

## ARTICLE V

### CRITICAL AREA

#### Section 501 Chesapeake Bay Critical Area Overlay District

The purpose of this article is to merely reflect state law and not to impose any greater restrictions

#### 501.1 Definitions

**Applicability.** The following words have the following meanings for the purposes of implementing the Critical Area Program and this ordinance:

- (1) "Afforestation" means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.
- (2) "Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.
- (3) "Agricultural easement" means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.
- (4) "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.
- (5) "Aquaculture" means: (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.
- (6) "Barren land" means unmanaged land having sparse vegetation.

- (7) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.
- (8) "Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.
- (9) "Clearcutting" means the removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut from advanced regeneration or stump sprouts or from planting of seeds or seedlings by man.
- (10) "Cluster development" means a residential development to which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.
- (11) "Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.
- (12) "Commercial harvesting" means a commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.
- (13) "Commission" means the Chesapeake Bay Critical Area Commission.
- (14) "Community piers" means boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.
- (15) "Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.
- (16) "Conservation easement" means a non-possessory interest in land which restricts the

manner in which the land may be developed in an effort to reserve natural resources for future use.

- (17) "Cover crop" means the establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.
- (18) "Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
  - (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
  - (b) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and
  - (c) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.
- (19) "Density" means the number of dwelling units per acre within a defined and measurable area.
- (20) "Developed woodlands" means those areas of one acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.
- (21) "Development" means any activity that materially affects the condition or use of dry land, land under water, or any structure.
- (21) "Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.
- (22) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

- (23) "Dwelling unit means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence."
- (24) "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.
- (25) "Excess stormwater run-off" means all increases in stormwater resulting from:
- (a) An increase in the imperviousness of the site, including all additions to buildings, roads, and parking lots;
  - (b) Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
  - (c) Alteration of drainageways, or regrading of slopes;
  - (d) Destruction of forest; or
  - (e) Installation of collection systems to intercept street flows or to replace swales or other drainageways.
- (26) "Fisheries activities" means commercial water dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations.
- (27) "Forest" means a biological community dominated by trees and other woody plants covering a land area of one acre or more. This also includes forests that have been cut, but not cleared.
- (28) "Forest Interior Dwelling Birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

- (29) "Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.
- (30) "Forest practice" means the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.
- (31) "Highly erodible soils" means those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.
- (32) "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are historic in the sense that their location is common knowledge and because these areas have been used regularly during recent times.
- (33) "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils.
- (34) "Hydrophytic vegetation" means those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).
- (35) "K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.
- (36) "Land-based aquaculture" means the raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.
- (38) "Land clearing" means any activity that removes the vegetative ground cover.
- (39) "Landforms" means feature of the earth's surface created by natural causes.
- (40) "Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.
- (41) "Mean High Water Line" (MHWL) means the average level of high tides at a given location.

- (42) "Natural features" means components and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.
- (43) "Natural Heritage Area" means any communities of plants or animals which are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.
- (44) "Natural vegetation" means those plant communities that develop in the absence of human activities.
- (45) "Nature-dominated" means a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.
- (46) "Non-point source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.
- (47) "Non-renewable resources" means resources that are not naturally regenerated or renewed.
- (48) "Non-tidal wetlands" means those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of the Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate it covered by shallow water at some time during the growing season. These regulations apply to the palustrine class of non-tidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS 79/31, December 1979) and as identified on the Natural Wetlands Inventory maps, or which may be identified by site survey at the time of application for a developmental activity. These lands are usually characterized by one or both of the following:
  - (a) At least periodically, the lands support predominantly hydrophytic vegetation;
  - (b) The substrate is predominantly undrained hydric soils.
- (49) "Offsets" means structures or actions that compensate for undesirable impacts.

- (50) "Open space" means land and water areas retained in an essentially undeveloped state.
- (51) "Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.
- (52) "Palustrine" means all non-tidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.
- (53) "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.
- (54) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.
- (55) "Private harvesting" means the cutting and removal of trees for personal use.
- (56) "Project approvals" means the approval of development, other than development by the State or local government, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.
- (57) "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies which are available to the general public.
- (58) "Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.
- (59) "Redevelopment" means the process of developing land which is or has been developed.
- (60) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.
- (61) "Renewable resource" means a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

- (62) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.
- (63) "Seasonally flooded water regime" means a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.
- (64) "Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.
- (65) "Significantly eroding areas" means areas that erode two feet or more per year.
- (66) "Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article 10-2A-06 and 4-2A-03, Annotated Code of Maryland.
- (67) "Spoil pile" means the overburden and reject materials as piled or deposited during surface mining.
- (68) "Soil Conservation and Water Quality Plans" means land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:
  - (a) How the landowner plans to treat a farm unit;
  - (b) Which best management practices the landowners plans to install to treat undesirable conditions; and
  - (c) The schedule for applying those Best Management Practices.
- (69) "Steep slopes" means slopes of 15 percent or greater incline.
- (70) "Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.
- (71) "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.

- (72) "Transitional habitat" means a plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.
- (73) "Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.
- (74) "Tributary streams" means those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.
- (75) "Unwarranted hardship" means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested."
- (76) "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.
- (77) "Wash plant" means a facility where sand and gravel is washed during processing.
- (78) "Water-based aquaculture" means the raising of fish and shellfish in any natural, open, free-flowing water body.
- (79) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.
- (80) "Waterfowl" means birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.
- (81) "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passage for wildlife.

501.2 Purpose and Intent

- (a) **Intent.** In 1984, the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The decline was found to have resulted, in part, from the cumulative effects of human activity that caused increased levels of pollutants, nutrients, and toxins, and also from declines in protective land uses such as forest

land and agricultural land in the Bay region. In 2002, the Atlantic Coastal Bays were added to the Critical Area because these bays were experiencing a similar decline.

(b) **Purpose.** The General Assembly enacted the Critical Area Act for the following purposes:

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

(c) **Goals.** The goals of the Critical Area Program are to accomplish the following:

- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- (2) Conserve fish, wildlife, and plant habitat; and
- (3) Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

### 501.3 Implementation of the Critical Area Provisions

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

(b) **Critical Area Program.** The Town adopted its Critical Area Program in July 1987. The Program consists of this ordinance, the Town's Critical Area maps, and the Town's subdivision regulations.

(c) **Regulated activities and applicability.** Any applicant for a permit or license to pursue activities within the Critical area, including but not limited to, development or

redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the Zoning Administrator after review and approval under the Town's Critical Area Program.

- (d) **Responsible agencies.** These provisions shall be implemented and enforced by the Town Department of Planning and Zoning and Department of Permits and Inspections. Should an infraction of the provisions contained in any law, regulation, or plan related to the Town's Critical Area Program be brought to the attention of any Town official, said official shall contact the Zoning Administrator who may consult with the Town Attorney to determine the proper remedial course of action. If appropriate, the Zoning Administrator shall inform the Critical Area Commission about the infraction and any decision made regarding remedial action. The Commission, at its discretion, may also take remedial action under the authority it is given under State law.
- (e) **State and local projects.** For all development in the Critical Area resulting from State and local agency projects, the Town shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06. If applicable, consistency reports shall be submitted to the Chesapeake Bay Critical Area Commission.

501.4 Enforcement

- (a) **Consistency.** The Critical Area provisions of this Chapter, in accordance with the Critical Area Act and Criteria, and as set out in any other applicable Town Chapters, supersedes any inconsistent law, Chapter or plan of the Town of Easton. In the case of conflicting provisions, the stricter provision(s) shall apply.
- (b) **Responsible agencies.** These provisions shall be implemented and enforced by the Zoning Administrator with the assistance of the Chesapeake Bay Critical Area Staff. Should an infraction of provisions contained in this Critical Area Overlay District, or under any law, Chapter or plan related to the Town's Critical Area Program provisions or requirements, be brought to the attention of any official of the Town, said official shall immediately contact the Zoning Administrator who may consult with the Critical Area and/or the Town Attorney to determine the proper remedial course of action. The Zoning Administrator shall send a copy of his decision to the Critical Area Commission. The Commission, at its discretion, may also take such remedial action as given it under State law.
- (c) **Violations.** In addition to any other penalty applicable under state or municipal law, a

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person who violates a provision of Natural Resources Article, Title 8 Subtitle 18, or the Town's Critical Area Program, ordinance, or regulations is subject to a fine not exceeding \$10,000.

(1) In determining the amount of the penalty to be assessed under paragraph (c), the county may consider the following:

- A. The gravity of the violation
- B. Any willfulness or negligence involved in the violation; and
- C. The environmental impact of the violation

#### 501.5 Development in the Critical Area

(a) **Description.** The Critical Area of the Town contains those lands and waters located within one thousand feet of the landward boundaries of all tidal waters, tidal wetlands and tributary streams in the Critical Area as designated on the Official Critical Area Overlay District Maps.

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

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

utilization activities and for habitat protection.

- (c) **Implementation.** For purposes of implementing this regulation the Town has determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of land management and development areas described in this program.
- (d) **Activities not permitted except in IDA.** Certain new development, redevelopment or expanded activities or facilities, because of their intrinsic nature or because of their potential for adversely affecting habitats or water quality, may not be permitted in the Critical Area except in Intensely Developed Areas under regulations of this section and only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:
- (1) Non-maritime heavy industry;
  - (2) Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants); or
  - (3) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer;
  - (4) The Town may preclude additional development activities that it considers detrimental to water quality or fish, wildlife, or plant habitats within the Critical Area.
- (e) **Activities not permitted.** Certain new development activities or facilities, or the expansion of certain existing facilities, because of their intrinsic nature or because of their potential for adversely affecting habitat and water quality, may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem. These include:
- (1) Solid or hazardous waste collection or disposal facilities, including transfer stations; or
  - (2) Sanitary landfills.

- (f) **Continuation of existing, permitted facilities.** Existing, permitted facilities of the type noted in paragraph (e) above shall be subject to the standards and requirements of the Department of the Environment, under COMAR Title 26.
- (g) **Reasonable accommodations for the needs of disabled citizens.** The Board of Zoning Appeals may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs.
- (1) An applicant shall have the burden of demonstrating the following:
    - A. The existence of a physical disability;
    - B. Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;
    - C. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
    - D. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;
    - E. Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.
  - (2) The Board of Zoning Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
  - (3) The Board of Zoning Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the Town's ability to restore the property should the applicant fail to do so.

#### 501.6 Intensely Developed Areas.

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

- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;
- (4) In addition, these features shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

(b) **General policies.** The Critical Area ordinance for The Town of Easton hereby incorporates the following policies for Intensely Developed Areas. New or expanded development or redevelopment shall take place in such a way as to:

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

(c) **Development standards.** The following criteria are hereby adopted for intensely developed areas:

- (1) All plans shall be assessed for their impacts on water quality and other biological resources.

- (2) Alterations in the plans shall be made to mitigate any negative impacts.
- (3) Urban nest management practices shall be considered and, where appropriate, implemented as part of all plans for development and redevelopment.
- (4) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in those sections of this ordinance.
- (5) Stormwater shall be addressed in accordance with the following provisions:
  - A. The Town shall require, at the time of development or redevelopment, that technologies as required by applicable State and local ordinances be applied by anyone undertaking development activities in order to minimize adverse impacts to water quality caused by stormwater.
  - B. In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least 10 percent below the level of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for compliance with this requirement is provided in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003* and as may be subsequently amended.
  - C. In the case of new development, offsets as determined by the Town shall be used if they reduce pollutant loadings by at least 10 percent of the pre-development levels. Guidance for compliance with this requirement is provided in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003* and as may be subsequently amended.
  - D. Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures. Guidance regarding offsets is provided in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003*.
- (6) If practicable, permeable areas shall be established in vegetation and whenever possible, redevelopment shall reduce existing levels of pollution.
- (7) Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be

established within Intensely Developed Areas.

- (8) Ports and industries which use water for transportation and derive economic benefits from shore access shall be located near existing port facilities. The Town may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or Town and is consistent with the provisions of the Water Dependent Facilities Section of this ordinance and other State and Federal regulations.
  - (9) The Town shall promote with the assistance from State agencies, participation in programs and activities for the enhancement of biological resources within the Critical Area for their positive effects on water quality and urban wildlife habitat. These programs may include urban forestry, landscaping, gardens, wetland and aquatic habitat restoration elements.
  - (10) To the extent practicable, future development in the Critical Area shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.
  - (11) When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, the following shall be required:
    - A. Participation in programs established by the Town for the enhancement of forest and developed woodland resources such as programs for urban forestry (for example, street tree plantings, gardens, landscaping, open land buffer plantings);
    - B. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
    - C. Development activities shall address the protection of existing forests and developed woodlands identified as Habitat Protection Areas in the Habitat Protection Sections of this ordinance.
- (d) **Public education program.** The Town shall use a public education program to alert developers and property owners to potential impacts, mitigation measures and urban best management practices that should be considered as part of all intense development activity from individual dwellings through major development projects.

501.7 Limited Development Areas.

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

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

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

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

(c) **Development standards.** The following criteria are hereby adopted for Limited Development Areas:

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

- A. Adherence to the provisions of the applicable sections of this ordinance regarding Habitat Protection Areas and water-dependent facilities.
  - B. All roads, bridges, and utilities that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists.
  - C. All development activities that must cross or affect streams shall be designed to:
    - 1. Reduce increases in flood frequency and severity that are attributable to development;
    - 2. Retain tree canopy so as to maintain stream water temperature within normal variation;
    - 3. Provide a natural substrate for stream beds; and
    - 4. Minimize adverse water quality and quantity impacts of stormwater.
  - D. All development sites shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this ordinance. The Town shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town Attorney through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations.
- (2) For the cutting or clearing of trees in forests and developed woodland areas which are associated with current or planned development activities in a Limited Development Area, the Town shall:
- A. Require that the applicant consider the recommendations of the Maryland Department of Natural Resources when planning development on forested land;

- B. Design and implement development activities to minimize the destruction of woodland vegetation; and
  - C. Provide protection for forests and developed woodlands identified as Habitat Protection Areas in this Program.
- (3) For the alteration of forest and developed woodland in the Limited Development Area, the Town shall apply all of the following requirements:
- A. The total acreage in forest coverage within the Town in the Critical Area shall be maintained or preferably increased;
  - B. All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
  - C. No more than 20 percent of any forest or developed woodland may be removed from forest use, except as provided in paragraph (4) below. The remaining 80 percent shall be maintained through recorded, restrictive covenants or similar instruments approved by the Town Attorney; and
  - D. Developed woodland vegetation shall be conserved to the greatest extent practicable.
- (4) For replacement of forest and developed woodland, if more than 20 percent is to be removed from forest use, an applicant may clear or develop not more than 30 percent of the total forest area provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both.
- (5) In addition, applicants shall adhere to the following criteria for forest and woodland development:
- A. A performance bond shall be collected by the Town in an amount determined by the Town to assure satisfactory replacement as required by paragraphs (3) and (4) above;
  - B. Grading permits shall be required before forest or developed woodland is cleared;
  - C. Forests which have been cleared before obtaining a grading permit or that exceed the maximum area allowed in (4) above shall be replanted at three times the areal extent of the cleared forest;

- D. If the areal extent of the site limits the application of the reforestation guidelines in paragraphs (3), (4) and (5) above, alternative provisions or reforestation guidelines may be permitted by the Town if they are consistent with the intent of the Forest and Woodland Element of this Program to conserve the forest and developed woodland resources of the Critical Area. Alternative provisions may include fees-in-lieu provisions or use of a forest mitigation bank if the provisions are adequate to ensure the restoration or establishment of an equivalent forest area;
  - E. If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent;
  - F. All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants or other protective instruments approved by the Town Attorney;
  - G. The applicant shall designate, subject to the approval of the Town, a new forest area on a part of the site not forested; and
  - H. The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Town Attorney.
- (6) Applicants shall adhere to the following standards for development on steep slopes. Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies for Limited Development Areas set forth above.
- (7) Except as otherwise provided in this sub-section, for stormwater runoff, man-caused impervious areas shall be limited to 15 percent of the site.
- A. If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to twenty-five (25%) of the parcel or lot.
  - B. If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to fifteen percent (15%) of the parcel or lot.
  - C. If an individual lot one acre or less in size is part of a subdivision approved

after December 1, 1985, then man-made impervious surfaces of the lot may not exceed twenty-five percent (25%) of the lot, and the total impervious surfaces of the entire subdivision may not exceed fifteen percent (15%).

D. Impervious surface limits provided in sub-sections A through C above may be exceeded, upon findings by the Planning Director or his designee that the following conditions exist:

1. New impervious surfaces on the property have been minimized;
2. For a lot or parcel one-half acre or less in size, total impervious surface area does not exceed impervious surface limits in sub-section A by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
3. For a lot or parcel greater than one-half acre and less than one acre in size, total impervious surface area does not exceed impervious surface limits in subsection B or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
4. The following table summarizes the limits set forth in paragraphs 1 through 3 above:

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

5. Water quality impacts associated with runoff from new impervious surfaces can be and have been minimized through site design considerations or the use of best management practices to improve water quality; and
6. The property owner performs on-site mitigation to offset potential adverse water quality impacts from the new impervious surfaces, or the property owner pays a fee to the Town in lieu of performing the on-site mitigation. The amount of the fee shall be \$1.00 per square foot of new impervious surface area on the property. The Town shall use all fees collected under this provision to fund projects that improve water quality within the Critical Area, consistent with the Town's Critical

Area Program and Zoning Ordinance.

- (8) The Town should allow for modifications in road standards on a case-by-case basis to reduce potential impacts to the site and Critical Area resources, where the reduced standards do not significantly affect safety.
- (9) To reduce the extent of impervious areas and maximize areas of natural vegetation, cluster development shall be considered when planning for future development.
- (10) Development may be allowed on soils having development constraints if the development includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish or wildlife habitat.

(d) **Complementary State laws and regulations.** In applying this Critical Area Program, the Town refers to all of the following complementary existing State laws and regulations:

- (1) For soil erosion and sediment control (COMAR 26.17.01)
  - A. In order to prevent soil erosion and sedimentation, a Soil Erosion and Sedimentation Control Plan shall be required whenever a development within the Critical Area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the requirements of the Natural Resources Article and Environment Article of the Annotated Code of Maryland and local ordinances. Sediment control practices shall be appropriately designed to reduce adverse water quality impacts.
  - B. The Town requires erosion control as the basis of sediment control plans within the Critical Area.
- (2) For stormwater runoff (COMAR 26.17.02)
  - A. The Town requires limitations on stormwater runoff such that development may not cause downstream property, watercourses, channels or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a 10-year storm where the land is in its predevelopment state.
  - B. Storage Capacity - All stormwater storage facilities shall be designed with sufficient capacity to achieve water quality goals of this Section and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its pre-development state.

- C. Stormwater management measures shall be consistent with the requirements of Environment Article 4-201 et seq., Annotated Code of Maryland.

501.8 Resource Conservation Areas.

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

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

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

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

(c) **Development standards.** In implementing this Critical Area ordinance, the Town shall use all of the following requirements for Resource Conservation Areas:

- (1) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area Section, the Agricultural Section, and the Forest and Woodlands Protection Section of this ordinance.
- (2) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.

- (3) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the Town. Such mechanisms as cluster development, transfer of development rights, maximum lot size provisions and/or additional means to maintain the land area necessary to support the protective uses will be encouraged by the Town and implemented as necessary.
- (4) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture or residential development not exceeding the density specified above, shall be allowed in Resource Conservation Areas.
- (5) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the Town's growth allocation provisions. Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the Town's growth allocation provisions.
- (6) The Town shall ensure that the overall acreage of forest and woodland within the RCA does not decrease.
- (7) Development activity within the Resource Conservation Areas shall be consistent with the requirements for Limited Development Areas as specified in this ordinance.
- (8) Nothing in this section shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than one dwelling unit per 20 acres.
- (9) In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the resource conservation area, the Town may permit the area of any private wetlands located on the property to be included under the following conditions:
  - A. The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and
  - B. The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the Town and the State Department of Natural Resources.

(d) **Land use in the RCA.** In addition to the uses specified above, certain

nonresidential uses may be permitted in Resource Conservation Areas if it is determined by the Town Planner that the proposed use is one of the following and complies with the Easton Zoning Ordinance:

- (1) *A home occupation as an accessory use on a residential property and as provided for in the Town's zoning ordinance;*
- (2) *A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;*
- (3) *A cemetery that is an accessory use to an existing church; provided impervious surfaces are limited to 15 percent of the site or 20,000 square feet, whichever is less;*
- (4) *A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility;*
- (5) *A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;*
- (6) *A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;*
- (7) *A group home or assisted living facility with no more than eight residents;*
- (8) *Other uses determined by the Town and the Critical Area Commission to be similar to those listed above.*

#### 501.9 Growth Allocation.

In order to allow for limited growth within the Critical Area, Maryland Law permits reclassification of Critical Area property through a process known as Growth Allocation. Following are the procedures for determining if a site qualifies for Growth Allocation.

##### (a.) **Application Requirements**

Applications for Growth Allocation shall be submitted to the Town Council in care of the Town Clerk's Office. Growth Allocation applications shall include the following:

- (1.) A letter stating present and proposed Critical Area Land Management Classification and describing in general terms the nature of the proposed project.

- (2.) A Site Plan (10 copies) drawn at a scale of 1" = 50' or less. Minimum requirements for this site plan are as follows:
  - a. Boundary survey of the subject property.
  - b. Critical Area Boundary.
  - c. Critical Area Buffer.
  - d. Location sketch of proposed improvements, including buildings, driveways and parking areas, landscaping areas, etc.
  - e. Location of any Forested areas.
  - f. Location of any Habitat Protection Areas.
  - g. Abutting streets or highways.
  - h. North arrow and scale.
  - i. Location of septic fields and wells (if any).
  - j. Location of the waterline (mean high tide).
  - k. Location of tidal and non-tidal wetlands including buffers.
  - l. Existing land use including buildings and other impervious areas.
  - m. Vegetative cover including cover to be cut and to be replaced.
  - n. Existing contours with intervals not more than one (1) foot.
  - o. Areas of fifteen (15%) percent or greater slope.
- (3.) A letter from the Maryland Department of Natural resources Forest, Park and Wildlife Service regarding possible Habitat Protection Areas.

If the application is complete it shall proceed according to the following review process:

**(b) Review Process**

- (1.) The Town Council shall refer the application to the Planning Commission for their review and comments.
- (2.) The Planning Commission shall forward the application to the Chesapeake Bay Critical Area Commission (CBCAC) for informal technical review and take no action until comments are received from the CBCAC or the passage of 30 days.
- (3.) Upon receipt of CBCAC comments or the passage of 30 days, the Planning Commission shall review the application for consistency with the Comprehensive Plan, The Critical Area Program, and the Zoning Ordinance. The Planning Commission then makes a determination of consistency and may make additional recommendations concerning conditions of approval.

- (4.) Planning Commission and CBCAC comments are forwarded to the applicant.
- (5.) Upon receipt of comments from the Planning Commission and the CBCAC the applicant may amend the site plan and resubmit to the Planning Commission.
- (6.) The Planning Commission, upon receipt of amended plan, shall hold a public hearing, notice of which shall be printed in a newspaper of general circulation in the Town at least 15 days in advance of said hearing. The subject property shall also be posted for at least the 15 days preceding the hearing. The purpose of this hearing is to receive public input in regards to the application.
- (7.) The Planning Commission then makes a recommendation which is forwarded in writing to the Town Council. The applicant will also receive a copy of this recommendation. Said recommendation may include suggestions regarding conditions of approval.
- (8.) The Town Council shall hold a public hearing on the application. Said hearing shall be advertised and the site posted as per a conventional rezoning request.
- (9.) The Council may grant or deny any application. If the application is granted, the Council may establish conditions to accompany the new Critical Area overlay zoning classification. If the application is denied, no subsequent application for Growth Allocation involving the same property shall be accepted within twelve (12) months from the date of the Council's original decision.
- (10.) The application will then be forwarded for approval to the CBCAC who will meet and/or hold a public hearing on the Growth Allocation request.
- (11.) If the application is approved by the CBCAC, the Town's Official Critical Area Map shall be amended to reflect the new land management classification as either GA-IDA or GA-LDA as appropriate.
- (12.) Successful projects which have received Growth Allocation approval will be submitted for final site plan review or final subdivision approval according to the requirements of the Zoning Ordinance (including the appropriate Critical Area development standards) and/or the Subdivision Regulations. This step requires that the applicant receive any Special Exceptions or Variances, if necessary to approve the project.

- (13.) Any Growth Allocation awarded shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which the Growth Allocation was granted. The Town Council may specify some longer period than one year.

501.10 Grandfathering.

- (a) **Continuation of existing uses.** The Town shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of this ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in the variances section of this ordinance.
- (b) **Residential density.** Except as otherwise provided, the Town shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the Critical Area Program notwithstanding the density provisions of the Program. The Town shall permit a single-lot or parcel of land that was legally of record on the date of Program approval to be developed with a single-family dwelling if a dwelling is not already placed there (not withstanding that such development may be inconsistent with the density provisions of this ordinance) provided that:
- (1) It is on land where development activity has progressed to the point of the pouring of foundation footings or the installation of structural members.
  - (2) It is a legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985 and land that was subdivided into recorded, legally buildable lots, where the subdivision received the Town's final approval prior to June 1, 1984 if:
    - A. At the time of development, the land is brought into conformance with the Critical Area Program insofar as possible, including the consolidation or configuration of lots not individually owned and these procedures are approved by the Critical Areas Commission; or
    - B. The land has received a building permit subsequent to December 1, 1985, but prior to local Program approval.
  - (3) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the Town's final approval between June 1, 1984 and December 1, 1985; and

- (4) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA OR RCA requirements in this chapter or the area of the land is counted against the growth allocation permitted under this ordinance.

- (c) **Consistency.** Nothing in this section may be interpreted as altering any requirements for development activities set out in the Water-Dependent Facilities Section or the Habitat Protection Areas Section of this ordinance.

501.11 Intrafamily Transfers.

- (a) **Definitions.** In this section the following words have the meanings indicated:

- (1) "Bona Fide Intrafamily Transfer" means a transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.
- (2) "Immediate Family" means a father, mother, son, daughter, grandfather, grandmother, grandson or granddaughter.

- (b) **Applicability.** The Town shall permit bona fide intrafamily transfers to be made only from parcels of land that:

- (1) Were of record on March 1, 1986; and
- (2) Are 7 acres or more and less than 60 acres in size.

- (c) **Required subdivision.** A bona fide intrafamily transfer from a parcel of land shall be a subdivision of the parcel of land that is subject to approval under the Subdivision Regulations of the Town.

- (d) **Approval of subdivision of parcels.** The Town may approve the subdivision of a parcel of land into the number of lots indicated in this subsection by means of a bona fide intrafamily transfer and may not approve any greater subdivision of the parcel of land or any portion of it as follows:

- (1) A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.
- (2) A parcel that is 12 acres or more and less than 60 acres in size may be subdivided

into three lots. The lots may be created at different times.

- (e) **Conditions of approval.** As a condition of approval the Town shall require that:
- (1) Any deed for a lot that is created by a bona fide intrafamily transfer shall contain a covenant approved by the Town Attorney stating that the lot is created subject to the provisions of Natural Resources Article Section 8-1808.2, Annotated Code of Maryland, and
  - (2) A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family, except under provisions set forth in (f) of this section.
  - (3) This subsection does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.
- (f) **Standards and procedures for subsequent conveyance of lots.** The Town has established standards and procedures for bona fide intrafamily transfers as part of this program which will permit the subsequent conveyance of lots to persons other than immediate family members. The standards and procedures shall assure that:
- (1) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and
  - (2) A change in circumstances has occurred since the original transfer was made that is not inconsistent with this subtitle and that warrants an exception; or
  - (3) Other circumstances that are consistent with this subtitle and with the Critical Area Criteria to maintain land areas necessary to support the protective uses of agriculture, forestry, open space and natural habitats in Resource Conservation Areas and thus warrant an exception.

501.12 Variances.

- (a) **Applicability.** The Town has established provisions where, owing to special features of a site or other circumstances, implementation of this program or a literal enforcement of provisions within the program would result in unwarranted hardship to an applicant, a Critical Area Program variance may be obtained. In considering an application for a variance, the Town shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the

requirements of the Town's Critical Area Program.

- (b) **Standards.** The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:
- (1) Special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of the Town's Critical Area Program would result in unwarranted hardship;
  - (2) A literal interpretation of the provisions of the Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;
  - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town Critical Area Program to other lands or structures within the Critical Area;
  - (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property;
  - (5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and the Town Critical Area Program;
  - (6) Applications for a variance will be made in writing to the Town Board of Zoning Appeals with a copy provided to the Critical Area Commission.
- (c) **Process.** After hearing an application for a Critical Area Program variance, the Board of Zoning Appeals shall make written findings reflecting analysis of each standard. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (a) above. The Town shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.
- (d) **Findings.** Based on competent and substantial evidence, the Town shall make written findings as to whether the applicant has over come the presumption of nonconformance as established in paragraph (a) above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

- A. The applicant;
- B. The Town or any other government agency; or
- C. Any other person deemed appropriate by the Town.

(e) **Appeals.** Appeals from decision concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the Town for variances. Variance decisions by the Board of Zoning Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this section.

(f) **Conditions and Mitigation.** The Board of Zoning Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the Critical Area Program is maintained including, but not limited to the following:

- (1) Adverse impacts resulting from the granting of the variance shall be mitigated by planting on the site per square foot of the variance granted at no less than a three to one basis or as recommended by the Zoning Administrator.
- (2) New or expanded structures or impervious surfaces shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

#### 501.13 Program Amendments.

(a) **Program amendments.** The Town Council may from time to time amend the Town Critical Area Program. All such amendments shall also be approved by the Critical Area Commission as established in Section 8-1809 of the Critical Area Law. No such amendment shall be granted without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and Section 8-1809(d), respectively. In addition, the Town Council shall comprehensively review their entire Critical Area Program and propose any necessary amendments as required at least every six (6) years.

(b) **Process.** When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the Town Council. The Town Council shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard.

At least fourteen (14) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. After the Town Council approves an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the Critical Area Commission for final approval.

- (c) **Zoning Map Amendments.** Except for program amendments or program refinements developed during a six- year comprehensive review, a zoning map amendment may only be granted by the Town Council upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:
  - a. Are wholly consistent with the land classifications in the adopted Program; or
  - b. Propose the use of growth allocation in accordance with the growth allocation provisions of this ordinance.

501.14 Water Dependent Facilities.

- (a) **Definition.** "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational or fisheries activities that require location at or near the shoreline within the Buffer specified in the 100-foot Buffer section of this ordinance. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.
- (b) **Identification.** Water dependent facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision that provides community piers.
- (c) **General policies.** The policies of the Town with regard to water-dependent facilities shall be to limit development activities in the Buffer to those that are water-dependent and provide by design and location criteria that these activities will have minimal individual and cumulative impacts on water quality and fish, wildlife, and plant habitat in the Critical Area.
- (d) **Standards.** The following standards shall apply to new or expanded development activities associated with water -dependent facilities:
  - (1) New or expanded development activities may be permitted in the Buffer in the Intensely Developed and Limited Development Areas provided that it can be shown:

- A. That they are water-dependent;
- B. That the project meets a recognized private right or public need;
- C. That adverse effects on water quality, fish, plant and wildlife habitat are minimized;
- D. That, insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and
- E. That the facilities are consistent with an approved local plan as set forth below.

(2) Except as otherwise provided in this program, new or expanded development activities may not be permitted in those portions of the Buffer which occur in Resource Conservation Areas.

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

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

- (1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- (2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;
- (3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- (4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

- (5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
  - (6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area, generally;
  - (7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:
    - A. Backfill for permitted shore erosion protection measures;
    - B. Use in approved vegetated shore erosion projects;
    - C. Placement on previously approved channel maintenance spoil disposal areas; and
    - D. Beach nourishment.
  - (8) That interference with the natural transport of sand will be minimized; and
  - (9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in the Habitat Protection Area sections of this ordinance.
- (g) **Availability of information.** The information necessary for evaluating the above factors, if not available locally, shall be obtained from appropriate State and Federal agencies.
- (h) **Industrial and port-related facilities.** New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas as described in this ordinance and are subject to the provisions set forth in that section.
- (i) **Marinas and other commercial maritime facilities.** New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements set forth in this section. New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except as provided in this section. Expansion of existing marinas may be permitted by the Town within Resource Conservation Areas provided that it is sufficiently demonstrated

that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina. New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

(j) **Community piers.** New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the Buffer subject to the requirements in this section of the zoning ordinance provided that:

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

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

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

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

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

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

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

(n) **Fisheries activities.** Lands and water areas with high aquaculture potential will be identified by the Town in cooperation with the State when applications for new or expanded fisheries or aquaculture facilities in these areas are submitted to the Town. These areas are encouraged for that use and if so used, should be protected from degradation by other types

of land and water use or by adjacent land and water uses. Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities may be permitted in the Buffer in Intensely Developed, Limited Development and Resource Conservation Areas.

501.15 Structures on Piers.

- (a) **Definition.** Pier means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. Pier does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.
  
- (b) **Standards.** Except as provided in paragraphs (1), (2), and (3) below, the Town may not issue a building permit for any project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private tidal wetlands within the Critical Area.
  - (1) The Town may issue a building permit for a project involving the construction of a dwelling unit or other non-water-dependent- structure on a pier located on State or private wetlands within the Critical Area that was issued a permit by the Department of Natural Resources on or before January 1, 1989.
  
  - (2) The Town may issue a building permit for a project involving the construction of a dwelling unit or other non-water-dependent- structure on a pier located on State or private wetlands within the Critical Area if the following conditions exist:
    - A. The project is constructed on a pier that existed as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area;
  
    - B. The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface of a pier to be removed is not intact, but pilings identify its previous size, then that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed;

- C. The project is approved by the Zoning Administrator;
  - D. The project is located in an Intensely Developed Area (IDA) as designated in programs approved by the Critical Area Commission.
- (3) The Town may issue a building permit for the repair of an existing dwelling unit or other non-water-dependent- structure on a pier located on State or private wetlands within the Critical Area.
- (4) If a structure that is not water-dependent is to be permitted by the Town under the exceptions included in this Section, an applicant is required to demonstrate that the project will meet the following environmental objectives using the standards established under the Town' s Critical Area Program:
- A. The construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water;
  - B. The quality of storm water runoff from the project will be improved; and
  - C. Sewer lines or other utility lines extended for the pier will not affect the water quality of adjoining waters.

501.16 Shore Erosion Protection Works.

- (a) **Definition.** Shoreline erosion protection works means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area. The use of structural devices to protect the shoreline from erosion can result in a significant disturbance to the aquatic environment and increase erosion downstream. This section sets forth a plan for limiting the use of structural erosion control devices to only those areas where major erosion problems exist. As an alternative to structural erosion controls, the Town encourages the use of non-structural controls such as marsh creation, maintenance of buffer zones, and the establishment of natural barriers to prevent intrusion on fragile vegetated shorelines. The criteria set forth in this chapter are not intended to apply to those structures necessarily associated with water-dependent facilities as discussed in the water-dependent facilities section of this ordinance.
- (b) **General policies.** In protecting shore areas from erosion the Town shall follow these policies:
- (1) Encourage the protection of rapidly eroding portions of the shoreline in the Critical Area by public and private landowners;

- (2) Where such measures can effectively and practically reduce or prevent shore erosion, encourage the use of non-structural shore protection measures in order to conserve and protect plant, fish and wildlife habitat.

(c) **Identification.**

- (1) *Areas where no appreciable erosion appeared;*
- (2) *Areas where appreciable erosion appeared and where non-structural measures would be practical and effective; and*
- (3) *Areas where appreciable erosion appeared and where non-structural measures would **not** be practical in controlling erosion.*

(d) **Standards for erosion protection.** The Town shall require that each application for shore erosion protection meet the following standards:

- (1) Structural control measures shall only be used in areas where appreciable erosion occurs and where non-structural measures would not be practical or effective in controlling erosion.
- (2) Where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;
- (3) Non-structural measures shall be utilized in areas of erosion where they would be a practical and effective method of erosion control ;
- (4) Structural erosion measures shall not be encouraged in areas where no significant erosion occurs;
- (5) If significant alterations in the characteristics of a shoreline occur, the measure that best fits the change may be used for sites in that area.

(e) **Shoreline changes.** The Town recognizes that storms and other natural events may change current shoreline erosion patterns. As such, an individual may request the use of a structural erosion control device in an area currently designated for non-structural controls. This request to the Town must be accompanied by documentation which identifies the specific location of the site to be protected and a description of the event or events which led to the change in the erosion pattern. Notification of such a request shall be sent to the Zoning

Administrator for the review of that office.

- (f) **Process.** The Town, in reviewing any application for a permit for structural erosion control devices, shall refer the application to the Soil Conservation District and to the Department of Natural Resources for field verification of the need for the structural erosion control as well as for recommendations on proposed erosion control mechanisms.
- (1) Any application made to the Town for the installation of an erosion control device must, at a minimum, include the following information:
    - A. Photograph of erosion problem;
    - B. The specific location of the site on a USGS 7.5 topographic map;
    - C. Soil type and erodibility;
    - D. Proposed and existing land use.
  - (2) Applications must include appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.
  - (3) For shore erosion control projects that involve clearing of forest vegetation within the Buffer, applicants shall be required to reforest the impacted area of the Buffer.

501.17 Forest and Woodland Protection.

- (a) **General Policies.** The following policies for forest and woodland protection recognize the value of forested land for its water quality benefits and for habitat protection while accommodating the utilization of forest resources:
- (1) Maintain and increase the forested vegetation in the Critical Area;
  - (2) Conserve forests and developed woodlands and provide for expansion of forested areas;
  - (3) Provide that the removal of trees associated with development activities shall be minimized and, where appropriate, shall be mitigated; and
  - (4) Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation, and

other resources can be maintained, even when they are mutually exclusive.

- (b) **Identification.** The Town has identified and mapped forests and developed woodlands within the Critical Area and has identified and mapped habitat protection areas as described. More detailed evaluation of forest resources on specific sites shall be accomplished as part of the environmental analysis required prior to site plan and subdivision approval.
- (c) **Policies for the Protection of Riparian and Forest Habitat.** The Town adopts the following policies for the protection of riparian habitat:
- (1) Vegetation shall be maintained in its natural condition along all streams to provide wildlife corridors.
  - (2) A minimum 100-foot Buffer shall extend landward from the mean high water line of tidal water, and the edge of tributary streams and tidal wetlands. This area is to be conserved for wildlife protection.
  - (3) Non-tidal wetland forests should be left in a natural state for wildlife and water quality protection.
  - (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with these areas) shall be conserved.
  - (5) Existing riparian forests (for example, those relatively mature forest of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline) and/or which are documented breeding areas shall be conserved.
- (d) **Process.** If a forest is to be developed or to be harvested, a site-specific field investigation shall be conducted by a qualified professional to determine if important sensitive species present and to make sure that appropriate protection measures are incorporated into the development plan or Timber Harvest Plan. When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants are advised to review and utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development. In general, the following measures are recommended:
- (1) Minimize forest and woodlands disturbance from off-road vehicles, public use or

logging from May through August of each year;

- (2) Focus all development on the periphery of the forest or woodlands;
- (3) Retain the forest canopy as well as shrub understory;
- (4) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
- (5) Discourage the creation of small clearings and expansion of forest edge habitats;
- (6) Encourage re-establishment of native forests and woodlands; and
- (7) Adopt harvest techniques to maintain or improve habitat.

(e) **Policies for the establishment or replacement of forest.** The following policies should be used for afforestation and reforestation:

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

(f) **Buffer protection standards for timber for personal use.** Individual trees may be cut for personal use if the trees cut are replaced on an equal basis and provided the cutting does not impair the water quality or existing habitat value or other functions of the Buffer set forth in that section. Any cutting or removal of natural vegetation as permitted by the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting or clearing of trees and removal of natural vegetation within the Buffer shall be prohibited except that:

- (1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits and the trees are replaced on an equal basis for each tree cut.
- (2) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the buffer as set forth in the policies of this plan and provided that the trees are replaced on an equal basis for each tree cut.

- (3) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.
- (4) Horticultural practices may be used to maintain the health of individual trees.
- (5) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

(g) **Enforcement.** Unauthorized clearing, cutting, or removal of vegetation; unauthorized clearing, cutting, or removal of vegetation in the Buffer; and clearing, cutting or removal of vegetation in excess of the area permitted to be cleared by this ordinance is considered a civil violation of this ordinance and shall result in fines and mandatory planting. The Planning Director, or his designees, shall have the authority to issue a citation and are hereby declared to be the officials with the duty of enforcing these provisions.

- (1) For unauthorized clearing, cutting, or removal of vegetation that does not exceed the area that could be authorized in accordance with this ordinance, fines shall be assessed as set forth in the Section 1-504 of this ordinance and reforestation shall be required on an equal area basis if less than 20 percent of the forest cover is removed. For clearing between 20 percent and 30 percent of the existing forest cover, reforestation shall be required at 1.5 times the total surface acreage of forest cleared.
- (2) For unauthorized clearing, cutting, or removal of vegetation that exceeds the area that could be authorized in accordance with this ordinance, fines shall be assessed as set forth in the Section 1-504 of this ordinance, and reforestation shall be required at 3 times the total surface acreage of forest cleared.
- (3) For unauthorized clearing, cutting, or removal of vegetation in the Buffer or another Habitat Protection Area, fines shall be assessed as set forth in the Section 1-504 of this ordinance, and reforestation shall be required at 3 times the total surface acreage of forest cleared.
- (4) When trees or vegetative cover cannot be fully replaced on site because of existing vegetation, existing development, or the size of the parcel, then fees-in-lieu of planting may be collected. *Fees shall be assessed at \$1.20 per square foot of required mitigation or \$120 per tree.*
- (5) Fines collected from enforcement actions in the Critical Area shall be maintained in a separate account to be used by the Town for reforestation or other habitat enhancing

efforts.

501.18 Commercial Timber Harvesting.

- (a) **General policies.** A goal of the Critical Area program is to maintain or increase the lands in forest cover, because forests provide protection of the water quality and habitat values of the Chesapeake Bay and its tributaries
- (b) **Process.** Landowners proposing to harvest timber within any one year interval and affecting one or more acres in the Critical Area shall submit a "Timber Harvest Plan." This plan shall be prepared by a registered professional forester. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources and the District Forestry Board. The approved plan shall be filed with the County Soil Conservation District and the approved plan shall be sent to the Zoning Administrator prior to beginning timbering operations. The office shall review the plan to assure its consistency with this program.
- (c) **Timber Harvest Plan contents.** Plans shall include measures to protect surface and groundwater quality and identify whether the activities will disturb or affect Habitat Protection Areas as identified in this ordinance and shall incorporate protection measures for these areas as specified in that section. To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which shall include scheduling size, timing and intensity of harvest cuts, afforestation and reforestation.
- (d) **Sediment Control Plans.** In the Critical Area, any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more including harvesting on agricultural lands shall submit a Sediment Control Plan. This plan is also required for any harvests which will cross perennial or intermittent streams. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations". The operations shall be implemented in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the Town.
  - (1) If cuts and fills are three feet or more, if grades for roads are 15 percent or more, or if landings are on slopes of 10 percent or more, then the landowner must get a custom Sediment Control Plan for the operation. These are prepared by Registered Professional Foresters and include controls necessary to prevent site erosion and to ensure site stabilization. This plan shall be submitted to the local Soil Conservation District for approval and notice of approval sent to the Zoning Administrator.
  - (2) If a custom Sediment Control Plan is not required, a Standard Erosion and Sediment Control Plan is available through the Soil Conservation District. The landowner shall

provide the following information:

- A. Location description;
- B. Harvest operation description;
- C. Sketch map of the property showing acres to be cleared;
- D. Identification of the landowner, licensed timber harvest operator, and other operators or subcontractors.

(3) Either the owner or the operator shall take responsibility for implementation of the Sediment Control Plan or each subcontractor must file a separate plan.

(4) The landowner must sign the agreement to certify that he understands the terms of the plan and is responsible for preventing erosion and sedimentation during the forest harvesting.

(e) **Buffer protection standards for timber harvests.** The Buffer shall be managed to achieve or enhance the Buffer functions set forth in the Buffer section of this ordinance. The Buffer is measured landward from the mean high water line of tidal waters, from each bank of tributary streams, and from the landward edge of tidal wetlands.

(1) Where necessary the Buffer can be planted to protect, stabilize or enhance the shoreline.

(2) Cutting or clearing of trees within the Buffer is prohibited except for the following: commercial harvesting by selection or clear cutting of loblolly pine or tulip poplar is permitted to within 50 feet of the landward edge of the Mean High Water Line of tidal rivers, perennial tributary streams or the edge of wetlands, provided that the cutting is conducted in conformity the Habitat Protection Area provisions of this ordinance and with a Buffer Management Plan that is prepared by a registered professional forester and is approved by the Department of Natural Resources. The Plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall comply with the following requirements:

- A. Disturbance to stream banks and shorelines shall be avoided;
- B. Areas disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and re-establishes the wildlife corridor function of the Buffer;
- C. The cutting may not involve the creation of logging roads and skid trails

within the Buffer; and

- D. Commercial harvesting practices shall be conducted to protect and conserve the Habitat Protection Areas in accordance with Sections 149 through Section 153 of this Chapter.

- (f) **Other requirements.** Forest and timbering operations within the Critical Area shall conform to all other requirements of this ordinance.

501.19 Agriculture.

- (a) **General policies.** The Town shall follow all of the following policies with regard to agriculture in the Critical Area:

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

in accordance with a Soil Conservation and Water Quality Plan, approved by the Town Soil Conservation District.

- (5) Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and groundwater and further, shall minimize adverse effects on plants, fish and wildlife resources.
- (6) Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage and manure storage minimize the contamination of water bodies.
- (7) Assure that agricultural activity permitted within the Critical Area use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan approved by the Talbot County Soil Conservation District.

(b) **Identification.** The Town's intent is to maintain agriculture and forestry as viable and productive land uses.

(c) **Performance standards for agriculture.** The following performance standards shall be adopted for all land in agricultural use or to be converted to agricultural use within the Critical Area:

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

- A. Maintain or create a minimum 25-foot wide vegetated filter strip landward from the tidal waters, tidal wetlands or tributary streams. The width of the filter strip shall be expanded 4 feet for every one percent of slope for slopes greater than 6 percent.
- B. The filter strip is to be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies of the Critical Area Program.
- C. Noxious weeds which occur in the filter strip may be controlled by authorized means. The farmer shall maintain this filter strip until such time as his Soil Conservation and Water Quality Management Plan can be implemented. (Provided that the plans provide an equivalent degree of water quality and habitat protection as the interim measures.)
- D. Cover crops shall be planted to reduce erosion.
- E. Nutrients shall be applied at the appropriate time and appropriate methods shall be used.
- F. Reduced tillage (e.g. Ano-till) practices shall be utilized where practical.
- G. Crop rotations shall be implemented.

(d) **Agricultural activities in the Buffer.** Agricultural activities are permitted in the Buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the mean high water line of tidal waters, the bank of tributary streams, or from the edge of tidal wetlands, whichever is further inland, is established and further provided that:

- (1) The filter strip shall be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated above. Noxious weeds, including Johnson grass, Canada thistle, and multiflora rose, which occur in the filter strip, may be controlled by authorized means;
- (2) The filter strip shall be expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent;
- (3) The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a

program of best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip;

- (4) The best management practices shall include a requirement for the implementation of a grassland and manure management program where appropriate and that the feeding or watering of livestock, may not be permitted within 50 feet of the mean high water line of tidal water and the edge of the bank of tributary streams and the landward edge of tidal wetlands within the Critical Area:
- (5) Clearing of existing natural vegetation in the Buffer is not allowed; and
- (6) Farming activities, including the grazing of livestock, shall not disturb stream banks, tidal shorelines or other Habitat Protection Areas as described in this ordinance.
- (7) Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. The Buffer shall be established landward from the mean high water line of tidal waters, the edge of tributary streams, and the edge of wetlands. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in that section of the ordinance.

#### 501.20 Surface Mining in the Critical Area.

- (a) **Definition.** Surface mining is defined as the breaking of the surface soil in order to extract or remove minerals in the Critical Area. Surface mining includes any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this section, surface mining is also defined as operations engaged in processing minerals at the site of extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.
- (b) **General policies.** The Town shall assure that all available measures are taken to protect the Critical Area from all sources of pollution from surface mining operations including, but not limited to sedimentation, siltation, chemical and petrochemical use and spillage, and storage and disposal of waste, dusts and spoils. The Town shall further assure that surface mining is conducted in a way to permit the reclamation of surface mining sites as soon as possible and to the extent possible.

(c) **Mineral Resource Plan and Program.** The Town will develop and comply with a Mineral Resource Plan and Program for Management if applicable.

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

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

(e) **Location of future sites.**

- (1) New surface mining operations are permitted within the Critical Area provided that identification of appropriate post-excavation uses for this land such as recreation,

habitat restoration, open space use, or development are accomplished according to the appropriate land management classification (IDA, LDA or RCA) and other applicable Town and State codes and ordinances.

- (2) Areas such as the following shall not be used for surface mining:
  - A. Habitat Protection Areas and other important natural resource areas such as those of scientific value or areas where assemblages of rare species occur;
  - B. Areas where highly erodible soils exist;
  - C. Areas where the use of renewable resource lands would result in the substantial loss of long-range (25 years or more) productivity of forest and agriculture, or would result in a degrading of water quality or a loss of vital habitat;
  - D. Lands that are within 100 feet of the mean high water line of tidal waters, tidal wetlands, or the edge of streams.
  
- (3) Surface mining operations shall operate under the following conditions:
  - A. Future wash plants including ponds, spoil piles and equipment may not be located within the Buffer as defined in this ordinance.
  - B. Existing wash ponds shall be reclaimed as soon as possible after the cessation of a sand and gravel operation.
  - C. To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot Buffer of natural vegetation between the operation and the mean high water line of tidal waters or the edges of streams and tidal wetlands, whichever is further inland.

501.21 Habitat Protection.

(a) **Description.** *The Habitat Protection Areas Sections of the Town's Critical Area ordinance address protection of the following four habitats:*

- (1) *The 100-foot Buffer;*
- (2) *Threatened and Endangered Species and Species in Need of Conservation;*

(3) *Plant and Wildlife Habitat Protection Areas including non-tidal wetlands; and*

(4) *Anadromous Fish Propagation Waters*

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

501.22 The 100-foot Buffer.

- (a) **Definition.** The Buffer is an existing, naturally vegetated area or an area established in vegetation and managed to protect aquatic, wetlands, shoreline and terrestrial environments from man-made disturbances.
- (b) **Identification of the Buffer.** The establishment of a minimum 100-foot Buffer from the mean high water line of tidal waters, the edge of the bank of tributary streams, and the landward extent of tidal wetlands shall be required on a site by site basis as part of the environmental review and site analysis process.
- (c) **General policies.** The Town adopts the following policies with regard to the functions of the Buffer:
- (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, shoreline, stream banks, tidal waters and aquatic resources;
  - (3) Maintain an area of transitional habitat between aquatic and upland communities;
  - (4) Maintain the natural environment of streams; and
  - (5) Protect riparian wildlife habitat.

- (d) **Standards.** The following criteria apply to land use activities within the Buffer:
- (1) The Buffer shall be established at a minimum distance of 100 feet landward from the mean high water line of tidal waters, the edge of the bank of tributary streams and the landward edge of tidal wetlands within the Critical Area.
  - (2) The Buffer shall be expanded beyond 100 feet to include contiguous sensitive areas such as steep slopes, hydric soils or highly erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of 15 percent or greater the Buffer shall be expanded 4 feet for every one percent of slope or to the top of the slope, whichever is greater in extent.
  - (3) New development activities including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic tanks may not be allowed in the Buffer except for those necessarily associated with Water-Dependent Facilities approved under Sections 1-524 and 1-525 of this ordinance.
  - (4) 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.
- (e) **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 when the removal of trees or vegetation in the Buffer is proposed, the Town 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 location of all plantings.
- (f) **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 Town. The planting agreement shall include provisions for the collection of a surety or bond that will permit the Town to accomplish the required planting on the applicant’s property or another location selected by the Town should the applicant fail to meet the requirements of the agreement. A Planting Agreement is included in this ordinance as Appendix B.
- (g) **Agriculture in the Buffer.** Agricultural activities are permitted in the Buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from

the mean high water line of tidal waters or tributary streams, or from the edge of tidal wetlands, whichever is further inland, is established and further provided that:

- (1) The filter strip shall be composed of either trees with a dense ground cover or a thick sod of grass and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated above. Noxious weeds which occur in the filter strip, may be controlled by authorized means;
- (2) The filter strip shall be expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent;
- (3) The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip;
- (4) The best management practices shall include a requirement for the implementation of a grassland and manure management program where appropriate and that the feeding or watering of livestock, may not be permitted within 50 feet of the mean high water line of tidal water and the edge of the bank of tributary streams and the landward edge of tidal wetlands within the Critical Area;
- (5) Clearing of existing natural vegetation in the Buffer is not allowed; and
- (6) Farming activities, including the grazing of livestock, do not disturb stream banks, tidal shorelines or other Habitat Protection Areas as described in this ordinance.
- (7) Where agricultural use of lands within the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures the Buffer functions set forth in this section of the ordinance.

(h) **Timber harvests in the Buffer.** The Buffer shall be managed to achieve or enhance the policies stated in this section. Cutting or clearing of trees within the Buffer shall be prohibited except that:

- (1) Commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal

wetlands, provided that this cutting is conducted in conformity with the commercial timber harvest sections of this ordinance and in conformance with a Timber Harvest Plan and/or Buffer Management Plan prepared by a registered, professional forester and approved by the Maryland Department of Natural Resources.

- (2) A Buffer Management Plan and/or Timber Harvest Plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall comply with the following minimum requirements:
  - A. Disturbance to stream banks and shorelines shall be avoided;
  - B. Areas disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and re-establishes the wildlife corridor function of the Buffer;
  - C. The cutting does not involve the creation of logging roads and skid trails within the Buffer; and
  - D. Commercial harvesting practices shall be conducted to protect and conserve the habitat protection areas in accordance with the forest and woodland protection and commercial timber harvest sections of this ordinance.
- (3) Commercial harvesting of trees, by any method, may be permitted to the edge of intermittent streams provided that the cutting is conducted pursuant to the requirements of Section 1-519(f)(1) above.

(i) **Tree cutting in the Buffer.** The Buffer shall be managed to achieve or enhance the policies stated in Section 1-519(c). Individual trees may be cut for personal use provided the cutting does not impair water quality or existing habitat value or other functions of the Buffer. Any cutting in compliance with the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:

- (1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits.
- (2) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the buffer as set forth in the policies of this plan and provided that the trees are replaced on an equal basis for each tree cut.

- (3) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.
- (4) Horticultural practices may be used to maintain the health of individual trees.
- (5) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

501.23 Modified Buffer Area Provisions.

(a) **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.):

- (1) *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.
- (2) *Modified Buffer Area* means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Modified Buffer Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.
- (3) *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.
- (4) *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.
- (5) *Development Activity* means the construction or substantial alteration of residential,

commercial, industrial, institutional, recreational 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.

- (6) *Natural Forest Vegetation* means vegetation consisting of canopy trees, 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.
- (7) *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.
- (8) *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.
- (9) *Redevelopment* means a development activity that takes place on a property with pre-development imperviousness greater than 15 percent as of December 1, 1985.

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

(c) **Commercial, Industrial, Institutional, Recreational and Multi-family residential Development and Redevelopment Standards.** New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:

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

- (2) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
- (3) Convenience or expense were not factors considered when evaluating the extent of allowable impacts to the Buffer.
- (4) New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50-foot setback shall be maintained for all subsequent development or redevelopment of the property.
- (5) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25-foot setback should be maximized.
- (6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (7) Modified Buffer Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional build able land for new development or redevelopment.
- (8) No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- (9) Mitigation for development or redevelopment in the in the Modified Buffer Area approved under the provisions of this subsection shall be implemented as follows:
  - A. A forested or landscaped buffer yard, 25 feet wide, shall be established on the project site between the development and the distance to the water. This buffer yard shall be densely planted with trees and shrubs in accordance with Table 1.
  - B. Redevelopment sites, where existing structures or those rebuilt on an existing footprint limit the area available for planting, appropriate modifications to the

width of the planted buffer yard may be made on a case by case basis.

**Table 1  
Required Bufferyard Planting**

Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of buffer yard	5 Trees and	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red 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

- (10) 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:
- A. Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the Planning Commission.
  - B. Applicants who cannot fully comply with the planting requirement in A. above, may use offsets to meet the mitigation requirement. Offsets include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.

- C. Applicants who cannot comply with either the planting or offset requirements in (a) or (b) above shall pay into a fee-in-lieu program as follows:
  - (i) Applicants shall submit to the Planning Commission two cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a one year guarantee.
  - (ii) The Planning Commission shall determine the amount of the fee-in-lieu based on the average of the two estimates.
- D. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement. The status of these funds must be reported in the jurisdiction's quarterly reports.
- E. Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the Talbot County.

(d) **Single Family Residential Development and Redevelopment Standards.** New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, the Planning Commission finds that efforts have been made to minimize Buffer impacts, and the development complies with the following standards:

- (1) New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
- (2) Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this policy.
- (3) New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:

- A. New accessory structures may be located closer to the water or edge of tidal wetlands than the principal dwelling only if it has been determined by the Planning Commission or their designee that there are no other locations for the accessory structures.
  - B. The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total.
- (4) Variances to other local setback requirements shall have been considered before additional intrusion into the Buffer.
  - (5) Development may not impact any HPAs other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
  - (6) No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer.
  - (7) Modified Buffer Area designation shall not be used to facilitate the filling of nontidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.
  - (8) Mitigation for development or redevelopment in the Modified Buffer Areas approved under this subsection shall be implemented as follows:
    - A. Natural vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or other location as may be determined by the Planning Commission. If it is not possible to carry out offsets or other mitigation within the Critical Area, any plantings or other habitat/water quality improvements should occur within the affected watershed.
    - B. Applicants who cannot comply with the planting requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of existing impervious surface within the Buffer, the construction of Best Management Practices for stormwater, wetland creation or restoration, or other measures that improve water quality or habitat.
    - C. Applicants who cannot comply with either the planting or offset requirements

in A. and B. above shall pay into a fee-in-lieu program as follows:

- i) Applicants shall submit to the Planning Commission two cost estimates from qualified landscape businesses for planting the equivalent of an area twice the extent of the footprint of the development activity within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a two- year survival guarantee.
- ii) The Planning Commission shall determine the amount of the fee-in-lieu based on the average of the two estimates.

D. Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes, or other instrument and recorded among the land records of Talbot County.

(e) **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.

(f) **Review Process.** The Planning Commission shall make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings shall be available to the Commission upon request.

(g) **Modified Buffer Area Mapping Standards.** The following standards shall apply for the mapping of new Modified Buffer Areas:

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

development.

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

501.24 Threatened and Endangered Species and Species in Need of Conservation.

- (a) **Definitions.** 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 surrounding habitats. In this section, the following words have the meanings indicated:
  - (1) "Threatened species" means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the Federal Endangered Species Act, 16 USC ' 1531 et seq., as amended.
  - (2) "Endangered species" means any species of fish, wildlife, or plants which have been

designated as such by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, cited above.

(3) "Species in need of conservation" means those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation by the Secretary of the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Articles, ' ' 10-2A-903 and 4-2A-03, Annotated Code of Maryland.

(b) **Identification.** The approximate location of rare, threatened and endangered species, and species in need of conservation are shown on the 1" = 600' scale resource inventory maps filed with the Planning, Permits and Inspections Office. These maps will be used as a flagging device. Significant habitat areas include:

(c) **General policies.** The Town shall provide protection for threatened and endangered species, those species in need of conservation and their habitats, which occur in the Critical Area.

(d) **Standards.** The Town shall provide for the protection of the known habitats of species in need of conservation and threatened and endangered species and also habitats of these species that may be identified in the future. If a development activity is proposed for a site within the Critical Area, then the Town shall review the proposed activities on a case-by-case basis and seek technical advice from the Department of Natural Resources. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species on a site. If any habitats are identified on a project site, the applicant shall coordinate with the Department of Natural Resources to develop a Habitat Protection Plan to protect and conserve the habitats identified. The applicant shall obtain approval of the habitat Protection Plan from the Planning Commission. This information concerning habitats will be incorporated into the Town's Resource Inventory Maps for future reference.

(e) **Standards for bald eagle protection.** A three zone protection area of 1/4 mile (1320') in radius around each Bald Eagle nest shall be established and within the zones the Town shall comply with the following recommended 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.
- (3) Zone 3 extends from the outer limit of Zone 2 to a radius of 1320 feet from the nest. Timber cutting, land clearing, and development activities should 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.

(f) **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 in paragraph (g) below. It shall be submitted to and approved by the *Town Planning Commission* prior to beginning the activity. *The Planning Commission* will request a review by and comments from the Department of Natural Resources. A land altering activity, shall include, but not be limited to, such activities as subdivision, timbering, sand and gravel mining, clearing new farmlands, the construction of homes or commercial structures.

- (1) The Town shall maintain a list of landowners who have endangered species on their land. The Town and State policy is to encourage cooperative management agreements with private landowners as the best way to preserve and protect critical habitats for endangered or threatened species. In the long term, however, easements or acquisition of the lands for preservation of these habitats should be sought.
- (2) Management agreements, easements, and acquisition efforts shall be coordinated with the Maryland Department of Natural Resources and other appropriate public agencies, private organizations and affected landowners.

- (g) **Public notice.** The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the Town and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.
- (1) The establishment of Habitat Protection Areas shall not be intended to restrict or affect, beyond any existing local, State or Federal laws or regulations or on private land, any private restrictions, such activities as non-commercial passive recreation (for example, hiking and nature photography), educational pursuits, scientific observation, or non-commercial hunting, trapping or fishing.
  - (2) Development activities in areas of threatened or endangered species in need of conservation may be subject to other provisions and requirements of this program.

501.25 Plant and Wildlife Habitat and Nontidal Wetlands Protection Plan.

- (a) **Definitions.** In this section, the following words have the meanings indicated:
- (1) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
  - (2) "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.
- (b) **Description.** 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 forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the bay shoreline and which are documented breeding areas);

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

(c) **General policies.** The policies of the Town regarding plant and wildlife habitat in the Critical Area shall be to:

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

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

- (1) Any development or significant land use change of property located within the Critical Area of the Town will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property owner proposes to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.

- (2) The Town may seek additional information and comments from the Department of Natural Resources and other appropriate agencies and adjacent jurisdictions.
- (3) The Town may seek additional information and comments from the Department of Natural Resources and other appropriate agencies and adjacent jurisdictions.
- (4) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants are advised to review and utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development.
- (5) The Town will encourage the conservation of rough areas, e.g., depressions, swales, non-tidal wetlands or other areas unsuitable for development or agriculture as wildlife cover. Using cluster development, the developer shall leave these areas in natural vegetation or where this is not feasible, replant with native vegetation.
- (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 water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
- (8) New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.
- (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 zoning or other site design criteria which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs which use the acquisition of easements and other similar techniques.

- (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 Town shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high concentrations.
  - (13) Natural Heritage Areas shall be protected from alterations due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained
    - A. Development activities or cutting and clearing in Natural Heritage Areas shall be prohibited unless an analysis is performed and measures proposed to mitigate any adverse impacts of the proposed activities. The analysis and mitigation measures shall be prepared by qualified professionals (e.g., ornithologists, zoologists, environmental engineers and planners) at the expense of the applicant and shall address the expected effects on the natural environment within the Natural Heritage Area.
    - B. *The analysis shall be submitted to the Town Planning Commission which will then submit it to the State Department of Natural Resources for review and comment.* Upon receiving said comment and, if appropriate, upon seeking the advice of expert consultants, the Planning Commission 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 Planning Commission and State Department of Natural Resources should be completed within sixty (60) days from submission.
- (e) **Standards for non-tidal wetland protection.** In addition to the standards set forth in this ordinance for protection of the Buffer and expansion of the Buffer for 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 that may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities will not adversely affect the wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands.
- (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 alterations to the surface or subsurface flow of water into and from the wetlands and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.
- (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 evaluating a proposal involving wetland impacts, the Planning Commission 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, rehabilitation, or restoring the affected environments;
  - D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
  - E. Compensating for the impact 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.

- (f) **Public notice.** The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the Town and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.
- (1) The establishment of Habitat Protection Areas shall not be intended to restrict or affect, beyond any existing local, State or Federal laws or regulations or on private land, any private restrictions, such activities as non-commercial passive recreation (for example, hiking and nature photography), educational pursuits, scientific observation, or non-commercial hunting, trapping or fishing.
  - (2) Development activities in areas of threatened or endangered species in need of conservation may be subject to other provisions and requirements of this program.

501.26 Anadromous Fish Propagation Waters.

- (a) **Definition.** 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.
- (b) **Identification.** The Town may identify and map anadromous fish propagation waters as defined in this section, and if so these maps will be available at the Town Planning Office.
- (c) **General policies.** The policies of the Town 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.

(d) **Standards.** Within anadromous fish propagation watersheds, the following measures are required:

- (1) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
- (2) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.
- (3) The Town shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
  - A. Minimize development activities or land disturbances within the watershed;
  - B. Maintain, or if practicable, improve water quality in affected streams or other water bodies;
  - C. Minimize to the extent possible the discharge of sediments into affected streams or other water bodies;
  - D. Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams;
- (4) The Town shall ensure coordination and compliance with complementary State laws and regulations:
  - A. Prohibit the construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams or other designated water bodies. If practical, existing structures shall be removed; and
  - C. Ensure that the construction, repair or maintenance activities associated with bridges, or other stream crossing or with utilities and roads, which involve disturbance within the buffer or which occur instream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

501.27 Natural Parks.

- (a) **Definition.** Natural parks are areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.
- (b) **Identification.** The Town may identify areas within their Critical Area where natural parks could be established, and consider conserving these features through acquisitions, easements, designation, or other appropriate means. Parks should not be chosen to preserve only natural curiosities, but they should be planned to include coastal ecosystems that are within the jurisdiction, each with its geological and biological resources intact. Park boundaries should be based on biological necessity rather than administrative convenience.
- (c) **Policies.** The Town shall encourage the creation of opportunities for interaction between people and natural environments without destroying the fragile components of natural habitats. Any plans developed for the use of parks should recognize that all natural terrain has a finite capacity to tolerate human disturbances, and, therefore, attention should be given to limiting the number of park visitors in any park at any one time or in the course of a season.