

TOWN OF CHESAPEAKE BEACH

DRAFT – November 15, 2023

CRITICAL AREA ORDINANCE

*Based on the Critical Area Commission's Model Ordinance, 2022 Version. For review only. Not organized into Town of Chesapeake Beach code format. To be drafted as a repeal and replacement of Section 290-17 and 290-18 of the Town of Chesapeake Beach Zoning Ordinance.*

Part 1. Implementation of the Critical Area Program Purpose and Goals

A. Goals.

The goals of the Town of Chesapeake Beach (Town) 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.

B. Critical Area Program.

- (1) The Town of Chesapeake Beach adopted its Critical Area Program on December 1, 1985. The Chesapeake Beach Critical Area Program consists of the Chesapeake Beach Zoning Ordinance, the Official Critical Area map(s), and any other related provisions within the Town's ordinances.
- (2) Notwithstanding any provision in this ordinance, or the lack of a provision in this ordinance, all of the requirements of Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 shall apply to and be applied as minimum standards.
- (3) In the case of conflicting provisions, the stronger provision applies.

C. Responsibilities.

The Town of Chesapeake Beach's Critical Area Program and all applicable provisions of this Ordinance shall be implemented and enforced by the Town Zoning Administrator.

- (1) The Zoning Administrator shall review a permit, license, or other authorization for a development or redevelopment activity in the Critical Area for compliance with this Critical Area Ordinance prior to issuance of that permit or license.
- (2) Should the Critical Area Program be brought to the attention of any Town official, said official shall contact the Zoning Administrator.
- (3) As provided elsewhere in this Ordinance, in the review and approval of plans and applications, the local Approving Authority shall be with either the Zoning Administrator, the Planning Commission, or the Board of Zoning Appeals, depending on the specific petition or application filed with the Town.

D. Critical Area Overlay District Map.

- (1) The Official Critical Area Overlay District Map is maintained as part of the Official Zoning Map for the Town of Chesapeake Beach. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:
  - (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide [as indicated on the State wetland maps]<sup>1</sup>, and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and
  - (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 16 of the Environment Article of the Annotated Code of Maryland.
- (2) Within the designated Critical Area Overlay District, all land shall be assigned one of the following land classifications, based on land uses and development in existence on December 1, 1985:
  - (a) Intensely Developed Area (IDA).
  - (b) Limited Development Area (LDA).
  - (c) Resource Conservation Area (RCA).
- (3) The Critical Area Overlay District Map may be amended by the Mayor and Town Council in compliance with amendment provisions in this Ordinance the Maryland Critical Area Law, and COMAR Title 27.

E. Applications Referred to the Chesapeake Bay Critical Area Commission (CBCAC)

- (1) The Town of Chesapeake Beach shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in COMAR 27.03.01.04 to the CBCAC for review

and comment, except the following.

- (a) A single-family dwelling unit or addition thereto
  - (b) Any structure accessory to a single-family dwelling unit
  - (c) Development in which land disturbance does not exceed 15,000 square feet
  - (d) Subdivision resulting in 10 lots or less, or 10 dwelling units or less.
- (2) The copy of the application shall be accompanied by a completed "Project Notification Application" form downloaded from the Commission's website.
- (3) Chesapeake Beach may not process an application which has been sent to the Commission for notification until it has received notice of receipt by the Commission or the close of the tenth business day, whichever comes first.
- (4) Any action by the Town of Chesapeake Beach in violation of these procedures shall be void.

## Part 2. Development Standards in the Critical Area.

### A. General Requirements in all Critical Area Overlay Zones.

- (1) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in Parts 3-5 of this Ordinance.
- (2) Development and redevelopment shall be subject to the water-dependent facilities requirements of Part 6 of this Ordinance;
- (3) The Town of Chesapeake Beach shall maintain areas of public access to the shoreline, and, if possible, encourage the establishment of additional areas of shoreline access for public use, such as foot paths, scenic drives, and other public recreational facilities.
- (4) Development shall comply with the following complementary State statutes and regulations, including:
  - (a) For soil erosion and sediment control, management measures shall be consistent with the requirements of Environment Article, §§4-101—4-116, Annotated Code of Maryland, and COMAR 26.17.01;
  - (b) For stormwater runoff, stormwater management measures shall be consistent with the requirements of Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02;
  - (c) For shore erosion, shoreline stabilization measures shall be consistent with the requirements of Environment Article, Title 16, Annotated Code of Maryland, and COMAR 26.24.04; and
  - (d) Any other applicable State statute or regulation.
- (5) A development activity or facility may not be authorized in the Critical Area if, by its intrinsic nature, the activity or facility has the potential to cause an adverse effect on water quality, wildlife, or fish habitat or plant habitat, unless:
  - (a) For an activity or facility such as nonmaritime heavy industry:
    - (i) It is located within an intensely developed area;
    - (ii) It fully complies with all requirements under Part 6 of this Ordinance of this chapter; and
    - (iii) The owner or operator of the activity or facility demonstrates to all applicable State and local agencies that there will be a net improvement in water quality to the adjacent body of water; or
  - (b) For an activity or facility such as a sanitary landfill or a solid or hazardous waste collection or disposal facility:
    - (i) There is no environmentally acceptable alternative outside the Critical Area; and
    - (ii) The activity or facility is necessary in order to correct a water quality or wastewater management problem.

- (6) A transportation facility or a utility transmission facility or activity may not be authorized in the Critical Area, unless it is:
  - (a) A facility that serves a use identified under this Critical Area program;
  - (b) A linear regional or interstate transportation facility that must cross tidal waters; or
  - (c) A linear regional or interstate utility transmission facility that must cross tidal waters.
- (7) A new permanent sludge handling, storage, or disposal activity or facility may not be authorized in the Critical Area, unless:
  - (a) The activity or facility is associated with a wastewater treatment facility; or
  - (b) In accordance with an approved nutrient management plan under Agriculture Article, Title 8, Subtitle 8, Annotated Code of Maryland, and COMAR 15.20.04 and COMAR 15.20.06 -- .08, sludge is applied on agricultural land that is not in the buffer.
- (8) Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge, or utility is authorized, the design, construction and maintenance shall:
  - (a) Provide maximum erosion protection;
  - (b) Minimize negative impacts on wildlife, aquatic life and their habitats; and
  - (c) Maintain hydrologic processes and water quality.
- (9) Development activities that cross or affect a stream are prohibited unless there is no feasible alternative. All development activities that must cross or affect streams shall be designed to:
  - (a) Reduce flood frequency and severity that are attributable to development;
  - (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
  - (c) Provide a natural substrate for stream beds; and
  - (d) Minimize adverse water quality and quantity impacts of stormwater.
- (10) Reasonable accommodations for the needs of individuals with disabilities.
  - (a) An applicant seeking relief from the Critical Area standards contained in this Ordinance in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating by a preponderance of evidence the following:
    - (i) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
    - (ii) Literal enforcement of the provisions of this Ordinance would result in discrimination by virtue of such disability or deprive

- a disabled resident or user of the reasonable use and enjoyment of the property;
  - (iii) The accommodation would reduce or eliminate the discriminatory effect of the provisions of this Ordinance or restore the disabled resident's or user's reasonable use or enjoyment of the property;
  - (iv) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and
  - (v) The accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.
- (b) The Approving Authority shall determine the nature and scope of any accommodation under this Ordinance 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.
  - (c) The Approving Authority 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 of Chesapeake Beach's ability to restore the property should the applicant fail to do so.

#### B. Intensely Developed Areas.

All development in the Intensely Developed Area shall meet the following standards:

- (1) Intensely Developed Areas (IDA) include areas where residential, commercial, institutional, and/or industrial development 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:
  - (a) Housing density equal to or greater than four dwelling units per acre;
  - (b) Industrial, institutional, or commercial uses are concentrated in the area; or

- (c) Public sewer and water collection and distribution systems serving the area and housing density greater than three dwelling units per acre;
- (2) In addition, IDAs shall be located in an area of at least 20 adjacent acres unless it is the entirety of the upland area of the Town of Chesapeake Beach, or it is consistent with Part 7;
- (3) Land use activities within the IDA will be managed in accordance with the land use policies of COMAR 27.01.02.03;
- (4) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
- (5) All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to development or redevelopment as provided in Critical Area 10% Rule Guidance Manual – Fall 2003 and as may be subsequently amended.
- (6) No use shall be permitted in the IDA that is not permitted in the underlying zoning district.

#### C. Limited Development Areas.

- (1) Limited Development Areas (LDA) are those areas that are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. The quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:
  - (a) Housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
  - (b) Areas not dominated by agricultural, wetland, forest, barren land, open water, or open space;
  - (c) Areas meeting the conditions of Intensely Developed Area but compromising less than 20 acres; or
  - (d) Areas having public sewer or public water, or both.
- (2) Land use activities within the LDA will be managed in accordance with the land use policies of COMAR 27.01.02.04.
- (3) If a wildlife corridor system is identified by the Department of Natural Resources on or near the site, the following practices are required:
  - (a) The applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site;
  - (b) The Town of Chesapeake Beach shall require and approve a conservation easement, restrictive covenant, or similar instrument to ensure maintenance of the wildlife corridor;
  - (c) The wildlife corridor shall be preserved by a public or private

group.

- (4) Development on slopes 15 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
- (5) Except as otherwise provided in this subsection, lot coverage is limited to 15% of a lot or parcel or that portion of a lot or parcel that is designated LDA.
  - (a) If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
  - (b) If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
  - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
  - (d) Lot coverage limits provided in §(a) and §(b) above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
    - (i) The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements.
    - (ii) Lot coverage associated with new development activities on the property have been minimized;
    - (iii) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in §(a) by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
    - (iv) For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
    - (v) The following table summarizes the limits set forth in §(i) through §(iv) above:

Table C.(3)(d). Lot Coverage Limits.

Lot/Parcel Size (Square	Lot Coverage Limit
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Feet)	
0 – 8,000	25% of parcel + 500 SF
8,001 – 21, 780	31.25% of parcel
21,781 – 36,300	5,445 SF
36,301 – 43,560	15% of parcel

- (e) If the Approving Authority makes the findings set forth in §(d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
  - (i) Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
  - (ii) Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.
  - (iii) If the approving authority finds that the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to the Town of Chesapeake Beach in lieu of performing the on-site mitigation.
- (f) For the purposes of calculating limitations on lot coverage, is as follows:
  - (i) When a site is mapped entirely as LDA, lot coverage is based on the entire site area; and
  - (ii) When a portion of a lot or parcel is mapped as LDA, lot coverage is based on the area of the LDA.
- (6) The alteration of forest and developed woodlands shall be restricted and mitigated as follows:
  - (a) The total acreage in forest and developed woodlands within the Town of Chesapeake Beach in the Critical Area shall be maintained or preferably increased;
  - (b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
  - (c) If an applicant is authorized to clear more than 20 percent of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the entire areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed

woodlands cleared.

- (d) An applicant may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel, unless the Board of Appeals grants a variance, and the applicant replaces forest or developed woodlands at a rate of 3 times the areal extent of the forest or developed woodlands cleared.
- (7) If no forest exists on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent. The applicant shall designate, subject to the approval of the Town of Chesapeake Beach, a new forest area on a part of the site not forested.
- (8) If the areal extent of the site limits the application of the reforestation standards in this section, the Town of Chesapeake Beach may allow an applicant to plant offsite within the LDA or RCA within the Town of Chesapeake Beach, or upon finding that offsite planting is not possible, to pay a fee in lieu of planting.
- (9) The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by the Town of Chesapeake Beach shall be posted to assure satisfactory replacement as required in (5) above and plant survival;
- (10) The applicant shall obtain a permit from the Town of Chesapeake Beach before forest or developed woodland is cleared. The clearing of forests and developed woodlands before obtaining a Town of Chesapeake Beach permit is a violation and any area cleared shall be replanted at three times its areal extent;
- (11) Clearing of forest or developed woodlands that exceeds the maximum area allowed in (6) above shall be replanted at three times the areal extent of the cleared forest;
- (12) All forest, including afforested areas, shall be maintained through conservation easements, restricted covenants, or other protective instruments.
- (13) New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if such a use is permitted in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.
- (14) No use shall be permitted in the LDA that is not permitted in the underlying zoning district.

#### D. Resource Conservation Areas.

- (1) RCAs are those areas characterized by nature dominated environments (wetlands, forests, abandoned fields) and resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture). These areas

shall have at least one of the following features: Density is less than one dwelling unit per 5 acres; or Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

- (2) Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified by in COMAR 27.01.02.04 and this Ordinance.

(a) For the purposes of calculating limitations on lot coverage, the following shall apply:

- (i) When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and
- (ii) When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.

(3) Density

(a) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres, except as may be further restricted by the underlying zoning district.

(b) The Town of Chesapeake Beach may not authorize a variance to the maximum density of one dwelling unit per 20 acres. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, the Town:

- (i) Shall count each dwelling unit;
- (ii) 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 of Chesapeake Beach, the CBCAC and Maryland Department of the Environment.

- (4) Nothing in this Section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members provided that no such conveyance and will result in a density greater than one dwelling unit per 20 acres, except as may be further restricted by the underlying zoning district.

(5) RCA Uses

(a) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, or aquaculture shall be allowed in RCAs.

- (b) Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.
- (c) Additional industrial or commercial facilities shall not be located in the RCA.
- (d) Any Institutional, Recreational, and Educational use permitted by right or special exception in the RC District shall be allowed in the RCA.
- (e) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the Town of Chesapeake Beach's growth allocation provisions or as listed below.<sup>10</sup>
  - (i) A home occupation as an accessory use on a residential property and as provided for in the Town of Chesapeake Beach's zoning ordinance; and
  - (ii) Any Institutional, Recreational, and Educational use permitted by right or special exception in this Ordinance's Resource Conservation (RC) zoning district.
- (f) Additional RCA may not be zoned or used for industrial, commercial, or institutional development, except as provided by the Town of Chesapeake Beach's growth allocation provisions.
- (g) No use shall be permitted in the RCA that is not permitted in the underlying zoning district.

### Part 3. The Buffer.

#### A. Applicability & Delineation.

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

- (1) A Buffer of at least 200 feet is delineated, and expanded as described in A(3), based on existing field conditions landward from:
  - (a) The mean high water line of a tidal water;
  - (b) The edge of each bank of a tributary stream; and
  - (c) The upland boundary of a tidal wetland.
- (2) Applications for a subdivision or development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include a minimum Buffer of at least 200 feet from a tidal waterway, tidal wetlands, or a tributary stream.

- (3) The Buffer shall be expanded beyond 200 feet as described in §A(1) above, and beyond 200 feet as described in §A(2) above , to include the following contiguous land features:
- (a) A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
  - (b) A nontidal wetland to the upland boundary of the nontidal wetland;
  - (c) The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern, which shall be so designated and included in the list of such wetlands in COMAR §26.23.06.01; [Drafter's Note: As of January 1, 2024, no such wetland exists in Chesapeake Beach.]
  - (d) For an area of hydric soils or highly erodible soils, the lesser of:
    - (i) The landward edge of the hydric or highly erodible soils; or
    - (ii) Three hundred feet where the expansion area includes the minimum 200-foot Buffer.

**B. Development Activities in the Buffer.**

The Town of Chesapeake Beach may authorize disturbance to the Buffer for the following activities, provided mitigation is performed in accordance with Section D of this Part and an approved Buffer Management Plan is submitted as required per Section F of this Part:

- (1) A new development or redevelopment activity associated with a water-dependent facility as described in Part 6.
- (2) A shoreline stabilization measure, which shall be otherwise authorized by the State in accordance with COMAR 26.24.02, and/or COMAR 26.24.04.
- (3) A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance.
- (4) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
  - (a) The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;
  - (b) The development or redevelopment is located in the expanded portion of the Buffer and not within the 200-foot Buffer; and
  - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- (5) Associated with the placement of dredged material: The Town of Chesapeake Beach may approve the placement of dredged material in the buffer, including within any portion of the Critical Area designated as a

Habitat Protection Area, for the following:

- (a) A beneficial use approved by the Maryland Board of Public Works or Department of the Environment, such as the following purposes:
  - (i) Backfill for a shoreline stabilization measure;
  - (ii) Use in a nonstructural shoreline stabilization measure, including a living shoreline;
  - (iii) Beach nourishment;
  - (iv) Restoration of an island;
  - (v) The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat;
  - (vi) Land form measures to address coastal resiliency; and
  - (vii) Any other approved beneficial use.
- (b) The placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988.

C. Buffer Establishment.

- (1) The requirements of this regulation are applicable to:
  - (a) A development or redevelopment activity that occurs on a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream if that development or redevelopment activity is located outside the buffer; and
  - (b) The approval of a subdivision that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.
- (2) If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:
  - (a) In accordance with local land recordation requirements, shall record an approved buffer management plan under Part F of this chapter; and
  - (b) If authorized by the local jurisdiction, may delay implementation of the buffer management plan until the use of the lot is converted to a nonagricultural purpose.
- (3) The requirements of this regulation are not applicable to an in-kind replacement of a structure.
- (4) The Town of Chesapeake Beach shall require an applicant to establish the Buffer in vegetation in accordance with the table below and Part E of this chapter and to provide a Buffer Management Plan under Part F of this chapter when an applicant applies for:
  - (a) Approval of a subdivision;
  - (b) Conversion from one land use to another land use on a lot or a parcel; or
  - (c) Development on a lot or a parcel created before January 1,

2010.

- (5) When the buffer is not fully forested or is not fully established in existing, naturally occurring woody or wetland vegetation, an applicant shall establish the buffer to the extent required in the following table;

Table 3.C.(5). Buffer establishment requirements.

<b>Development Category</b>	<b>Lot Created Before December 1, 1985</b>	<b>Lot Created After December 1, 1985</b>
Development on a vacant lot	Establish the Buffer based on total square footage of lot coverage outside the Buffer	Fully establish the Buffer
Subdivision	Fully establish the buffer	
New lot with an existing dwelling unit	Establish the Buffer based on total square footage of lot coverage outside the Buffer	
Conversion of a land use on a parcel or lot to another land use	Fully establish the Buffer	
Addition, accessory structure, or redevelopment	Establish the Buffer based on net square footage increase in lot coverage outside the Buffer	
Substantial alteration	Establish the Buffer based on total square footage of lot coverage outside the Buffer	

- (6) The Town of Chesapeake Beach may authorize an applicant to deduct from the total establishment requirement an area of lot coverage removed from the buffer if:
- (a) The lot coverage existed before the date of local program adoption or was allowed by the Town of Chesapeake Beach; and
  - (b) The total area is stabilized.

#### D. Mitigation for Impacts to the Buffer.

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

- (1) All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2.
- (2) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
- (3) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then the Town of Chesapeake Beach may permit planting in the following order of priority:

- (a) On-site and adjacent to the Buffer; and
  - (b) On-site elsewhere in the Critical Area.
- (4) For the removal of a dead tree, the affected area shall be stabilized with native groundcover or other native vegetation as necessary.
- (5) The removal of a diseased, dying, invasive, or hazardous tree shall be mitigated with one tree of at least ¾-inch caliper for each tree removed or the affected area shall be stabilized in native woody vegetation if a tree cannot be replanted due to space constraints.
- (6) The installation or cultivation of new lawn or turf in the Buffer is prohibited unless for a public purpose authorized by the approving authority.
- (7) The applicant shall restore area in the buffer that is temporarily disturbed by a development activity to pre-disturbance conditions.

#### E. Buffer Planting Standards.

- (1) An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall apply the planting standards set forth in COMAR 27.01.09.01-2 and 01-4.
- (2) A variance to the Critical Area planting and mitigation standards of this Ordinance is not permitted.

#### F. Required Submittal of Buffer Management Plans.

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

- (1) Any permit for a development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by the Town of Chesapeake Beach.
- (2) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by the Town of Chesapeake Beach.
- (3) The Town of Chesapeake Beach may not approve a Buffer Management Plan unless:
  - (a) The plan clearly indicates that all planting standards under Part E of this chapter will be met; and
  - (b) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
- (4) For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:



- (a) Completes the implementation of a Buffer Management Plan; or
  - (b) Provides financial assurance to cover the costs for:
    - (i) Materials and installation; and
    - (ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- (5) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
- (6) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance. A permit for development activity will not be issued for a property that has the violation.
- (7) An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
- (8) Buffer management plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

## Part 4. Modified Buffer Area (MBA).

### A. Applicability.

The following provisions apply to areas designated and mapped as Modified Buffer Areas (MBA) on the map titled Modified Buffer Area, Town of Chesapeake Beach, which is a supplement to the Town's Critical Area Map.

### B. General development standards.

#### (1) Development standards in the Modified Buffer Area.

- (a) A "Modified Buffer Area" means that area of the Buffer for which the Town has requested and the CBCAC has approved an exemption from the requirements of the Buffer.
- (b) Water-polluting activities, including, but not limited to, storage of vehicles, fuel, or chemicals, shall be prohibited in the Modified Buffer Areas.
- (c) All uses shall be subject to the provisions established in other sections of this chapter. Development or redevelopment in a Modified Buffer Area shall be subject to all of the criteria applicable to the underlying zoning district and shall be further subject to all of the criteria applicable to the governing land use classification. Permitted uses shall also be subject to the following:
  - (i) Shore erosion protection measures shall be provided in accordance with the criteria set forth in the Town Critical Area Protection Program.
  - (ii) Cutting or clearing of trees or removal of vegetation is allowed in the Modified Buffer Area for the following purposes only:
    - a. For personal use, provided that Buffer functions are not impaired and trees cut are replaced;
    - b. To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
    - c. In conjunction with horticultural practices used to maintain the health of individual trees;
    - d. To provide access to private piers;
    - e. To install or construct an approved shore erosion protection device or measure;
    - f. To protect trees from extensive pest or disease infestation; and
    - g. To permit the development allowed described in

letters a. through f. above to be constructed or installed.

- (iii) The expansion or redevelopment of existing structures in the Modified Buffer Area may not increase impervious surfaces shoreward of the existing structure and shall not result in greater than a twenty-five-percent increase in the total site area in impervious surface as existed at the time of adoption of the Town's Critical Area Protection Program. Offsetting of such increased impervious surfaces, as described below, shall be required.
- (iv) When a structure within the Modified Buffer Area is removed or destroyed, it may be replaced, insofar as possible, no closer than 100 feet to the edge of tidal waters, tidal wetlands, or tributary streams. In such cases where a setback line exists as defined by structures on adjacent lots or parcels, the structure may not be replaced shoreward of that line. Any impervious surfaces created greater in extent to the preexisting impervious surfaces within the Modified Buffer Area shall be offset as described below.
- (v) New development in the Modified Buffer Area shall minimize the shoreward extent of impervious surfaces insofar as possible, taking into consideration existing Town yard setback requirements and other such factors. In no case may such impervious surfaces be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels.
- (vi) Definitions pertaining to implementation of Modified Buffer Area provisions. As used in this Subsection B(1), the following terms shall have the meanings indicated:  
[Amended 12-6-2006 by Ord. No. O-06-14]

#### DEVELOPMENT ACTIVITY

The construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures by the proposed project. 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 these provisions, development activity does not include subdivision.

#### NEW DEVELOPMENT

A development activity that takes place on a property with predevelopment imperviousness less than 15% as of March 15, 2003.

#### REDEVELOPMENT

A development activity that takes place on a property with predevelopment imperviousness greater than 15% as of March 15, 2003.

- (vii) Mitigation for area of disturbance for single-family residential development. [Amended 12-6-2006 by Ord. No. O-06-14]
- a. Mitigation for the area of disturbance in the Modified Buffer Area shall be provided by planting an area of natural forest vegetation twice the size of the area of disturbance of the single-family residential development activity or redevelopment activity within the Modified Buffer Area. Previously existing and legal development on the property that is not impacted by the proposed development or redevelopment shall not be considered as part of the area of disturbance.
  - b. The mitigation shall be planted on-site in the Buffer or off-site in the Buffer or Modified Buffer Area at another location approved by the Planning and Zoning Commission.
  - c. Table 4.B.1.c.vii.c lists the basis for determining the amount of mitigation required for selected development activities. This chart is for general guidance only and the actual amount of development mitigation required is determined on a case-by-case basis.

**Table 4.B.1.c.vii.c**

**Mitigation Requirements for Single-Family Residential Development within the MODIFIED BUFFER AREA (MBA)**

<u>Development Activity</u>	<u>Amount of Mitigation Based on</u>
Build a new house, replace a house	Square feet of development activity
Build an addition	Square feet of development activity
Add an additional floor on existing building footprint	NA

Construct a new accessory structure	Square feet of development activity
Replace or build a new deck	Square feet of development activity
Build a new patio, swimming pool	Square feet of development activity
Add an off-street parking space	Square feet of development activity
Construct a fence	NA
Build a retaining wall	Square feet of development activity
Individual tree cutting	2 trees planted for every 1 tree removed
Construct a pathway	Square feet of development activity
Notes:	
Mitigation requirements for single-family residential development within the one-hundred-foot Buffer on non-MBA properties are based on limits of disturbance of development activity and require a variance from the Board of Appeals. Mitigation requirements for single-family residential development within the Critical Area, but not in a BEA or one-hundred-foot Buffer, are based upon the extent of the existing forest and developed woodland cover and proposed forest clearing.	

- (viii) Mitigation requirements for all other types of development. All new development or redevelopment other than single-family residential in the Modified Buffer Area shall be required to offset for such development by providing the following two forms of mitigation: planting a buffer yard as specified in Subsection B(1)(c)[viii][a] below and mitigating for the area of disturbance as set forth below in Subsection G(1)(c)[viii][b]:
- a. Buffer yard.
    - i. On new development sites, a buffer yard 20 feet wide shall be required on the project site between the development and the water's edge or landward edge of revetment, unless a variance is obtained from the Board of Appeals. On redevelopment sites, a buffer yard 15 feet wide shall be required on the project site between the development activity and the water's edge or landward edge of revetment,

unless a variance is obtained from the Board of Appeals. The buffer yard shall be at least 15 feet wide over at least 75% of its length.

- ii. The buffer yard shall be densely planted with native species such that full ground cover is achieved using guidance on plant materials provided by the Town Zoning Administrator.
- iii. The buffer yard shall minimally include, or a similar combination thereof, the following planting requirements per 100 linear feet of buffer planting strip: four native species canopy trees, 10 native species understory trees or large shrubs, 25 native species small shrubs, and a sufficient number of native species herbaceous plants and grasses to provide complete ground cover.
- iv. On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted buffer yard may be made on a case-by-case basis, but the area of buffer yard which would have been required to be planted under this section shall be included in the area proposed as an offset or for which fees-in-lieu are proposed to be paid.
- v. Reasonable walkway access to the water's edge through the buffer yard shall be permitted.
- vi. For properties in marina use, the fifteen-foot buffer yard is required only along 75% of the shoreline frontage.
- vii. The landscaping requirements of this chapter may be achieved through planting in the buffer yard where such planting reasonably achieves the stated purposes of the landscaping requirements.
- viii. On redevelopment sites, a fifteen-foot-wide buffer yard that is established where previously the area was a developed impervious area is eligible to be counted toward meeting the two-to-one mitigation for area of disturbance specified in Subsection G(1)(c)[8][b], as long

as the square footage of the buffer yard is at least 450 square feet.

- ix. A buffer yard is eligible to be counted toward meeting the buffer yard planting mitigation requirements of this subsection even if the buffer yard as proposed converts pervious nonnative planted areas (such as lawns or stone shoreline protection) to the planting requirements of the buffer yard.
  - x. Should the applicant provide a buffer yard meeting required planting specifications but wider than the required 20 feet for new development sites and 15 feet for redevelopment sites, the area of planting exceeding any on-site mitigation requirements shall be eligible for a mitigation credit that may be sold, should the Town adopt an ordinance allowing mitigation banking.
  - xi. The mitigation area shall include informational or educational signage indicating that the area is a protected area for water quality and habitat conservation.
- b. Mitigation for area of disturbance for all other development types.
- i. Mitigation for the area of disturbance in the Modified Buffer Area shall be provided by planting an area of natural forest vegetation twice the size of the area of disturbance of the development activity or redevelopment activity within the Modified Buffer Area. Previously existing and legal development on the property that is not impacted by the proposed development or redevelopment shall not be considered as part of the area of disturbance.
  - ii. The mitigation area shall include informational or educational signage indicating that the area is a protected area for water quality and habitat conservation.
  - iii. The mitigation shall be planted on-site in the Buffer or off-site in the Buffer or Modified Buffer Area at another location approved by the Planning and Zoning Commission.
  - iv. Table 4.B.1.c.vii lists the amount of mitigation

required for selected development activities. This chart is for general guidance only and the actual amount of development mitigation required is determined on a case-by-case basis.

**Table 4.B.1.c.viii.b**

**Mitigation Requirements for All Other Development Types and Activities within the MODIFIED BUFFER AREA (MBA)**

<u>Development Activity</u>	<u>Amount of Mitigation Based on</u>
Build a new structure, replace a structure	Square feet of development activity
Build an addition	Square feet of development activity
Add an additional floor on existing building footprint	NA
Construct a new accessory structure	Square feet of development activity
Replace or build a new deck	Square feet of development activity
Build a new patio	Square feet of development activity
Expand the parking area	Square feet of development activity
Construct a fence	NA
Build a retaining wall	Square feet of development activity
Individual tree cutting	2 trees planted for every 1 tree removed
Construct a pathway	Square feet of development activity

**Notes:**

All non-single-family development in the MBA must provide a buffer yard in addition to mitigation required by the development activity. An applicant must obtain a variance when proposing a non-single-family residential development activity that is not within the MBA but within the Critical Area or one-hundred-foot Buffer. The applicant must meet the standards found in § 290-32F of this chapter in order for the Board of Appeals to issue a variance.



- (ix) Offsets. Applicants who cannot fully comply with the planting requirements in Subsection G(1)(a)[7] or [8] above may use offsets to meet a portion of the mitigation requirement. Offsets can include the removal of an equivalent area of existing impervious surfaces in the Buffer or Modified Buffer Area, the construction of best management practices for stormwater in excess of those required, wetland creation or restoration, or other measures that improve water quality or habitat.
- (x) Fees in lieu of planting.
  - a. Applicants who cannot comply with the planting or offset requirements shall pay into a fee-in-lieu program.
  - b. Fees-in-lieu shall be collected at the rate per square foot of required mitigation that cannot be satisfied through planting or offsets:
    - i. For private development projects, the rate shall be \$1.25 per square foot.
    - ii. For public sector development projects, the rate shall be \$2.50 per square foot.
- (xi) Both rates are effective until two years have elapsed from the date of adoption of this amendment, at which time the rates shall be re-evaluated and revised as needed to ensure that funds collected are sufficient to cover the cost of administering the mitigation program but do not exceed the costs of administering the mitigation program. The Town Council, in consultation with the CBCAC, shall reassess the rate every two years thereafter as needed.
- (xii) Any required on-site or off-site buffer yard mitigation area, limits of disturbance mitigation area, or offset area or structure must be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of Calvert County.
- (xiii) Alternative provisions for meeting the mitigation requirements may be used, provided the Planning and Zoning Commission and the CBCAC approve them and find that they meet the goals of the Critical Area regulations.

## Part 5. Other Habitat Protection Areas.

### A. Identification.

An applicant for a development activity, redevelopment activity or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this Ordinance.

- (1) In addition to the Buffer, other Habitat Protection Areas include:
  - (a) Threatened and Endangered Species and Species in Need of Conservation;
  - (b) Plant and Wildlife Habitat Protection Areas; including:
    - (i) Colonial waterbird nesting sites;
    - (ii) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
    - (iii) Existing riparian forests;
    - (iv) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species;
    - (v) Other plant and wildlife habitats determined to be of local significance; and
    - (vi) Natural Heritage Areas; and
    - (vii) Anadromous Fish Propagation Waters
- (2) Maps identifying these specific Habitat Protection Areas are maintained by the Maryland Department of Natural Resources (MD-DNR) Wildlife and Heritage Division, The Town of Chesapeake Beach, and the Government of Calvert County. These areas include but are not limited to:
  - (a) 202.7 acre Forest Interior Dwelling Species habitat adjacent to Fishing Creek and Richfield Station Subdivision
  - (b) Randle Cliff Natural Heritage Area
  - (c) Forest Conservation Act Easement Areas;
    - (i) Richfield Station Subdivision
    - (ii)
    - (iii) Thomas Parran Jr. Property
  - (d) Lynwood T. Kellam Memorial Park
  - (e) Any other area meeting the qualifications of A(1), above found on the most recent mapping provided by MD-DNR Wildlife and Heritage Division

### B. Standards.

- (1) An applicant for a development activity proposed for a site within the Critical Area that is in or within 50 feet of a Habitat Protection Area listed above; shall request review by the Department of Natural Resources

Wildlife and Heritage Service (DNR WHS), and as necessary United States Fish and Wildlife Service (USFWS), for comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.

- (2) If the presence of any Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall follow the requirements of COMAR 27.01.09.02 through 27.01.09.05, all recommendations from DNR WHS, and as necessary all recommendations from USFWS.
  - (a) If potential FIDS habitat is identified, the proposed development shall conform to the CBCAC's FIDS Guidance Manual, dated June 2000 and as updated.
  - (b) If potential anadromous fish propagation waters are identified, the proposed development shall conform to the policies and criteria listed in COMAR 27.01.09.05
- (3) The specific protection and conservation measures recommended by DNR, WHS and USFWS shall be included on the site plan and shall be considered conditions of approval for the project.

## Part 6. Water Dependent Facilities.

### A. Applicability.

- (1) The provisions of this section apply to those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer.
- (2) The provisions of this section are not applicable to:
  - (a) A private pier that:
    - (i) Is installed or maintained by a riparian landowner; and
    - (ii) Is not part of a residential project that provides a community pier or other community boat-docking or storage. A non-water-dependent project. covered under COMAR 27.01.13.

### B. General Criteria.

- (1) The following standards shall apply to new or expanded development activities associated with water-dependent facilities:
- (2) Development in the Buffer is limited to the minimum lot coverage necessary to accommodate each water dependent facility or activity.
  - (a) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Area provided it is shown:
    - (i) That the facility or activity is water-dependent;
    - (ii) That the facility or activity meets a recognized private right or public need;
    - (iii) That adverse effects on water quality, fish, plant and wildlife habitat are first avoided, or if unavoidable, minimized;
    - (iv) That, insofar as possible, a non-water-dependent project associated with the water-dependent facility or activity is located outside the Buffer;
    - (v) Impacts to fish, wildlife, or plant habitat are avoided, or if unavoidable, minimized; and
    - (vi) Mitigation is provided at a minimum ratio of 1:1 based on the square footage of canopy coverage removed.
- (3) Except as otherwise authorized in this section, a water-dependent facility or activity is prohibited in the Buffer of the Resource Conservation Area.

### C. General Requirements for the Location of Water-Dependent Facilities or Activities.

- (1) The Town of Chesapeake Beach shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities and work with appropriate State and federal agencies to ensure

compliance with applicable regulations.

(2) The following siting factors shall be considered when evaluating proposals for new or expanded water-dependent facilities:

- (a) The impact on the water body upon which the water-dependent facility or activity is proposed that would likely result from the approval of that location, including:
  - (i) Alteration of an existing water circulation pattern or salinity regime;
  - (ii) Adequacy of area flushing characteristics;
  - (iii) Necessity of, and proximity to, a dredging operation; and
  - (iv) Interference with the natural transport of sand;
- (b) Disturbance to:
  - (i) An oyster harvest area, as defined in COMAR 08.02.04.11;
  - (ii) An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
  - (iii) A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
  - (iv) An oyster sanctuary, as established in COMAR 08.02.04.15A; and
  - (v) Any other shellfish located in a shellfish area regulated by the Department of Natural Resources.
- (c) Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
- (d) The avoidance or, if unavoidable, the minimization of:
  - (i) Disturbance to:
    - a. A wetland;
    - b. Submerged aquatic vegetation;
    - c. A habitat of threatened or endangered species or species in need of conservation;
    - d. In accordance with COMAR 26.08.02.04-1, a water body identified by the Department of the Environment as a Tier II, high quality water body and its watershed; and
    - e. A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and .04 and COMAR 26.23.06.01 and;
    - f. Adverse impact on water quality that would likely result from the facility or activity, such as nonpoint source runoff, sewage discharge, or other pollution related to vessel maintenance.

D. Industrial and port-related facilities.

New, expanded or redeveloped industrial or port-related facilities or activities and the replacement of these facilities or activities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas.

E. Commercial Marinas and Other Water-Dependent Commercial Maritime Facilities and Activities.

- (1) A new or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Modified Buffer Area of an IDA;
- (2) The owner and operator of a commercial marina and related commercial maritime facility or activity shall demonstrate to the Approving Authority that the marina or facility has obtained all permits required by COMAR 26.08.04.09

F. Community Piers and Other Community Boat-Docking and Storage Facilities.

- (1) In addition to meeting the requirements of Part 6.B and 6.C, new or expanded community pier or other community boat-docking and storage facilities may be permitted in the Buffer if:
  - (a) The pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
  - (b) The pier or facility is associated with a residential project approved by the Town of Chesapeake Beach for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;
  - (c) The owner or operator of the pier or facility provided:
    - (i) Does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and
    - (ii) As applicable, complies with the requirements of COMAR 26.24.04.03;
  - (d) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the pier or facility; and
    - (i) If community piers are provided as part of a new residential project, private piers in the development are not allowed.
- (2) The number of slips authorized at a pier or facility shall be the lesser of (a) or (b) below:
  - (a) One slip for each 50 feet of shoreline in a residential project in the Intensely Developed and Limited Development Areas, and one slip for each 300 feet of shoreline in a residential project in

- the Resource Conservation Area; or
- (b) A density of slips to platted lots or dwellings within a residential project in the Critical Area according to the following schedule:

**Table 6.F.2 Number of Slips Permitted**

<b>Platted Lots or Dwellings in the Critical Area</b>	<b>Slips</b>
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

**G. Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities including public piers.**

- (1) In addition to meeting the requirements of Part 6.B and 6.C, public beaches and piers or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:

- (a) An Intensely Developed Area; or
- (b) A Limited Development Area or a Resource Conservation Area provided that:
  - (i) Adequate sanitary facilities exist;
  - (ii) Sanitary and service facilities are, to the extent possible, located outside the Buffer;
- (c) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would likely result; and
  - (i) Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.

- (2) Areas for public passive outdoor recreation, such as nature study, and hiking, hunting, and trapping, and for education, may be permitted in the Buffer within a Limited Development Area or a Resource Conservation Area if sanitary and service facilities for these uses are located outside of the Buffer.

**H. Research-Associated and Education-Associated Water-Dependent Facilities or Activities.**

- (1) In addition to meeting the requirements of Part 6.B and 6.C, a research-associated water-dependent facility or activity or an education-associated water-dependent facility or activity may be permitted in the Buffer of an IDA, LDA, or RCA, if any associated nonwater-dependent project or activity is located outside the Buffer to the extent possible.

I. Aquaculture and Fishery Facilities and Activities: Water Quality Restoration.

- (1) The following types of aquaculture and fishery facilities and activities may be permitted in the Buffer of an IDA, LDA, or RCA:
  - (a) A shore-based facility or activity necessary for a commercial aquaculture operation;
  - (b) A commercial water-dependent fishery facility or activity, including a structure for crab shedding, a fish off-loading dock, and a shellfish culture operation; and
  - (c) A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.



## Part 7. Growth Allocation.

### A. Definition.

- (1) "Consistent with" means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan: (i). Policies; (ii) Timing of the implementation of the plan, of development, and of rezoning; (iii). Development patterns;(iv).Land uses; and (v). Densities or intensities.<sup>15</sup>

### B. Growth allocation acreage and deduction.

- (1) Growth allocation available to the Town of Chesapeake Beach includes
  - (a) An area equal to five (5) percent of the RCA acreage located within Chesapeake Beach and;
  - (b) Growth allocation available to Chesapeake Beach as provided for by Calvert County.
- (2) The Town of Chesapeake Beach shall deduct acreage from its growth allocation reserves in accordance with COMAR 27.01.02.06-4.

*DRAFTER'S NOTE: The Town maintains a record of growth allocation and as of the date of adoption of this Ordinance \_\_\_\_\_, the growth allocation acreage remaining is 58.37 acres.*

### C. Purpose.

- (1) Growth Allocation is available for use in a Resource Conservation Area (RCA) or in a Limited Development Area (LDA) in the Chesapeake Beach Critical Area Overlay District. The purpose is to authorize a change in the Critical Area classification to develop at a higher density, intensity, or use than the current classification allows.

### D. Process.

- (1) An applicant shall submit to the Zoning Administrator a complete application for growth allocation that complies with the submittal and environmental report requirements of COMAR 27.01.02.06-1—.06-2.
- (2) The application for growth allocation shall be reviewed by the Planning Commission, who shall transmit a recommendation to the Mayor and Town Council.
- (3) The application for growth allocation shall be approved by the Mayor and Town Council prior to submission to the CBCAC.
- (4) The application for growth allocation shall be approved by the CBCAC before any site development plan, subdivision plan, or zoning permit application is submitted to the Planning Commission or Zoning Administrator for review.

#### E. Requirements.

When locating new Intensely Developed or Limited Development Areas, the following requirements apply:

- (1) A new Intensely Developed Area shall be at least 20 acres unless it is adjacent to existing IDA
- (2) An application for a new IDA or LDA shall be:
  - (a) In conformance with the requirements of COMAR Title 27 Subtitle 01; and
  - (b) Designated on the approved Critical Area map that is submitted as part of its application to the Commission for growth allocation approval.
- (3) As part of a growth allocation approved by the Commission, the following shall be enforced as applicable:
  - (a) A buffer management plan;
  - (b) A habitat protection plan; and
  - (c) Other applicable conditions of approval as determined by the Commission at the time of project approval.

#### F. Standards.

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

- (1) A new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area.
- (2) A new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area.
- (3) A new Limited Development Area or Intensely Developed Area shall be located in a manner that minimizes impacts to Habitat Protection Area as defined herein and in COMAR 27.01.09 and in an area and manner that minimizes impacts to water quality;
- (4) A new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters unless Chesapeake Beach proposes, and the CBCAC approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources; and
- (5) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of Chesapeake Beach for such areas, shall be so designated on the Chesapeake Beach Critical Area Maps and shall constitute an amendment to this Ordinance subject to review and approval by the Mayor and Town Council and the

CBCAC as provided herein.

G. Additional Factors.

In reviewing map amendments or refinements involving the use of growth allocation, both the Planning Commission and Mayor and Town Council in their respective reviews of an application, shall consider the following factors:

- (1) Consistency with the Town of Chesapeake Beach's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.
- (2) For a map amendment or refinement involving a new Limited Development Area, whether the development is:
  - (a) To be served by a public wastewater system
  - (b) A completion of an existing subdivision;
  - (c) An expansion of an existing business; or
  - (d) To be clustered on a portion of the tract so as to preserve land in open space, to the extent possible.
- (3) For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:
  - (a) To be served by a public wastewater system;
  - (b) Have an allowed average density of at least 3.5 units per acre as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland; and
  - (c) If greater than 20 acres, to be located in a designated Priority Funding Area.
- (4) The use of existing public infrastructure, where practical;
- (5) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
- (6) Impacts on a priority preservation area, if applicable;
- (7) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
- (8) Environmental impacts, including risk of severe flooding, associated with location in a coastal hazard area.

Part 8. Grandfathering.

A. Continuation of existing uses.

- (1) The continuation, but not necessarily the intensification or expansion, of any use in existence on December 1, 1985 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted

by existing municipal ordinances.

- (2) If any existing use or structure does not conform with the provisions of this Ordinance pertaining to the Critical Area, its intensification or expansion shall be restricted in the same manner provided for in Section 290-28, Nonconforming Uses, of this Ordinance except that any allowable intensification or expansion may be permitted only in accordance with the variance procedures in Part 9.

#### B. Residential density on grandfathered lots

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

- (1) Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members;
- (2) A legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985;
- (3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; and
- (4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.

## Part 9. Lot Consolidation and Reconfiguration.

### A. Applicability.

The provisions of this part apply to a consolidation or a reconfiguration of any nonconforming legal grandfathered parcel or lot. These provisions do not apply to the reconfiguration or consolidation of parcels or lots which are conforming or meet all Critical Area requirements. Nonconforming parcels or lots include:

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

### B. Procedure.

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the information required in COMAR 27.01.02.08.E to the Town of Chesapeake Beach.

- (1) The Town of Chesapeake Beach may not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with COMAR 27.01.02.08.F.
- (2) The Town of Chesapeake Beach shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
  - (a) After a final written decision or order is issued, the Town of Chesapeake Beach shall send a copy of the decision or order and a copy of any approved development plan to the Commission within 10 business days.
- (3) The Town of Chesapeake Beach may not issue a permit or approval of any type on a property affected by the final written decision or order until after the expiration of the time within which the Commission may file an appeal or petition for judicial review.

## Part 10. Local Development Projects

### A. Applicability.

For all development in the Critical Area resulting from any action by the Town of Chesapeake Beach on publicly or privately owned lands, the Town of Chesapeake Beach shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

### B. Procedures.

- (1) If the project meets the provisions of this Ordinance and is minor development, the Zoning Administrator shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the CBCAC per the requirements of COMAR 27.02.02.
- (2) If the project does not meet the provisions of this Ordinance, The Town of Chesapeake Beach shall seek a conditional approval by the CBCAC per the requirements of COMAR 27.02.06.
- (3) The Town of Chesapeake Beach shall submit information as required in the CBCAC's Local Project Submittal Instructions and Application Checklist.

### C. Notice and posting requirements for projects reviewed and approved by the Chesapeake Bay Critical Area Commission.

- (1) Public notice is required for all development projects that qualify under COMAR 27.03.01.03. Public notice shall be the responsibility of the Town of Chesapeake Beach and evidence that those requirements have been met shall be included as part of the submittal to the Critical Area Commission.

## Part 11. Enforcement.

### A. Consistency.

The Critical Area provisions of this Ordinance, in accordance with the Critical Area Act and Criteria supersede any inconsistent law, Chapter or plan of the Town of Chesapeake beach. In the case of conflicting provisions, the stricter provisions shall apply.

### B. Violations.

- (1) No person shall violate any provision of this zoning ordinance. Each violation that occurs and each calendar day that a violation continues shall be a separate offense subject to separate fines, orders, sanctions, or other penalties.
- (2) Noncompliance with any permit or order issued by the Town of Chesapeake Beach related to the critical area shall be a violation of this Ordinance and shall be enforced as provided herein.

### C. Responsible Persons.

- (1) The following persons may each be held jointly or severally responsible for a violation:
  - (a) any persons who apply for or obtain any permit or approval,
  - (b) contractors,
  - (c) subcontractors,
  - (d) property owners,
  - (e) managing agents, or
  - (f) any person who has committed, assisted, or participated in the violation.

### D. Required Enforcement Action.

When the Town of Chesapeake Beach identifies a violation of this Ordinance, it shall take enforcement action, including:

- (1) Citing the violation;
- (2) Issuing abatement, restoration, and mitigation orders as necessary to:
  - (a) Stop unauthorized activity; and
  - (b) Restore and stabilize the site to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits;
- (3) Requiring the implementation of mitigation measures, in addition to

- restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation; and
- (4) Assessing an administrative fine or pursuing a civil penalty in accordance with Section 290-30, Violations and Penalties.

E. Restoration and Mitigation

- (1) A restoration or mitigation order shall specify the amount of appropriate restoration and mitigation as necessary to offset the adverse impacts to the Critical Area, resulting from the violation, consistent with all other requirements of this Ordinance.
- (2) For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000, the Town of Chesapeake Beach shall collect a performance bond or other financial security.
- (3) If restoration or mitigation involves planting, a performance bond shall be held for at least 2 years after the date the plantings were installed to ensure plant survival.
- (4) A property owner may request the Town of Chesapeake Beach to schedule inspections as necessary to ensure compliance and the return of the bond or other financial security.