include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
 - (3) Any required mitigation of offset areas shall be protected from future development through an easement, plat notes and declaration of restrictions and recorded among the land records of the County.
 - (4) Modification of the mitigation standards as described in Section 200.6.b(1) does not apply.

6. **Single Family Residential Redevelopment Standards.** New development or redevelopment including structures, roads, parking areas, accessory structures and other areas of lot coverage or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission or the Director of Planning and Zoning finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:
- a. Both proposed new development and redevelopment shall minimize the shoreward extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
 - b. New subdivisions to accommodate new development shall provide a full 110' buffer and be expanded, as required.
 - c. Existing principal dwelling or accessory structures in the Buffer may be replaced in the same location. Any increase in lot coverage within the Buffer shall comply fully with the requirements of this Section.

- d. New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:
 - (1) New accessory structures may be located closer to the water or edge of tidal wetlands than the principal dwelling only if it has been determined by the Director of Planning and Zoning that there are no other locations for the accessory structures.
 - (2) The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.
- e. Variances to other setback requirements shall have been considered before additional intrusion into the Buffer.
- f. Development may not impact any Habitat Protection Areas other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- g. No natural vegetation may be removed in the Buffer except that required by the proposed construction and as shown on a Buffer Management Plan. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
- h. Buffer Exemption Area designation shall not be used to facilitate the filling of nontidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
- i. Mitigation for development or redevelopment in the Buffer Exemption Area approved under the provisions set forth herein shall be implemented as follows:
 - (1) The requirements of §200.6 notwithstanding, natural vegetation of an area twice the extent of the footprint of the development activity within the 110-foot Buffer shall be planted on site in the Buffer or other location as may be determined by the Director of Planning and Zoning. If it is not possible to carry out offsets or other mitigation within the Critical Area, any plantings or other habitat/water quality improvements should occur within the affected watershed.
 - (2) Applicants who cannot comply with the planting requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of existing impervious surface within the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.

(3) Any required mitigation or offset areas shall be protected from future development through an easement, plat notes, and declaration of restrictions recorded among the land records of the County.

7. **Notification Requirements.** All new commercial, industrial, institutional, recreational, multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.
8. **Review Process.** The Planning Commission shall consider the written findings of the Director of Planning and Zoning documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings shall be provided to the Commission.
9. **Buffer Modification Area Mapping Standards.** The following standards shall apply for the mapping of Buffer Modification Areas.
 - a. Only lots of record as of December 1, 1985 are eligible for mapping as Buffer Exemption Areas.
 - b. The parcel or lot being considered for Buffer Modification Area status shall contain a Buffer that was significantly impacted by development at the time of program adoption and that prevent the Buffer from fulfilling its functions.
 - c. Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).
 - d. Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a Buffer Modification Area if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development. Undeveloped lots of record in single ownership that are 200 feet deep or less may also be designated.
 - e. If only part of a parcel or lot meets the criteria for designation as a Buffer Modification Area, then only portions of the parcel or lot shall be designated as a Buffer Modification Area. The portion of the parcel designated as a Buffer Exemption Area will be subject to the Buffer Modification Area requirements. Portions of the property that are not designated as a Buffer Modification Area shall comply fully with the 110-foot Buffer restrictions.
 - f. Any proposal by the County for designation of an area as a Buffer Modification Area shall include, at a minimum, a written evaluation and supporting reasons

which demonstrate the degree to which the proposed Buffer Modification Area does not perform each of the following Buffer functions:

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

Section 196. Buffer Requirements

1. **Identification of the Buffer.** Tidal Waters, Tidal Wetlands, and Tributary Streams no-disturbance Buffer .“Buffer” means a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made disturbances. In the Critical Area District, the minimum Buffer is a continuous area located immediately landward of tidal waters – measured from the Mean High Water Line, tributary streams in the Critical Area, and tidal wetlands as has a minimum depth of one hundred and ten (110) feet. The Buffer shall be expanded beyond the minimum depth to include sensitive areas as per requirements established in the Zoning Ordinance.
 - a. Where a tract of land bordering tidal water, tidal wetlands, or tributary streams in the Critical Area a Buffer of at least one hundred and ten (110) feet shall be established landward of the mean high water line, tributary streams, and tidal wetlands in natural vegetation.
2. **General policies.** The County adopts the following policies with regard to the functions of the Buffer:
 - a. Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;

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- b. Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;
 - c. Maintain an area of transitional habitat between aquatic and upland communities;
 - d. Maintain the natural environment of streams; and
 - e. Protect riparian wildlife habitat.
3. **Standards.** The following criteria apply to land use activities within the Buffer:
- a. New development including septic systems, impervious surfaces, parking areas, roads, structures, or other areas of lot coverage are not permitted in the Buffer, except for new water-dependent facilities, development or the expansion of existing development associated with water-dependent facilities, as provided in Section 198. Single family residential new development or redevelopment activities, including structures, roads, parking areas, accessory structures and other areas of lot coverage or septic systems will not be permitted in the Buffer.
 - b. The Buffer shall be expanded 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.
 - c. In the case of steep slopes, fifteen (15) percent or greater contiguous to the Buffer, the Buffer shall be expanded four (4) feet for every one (1) percent of slope or to the top of the slope, whichever is greater in extent.
 - d. When Buffer expansion is required for hydric and/or highly erodible soils, because development or disturbance may impact streams, wetlands, or other aquatic environments, expansion shall be to the upland limit of contiguous hydric and/or highly erodible soils.
 - e. 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, including planting, shall be undertaken to provide forest vegetation that assures the Buffer functions as set forth in this section.
 - f. Existing sand and gravel operations should establish a Buffer to the greatest extent possible.
4. **Buffer Management Plans.** When the Buffer is required to be established on a development site, when a proposed development activity will impact the Buffer, or

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when the removal of trees or vegetation in the Buffer is proposed, the County will require that the applicant prepare a Buffer Management Plan. The Plan shall show existing vegetation within the Buffer, any vegetation in the Buffer that is proposed to be removed, and the proposed planting in the Buffer required to “establish” the Buffer or as mitigation for impacts. The planting plan shall include the size, species, and locations of all plantings. The Buffer Management Plan shall include appropriate written descriptions, specifications, and protective agreements necessary to ensure proper implementation of the Buffer Management Plan and to ensure appropriate protection and maintenance of vegetation in the Buffer.

5. **Planting Agreements.** For all projects that require establishment of the Buffer or mitigation plantings that exceed 2,000 square feet or 10 trees, the applicant shall execute a planting agreement with the County. The planting agreement shall include provisions for the collection of a surety or bond that will permit the County to accomplish the required planting on the applicant’s property or another location selected by the County should the applicant fail to meet the requirements of the agreement. A Planting Agreement is included in this Ordinance as Appendix C.

Section 197. General Regulations for Development and Land Use within the Critical Area District

1. Except as provided below, uses, accessory uses, and special exception uses shall be those uses permitted within the applicable underlying base zoning district as shown on the Official Zoning Maps.
2. In business zones within Resource Conservation Areas (RCA's), expansions of existing special exception facilities are permitted.
3. No building or other structure shall exceed thirty-five (35) feet in height, except for flag poles, chimneys or agriculture structures and buildings.
4. Storage of fertilizers, chemicals, pesticides, or polluting materials or substances shall be contained to the extent that any erosion of or runoff from such materials or substances is prevented.
5. No natural vegetation shall be removed nor shall the slope of the land surface be altered in the Buffer, including clearing of existing natural vegetation to create new agricultural lands, except as provided below. In addition, limited cutting or clearing of trees and understory is permitted under an approved Buffer Management Plan for the following purposes:
 - a. To provide access to water-dependent uses otherwise permitted;
 - b. To install or construct a shore erosion protection device or measure otherwise permitted;

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- c. For personal use if there is no impairment of water quality and habitat value and trees cut are replaced and provided that it qualifies as a minor impact;
 - d. To remove trees that may result in stream blockage, streambank erosion or damage to structures;
 - e. To prevent the spread of disease afflicting vegetation and the threat of forest fire with the advice and guidance of the Departments of Agriculture and Natural Resources and spread of noxious weeds and plants; or
 - f. To accommodate modifications or redevelopment of existing structures in the Buffer Modification Areas.
 - g. For agricultural activity provided that a twenty-five (25) foot buffer and Best Management Practices are in place on that portion of the farm that is within the Critical Area District.
 - h. Other uses as recommended by the Cecil County Critical Area Program.
6. The following uses are prohibited due to their adverse impact on habitats and water quality, unless it has been demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.
- a. Non-maritime heavy industry; and
 - b. Transportation facilities.
7. The following uses are prohibited:
- a. Solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles;
 - b. Sanitary landfills;
 - c. Sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities;
 - d. New commercial or related maritime facilities in the Buffer within Resource Conservation Areas (RCA's);

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- e. New industrial and maritime industrial uses in the Buffer in Limited Development Areas (LDA's) and Resource Conservation Areas (RCA's); and
 - f. The application of sludge in the Buffer.
 - g. Placement or storage of coal combustion byproducts.
8. Commercial timber harvesting activities or other cutting or clearing of forested land are permitted in the Critical Area provided such activities are conducted in accordance with all standards established in the Cecil County Critical Area Program and an approved Timber Harvesting Plan.
 9. Agriculture is permitted in the Critical Area provided all agricultural activities and land management practices are conducted in accordance with the standards established in the Cecil County Critical Area Program.
 10. All development, alteration, or use of any land for residential, commercial, industrial, or institutional purposes, or agricultural, fishery or forestry activities in the Critical Area shall only be done in compliance with the Habitat Protection Provisions of the Cecil County Critical Area Program. Cecil County Habitat Protection Areas include the following four habitats: the 110-foot Buffer, Threatened and Endangered Species and Species in Need of Conservation, Plant and Wildlife Habitat Protection Areas including Nontidal Wetlands, and Anadromous Fish Propagation Waters. The 110-foot Buffer is regulated as per Section 195 and 196 of this Ordinance. The remaining Habitat Protection Areas are regulated as per the following sections.
 - a. When required per the standards outlined in this Ordinance, a Habitat Protection Plan shall be provided and approved by the Planning Commission or the Director of Planning and Zoning prior to final approval of the project. The Habitat Protection Plan shall protect and conserve the particular identified habitat or species on the project site and include any necessary mitigation measures. The applicant shall provide a proposed schedule for mitigation, planting plan, and bond if deemed necessary by the Director of Planning and Zoning. The County shall seek additional information and comments from the Department of Natural Resources and other appropriate agencies and adjacent jurisdictions, to ensure that the Plan is adequate to provide for long-term conservation and can be implemented on the specific site. A copy of the Habitat Protection Plan shall be forwarded to the Critical Area Commission for review and comment per COMAR 27.03.01
 11. Areas of threatened and endangered species and areas with species in need of conservation are 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

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

- a. Standards. The County, through these regulations and measures, shall provide for the protection of the known habitats of species in need of conservation, threatened and endangered species, and also habitats of these species that may be identified in the future. If a subdivision or development activity is proposed for a site within the Critical Area, then the County shall review the proposed activities on a case-by-case basis and seek technical advice from the Department of Natural Resources and other appropriate agencies. Based on the recommendations of each agency, additional research and site analysis may be required to identify the location(s) of threatened and endangered species on a site. If any habitats are identified on a project site, a portion thereof, or adjacent to a project site, then the applicant shall be responsible for developing a Habitat Protection Plan as described above that protects and conserves the species and habitats identified.
- b. Bald Eagle Protection Standards. The County standards for bald eagle protection shall be consistent with those of the Department of Natural Resources. A three zone protection area of $\frac{1}{4}$ mile (1,320 feet) in radius around each Bald Eagle nest shall be established, and within the zones there shall be compliance with the following protection measures:
 - (1) Zone 1 shall include the area extending from the nest out to a radius of 330 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 should 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 660 feet from the nest. In this zone, major habitat changes should 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 should 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.

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(3) Zone 3 extends from the outer limit of Zone 2 to a radius of 1,320 feet from the nest. Timber cutting, land clearing, and development activities shall 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.

c. **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 a Habitat Protection Plan, as described above. A land altering activity shall include, but not be limited to, such activities as subdivision, timbering, sand and gravel mining, clearing new farmlands, the construction of homes or commercial structures.

12. “Plant habitat” means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics. “Wildlife habitat” means 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 Critical Area.

a. The following plant and wildlife habitats shall be identified in the Critical Area.

- (1) Colonial water bird nesting sites;
- (2) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;
- (3) Existing riparian forests (example: relatively mature forested areas within the Critical area of 50 acres or more, or forest connected with such areas);
- (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (example: relatively mature forested areas within the Critical area of 50 acres or more, or forest connected with such areas);
- (5) Other areas which may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat areas;
- (6) Other plant and wildlife habitats determined to be of local significance;
- (7) Natural Heritage Areas which have been designated; and
- (8) Non-tidal wetlands.

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

- (1) Any development or significant land use change of property located within the Critical Area of the County will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans, a written description of the measures the property owner proposes to take to protect the habitats identified, and the required Habitat Protection Plan that addresses the standards below. This information concerning habitats will be incorporated onto Resource Inventory Maps for future reference.
- (2) The County may seek additional information and comments from the Department of Natural Resources and other appropriate agencies and adjacent jurisdictions.
- (3) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants will utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, date June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development. Riparian habitat protection shall be achieved through adherence to valid habitat protection policies as follows.
 - (A) Vegetation shall be maintained in its natural condition along all streams to provide wildlife corridors.
 - (B) A minimum 110 foot Buffer shall extend landward from the mean high water line of tidal water, and the edge of tributary streams and tidal wetlands. This area is to be conserved for wildlife protection.
 - (C) Non-tidal wetland forests shall be left in a natural state for wildlife and water quality protection.
 - (D) Forest areas utilized as breeding areas by forest interior dwelling birds and other species shall be conserved.
 - (E) Existing riparian forest, e.g, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or Bay shoreline and/or which are documented breeding areas, shall be conserved.

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- (4) 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. (When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants will utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, date June 2000, and as may be subsequently amended.) In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development. In general, the following recommended measures shall be followed.
- (A) Minimize forest and woodlands disturbance from off-road vehicles, public use or logging from May through August of each year;
 - (B) Focus all development on the periphery of the forest or woodlands;
 - (C) Retain the forest canopy as well as shrub understory;
 - (D) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
 - (E) Discourage the creation of small clearings and expansion of forest bridge habitats;
 - (F) Encourage the re-establishment of native forests and woodlands; and
 - (G) Adopt harvest techniques to maintain or improve habitat.
- (5) The County requires the conservation of rough areas, e.g., depressions, swales, non-tidal wetlands or other areas unsuitable for development or agriculture, as wildlife cover. Using cluster development, the developer shall leave these areas in natural vegetation or where this is not feasible, replant with native vegetation.
- (6) For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts which are located outside of the area of the property being developed or subdivided. The area left in forest cover (at least 70 percent of the tract in LDAs or RCAs as required by this Ordinance) shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.
- (7) Buffer areas for colonial winter bird (heron, egret, tern, and glossy ibis)

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nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.

- (8) New water-dependent facilities shall be located to prevent disturbance to site of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.
- (9) Protection measures, including a buffer area, shall be established where appropriate, for other plant and wildlife habitat sites identified in this Ordinance.
- (10) Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster development or other site design criteria which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans, which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs which use the acquisition of easements and other, similar techniques.
- (11) When development activities, or the cutting or clearing of trees, occurs in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.
- (12) Those plant and wildlife habitats considered to be of local significance by the County shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the County, or because the species are found in unusually high concentrations.
- (13) Natural Heritage Areas shall be protected from alteration due to development activities or cutting or clearing so that structure and species composition of the areas are maintained.

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- (A) The following area within the Critical Area of the County is officially identified as a Natural Heritage Area.
 - I.* The Plum Creek Natural Heritage Area.
- (B) Development activities or cutting and clearing in Natural Heritage Areas shall be prohibited unless an analysis is performed and measures proposed to mitigate any adverse impacts of the proposed activities. The analysis and mitigation measures shall be prepared by qualified professionals (e.g., ornithologists, zoologists, environmental engineer and planners) at the expense of the applicant and shall address the expected effects on the natural environment with within the Natural Heritage Area.
- (C) The analysis shall be submitted to the Office of Planning and Zoning for review and comment by the Technical Advisory Committee (including the Critical Area staff) in conjunction with the preparation of the Preliminary Plat, if a major subdivision. (If the proposed development activities are part of a site plan or minor subdivision, then those applications are not reviewed by the Technical Advisory Committee or the Planning Commission.) Upon receiving said comment and, if appropriate, upon seeking the advice of expert consultants, the Planning Commission or the Director of Planning and Zoning shall find against or in favor of the activities or may make suggestions for changing the analysis and ask the applicant to resubmit the analysis. The initial review between the County and the Critical Area Commission should be completed within sixty (60) days from submission.

c. In addition to the standards set forth in this ordinance for protection of the Buffer and expansion of the Buffer for hydric soils, the following shall apply to new development and re-development in the Critical Area.

- (1) Maintain at least a 25 foot buffer around identified non-tidal wetlands where development activities or other activities may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities will not adversely affect the wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands.

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- (2) Protect the hydrologic regime and water quality of identified non-tidal wetlands by providing that development activities or other land disturbances in the drainage area of the wetlands shall minimize alteration to the surface or subsurface flow of water into and from the wetlands and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.
- (3) If an applicant demonstrates that activities or operations that impact non-tidal wetlands are water-dependent or of substantial economic benefit, but will cause unavoidable and necessary impacts to the wetlands, a Mitigation Plan is required. The Plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to those of the wetland destroyed or altered and shall be accomplished, to the extent possible, on site or near the affected wetland. In evaluation a proposal involving wetland impacts, the County shall consider the following.
 - (A) Avoiding the impact by not taking a certain action or parts of an action;
 - (B) Minimizing impacts by limiting the degree of magnitude of action and its implementation;
 - (C) Remediating the impact by repairing, rehabilitating, or restoring the affected environments;
 - (D) Reducing or eliminating the impact over time by preservation and maintenance operation during the life of the action; and
 - (E) Compensating or eliminating the impact over time by replacing or providing substitute resources or environments.
- (4) For all activities or operations that impact non-tidal wetlands or the non-tidal wetland buffer, the applicant shall seek comments on Mitigation Plans from the Department of Natural Resources, and, where appropriate, State departments including the Departments of the Environment and Agriculture, the local Soil Conservation Districts and the U. S. Fish and Wildlife Service. Upon finding that the plan as proposed, or as may be modified to address the comments of these agencies, provides mitigation sufficient to accomplish the objectives of this section, then the proposer shall implement the plan.

(Amended 7/22/2008)

13. Anadromous Fish Propagation Water Development Standards. Anadromous fish propagation waters are those streams that are tributary to the Chesapeake Bay where spawning of anadromous species (e.g., rockfish or striped bass, yellow perch, white perch, shad and river herring) occurs or has occurred.
 - a. The policies of the County 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 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.
 - b. With anadromous fish propagation watersheds, the following measures are required.
 - (1) Establishment of a Habitat Protection Plan.
 - (2) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
 - (3) 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.
 - (4) The County shall require 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

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affected streams or other water bodies; and

- (D) Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams.
- (5) The County shall ensure coordination and compliance with complementary State laws and regulations, as follows.
 - (A) Prohibit the construction or placement of dams or other structure that would interfere with or prevent the movement of spawning fish or larval forms in streams or other designated water bodies. If practical, existing structures shall be removed; and
 - (B) Ensure that the construction, repair or maintenance activities associated with bridges, or other stream crossing or with utilities and roads, which involve disturbance within the buffer or which occur instream, as described in COMAR 08.05.0311B(5), shall be prohibited between March and June 15 of each year.

Section 198. Water-Dependent Facility Requirements

1. Proposed new or expanded water-dependent facilities may be permitted in the Buffer in IDA and LDA provided they demonstrate the following:
 - a. They are water-dependent;
 - b. They meet a recognized private right or public need;
 - c. That the adverse impacts on water quality and fish, plant and wildlife habitat are minimized;
 - d. That, insofar as possible, non-water dependent uses or activities are located outside of the Buffer; and
 - e. That they meet the requirements of the Cecil County Critical Area Program.

(Amended 5/4/99, 6/18/08, 7/22/2008)

2. Buildings, structures, and parking areas are prohibited within the Buffer except the following:

a. Community piers, individual private piers, docks, launching ramps, and mooring facilities.

(1) For community piers, only the following uses may be located in the Buffer:

(a) mooring buoys and slips

(b) docks, piers, launching ramps, access roads, and paths

(c) loading/unloading areas

(2) Where community piers are permitted, the number of slips or mooring buoys shall be the lesser of (a) or (b) below:

(a) One slip for each fifty (50) feet of shoreline in the subdivision in Intensely Developed Area (IDA's) and Limited Development Areas (LDA's) and one slip per each 300 feet of shoreline in the subdivision in the Resource Conservation Areas (RCA's); or

(b) A ratio of slips or piers to platted lots or dwellings within the subdivision in the Critical Area District according to the following:

<u>Platted Lots or Dwellings in the Critical Area</u>	<u>Slips Non-Commercial</u>
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

(3) Where community slips or community piers are permitted the following shall apply:

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

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- c.** Public community beaches and other public and community 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 (IDA). These facilities may be permitted within the Buffer in Limited Development Area (LDA) and Resource Conservation Areas (RCA) 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 to groundwater would result;
 - (4)** Disturbance to natural vegetation is minimized; and
 - (5)** Areas for passive recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within Resource Conservation Areas, if service facilities for these uses are located outside the Buffer.

- d.** 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 and facilities associated with the project are, to the extent possible, located outside of the Buffer.

- e.** Industrial uses, expansion of existing industrial uses located in the Buffer, or expansion of existing maritime industrial uses may only be permitted in IDA and in a Buffer Exemption Area, in zones where permitted, provided that no industrial structure shall be located within five hundred (500) feet of the Mean High Water Line unless such structures are an integral part of the shipping or receiving of waterborne goods or materials required for the operation of the industrial establishment. Only the following industrial and port related water-dependent facilities may be located within the Buffer Exemption Area in an IDA:

 - (1)** Docks, piers, and access roads;
 - (2)** Freight staging areas;
 - (3)** Rail lines;
 - (4)** Dry docks;

- (5) Fueling areas; and
 - (6) Public access roads.
- 3. No structure connected to the shoreline, such as a dock, pier, boathouse, etc., shall extend outward from the Mean High Water Line from where the structure is connected to the shoreline, more than twenty-five (25) percent of the distance to the Mean High Water Line on the opposite shore, or more than three hundred (300) feet, whichever is the lesser distance. Notwithstanding this provision, no dock or pier shall extend to within the boundaries of any defined navigation channel established by a state or federal agency.
- 4. New commercial marinas are prohibited in Resource Conservation Areas (RCA). Expansion of existing commercial marinas is permitted in RCAs only if it is sufficiently demonstrated that 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.
- 5. Applications for new and expanded water-dependent facilities shall address the following environmental standards:
 - a. That the activities will not significantly alter existing water circulation patterns or salinity regimes;
 - b. That the water body upon which these activities are proposed has adequate flushing characteristics at the site;
 - c. That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
 - d. That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewerage discharge from land activities or vessels, or from boat cleaning and maintenance operations is minimized;
 - e. That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
 - f. That dredging shall be conducted in a manner, at such time of the year, and using a method, which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area;

- g.** That dredged spoil, except for clean sand for beach nourishment, will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area;
- h.** That interference with the natural transport of sand will be minimized;
- i.** That no disturbances will occur to aquatic areas of historic waterfowl staging and concentration areas.

Section 199. Development Standards in Intensely Developed Areas (IDA's)

All uses in the IDA shall be subject to the following development standards and/or conditions in addition to those established in other sections of this Ordinance. Development and redevelopment in those areas designated Intensely Developed Areas (IDA's) shall be subject to the following standards:

- 1.** The following uses may only be permitted in an IDA and only after the applicant has demonstrated that the activity will create a net improvement in water quality to the adjacent body of water.
 - a.** Non-maritime heavy industry;
 - b.** 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); and
 - c.** Permanent sludge storage, handling and disposal facilities associated with wastewater treatment facilities.
- 2.** All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of the site within the Critical Area.
- 3.** Development and redevelopment shall be subject to the Habitat Protection Criteria prescribed in COMAR 27.01.09 and those habitat protection guidelines in the Cecil County Critical Area Program. This information shall be made part of the Environmental Impact Assessment Report as part of the application for site plan review.

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4. Development and redevelopment shall be required to identify stormwater management practices appropriate to site development which achieve the following standards:
 - a. Development and redevelopment proposals shall demonstrate that the Best Management Practices for stormwater assure a ten (10) percent reduction of pre-development pollutant loadings (see Stormwater Management Ordinance for computation methodology).
 - b. If the required ten (10) percent improvement will not be achieved, then offsets must be provided as approved by the County. Offsets may be provided either on or off site as determined by the County, 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.
5. Development and redevelopment projects shall delineate those site areas not covered by impervious surfaces, and that are to be maintained or established in vegetation. Where vegetation is not proposed, the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established in Section 202 below.
6. A minimum twenty-five (25) foot buffer shall be established around all non-tidal wetlands as identified in the County Critical Area Program. This Buffer shall be expanded to include adjacent sensitive soils unless the applicant can prove that the development or disturbance of these areas will not adversely impact the wetlands.
7. Proposed development shall be done so as to protect the hydrologic regime and water quality of identified non-tidal wetlands by providing that development activities and other land disturbances in the drainage area of the wetlands will minimize alterations to the surface or subsurface flow of water into and from the wetland and not cause impairment of water quality or the plant and wildlife and habitat value of the wetland.
8. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:
 - a. Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or

- b.** Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used). If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

Section 200. Development Standards in Limited Development Areas (LDAs)

Development and redevelopment in an area designated Limited Development Areas shall be subject to the following standards.

- 1.** All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of site within the Critical Area. This information shall be made part of the Environmental Impact Assessment Report as part of the application for site plan review.
- 2.** Site development shall be designed to assure that features or resources identified as Habitat Protection Areas are afforded protection as prescribed in COMAR 27.01.09 and in these regulations. Where said protection of identified Habitat Protection Areas is required, the Environmental Assessment shall include the Habitat Protection Plan (§197.10.a), and the Final Plat shall include appropriate notes.
- 3.** Roads, bridges and utilities serving development 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. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas, the developer shall demonstrate that no feasible alternative location for such infrastructure exists and must show how these standards will be met at each phase of the project, i.e., location, design, construction and maintenance.
- 4.** All development activities which cross, or are located adjacent to, tributary streams in the Critical Area shall:
 - a.** Be designed in a manner to reduce increases in flood frequency and severity;
 - b.** Provide for the retention of natural streambed substrate;
 - c.** Minimize adverse impacts to water quality and storm water runoff; and

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- a. Water quality impacts associated with runoff from the new area of lot coverage has been minimized through site design considerations; and
 - b. The property owner performs on-site mitigation to offset potential adverse water quality impacts from the new area of lot coverage.
10. A minimum twenty-five (25) foot buffer shall be established around all non-tidal wetlands as identified and shall be expanded to include adjacent sensitive areas whose development or disturbance would adversely impact the wetlands.
11. Proposed development shall be done so as to protect the hydrologic regime and water quality of identified non-tidal wetlands by providing that development activities and other land disturbances in the drainage area of the wetlands will minimize alterations to the surface or subsurface flow of water into and from the wetland and not cause impairment of water quality or the plant and wildlife and habitat value of the wetland.
12. Development and redevelopment projects shall install vegetative shore erosion control measures (where feasible and appropriate) on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion. Where control of shore erosion cannot be accomplished by vegetative measures and structural measures are required, proposed development must either:
- a. Construct appropriate structural measures to control shoreline erosion on portions of the site proposed for development and near such portions if the shore erosion threatens the proposed development portion; or
 - b. Set back the development behind the Buffer based on the annual shore erosion rate. To determine the setback, published data on annual erosion rates for the site must be used. (If two or more published rates are available, the highest rate must be used). If published data are not available, either the annual rate is assumed to be two (2) feet per year or the developer shall do a technical study to determine the annual erosion rate. The setback shall be the annual erosion rate times twenty-five (25) years.

Section 201. Development Standards in Resource Conservation Areas (RCAs)

Development and redevelopment in Resource Conservation Areas (RCA's) shall be subject to the same development standards applicable to the Limited Development Areas (LDA's).

Section 202. Woodland Reforestation and Afforestation Standards

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

- 1. The replacement or establishment of forests or developed woodlands shall assure a diversified plant community, but may include other types of tree plantings where

(Amended 1/28/97 and 7/22/2008)

necessary to correct an existing soil stabilization problem. Diverse forest plantings shall include:

- a.** A canopy layer, an understory layer, and a shrub layer; and
 - b.** For each acre of land where woodlands must be replaced or established, plantings shall consist of trees and/or wildlife shrub species spaced approximately at eight (8) foot intervals in rows eight (8) feet apart, or other suitable spacing on a site-by-site basis, that result in a minimum of three hundred (300) stems per acre after the first growing season.
- 2.** A planting plan shall be submitted by the developer to the Office of Planning and Zoning for approval, and must demonstrate compliance with the minimum standards for reforestation and afforestation specified above. It is required that the planting plan shall be prepared by a licensed forester, landscape architect, or an experienced landscape designer.
- 3.** The planting plan must be prepared in coordination with the approved site plan or preliminary and final subdivision plat and shall show:
 - a.** The site plan, building outlines (remaining and proposed), walls, fences, parking spaces, loading spaces, driveways, walks, storage areas, public rights-of-way, easements and the general location of structures and uses of abutting properties;
 - b.** Existing and proposed grades;
 - c.** Existing vegetative cover to be retained, and the location, general size and type of such vegetation;
 - d.** The method for protecting plant materials during and after construction;
 - e.** A plant schedule and plan, listing plants to be used (giving their botanical and common names), size at time of planting, and quantity of each;
 - f.** An indication of whether plants are balled and burlapped, container grown or bare root; and
 - g.** An indication of the spacing and location of all proposed trees, shrubs and ground covers.

4. Plant Materials and Planting Schedule:
 - a. Although plant types should be chosen from the recommended plant list available from the Office of Planning and Zoning or Maryland State Bay Watershed Forester, plant types that vary from this list may be substituted. Plants for afforestation or reforestation shall be suitable in regard to their eventual size and spread, susceptibility to diseases and pests, and adaptability to existing soil and climate conditions.
 - b. All planting should be done in the months of March and April of each year. For the first two (2) years, steps should be taken to control competing vegetation.
5. The planting plan shall be accompanied by an estimate of the installation cost for all afforestation and reforestation. Upon approval of the plan and cost estimate, the developer or owner shall enter into a landscape agreement with the County to provide plantings as required. The landscape agreement shall be in form and substance as approved by the Office of Planning and Zoning and shall be accompanied by a performance bond or other approved surety executed by the owner or developer in the amount of one hundred (100) percent of proposed plant materials, labor and maintenance costs.
 - a. If all afforestation or reforestation is not completed within two (2) years after the first spring planting date following recordation, or if the requirements set forth in the approved planting plan are not met, the surety shall be forfeited (or if a bond or surety has not been posted, payment in full to the County shall be ordered). The funds so received shall be used by the County to defray the cost of providing the approved Buffer afforestation or reforestation for the site.
 - b. If the foregoing costs exceed the amount of the deposit bond or other approved surety, the excess shall be paid by the developer.
 - c. All bonds or other forms of surety shall be in a form acceptable to and approved by the Office of Planning and Zoning.
 - d. All security posted will be held for a period of two (2) years after installation of the planting, to assure the proper maintenance and growth. Failure to maintain the planting or to replace the dead portions thereof shall result in a forfeiture of the surety posted to the extent necessary to replace the dead plant materials.
 - e. The Office of Planning and Zoning or its designee may from time to time release those portions of the surety which may be appropriate.

- f. Where existing vegetation is to be used to meet the requirements contained herein, the surety requirement may be modified appropriately. However, to the extent that existing vegetation is or will be inadequate to meet the standards set herein, a planting plan meeting all of the requirements herein must be submitted.
- g. All plantings shall be inspected by County upon notification by the developer or owner, and shall be approved according to the following standards:
 - (1) The planting shall adhere to the approved plan. Substitutions or revisions may be made with the approval of the Office of Planning and Zoning.
 - (2) All plants shall be protected from vehicular encroachment by wheelstops, curbs or other barriers unless distance provides adequate protection.
 - (3) No planting shall result in vegetative growth exceeding thirty-six (36) inches in height, within thirty (30) feet of any street intersection or otherwise obstruct sightlines.

Section 203. Amendments in the Critical Area District

- 1. Amending the Critical Area Boundary, Land Use Management Classifications, Buffer Exemptions, and Exclusion.
 - a. The County Commissioners may from time to time, but not more than four times a year, amend the land use management classification of properties in the Critical Area District, provide for Buffer Modification Areas from all but the requirements of Section 195, or exclude portions of County's Critical Area from the Critical Area District.
 - b. In addition, the County's Commissioners shall complete a comprehensive review and propose any necessary amendments, as required, to the land management classifications, or Critical Area Program at least every six (6) years. The County Commissioners Comprehensive Review to the Critical Area Commission shall be in accordance with Subtitle 18, Subsection 8-1809 (g) of the Critical Area Law.
 - c. All such amendments shall also be approved by the Maryland Chesapeake Bay Critical Area Commission (Critical Area Commission) as established in Subsection 8-1809 of the Critical Area Law, Subtitle 18. The Critical Area Commission process for approval of proposed amendments are as set forth in the Critical Area Law, Subtitle 18, Subsection 8-1809.

(Amended 7/22/2008)

2. Applications for land use management classification or Critical Area Program amendment, Buffer Modification Area or area exclusion shall be processed as any other proposed amendment to this Ordinance and are subject to the Chesapeake Bay Critical Area Commission approval.

3. Requirements for Amendments:
 - a. Land Use Management Classification - When considering a proposed change of land use management classification, i.e., Intensely Developed Area (IDA), Limited Development Area (LDA), or Resource Conservation Area (RCA), the County Commissioners shall not approve amendments unless it is found that there was a mistake in the original classification, or the site will be granted the Growth Allocation (GA) or Special Growth Allocation (SGA) floating zone district classification.

 - b. Buffer Modification Areas (see Section 195) - The County Commissioners may designate an area of the Buffer as a Buffer Modification Area, where the applicant can sufficiently demonstrate that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area portion of the site as of December 1985 prevents the Buffer from performing its function. At a minimum, in order to grant a Buffer Modification Area, the Commissioners shall find that the following conditions exist:
 - (1) Existing development as of December 1985 has altered the natural state of the site such that it has more than fifty (50) percent impervious surface and less than twenty (20) percent vegetative cover;

 - (2) The Buffer area consists of boulders or inert fill that does not and cannot support vegetative growth; and

 - (3) The Buffer area can support less than fifty (50) percent vegetative cover, such area cannot provide continuous vegetative cover along the Buffer, and stormwater runoff from the adjacent upland is diverted around the area by existing storm drains.

(Amended 7/22/2008)

- c.** Excluding Area From the Critical Area District - The County Commissioners may amend the Critical Area District to exclude an area proposed for development from the provisions of the Article XI, Part I of this Ordinance, subject provided that:

 - (1)** Excluded properties or portions of properties must be located at least 1,000 feet from open water;
 - (2)** Intervening wetlands and uplands serve to protect tidal water quality and fish and wildlife or plant habitats from adverse impacts of development in the excluded areas.

- d.** Adding land to the Critical Area District

 - (1)** The County Commissioners may amend the Critical Area Boundary to add land to the Critical Area District, including land areas for which property owners have requested such an amendment provided that:

 - (a)** It is documented that the benefits from the additional resource protection afforded the area exceeds the negative impact of any additional development allowed and that provisions are proposed to ensure the continuance of these benefits.
 - (b)** The proposal is supported by competent and material evidence on its benefits for resource protection.
 - (c)** The proposal clearly improves resource protection on primarily undeveloped land.
 - (d)** The extended area is added as a Resource Conservation Area (RCA), and any proposed development meets all RCA requirements.
 - (e)** Five percent of the extended areas that are not tidal wetlands or publicly-owned land can generate growth allocation for the County.
 - (2)** Any land or portion added to the Critical Area District under these provisions that has been combined with adjacent Critical Area lands for the purpose of increasing the number of dwelling units that may be

(Amended 7/22/2008)

placed on the adjacent Critical Area parcel may not be subsequently deleted from the Critical Area District.

4. When the County submits a request for review and approval of any changes to any element of the County's Critical Area program, including but not limited to, the zoning ordinance, subdivision regulations, or Critical Area maps, the request shall include all relevant information necessary for the Chairman, and as appropriate the Commission, to evaluate the changes. The Chairman, and as appropriate the Commission, shall determine if the requests for program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area law and of the Commission. In accordance with the determination of consistency as outlined above, the Chairman, or as appropriate, the Commission shall:
 - (a) Approve the proposed program refinement or amendment and notify the local jurisdiction;
 - (b) Deny the proposed program refinement or amendment;
 - (c) Approve the proposed program refinement or amendment subject to one or more conditions; or
 - (d) Return the proposed program refinement or amendment to the local jurisdiction with a list of changes to be made.

Section 204. Growth Allocation Floating Zone Amendments

1. Zoning Amendment Petitions for the Growth Allocation Floating Zone classification shall be subject to a different set of criteria than those outlined in Section 203. Floating zone requests shall be reviewed under the provisions relating to Growth Allocation unless it qualifies for Project Point Scoring System Exemption and is approved by the Board of County Commissioners for Cecil County and by the Critical Area Commission.
2. The Growth Allocation floating zones are zones that are not mapped but that are designated for use in areas classified as Resource Conservation Areas (RCA) and/or Limited Development Areas (LDA) within the Critical Area District. The purpose of the Growth Allocation floating zone is to permit a change in the land management classification established in the Critical Area District on specific sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification, whichever is more restrictive. Only projects that have been approved by the Board of County Commissioners and the Critical Area Commission for award of the Critical Area Growth Allocation by Special Growth Allocation, by the Project Point Scoring System process, or by a Project Point Scoring System Exemption as described in this ordinance and the Cecil County Critical Area Program are eligible for Growth Allocation floating zones.
3. Designation of Growth Allocation Floating Zones
 - a. The Growth Allocation (GA) district and the Special Growth Allocation (SGA) district shall be floating zones. Both are classified as floating zones to achieve specific purposes.
 - b. The Growth Allocation (GA) district provides for changing the land management classification of Resource Conservation Areas (RCAs) and Limited Development Areas (LDAs) in the Critical Area District. The GA district shall only be permitted on sites or portions of sites that have been awarded reclassification through either:
 - (1) the Growth Allocation Project Point Scoring System process described herein;
 - (2) the Special Growth Allocation process described herein, or;
 - (3) the Project Point Scoring System Exemption as described in Section 212 below.

(Amended 3/20/07 and 7/22/2008)

These are approved land management classification changes, adopted by the Board of County Commissioners, as an amendment to the Cecil County Critical Area Program and Official Maps. Granting of the GA district classification shall further be limited in the sections of this Article set forth below as applicable.

- c. The Special Growth Allocation (SGA) district provides for changing the land management classification of Resource Conservation Areas (RCAs) in the Critical Area District to the Limited Development (LDA) classification. The SGA district shall only be permitted for residential development on sites or portions of sites recommended for approval by the Cecil County Planning Commission and approved by the Cecil County Commissioners. Granting of the SGA district classification shall further be limited in the sections of this Article set forth below.

Section 205. Growth Allocation (GA) District

The following provisions shall apply to the GA district:

- 1. The total number of acres that may be utilized for GA inside the Development, Town, or Suburban Land Use Districts described in the County Comprehensive Plan will be limited to a total of fifty (50) percent of the total GA acreage available. The total number of acres that may be utilized for GA inside the towns of the County will be limited to a total of twenty-eight (28) percent of the total GA acreage available. The balance, or twenty-two (22) percent, may be utilized in any area of the County. However, if the County Commissioners find that, based on the number of projects that exceed the scoring threshold, the awarding of a larger portion of the growth allocation to any single project proposed within the Development, Town, Suburban Land Use Districts described in the Comprehensive Plan, or municipal Town boundaries is warranted, they may utilize any percentage of acreage from the total acres for the GA district award.
 - a. Growth Allocation awarded to the Towns shall follow the following procedure:
 - i. Request for GA from the Towns shall be made to the Office of Planning & Zoning
 - ii. Planning & Zoning shall place the request on the meeting agendas for the Planning Commission and Board of County Commissioners
 - iii. Planning Commission shall review the request and forward a recommendation to the Board of County Commissioners
 - iv. The Board of County Commissioners shall decide whether to grant the request

(Amended 6/3/08)

- b.** Growth Allocation requests from the Towns shall contain the following information:

 - i. Demonstration of consistency with Town’s Comprehensive Plan;
 - ii. Existing Critical Area Designation and Requested Designation;
 - iii. Number of acres requested and justification for acreage;
 - iv. Demonstration of consistency with Town’s Critical Area regulations;
 - v. Demonstration of minimal impact to sensitive areas and habitats of rare, threatened and endangered species;
 - vi. Maximization of clustering to the extent possible;
 - vii. Concept plat for the proposed development.

- 2.** The County Commissioners may award all or part of the requested Growth Allocation with GA district reclassification. In addition, the County Commissioners may decide not to grant any projects Growth Allocation based on scores received in the Project Point Scoring System when project scores are below the minimum scoring threshold.

- 3.** The total number of acres that may be reclassified to the GA district for a single project in an RCA to IDA conversion will be limited to twenty (20) acres.

- 4.** The total number of acres that may be reclassified to the GA district for a single project in an LDA to IDA conversion will be limited to twenty (20) acres.

(Amended 6/3/08)

5. The total number of acres that may be reclassified to the GA district for a single project in an RCA to LDA conversion will be limited to forty (40) acres.
6. The maximum lot size shall not exceed the minimum individual lot size required by the Cecil County Environmental Health Department.
7. If one-third of a projects building permits for construction have not been obtained within two (2) years of a projects Final approval, the Growth Allocation award shall become null and void. Further, the award shall be recaptured by the County unless an extension is granted by the Board of County Commissioners. Extensions cannot be granted for more than one year at any one time.
8. The forwarding of any particular project to the Critical Area Commission shall be based on the Critical Area law, Critical Area Commission policy guidelines for amendments and the ability of Cecil County to make amendments in a particular calendar year.
9. When locating new Intensely Developed or Limited Development Areas, the County shall use the following guidelines:
 - a. Locate new Intensely Developed Areas in Limited Development Areas or adjacent to existing Intensely Developed areas;
 - b. Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area;
 - c. Locate a new Limited Development Area or an Intensely Developed Area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality; and
 - d. Locate new Intensely Developed Areas or Limited Development Areas in Resource Conservation Areas at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
 - e. New Intensely Developed Areas should be located where it will minimize the impacts to the defined land uses of the Resource Conservation Area.

When the County submits a request for the Commission to review and approve the use of growth allocation, the request shall state how the local jurisdiction has applied the preceding guideline. The Commission shall ensure that the guidelines set forth in this section have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area law and all criteria of the Commission.

Section 206. Award Process for Growth Allocation

1. Applications for Growth Allocation must be consistent with the current zoning of the property. No project for Growth Allocation will be accepted which is not consistent with the density permitted in the current base zoning classification. A scoring threshold will be established to screen projects. Only those projects scoring a total score at or above the minimum scoring threshold (90 points) shall be considered for Growth Allocation and granted the Growth Allocation Floating Zone.
2. Technical Advisory Committee (TAC). All applications for GA district classification and Growth Allocation will be reviewed upon submittal at the regularly scheduled Technical Advisory Committee meetings. The decision to recommend reclassifying a site to the GA district and to award Growth Allocation will be based on a project point scoring system found in Section 207 and 208 below.
3. Planning Commission. A point scoring recommendation shall be received by the Planning Commission regarding each application for GA from the developer and the Office of Planning and Zoning. Points will be assigned by the Planning staff, and by the Planning Commission at their regular meeting, or at a special meeting (if in their opinion it is deemed necessary). The decision to recommend reclassifying a site to the GA district and to award Growth Allocation will be based on the Cecil County Comprehensive Plan, the Cecil County Critical Area Program and on a project point scoring system found in Section 207 and 208 below.
4. County Commissioners. A point scoring recommendation shall be received by the Board of County Commissioners regarding all applications for Growth Allocation from the developer. The Planning Commission and the Office of Planning and Zoning shall

(Amended 3/20/07 and 7/22/2008)

forward their recommendations for the Board of County Commissioner's consideration. A decision of approval, disapproval, tabling or conditional approval shall be made at their regular meeting, or at a special meeting (if in their opinion it is deemed necessary). The decision to reclassify a site to the GA district and to award Growth Allocation will be based on the Cecil County Comprehensive Plan, the Cecil County Critical Area Program, and the Growth Allocation process established in this Ordinance.

5. Critical Area Commission. A conditional decision shall be received by the Critical Area Commission from the Board of County Commissioners regarding the Growth Allocation application. A decision of approval, disapproval, tabling or conditional approval shall be made at their regular meeting, or at a special meeting (if in their opinion it is deemed necessary). A final decision regarding the Growth Allocation application shall be made by the County Commissioners.

Section 207. Project Point Scoring System Thresholds

1. Points will be awarded to projects based on the following scoring system. The award of points is contingent upon the proposal including the required performance standards listed below. These points were developed to ensure development design which maximizes habitat protection, enhances water quality, minimizes disturbance to the natural environment and fulfills objectives of the Chesapeake Bay Critical Area Act's Criteria. Applications for GA must receive at least 90 points (minimum scoring threshold) to be considered for an award of GA and reclassification.
2. The following general provisions shall apply to all submittals for award for Growth Allocation:
 - (a) For residential development, the maximum lot size permitted in a RCA conversion is the minimum lot size permitted on the site by the Environmental Health Department Regulations.
 - (b) In a RCA to LDA conversion, higher points will be awarded for having a sixty (60) percent open space ratio. This will allow the majority of the site to continue to provide the benefits of RCA, since it will be dominated by agriculture, wetlands, forest, barren land, surface water, or open space and protective land uses. The impact of the Growth Allocation conversion will be less than if a smaller open space ratio is achieved. Tidal wetlands, reforested areas, and Buffer extensions may be counted in the sixty (60) percent open space ratio provided that at least three-quarters of the open space is upland

(Amended 7/22/2008)

- (c) In a RCA or LDA to IDA conversion, higher points will be awarded for providing a thirty (30) percent open space ratio if evidence is included that the site continues to exhibit the characteristics of a LDA, i.e., containing areas of natural plant and animal habitats, and that the quality of runoff is not substantially altered or impaired. If these conditions can be demonstrated, it is assumed that the impact of the Growth Allocation conversion is less than if a smaller open space ratio is achieved. Tidal wetlands, reforested areas, and Buffer extensions may be counted in the 30 percent open space ratio, provided that at least three-quarters of the open space is upland areas.
- (d) All proposed projects located adjacent to a municipality will be scored in the same manner as all other projects, except that such projects may be designed to the development codes of the adjacent municipality (including the municipality's Critical Area Program) if it is to be annexed. In addition, projects endorsed by a municipality will be awarded special bonus points, provided the entire proposed development site is to be annexed into the municipality. Such projects shall be incorporated into the municipality within one (1) year of approval or the Growth Allocation is subject to reevaluation.
- (e) In an RCA to LDA conversion, which involves land only in the Critical Area, calculation of the maximum permitted density will be based on Critical Area acreage. The maximum permitted density within the Critical Area portion of the site may not exceed the base zone density for the Critical Area portion of the site or 3.99 units per acre, whichever is less.
- (f) In an RCA to LDA conversion, where non-Critical Area portions of a site are included in the development, the maximum permitted density may not exceed the base zoning density calculated for the entire site, or 3.99 units per acre as calculated based on the size of the Critical Area portion of the site, whichever is less.
- (g) In a RCA or LDA conversion to IDA, the permitted maximum density or intensity shall not exceed that permitted by the base zoning.
- (h) Large Lot Residential is defined as lot size in excess of the minimum required by the Cecil County Environmental Health Department.
- (i) A development pad (permitted area of disturbance) is defined as the area of a lot devoted to structures, drives and parking areas, and any necessary grading.
- (j) In projects that include water-dependent facilities, locating such facilities in the Buffer will not be reason for denying Buffer points, if a Buffer is provided on portions of the site that are not required for locating such facilities. In such

cases, Buffer points for water-dependent facilities will be awarded as set forth below, provided non-water dependent facilities are not located in the Buffer.

- (k) Parcels having already utilized the Special Growth Allocation are not eligible for this contest.
- (l) Community sewer facilities shall be required for conversion to IDA. If a community sewer facility is not present or not proposed as part of the development, conversion to IDA shall not be permitted.

Section 208. Point Criteria and Values

The Minimum Scoring Threshold shall be 90 points. Points shall be assigned in the following categories:

1. Development Type (maximum possible points = 40)
 - a. Clustering. Where dwelling units are concentrated in a selected area of the development tract so as to provide natural habitat or other open space uses on the remainder of at least 60 percent, at least three quarters of the open space shall be upland. Points = 15
 - b. Conversion of RCA to LDA
 - (1) In a conversion of RCA to LDA where a 60 percent open space ratio is maintained throughout the entire Critical Area portion of the site only. Points = 12, and

If this open space is linked to other permanently established open space, publicly or privately held, or maintains contiguity among forested areas, bonus points shall be awarded. An additional 3 Points
 - (2) Where a 60 percent open space ratio is maintained throughout the entire site, and where open space outside the Critical Area portion of the site is a minimum of 20 acres. Points = 22, and

If this open space is linked to other permanently established open space, publicly or privately held, or maintains contiguity among forested areas, bonus points shall be awarded. An additional 3 Points
 - c. Conversion of RCA and LDA to IDA
 - (1) Where a 30 percent open space ratio is maintained throughout the entire Critical Area portion of the site only. Points = 12, and

If this open space is linked to other permanently established open space, publicly or privately held, or maintains contiguity among forested areas, bonus points shall be awarded. An additional 3 Points

- (2) Where a 30 percent open space ratio is maintained throughout the entire site, and where open space outside the Critical Area portion of the site is a minimum of 20 acres. Points = 22, and

If this open space is linked to other permanently established open space, publicly or privately held, or maintains contiguity among forested areas, bonus points shall be awarded. An additional 3 Points

2. Buffer Enhancement (maximum possible points = 20)

- a.** Points shall be awarded for additional Buffer enhancement that occurs as outlined in the following Table 1 and criteria below.

Table 1

<u>Minimum Depth of Buffer</u>	<u>Points</u>
Required*	0
Required* plus 50 feet	4
Required* plus 100 feet	6
Required* plus 150 feet	7
Required* plus 200 feet	9

* Required = 110 feet plus any expansion required by location of the Buffer adjacent to sensitive areas as specified in Section 196.

- b.** Points shall be awarded for additional Buffer enhancement by afforestation that occurs as outlined in the Table 2, and criteria below.

Table 2

	<u>Portion of Buffer afforested by Applicant</u>				<u>Depth of Buffer</u>
	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>	
Points	1	2	3	4	Required (as above)
Points	2	3	4	5	Required + 200'

- c.** Where a 50-foot forested buffer, which remains in open space, is established along all drainageways on the site. Points = 4, or

- c. Where forest cover exclusive of Buffer Area and existing forest is increased as follows:

<u>Afforestation</u>	<u>Area of Forest Cover increased by:</u>		
	<u>30%</u>	<u>50%</u>	<u>70%</u>
In Critical Area portion of site (Points =)	3	4	5
Entire site above any Afforestation required by Forest Conservation Regulations, and is 5 acres or more (Points =)	4	5	6

5. Habitat Protection (maximum possible points = 10)

- a. Where a disturbance, of palustrine, non-tidal wetlands or hydrologic regime of non-tidal wetland, mitigation notwithstanding, is avoided and a minimum buffer provided. Points = 1
- b. Where permanent environmental easements on existing plant, wildlife and related habitat enhancement areas are donated. Points = 4
- c. Where the following existing Habitat Protection Areas are not present on, or adjacent to, the site: rare, threatened and endangered species, Natural Heritage Areas, and colonial waterbird nesting areas. Points = 2
- d. If the developed portion of the site is located the maximum distance possible from a habitat protection area minimum setback. Points =2
- e. If measures are implemented which enhance the Habitat Protection Areas in the area of the site as recommended by the Cecil County Planning Commission and the Maryland Fish, Heritage and Wildlife Program. Points = 4
- f. If the project proposes implementation of a forest management program which is designed to protect the habitat values of existing and newly created riparian forests and large forested areas (if the site includes 5 acres or more outside of the Critical Area), and this program is prepared in conjunction with the Cecil County Planning Department and the Maryland Forest, Park and Wildlife Service. Points = 1

6. Water Quality (maximum possible points = 8)

- a.** RCA to LDA conversion: For impervious surfaces less than 15 percent, points may be assigned as follows:

<u>Impervious surface</u>	<u>Points</u>
15% or less	0
14% or less	1
12% or less	2
10% or less	5
8% or less	8

- b.** LDA and RCA conversion to IDA: For impervious surfaces less than 70 percent, points assigned as follows:

<u>Impervious surface</u>	<u>Points</u>
70% or less	0
60% or less	1
50% or less	2
40% or less	5
30% or less	8

7. Resource Utilization (maximum possible points = 6)

- a.** Where agriculture or silviculture is continued on the open space portions of the site in the Critical Area and Best Management Practices are used. Points = 3, or
- b.** Where agriculture or silviculture is continued on the open space portions of the entire site, where the site includes at least 20 acres in agriculture outside the Critical Area and Best Management Practices are used. Points = 6

8. Erosion Control (maximum possible points = 3)

- a.** Where shore erosion protection measures are installed on 50 percent of the remaining shoreline where needed, and use of non-structural shore erosion controls where feasible. Points = 2, or
- b.** Where shore erosion protection measures are installed on 100 percent of the remaining shoreline, and use of non-structural shore erosion controls where feasible. Points = 3

9. Water-Dependent Facilities (maximum possible points = 3)
 - a. Where community piers are provided. Points = 3, or
 - b. Where shared piers by less than 3 property owners are provided. Points = 1
10. Bonus points, as follows, may be granted if all conditions of the points are fulfilled:
 - a. Where a proposed development includes community sewer facilities and the developer is able to expand the system to serve existing developed areas of failing septic systems, thereby correcting a documented existing water quality problem. The award of these points will be based on the feasibility of servicing adjacent areas as determined in consultation with the Health Department and the Department of Public Works. Actual points awarded will vary depending on the number of units served, the severity of the problem and other factors relating to feasibility. A general guideline will be that the correction of all failing septic systems in adjacent areas will earn maximum points. Maximum Bonus Point Value = 30
 - b. Where a proposed development project provides free public access to the shoreline in perpetuity. Bonus Points = 10
 - c. Where a natural park is designated and approved by the Cecil County Planning Commission, and, provisions are made to permit limited access to the natural park for education purposes (e.g., periodically permitting the local school system to conduct field trips to the park), points will be credited. To receive these points, a natural park management plan and program must be developed and include the recommendations of the Maryland Forest, Park and Wildlife Service. Bonus Points = 10
 - d. Placing all remaining viable agricultural lands in the open space portion of the site in a Maryland Agricultural Preservation Program Easement or other program permanently preserving the property from disturbance. Bonus Points = 15

Section 209. Submission Requirements

1. Subdivision plans, and site plans,(Concept, Preliminary, Preliminary-Final, and Final), shall be prepared and submitted as per the applicable requirements of this ordinance the Subdivision Regulations, the Critical Area Program and Office of Planning and Zoning policy.
2. Requests for Growth Allocation and GA floating zone classification and all required items for submission (as described in 1. above) shall be submitted to the Office of

Planning and Zoning as outlined in the Cecil County Subdivision Regulations and Appendix A of this Ordinance.

3. The Office of Planning and Zoning shall review the submittal for completeness. The Office of Planning and Zoning shall solicit comments from other departments, agencies (i.e., the Technical Advisory Committee), and any Officials that the Office of Planning and Zoning may deem appropriate. Incomplete submissions will be returned with comments within (30) days of submission.

Section 210. Procedure for Review of GA District Applications

1. All grants of the floating zone district by the County Commissioners shall meet the same procedural requirements as amendments to the Critical Area District contained in Section 203.
2. Development projects submitted for GA district classification and Growth Allocation under the point award system shall be processed as follows:
 - a. Concept Review
 - (1) All Concept Plats and Concept Site Plan applications will be reviewed upon submittal and placed on the regular agenda for TAC. The developer shall initially submit a Concept Plat or Concept Site Plan (as required) containing a statement of Concept Scoring assigning points toward the applicable categories and point values the developer believes should be awarded to the proposed project, along with a delineation of the area to be reclassified to the GA district. The Technical Advisory Committee (TAC) will review the Concept Plan or Concept Site Plan and provide comments to the developer. The Planning staff shall indicate the Concept Scoring of the project and provide their scores and recommendation to the developer at the TAC meeting.
 - (2) The Planning Commission shall meet on the Concept Plat or Concept Site Plan submittal at their regular meeting, review the developers Concept scoring, the Planning Staff Concept scoring and score the Concept themselves. They then shall choose to recommend approval, disapproval, conditional approval, tabling, or a continuance to the next regular meeting or determine if a special meeting is necessary.
 - (3) The decision to recommend an award of Growth Allocation and reclassification of the site to a GA district will be based on a project point system and the score the particular submittal receives. Projects above the Minimum Tier Scoring Threshold whose design maximizes habitat protection, the enhancement of the water quality objectives of

the Cecil County Critical Area Program and a high quality site design shall be recommended the award of Growth Allocation.

- (4)** The Planning staff will review and score the proposed development project and submit its final scoring recommendations to the Planning Commission.
- (5)** The Planning Commission shall hold a public hearing on all submissions which shall include the following:
 - (a)** Presentation of projects by the developers;
 - (b)** Staff review comments and scoring; and
 - (c)** Public comments.
- (6)** The condition of approval received by a particular project shall contain at least the condition that the Critical Area Commission shall recommend approval of the project and the Board of County Commissioners shall grant Growth Allocation and the Floating Zone amendments.

b. Preliminary Plan Review

- (1)** If Concept Plat or Concept Site Plan approval or conceptual approval is received, the developer shall submit the revised (as required) Preliminary Plat or Preliminary Site Plan again to the Technical Advisory Committee (TAC) containing a statement of Preliminary Scoring assigning points toward the applicable categories and point values the developer believes should be awarded to the proposed project, along with a delineation of the area to be reclassified to the GA district. The Technical Advisory Committee (TAC) will review the Preliminary Plan or Preliminary Site Plan and provide comments to the developer. The Planning staff shall indicate the Preliminary Scoring of the project and provide their scores and recommendation to the developer at the TAC meeting.
- (2)** The Planning Commission shall hold a public hearing on all submissions which shall include the following:
 - (a)** Presentation of projects by the developers;
 - (b)** Staff review comments and scoring; and

(Amended 7/22/2008)

(c) Public comments.

- (3) The Planning Commission will then score each proposed development project. The projects that meet the Minimum Scoring Threshold at the Preliminary level will be forwarded with a recommendation of conditional approval to the Board of County Commissioners with the Developers, the Planning Staff, and Planning Commission's scores and recommendations.
- (4) The Board of County Commissioners shall then hold a public hearing on the submittal unless the developer withdraws the application. The Board shall review the developers scoring, the Planning Staff scoring and the Planning Commissions scoring and recommendations. They then shall choose to recommend conditional approval, disapproval, tabling, or a continuance at the next meeting or a special meeting. Projects above the Minimum Scoring Threshold whose design maximizes habitat protection and the enhancement of the water quality objectives of the Cecil County Critical Area Program, and a high quality site design shall be awarded Growth Allocation.
- (5) The County Commissioners will forward the proposed amendment(s) of the County Critical Area Program Map (Official Critical Area Maps) and the Preliminary submittal and scoring and conditional assignment of the Growth Allocation (GA) District classification, i.e., projects which received conditional Preliminary approval, to the Critical Area Commission for approval. A final decision regarding the Critical Area Growth Allocation shall be made by the County Commissioners.

c. Final Approval

- (1) If approval is received from the Critical Area Commission regarding a project, the submittals shall proceed through normal approval channels as outlined in this ordinance, the Critical Area Program, and the Cecil County Subdivision Regulations for Final Plat or Site Plan approval.
- (2) Successful projects granted the GA district classification will be submitted for final site plan or final subdivision approval as per requirements of the Zoning and/or Subdivision Regulations.
- (3) The Official Critical Area Map(s) will be amended to reflect the new GA district classification along with a notation of the new land management classification when Final Approval is received.

(Amended 7/22/2008)

Section 211. Special Growth Allocation District (SGA)

1. Limitations on Approving the SGA District

- a.** The SGA district is limited to the Resource Conservation Areas of the Cecil County Critical Area and may only be used for residential development purposes.
- b.** The County will be limited in the total amount of Growth Allocation which may be permitted under this provision to twenty-two percent of the total growth allocation.

2. Criteria for Granting the SGA district classification

The SGA district classification may not be granted unless:

- a.** The number of additional lots is limited as shown in the following Table:

Table Maximum Additional Lots

<u>Critical Area (Acres)</u>	<u>Maximum Number of Additional Lots</u>
Up to 5	0
5 to less than 30	2
30 to less than 100	4*

* The total number of lots permitted in the development of the Critical Area portion of the site will not exceed 5 lots.

- b.** The maximum lot size shall not exceed the minimum individual lot size required by the Cecil County Health Department.
- c.** The permitted development pad size (permitted area of disturbance) does not exceed 20,000 square feet and provided the remaining lot area remains in natural vegetation under a restrictive conservation easement;
- d.** Full compliance with all other requirements of the Cecil County Critical Area Program for the entire site, including provisions relating to habitat protection and the removal of forest cover for building sites;
- e.** The subdivision complies with all applicable requirements of the Cecil County Subdivision Regulations and this ordinance;

2. The application shall be in the form of a Sketch Plat detailing all Habitat Protection Areas and all other information as described in Appendix A of this Ordinance.
3. The Sketch Plat shall be reviewed by the Technical Advisory Committee for comments prior to review of the application by the Planning Commission, Board of County Commissioners for Cecil County and the Critical Area Commission and Growth Allocation will be assigned and deducted from the County's reserve.
4. If the application for a Project Point Scoring System Exemption for a Growth Allocation Floating Zone is approved by the Board of County Commissioners for Cecil County and the Chesapeake Bay Critical Area Commission, the applicant shall submit a major site plan to the Office of Planning and Zoning for review in accordance with Section 291 of this Ordinance.
5. Project Point Scoring System Exemptions for Growth Allocation Floating Zones shall not proceed with any on site work, grading or construction until the major site plan is approved by the Office of Planning and Zoning.
6. A major site plan approved with the use of the Project Point Scoring System Exemptions for a Growth Allocation Floating Zone shall be valid for a period of two (2) years unless construction has begun. If work has not begun, as determined by the Cecil County Office of Planning and Zoning, all approvals shall be null and void and the Growth Allocation may be subject to recapture. There shall be no extension of major site plan approvals that use Project Point Scoring System Exemptions for creating a Growth Allocation Floating Zone.

Section 214. Penalties

1. 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, the Critical Area Criteria, or the County's Critical Area Program, Ordinance, or Regulations is subject to a fine not exceeding \$10,000.
2. In determining the amount of penalty to be assessed under paragraph 1, the County may consider the following:
 - a. The gravity of the violation;
 - b. Any willingness or negligence involved in the violation;
 - c. The environmental impact of the violation;
 - d. Plus costs of inspections and monitoring.

Section 215. Reserved

(Amended 11/16/04 and 7/22/2008)