

Harford County, Maryland

ZONING CODE



Chapter 267 of the Harford County Code, as amended

Effective December 22, 2008

Amended thru April 9, 2024

DEPARTMENT OF PLANNING AND ZONING

Harford County, Maryland

FLOODPLAIN MANAGEMENT PROGRAM, Chapter 131

and

SUBDIVISION REGULATIONS, Chapter 268

of the Harford County Code, As Amended
are included at the end of
The Development Regulations.

ZONING CODE AMENDMENT INFORMATION:

<u>Bill Number</u>	<u>effective date</u>	<u>Bill Number</u>	<u>effective date</u>
09-01	4/6/09	16-29AA	2/13/17
09-11	6/15/09	17-02	4/24/17
09-19AA	8/17/09	17-04	6/5/17
09-23AA	10/13/09	17-08AA	8/14/17
09-31AA	1/22/10	17-15AA	12/26/17
09-33AA	1/22/10	17-18AA	1/16/18
10-03	4/20/10	18-04AA	6/18/18
10-30	12/13/10	18-33	12/10/18
10-32AA	12/27/10	18-34	12/10/18
11-04AA	5/23/11	18-35	12/10/18
11-05AA	5/23/11	18-36	12/10/18
11-03	5/31/11	19-04AA	5/13/19
11-32	12/12/11	19-15AA	8/12/19
11-44	12/19/11	19-16AA	8/20/19
11-62AA	1/13/12	19-29AA	1/2/20
12-07AA	5/14/12	19-28	1/13/20
12-14	5/21/12	19-30	2/14/20
12-44	1/26/13	20-01	4/20/20
12-48AA	2/11/13	20-11	8/10/20
13-4AA	5/6/13	21-01AA	5/10/21
13-17	7/22/13	21-03AA	8/6/21
13-35	1/21/14	21-14	8/16/21
13-36	1/21/14	21-19	11/22/21
13-50	2/18/14	21-20AA	12/20/21
13-51	3/18/14	21-23	1/10/22
13-52	3/18/14	22-06	7/19/22
14-01	4/22/14	22-08	7/25/22
14-09	7/11/14	22-14	8/22/22
14-26AA	8/25/14	22-11	10/5/22
15-17	12/7/15	22-24	10/19/22
15-23AA	1/4/16	23-06AA	6/5/23
15-35AA	2/8/16	23-10AA	8/21/23
15-36AA	2/16/16	23-23	8/25/23
15-39AA	2/16/16	23-24	8/28/23
16-02AA	5/17/16	23-26AA	12/12/23
16-07	7/5/16	23-27AA	1/8/24
16-20	8/22/16		
16-28	2/13/17		

- (3) Additional mitigation for commercial, industrial, institutional, recreational and multi-family residential development or redevelopment shall be required in the Modified Buffer. In addition to implementing the mitigation measures as described in this Subsection, a 25-foot vegetated buffer yard shall also be established as follows:
- (a) A forested or landscaped buffer yard of at least 25 feet wide shall be established on site between the development and the water. This vegetated buffer yard shall be densely planted with trees and shrubs in accordance with Table 6, below.
 - (b) For 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 6. Required Buffer Yard 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	wild columbine, butterflyweed, common milkweed, asters

- (4) 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 Harford County.
- (5) Applicants who cannot comply with either the planting or offset requirements above shall pay a fee-in-lieu of \$4.00 per square foot of required mitigation. Fee-in-lieu funding shall be utilized as set forth in §267-63.18D (Forest and Woodland Protection, Fee-in-lieu of Planting Mitigation).
- (6) Notification. All new commercial, industrial, institutional, recreational, multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with §267-63.1D (Implementation, Notification of Project Approval). Mitigation Plans shall be included as part of the project submission.

§ 267-63.9. Habitat Protection Areas. [Amended by Bill 23-37]

- A. Description. Areas with significant natural resource value are called Habitat Protection Areas no matter where they are located within the Critical Area. To ensure protection of these areas, an applicant for a development activity, redevelopment activity or change in

land use shall identify all applicable Habitat Protection Areas and follow the standards set forth in COMAR 27.01.09, as amended, included in Appendix K of the Harford County Chesapeake Bay Critical Area Program Manual. In addition to the Critical Area Buffer described in §267-63.7 (The Critical Area Buffer) and §267-63.8 (Modified Buffer Areas), other Habitat Protection Areas include:

- (1) Wetlands or other identified aquatic habitats.
- (2) Habitats of State and Federally Designated and Listed Threatened or Endangered Species or Species in Need of Conservation, Natural Heritage Areas and Habitats of Local Significance.

Species sites include:

- (a) Boyer Road Shoreline
- (b) Gunpowder Shore
- (c) I-95 Crossing
- (d) Lower Deer Creek
- (e) Lower Susquehanna
- (f) Northern Susquehanna Canal
- (g) Oakington Shore
- (h) Otter Point Creek
- (i) South Lapidum
- (j) Stafford Road Slopes
- (k) Swan Creek

Species include:

- (a) Small Waterwort (rare)
- (b) Mudwort (endangered)
- (c) Parker's Pipewort (threatened)
- (d) Maryland Bur-Marigold (watchlist)
- (e) Spongy Lophotocarpus (rare)
- (f) Northern Map Turtle (endangered)
- (g) Chesapeake Logperch (threatened)

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- (h) Maryland Darter (endangered)
 - (i) Single-Headed Pussytoes (threatened)
 - (j) Rapids Clubtail (in need of conservation)
 - (k) Shortnose Sturgeon (endangered)
 - (l) Atlantic Sturgeon (threatened)
 - (m) Short's Rockcress (watchlist)
 - (n) Starflower Solomon's-Plume (endangered)
 - (o) Sweet-Scented Indian-Plantain (endangered)
 - (p) Valerian (endangered)
 - (q) Creeper (in need of conservation)
 - (r) Alewife Floater (watchlist)
 - (s) Comely Shiner (watchlist)
 - (t) Primrose-Willow (state rare)
 - (u) Potomac Amphipod (watchlist)
 - (v) Salt-Marsh Bulrush (rare)
 - (w) Tickseed Sunflower (watchlist)
- (3) Colonial water bird nesting sites.
 - (4) Riparian forests and other forested areas utilized as breeding habitat by forest interior dwelling species.
 - (5) Anadromous fish propagation waters.
 - (6) Waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands.
 - (7) Other areas that may, in the future, be identified by State and Federal agencies as important plant and wildlife habitat areas. The process for designation of new habitats shall be in accordance with COMAR 27.01.09.04C(2)(c).
- B. Maps identifying these specific Habitat Protection Areas are maintained by the Department of Natural Resources Wildlife and Heritage Division. The most recent updated inventory was completed in August, 2022, and recommendations contained in Appendix 1 of the Harford County Critical Area Program, entitled "Habitat Protection Areas for the Harford County Critical Area" and are hereby incorporated into this Code.

C. Process.

- (1) The disturbance of a Habitat Protection Area shall be prohibited unless permitted as set forth in Subsection D below.
- (2) An applicant for a proposed activity within a Habitat Protection Area shall request review by the Department of Natural Resources Wildlife and Heritage Service, and, as necessary, the United States Fish and Wildlife Service, for comment and technical advice.
- (3) An applicant shall coordinate with the Department of Natural Resources to develop a Habitat Protection Plan that provides for the protection and conservation of the species and habitats identified.

D. Special conditions.

- (1) The location of roads, bridges or utilities shall be prohibited within the boundaries of a Habitat Protection Area unless there is no feasible alternative, as determined by the Director of Planning and Zoning in consultation with the Director of the Department of Public Works, in which case they shall be located, designed, constructed and maintained to provide maximum erosion protection, minimize adverse effects on wildlife and aquatic life and their habitats and maintain hydrologic processes and water quality.
- (2) Existing farm ponds and other existing man-made bodies of water for the purpose of impounding water for agriculture, water supply, recreation or waterfowl habitat are specifically excluded from coverage by the provisions of this Section.
- (3) Any activity that occurs in a free-flowing stream with a watershed of 400 acres or more (or 100 acres or more in the case of trout streams) requires a Waterways Construction/Obstruction Permit from the Maryland Department of the Environment.
- (4) An applicant shall demonstrate how development activities that must cross or otherwise affect streams will be designed to:
 - (a) Reduce increases in flood frequency and severity that are attributable to development;
 - (b) Retain tree canopy so as to maintain stream water temperatures within normal variation;
 - (c) Provide a natural substrate for streambeds; and
 - (d) Minimize adverse water quality and quantity impacts of stormwater.

E. Threatened and endangered species and species in need of conservation. If a threatened or endangered species, or species in need of conservation, is identified on a development site, the Habitat Protection Plan shall include a designated protection area around the habitat occurring on site, unless the applicant can demonstrate development impacts have been minimized, as determined by the Department of Natural Resources.

F. Plant and Wildlife Habitat Protection Areas.

- (1) Plant and wildlife habitats in the Critical Area include:
 - (a) Colonial water bird nesting sites;
 - (b) Waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
 - (c) Existing riparian forests (e.g., 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);
 - (d) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (e.g., relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);
 - (e) Other areas which may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat areas;
 - (f) Other plant and wildlife habitats determined to be of local significance, which include the following:
 - [1] Belcamp Beach
 - [2] Grays Run
 - [3] Leight Park Site
 - [4] Perryman Woods
 - [5] Swan Creek Point
 - [6] Willoughby Woods; and
 - (g) Natural Heritage Areas which have been designated.
- (2) The policies of the County regarding plant and wildlife habitat in the Critical Area shall be to:
 - (a) Conserve plant and wildlife habitat in the Critical Area ;
 - (b) Protect those plant and wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
 - (c) Protect those plant and wildlife habitat types which are required to support the continued presence of various species;
 - (d) Protect those plant and wildlife habitat types and plant communities which are determined by the County to be of local significance; and
 - (e) Protect Natural Heritage Areas.

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- (3) If a plant or wildlife habitat is identified on a development site, the Habitat Protection Plan shall include a designated protection area around the habitat occurring on site, unless the applicant can demonstrate development impacts have been minimized, as determined by the Department of Natural Resources.
 - (4) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants shall 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) For development activities in Resource Conservation Areas and Limited Development Areas, 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% of the tract in LDAs or RCAs as required by the County Chesapeake Bay Critical Area Program) shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.
 - (6) Buffer areas for nesting sites of colonial nesting water birds shall be established so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
 - (7) New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.
 - (8) Protection measures, including a buffer area, shall be established where appropriate for other plant and wildlife habitat sites identified in this ordinance.
 - (9) Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by developing management programs which have as their objective conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into timber harvest plans, forest management plans, cluster zoning or other site design criteria which provide for the conservation of wildlife habitat. Measures may also include soil conservation plans which have wildlife habitat protection provisions appropriate to the areas defined above and incentive programs which use the acquisition of easements and other similar techniques.
 - (10) When development activities, or the cutting or clearing of trees, occur in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.

- (11) Those plant and wildlife habitats considered to be of local significance by the County shall be protected. Examples of these are those whose habitat values may not be of Statewide significance but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction or because the species are found in unusually high concentrations.
- (12) Natural Heritage Areas shall be protected from alterations due to development activities, or cutting or clearing, so that the structure and species composition of the areas are maintained.

G. Anadromous fish propagation waters.

- (1) The Department of Natural Resources has identified and mapped anadromous fish propagation waters as defined in this Section 267-4 (Definitions) and these maps are available by contacting the Department.
- (2) The policies of the County with regard to anadromous fish propagation waters shall be to:
 - (a) Protect the instream and streambank habitat of anadromous fish propagation waters;
 - (b) 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
 - (c) Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.
- (3) Within anadromous fish propagation watersheds, the following measures are required:
 - (a) 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.
 - (b) 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.
 - (c) The County shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
 - [1] Minimize development activities or land disturbances within the watershed;
 - [2] Maintain, or if practicable, improve water quality in affected streams or other water bodies;
 - [3] Minimize to the extent possible the discharge of sediments into affected streams or other water bodies; and

- [4] Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams.
- (4) The County shall ensure coordination and compliance with complementary State laws and regulations and shall:
 - (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.
 - (b) Ensure that the construction, repair or maintenance activities associated with bridges, or other stream crossing or with utilities and roads, which involve disturbance within the Buffer or which occur instream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

§ 267-63.10. Grandfathering.

A. Continuation of existing uses and structures.

- (1) Any use or structure in existence as of December 1, 1985 shall be allowed to continue as originally built and utilized, but the intensification or expansion of that use beyond the maximum lot coverage allowed shall not be permitted without a variance.
- (2) If an existing use or structure has been abandoned for more than 1 year or is otherwise restricted by the current Zoning Code, the County may determine that such a use is no longer grandfathered and must conform to the regulations of the current Zoning Code.
- (3) When new construction or additional improvements to a grandfathered structure take place outside of the existing footprint or foundational footprint, that structure shall no longer be considered as grandfathered and must conform to the regulations of the current Zoning Code. Such a structure that serves as the primary structure or residence on the property shall require a new property survey.
- (4) Mitigation or removal of lot coverage shall be required for proposed intensification or expansion of grandfathered lots or parcels, as set forth in §267-63.5C(2) (Limited Development Areas, Development Standards), provided that all regulations of the County Chesapeake Bay Critical Area Program, including density requirements, have been met.
- (5) If any existing use does not conform with the provisions of this Section, or §267-20 (Nonconforming Buildings, Structures and Uses) and §267-21 (Enlargement or Extension of Nonconforming, Nonresidential Buildings, Structures or Uses), a variance shall be required for its intensification or expansion, in accordance with the procedures in §267-63.12 (Variances).

B. Implementation.

- (1) Nothing in this Section shall be interpreted as altering any requirements of the County Chesapeake Bay Critical Area Program, including those related to water-dependent facilities and Habitat Protection Areas.
- (2) Refer to Appendix D of the Harford County Chesapeake Bay Critical Area Program Manual for additional requirements and development regulations pertaining to grandfathered lots and parcels.

§ 267-63.11. Lot Consolidation and Reconfiguration.**A. Applicability.**

- (1) The provisions of this Section shall apply to a consolidation or a reconfiguration of any nonconforming grandfathered parcel or lot.
- (2) In this Section, consolidation means a combination of any legal parcels of land or recorded legally buildable lots into fewer lots or parcels than originally existed. Consolidation includes any term used by the County for a development application that proposes to combine legal parcels of land or recorded legally buildable lots into fewer parcels or lots than the number that existed before the application, a lot line abandonment, a boundary line adjustment, a replatting request, and a lot line adjustment.
- (3) In this Section, reconfiguration means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. Reconfiguration includes a lot line adjustment, a boundary line adjustment, and a replatting request.
- (4) These provisions do not apply to grandfathered parcels or lots that are conforming, or those that meet all of the County Chesapeake Bay Critical Area Program requirements.
- (5) Nonconforming parcels or lots include:
 - (a) Those for which a Critical Area variance is sought or has been issued.
 - (b) Those located in the Resource Conservation Area and are less than 20 acres in size.
 - (c) Those with grandfathered lot coverage that exceeds the maximum amount allowed.

B. Procedure.

- (1) An applicant seeking a consolidation or reconfiguration shall provide the required information outlined in Subsection C below.
- (2) A consolidation or reconfiguration shall not be approved without making written findings in accordance with Subsection D below and COMAR 27.01.02.08.F.

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- (3) The Department of Planning and Zoning 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 Department of Planning and Zoning shall send a copy of the decision or order with a copy of any approved development plan to the Critical Area Commission's business address within 10 business days.
 - (b) Minor lot line adjustments of 10 feet or less between 2 nonconforming lots of record are exempt from submittal to the Critical Area Commission.
 - (4) The Department of Planning and Zoning shall not issue a building permit or approval of any kind until the 30-day appeal timeframe has expired pursuant to COMAR 27.01.02.08.H.
- C. Process for submittal. An application for the consolidation or reconfiguration of any nonconforming parcel of land or recorded legally buildable lot shall be submitted following the procedure set forth in the County's Subdivision Regulations contained in Chapter 268 of the Harford County Code and shall contain at least the following information:
- (1) The date of recordation for each legal parcel of land or legally buildable lot to be consolidated or reconfigured.
 - (2) A plan drawn to scale that shows all existing and proposed lot or parcel boundaries.
 - (3) A table that lists the number of all legal parcels or recorded legally buildable lots and the number of proposed lots, parcels or dwelling units to be derived.
 - (4) Information sufficient to make the findings set forth in Subsection D below.
- D. Standards. The Department of Planning and Zoning shall review an application for a proposed lot consolidation or reconfiguration and in order to approve said application shall make written findings that each one of the following standards has been met:
- (1) The proposed consolidation or reconfiguration shall result in no greater number of lots, parcels or dwelling units in the Critical Area than the existing configuration would allow.
 - (2) The proposed lot consolidation or reconfiguration shall result in no greater lot coverage than the existing configuration would allow.
 - (3) The proposed consolidation or reconfiguration shall not:
 - (a) Create an additional riparian lot or parcel, waterfront lot or any other lot or parcel deeded with water access; or
 - (b) Intensify or increase impacts associated with riparian access.
 - (4) The proposed consolidation or reconfiguration shall not create:

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- (a) A lot, parcel or portion of a lot or parcel that will serve development activities outside of the Critical Area; or
 - (b) A Resource Conservation Area lot or parcel that serves development activities in the Intensely Developed Area or Limited Development Area.
- (5) The proposed consolidation or reconfiguration plan shall identify steep slopes and Habitat Protection Areas. If impacts to a steep slope or Habitat Protection Area are proposed, the application shall demonstrate that:
- (a) No greater impact to a steep slope or Habitat Protection Area will result than the impact that would have resulted from the existing lot configuration; and
 - (b) Protective measures and restoration measures are implemented as recommended by the Maryland Department of Natural Resources, the United States Fish and Wildlife Service or other agency or organization where applicable.
- (6) The proposed consolidation or reconfiguration shall provide:
- (a) Stormwater management for all proposed development activities;
 - (b) Benefits to fish, wildlife and plant habitats that are clearly identified;
 - (c) Critical Area Buffer establishment as set forth in §267-63.7 (The Critical Area Buffer) and §267-63.8 (Modified Buffer Areas); and
 - (d) Afforestation and reforestation requirements as set forth in §267-63.18 (Forest and Woodland Protection).

§ 267-63.12. Variances.

In addition to the regulations set forth in §267-11 (Variances), the provisions of this Section shall also apply to variances in the Critical Area .

- A. Applicability. Variances as described in this Section shall only be granted if, due to special features of a site or other circumstances, implementation of the County Chesapeake Bay Critical Area Program or a literal enforcement of its provisions would result in an unwarranted hardship to an applicant.
- (1) 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.
 - (2) The County shall presume that the specific development activity in the Critical Area for which a variance is required does not conform with the general purpose and intent of Title 8, Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland, as the same may be amended, Title 27 of the Code of Maryland Regulations and the requirements of the County Chesapeake Bay Critical Area Program.

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- (3) In accordance with Section 8-1808(D)(2) of the Natural Resources Article of the Annotated Code of Maryland, as the same may be amended, in this Section, if a person meets the threshold under Federal law, the person shall have standing to participate as a party in the administrative proceeding.
- B. Standards. In granting a variance, the Board of Appeals shall find that the following standards have been met:
- (1) Due to special features of the site or special conditions or circumstances peculiar to the land or structure involved, a literal enforcement of provisions and requirements of the County Chesapeake Bay Critical Area Program would result in an unwarranted hardship.
 - (2) A literal interpretation of the provisions of the County Chesapeake Bay Critical Area Program 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 to other lands or structures within the Critical Area by the County Chesapeake Bay Critical Area Program.
 - (4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed.
 - (5) The variance request does not arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
 - (6) The granting of a variance shall not adversely affect water quality, fish, wildlife or plant habitat within the Critical Area .
 - (7) The granting of the variance will be in harmony with the general spirit and intent of the Chesapeake Bay Critical Area Act and the County Chesapeake Bay Critical Area Program.
 - (8) All identified Habitat Protection Areas on or adjacent to the site shall be protected from the proposed development by implementation of either on-site or off-site measures.
 - (9) The variance request will not be substantially detrimental to adjacent properties or materially impair the purpose of this Part 1 or the public interest.
- C. Process.
- (1) Applications for a variance shall be made in accordance with §267-9D (Board of Appeals, Filings), and a copy shall be provided to the Critical Area Commission. The Department of Planning and Zoning shall follow its established procedures for preparing its staff report and for advertising and notification to affected landowners as set forth in the Zoning Board of Appeals Rules of Procedure contained in Chapter A274 of the Harford County Code.

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- (2) The Department of Planning and Zoning shall require additional information, studies or documentation deemed necessary to ensure that all applicable requirements are met. Applications shall not be considered complete for processing until all information as required by the Department of Planning and Zoning has been received.
 - (3) After a hearing on an application for a variance from the County Chesapeake Bay Critical Area Program, the Board of Appeals shall make written findings reflecting analysis of each standard. 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 County or any other government agency; or
 - (c) Any other person deemed appropriate by the Department of Planning and Zoning.
 - (4) The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection A(2) above.
 - (5) If an activity or structure for which a variance is requested commenced without permits or approvals and does not meet each of the variance criteria under this Section, the variance request shall be denied and the structure must be removed or relocated and the affected resources restored.
 - (6) The Department of Planning and Zoning shall notify the Critical Area Commission of the findings and decision to grant or deny the variance request within 10 business days of the issuance of the decision.
 - (7) The Department of Planning and Zoning shall not issue a permit or zoning certificate for the activity that was the subject of the variance application until all applicable appeal timeframes have expired.

D. After-the-fact requests.

- (1) The County shall not accept an application for a variance to legalize a violation of the County Chesapeake Bay Critical Area Program, including an unpermitted structure or other development activity, until the County issues a Notice of Violation.
- (2) The Board of Appeals shall not approve an after-the-fact variance unless an applicant has:
 - (a) Fully paid all criminal fines and penalties imposed under §§ 8-1808(C)(1)(iii)14-15 and (2)(i) of the Natural Resources Article of the Annotated Code of Maryland, as the same may be amended;
 - (b) Prepared a restoration or mitigation plan, approved by the Department of Planning and Zoning, to abate impacts to water quality or natural resources as a result of the violation;

- (c) Performed the abatement measures in the approved plan in accordance with the County Chesapeake Bay Critical Area Program; and
 - (d) Agreed to install any additional mitigation required within 90 days of the issuance of a permit, approval or variance for the affected property. An extension of planting time may be approved by the Department of Planning and Zoning in case of adverse planting conditions.
 - (3) If the Board of Appeals denies the requested after-the-fact variance, then the County shall:
 - (a) Order removal or relocation of any structure; and
 - (b) Order restoration of the affected resources.
- E. Conditions and mitigation. The Board of Appeals shall impose the following conditions on the use or development of a property that is granted a variance to ensure that the spirit and intent of the County Chesapeake Bay Critical Area Program is maintained:
 - (1) Mitigation shall be required at a ratio of 3:1 per square foot, or as recommended by the Department of Planning and Zoning, to offset potential adverse impacts resulting from the granting of the variance; and
 - (2) New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of all wetlands, tributary streams, nontidal wetlands and steep slopes.

§ 267-63.13. Local Development Projects.

- A. Applicability. For all development in the Critical Area resulting from, or initiated by, any County department or agency, the County shall comply with the provisions set forth in COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.
- B. Procedures. The sponsoring department or agency of any development project within the County's Critical Area shall work with the Department of Planning and Zoning to determine compliance with the County Chesapeake Bay Critical Area Program.
 - (1) If the project meets the provisions of the County Chesapeake Bay Critical Area Program and is locally significant, the Department of Planning and Zoning shall:
 - [a] Prepare a consistency report; and
 - [b] Submit a copy of the report with relevant plans and information about the project to the Critical Area Commission pursuant to the requirements set forth in COMAR 27.02.02.
 - (2) If the project does not meet the provisions of the County Chesapeake Bay Critical Area Program, or if development in the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside of the Critical Area, the Department of Planning and Zoning shall:

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- [a] Seek conditional approval by the Critical Area Commission per the requirements of COMAR 27.02.06;
 - [b] Submit information as required in the Critical Area Commission's *Local Project Submittal Instructions and Application Checklist*;
 - (3) New major development by a County agency shall, to the extent practical, be located outside the Critical Area. If the siting of the development in the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area, the Department of Planning and Zoning shall request approval from the Critical Area Commission per the Commission's *Local Project Submittal Instructions and Application Checklist* and provide the following information:
 - [a] Provide any findings and supporting documentation showing the extent to which the project or development is consistent with the provisions and requirements of the County Chesapeake Bay Critical Area Program; and
 - [b] Provide an evaluation of the effects of the project on the County Chesapeake Bay Critical Area Program.
 - C. Critical Area Commission public notice requirements. Public notice is required for all development projects that qualify under COMAR 27.03.01.03. Public notice shall be the responsibility of the County agency proposing the project, and the agency shall provide evidence as part of its submittal to the Critical Area Commission that:
 - (1) Public notice was published for 1 business day in a newspaper of general circulation in the geographic area where the proposed development would occur, including the following information:
 - (a) The identity of the sponsoring local agency as well as any other local or State agencies affiliated with the project.
 - (b) A description of the proposed development.
 - (c) The street address of the affected land and a statement that its location is in the Critical Area.
 - (d) The name and contact information of the person within the sponsoring State agency or local agency designated to receive public comment, including a fax number and email address, and the deadline for receipt of public comment.
 - (2) A sign was posted on the property no later than the date of which the notice was published in the newspaper. The sign shall meet the following requirements:
 - (a) The display area of the sign is a minimum of 30 inches by 40 inches in size.
 - (b) The same information is displayed on the sign as set forth in paragraph (1) of this Subsection.

- (c) The sign is located in a conspicuous area on the development site and will remain there until after the Critical Area Commission has voted on the development.
 - (d) For development that extends more than 1,000 linear feet in road frontage, at least 1 sign is posted at each end of the affected land for which the development is proposed.
- (3) In addition to the public notice required in paragraphs (1) and (2) of this Subsection, the County may also provide public notice by electronic posting on the County website, on the website of a newspaper of general circulation in the geographic area where the proposed development would occur or by notification to a neighborhood association or citizens of a particular geographic area.
- (4) Additional evidence of public notice to include the following documentation:
 - (a) The name of the newspaper and the date on which the notice was published.
 - (b) A copy of the public notice as it was published in the newspaper.
 - (c) A copy of each written comment received during the required 14-day response period following the public notice.

§ 267-63.14. Program Changes.

- A. Description. The Department of Planning and Zoning may see the need to amend the County Chesapeake Bay Critical Area Program. County Critical Area Program changes may include, but are not limited to, amendments, refinements, revisions and modifications to zoning regulations, subdivision regulations, Critical Area Maps, the Harford County Chesapeake Bay Critical Area Program Manual, implementation procedures and local policies that affect the County Chesapeake Bay Critical Area Program.
 - (1) All requirements as stated in this Section and in the County Chesapeake Bay Critical Area Program shall be applied to any proposed change to the Critical Area designation boundaries, or the management thereof, including:
 - (a) A request for growth allocation.
 - (b) A mistake in the mapping of the original designation area.
 - (c) The periodic review of the overall County Chesapeake Bay Critical Area Program.
 - (2) All proposed changes to the County Chesapeake Bay Critical Area Program as set forth in this Section shall adhere to the process and submittal requirements, where applicable, as outlined in Subsection B below. This shall be done prior to submission for approval to the Critical Area Commission.

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- (3) All proposed changes shall also be approved by the Critical Area Commission as established in §8-1809 of the Natural Resources Article of the Annotated Code of Maryland, as may be amended. No change shall be implemented without approval of the Critical Area Commission.
 - (4) Standards and procedures for Critical Area Commission approval of proposed changes are as set forth in the Chesapeake Bay Critical Area Act, codified in §8-1809(l) and (D), respectively, of the Natural Resources Article of the Annotated Code of Maryland, as may be amended.
- B. Process. All changes to the County Chesapeake Bay Critical Area Program shall be reviewed in accordance with the following procedures and shall conform to the required standards as outlined in this Section:
- (1) The following fees shall apply to all applications for changes to the Critical Area designation boundaries:
 - (a) \$200 for publication and posting.
 - (b) \$500 for filing.
 - (c) \$15 per requested acre, or portion of an acre, within the Critical Area.
 - (2) The Department of Planning and Zoning shall submit all proposed amendments to the Planning Advisory Board and the Environmental Advisory Board for review, accompanied by written reasoning for the changes.
 - (3) The Planning Advisory Board and the Environmental Advisory Board shall transmit their written recommendations regarding the proposed amendments to the Department of Planning and Zoning within 60 calendar days.
 - (4) The Department of Planning and Zoning shall send the amendments, as revised per the written recommendations received from the boards, to the County Council for consideration.
 - (5) Within 30 days of the County Council's approval, the amendments package shall be sent to the Critical Area Commission for review. No amendments shall be considered final until written approval is received from the Critical Area Commission. The amendments package shall be accompanied, where applicable, by pertinent findings, plans, environmental reports and studies as described below:
 - (a) A written finding that ensures the proposed amendment is consistent with the purposes, policies, goals and provisions of the Chesapeake Bay Critical Area Act and all criteria of the Critical Area Commission.
 - (b) A conceptual site plan and environmental features map in accordance with COMAR 27.01.02.06-1.B.

- (c) An environmental report, when applicable, that includes comments from the Maryland Department of the Environment, Maryland Department of Natural Resources, United States Fish and Wildlife Service, Maryland Historical Trust and U.S. Army Corps of Engineers.
- (d) A map that shows the land area where the amendments are proposed.
- (6) The County's official Critical Area Maps and County Chesapeake Bay Critical Area Program shall be amended to reflect any approved changes, and a copy of these documents shall be provided to the Critical Area Commission.

C. Growth allocation.

- (1) Growth allocation is the number of acres of land available to the County to reclassify a Critical Area designation as a new Limited Development Area or Intensely Developed Area. Growth allocation is available for use in a Limited Development Area or Resource Conservation Area in order to develop at a higher density or allow a use other than what the current classification allows.
- (2) An annexation by a municipality shall meet all of the requirements of this Section and of the County Chesapeake Bay Critical Area Program when the proposed use on the parcel requires a land use designation change.
- (3) An applicant shall submit a completed application for a growth allocation to the Department of Planning and Zoning that complies with all of the requirements set forth in this Section, the County Chesapeake Bay Critical Area Program and COMAR 27.01.02.06-1.
- (4) Refer to Chapter 2 of the Harford County Chesapeake Bay Critical Area Program Manual for additional information regarding the application review process and associated requirements for the use of growth allocation.
- (5) Consistency with the comprehensive plan under this Section means that a proposal will further, and not be contrary to, the following items in the comprehensive plan:
 - (a) Policies;
 - (b) Timing of implementation, or development, and of rezoning;
 - (c) Development patterns;
 - (d) Land uses; and
 - (e) Densities and intensities.

D. Comprehensive reviews. The Department of Planning and Zoning shall review its entire County Chesapeake Bay Critical Area Program and shall propose any necessary changes to any part of the County Chesapeake Bay Critical Area Program at least every 6 years. The changes shall be reviewed and considered by the County Council. The anniversary of the date that the County Chesapeake Bay Critical Area Program became effective shall be used to determine when the review shall be completed. Within 60 days after completion of the County Council's review, the County shall send the following information, in writing, to the Critical Area Commission:

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- (1) A statement certifying that the required review has been accomplished.
 - (2) All necessary requests for the County Chesapeake Bay Critical Area Program amendments, refinements or other matters that the County wishes the Critical Area Commission to consider.
 - (3) An updated resource inventory.
 - (4) A statement quantifying acreages within each land classification, the growth allocation used and the growth allocation remaining.
- E. Zoning map amendments. Except for amendments or refinements to the County Chesapeake Bay Critical Area Program developed during the 6-year comprehensive review, a zoning map amendment shall only be granted by the County 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:
- (1) Are wholly consistent with the land classifications in the adopted County Chesapeake Bay Critical Area Program; or
 - (2) Propose the use of growth allocation in accordance with the growth allocation provisions of the County Chesapeake Bay Critical Area Program.
- F. Adoption of a County Chesapeake Bay Critical Area Program change. If approved by the Critical Area Commission, the Department of Planning and Zoning shall incorporate the proposed changes into its adopted County Chesapeake Bay Critical Area Program, including any conditions of approval, within 120 days of receiving notice from the Chairman of the Critical Area Commission.

§ 267-63.15. Water-dependent Facilities and Activities.

- A. Applicability. The provisions of this Section apply to those structures or activities associated with industrial, maritime, recreational, educational, aquaculture or fisheries activities that require location at or near the shoreline within the Critical Area Buffer. An activity is water-dependent if it cannot exist outside of the Critical Area Buffer and is dependent on the water by reason of the intrinsic nature of its operation. These provisions do not apply to silviculture activities.
- B. Identification.
- (1) The provisions of this Section are not applicable to:
 - (a) A private pier that:
 - [1] Is installed or maintained by a riparian landowner; and
 - [2] Is not part of a residential project that provides a community pier or other community boat-docking or storage facility under Subsection I below; or

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- (b) A nonwater-dependent project covered under COMAR 27.01.13; or
 - (c) The maintenance, repair or replacement of existing bulkheads, piers, buildings or maintenance dredging.
 - (2) A water-dependent facility or activity includes:
 - (a) A port.
 - (b) An intake or outfall structure of power plants.
 - (c) A marina, another boat-docking facility or a structure or activity that is essential to the operation of the water-dependent facility, structure or activity.
 - (d) A fuel pump or other fuel-dispensing equipment on a pier, a sanitary sewage pump or other wastewater removal equipment on a pier or an office on a pier for managing marina operations such as monitoring vessel traffic, registering vessels, providing docking services and housing electrical or emergency equipment related to marina operations.
 - (e) The County shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The County shall work with appropriate State and Federal agencies to ensure compliance with applicable regulations.
 - (f) A public beach or any other public water-oriented recreation area.
 - (g) Any other water-dependent facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays or their watersheds.
 - C. General policies. The County shall limit development activities in the Critical Area Buffer to those that are water-dependent, as specified in COMAR 27.01.09, and ensure that these activities will have minimal individual and cumulative impacts on water quality, as well as fish, wildlife and plant habitat in the Critical Area, as provided by design and locational criteria.
 - D. Standards. The following standards shall apply to new or expanded development activities associated with water-dependent facilities and activities:
 - (1) In accordance with § 8-1808.3 of the Natural Resources Article of the Annotated Code of Maryland, as the same may be amended, and COMAR 27.01.09, development in the Critical Area Buffer shall be limited to the minimum lot coverage necessary to accommodate each water-dependent facility or activity, regardless of the Critical Area land use classification or the size of the parcel or lot.
 - (2) New or expanded development activities may be permitted in the Critical Area Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown that:
 - (a) The project is water-dependent;

- (b) The project meets a recognized private right or public need;
 - (c) The adverse effects on water quality, fish, plant and wildlife habitat are first avoided or otherwise minimized;
 - (d) The nonwater-dependent structures or operations associated with water-dependent projects or activities are located outside of the Critical Area Buffer as much as possible; and
 - (e) The facilities are consistent with an approved local plan as described in Subsection E below.
- (3) All new or expanded development activities shall not be permitted in those portions of the Critical Area Buffer that occur in Resource Conservation Areas. Applicants for water-dependent facilities in a Resource Conservation Area, other than those specifically permitted herein, shall apply for a portion of the County's growth allocation as set forth in the County Chesapeake Bay Critical Area Program.
 - (4) Mitigation shall occur at a 2:1 ratio based on the limit of disturbance of the proposed development activity that is in the Critical Area Buffer or expanded Critical Area Buffer.

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

- (1) All applicants for new or expanded water-dependent facilities shall be required to submit pertinent information and materials as listed in Appendix E of the Harford County Chesapeake Bay Critical Area Program Manual.
- (2) Interference with navigation caused by the proximity of a facility near State or Federally maintained channels shall constitute grounds for denial of an application.
- (3) Based on the project size, scope, environmental sensitivity on site and potential adverse impacts to water quality, aquatic habitats or terrestrial habitats on or near the site, the Director of Planning and Zoning may require a comprehensive water-dependent facility plan as detailed in Appendix E of the Harford County Chesapeake Bay Critical Area Program Manual. This plan shall be approved by the Director of Planning and Zoning. It is recommended that the applicant consult with the Department of Planning and Zoning prior to submitting this information.
- (4) A building permit or zoning certificate for any construction in or over tidal waters shall not be considered valid without a concurrent State wetlands license or permit from the Maryland Department of the Environment and Section 404/10 permits, as appropriate, from the Army Corps of Engineers.
- (5) The application shall demonstrate that all of the following provisions for new or expanded water-dependent facilities have been met:
 - (a) The proposed activities shall not significantly alter existing water circulation patterns or salinity regimes.

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- (b) The water body upon which these activities are proposed shall have adequate flushing characteristics in the area for natural dispersal and removal of pollution, as determined by Maryland Department of the Environment.
 - (c) Disturbance to wetlands, submerged aquatic plant beds or other areas of important aquatic habitats shall be avoided or otherwise minimized.
 - (d) Adverse impacts to water quality that may occur as a result of these activities, such as non-point source runoff, sewage discharge from land activities or vessels or pollutant discharge from boat cleaning and maintenance operations shall be avoided or otherwise minimized.
 - (e) Shellfish beds shall not be disturbed or be made subject to discharge that will render them unsuitable for harvesting.
 - (f) Interference with the natural transport of sand shall be avoided or otherwise minimized.
 - (g) Disturbance to sites of known historical significance to wildlife, such as aquatic staging areas and waterfowl concentration or staging areas, shall be prohibited.
 - (h) Location of activities adjacent to Habitat Protection Areas as set forth in the County Chesapeake Bay Critical Area Program shall be avoided or otherwise minimized. The use of activities adjacent to these sites shall be minimized during the time of November through March so as to prevent disturbance to wildlife overwintering or using the site as a migratory staging area.
 - (i) Dredging shall be conducted and dredged material shall be placed in an area that was approved for the disposal of channel maintenance dredging before June 11, 1988, and shall use a method that causes the least disturbance to water quality and to aquatic and terrestrial habitats in the Critical Area or the area immediately surrounding the dredging operation.
 - (j) Dredged spoil shall not be placed within the Critical Area Buffer or in any other designated Habitat Protection Area except as necessary for a beneficial use approved by Maryland Department of the Environment. Mitigation shall be required at a ratio of 1:1 for such beneficial uses, including:
 - [1] Backfill for a shoreline stabilization measure.
 - [2] Use in a non-structural shoreline stabilization measure, including a living shoreline.
 - [3] Beach nourishment.
 - [4] Restoration of an island.

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- [5] The creation, restoration or enhancement of a wetland, or a fish, wildlife or plant habitat.
 - [6] Any other approved beneficial use.
 - F. Additional provisions for industrial and port-related facilities or activities.
 - (1) 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 set forth in the County Chesapeake Bay Critical Area Program and are subject to the provisions set forth in § 267-63.8 (Modified Buffer Areas).
 - (2) Industrial waterfront facilities shall not extend any waterfront construction over or into waterways beyond the limit of pier or bulkhead lines, as established by the Army Corps of Engineers.
 - G. Additional provisions for marinas and other commercial maritime facilities or activities. New, expanded or redeveloped marinas may be permitted subject to the requirements as set forth below:
 - (1) New, expanded or redeveloped marinas must adhere to all other requirements as outlined in this Section.
 - (2) New marinas and related maritime facilities shall not be permitted in Resource Conservation Areas. Expansion of existing marinas may be permitted within Resource Conservation Areas provided that it is sufficiently demonstrated that the expansion shall result in an overall net improvement in water quality at, or leaving the site of, the marina.
 - (3) The Best Management Practices cited in Appendix E of the Harford County Chesapeake Bay Critical Area Program Manual shall be applied to the location and operation of new or expanded marinas and related maritime facilities, where applicable.
 - (4) New and existing marinas shall meet the sanitary requirements of the Maryland 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.
 - H. Additional provisions for community piers. New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the Critical Area Buffer, subject to the requirements in this Subsection or the County Chesapeake Bay Critical Area Program, and provided that the following provisions are met:
 - (1) These facilities shall not offer food, fuel or other goods and services for sale in the Buffer.
 - (2) These facilities shall provide adequate and clean sanitary facilities.
 - (3) The facilities shall be community-owned and established and operated for the benefit of the citizens of a platted and recorded riparian subdivision.

- (4) The facilities shall be associated with a residential development approved by the County and shall be consistent with all State and local program requirements for the Critical Area .
- (5) Disturbance to the Critical Area Buffer shall be the minimum necessary to provide a single point of access to the pier or facility.
- (6) If community piers, slips or moorings are provided as part of the new residential development built or constructed after June 24, 1988, private piers in the residential development shall not be permitted.

I. Slips and piers.

- (1) No structure connected to the shoreline, such as a dock or pier, shall extend outward from the mean high-water line more than 25% of the distance to the mean high-water line on the opposite shore, or more than 250 feet, whichever is less, nor shall it extend into an existing navigational channel.
- (2) New or expanded private water-dependent facilities shall accommodate no more than 4 boats.
- (3) Nonwater-dependent facilities or structures shall not be constructed on pilings or piers, as set forth in §267-63.16D (Water-dependent Structures, Nonwater-dependent Structures on Piers).
- (4) The number of slips or piers permitted at the facility shall be the lesser of (a) or (b) below:
 - (a) One slip for each 50 feet of shoreline in the subdivision of an Intensely Developed Area or a Limited Development Area, and 1 slip for each 300 feet of shoreline in the subdivision of a Resource Conservation Area; or
 - (b) A density of slips or piers according to the following table:

Table 7. Number of Piers/Slips Permitted.

Platted Lots or Dwellings in the Subdivision	Piers or 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

J. Additional provisions for public beaches and other public recreation or education areas.

- (1) Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching, docking facilities and fishing piers may be permitted in the Critical Area Buffer in Intensely Developed Areas.

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- (2) The facilities described in paragraph (1) of this Subsection, as well as areas for passive recreation such as hiking, nature study, hunting and trapping and for education may also be permitted within the Critical Area Buffer in Limited Development Areas and Resource Conservation Areas provided that the following conditions are met:
- (a) Adequate sanitary facilities shall be provided.
 - (b) Service facilities shall be located outside of the Critical Area Buffer.
 - (c) Permeable surfaces shall be used as the primary surfacing material if no degradation of groundwater would result, although such materials shall count toward the calculated lot coverage.
 - (d) Disturbance to any vegetation shall be avoided or otherwise minimized.
 - (e) All nonwater-dependent structures or facilities associated with these projects shall be located outside of the Critical Area Buffer.
- K. Additional provisions for research areas. Water-dependent research facilities or activities operated by State, Federal or local agencies or educational institutions may be permitted in the Critical Area Buffer. Nonwater-dependent structures or facilities associated with these projects shall be located outside of the Critical Area Buffer.
- L. Additional provisions for fisheries activities.
- (1) Land and water areas with high aquacultural potential shall be identified by the County in cooperation with the State when applications for new or expanded fisheries or aquaculture facilities are submitted to the County. These areas are encouraged for that use and, if so used, shall be protected from degradation by other types of land and water use or by adjacent land and water uses.
 - (2) 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 Critical Area Buffer in Intensely Developed Areas, Limited Development Areas and Resource Conservation Areas.

§ 267-63.16. Water-Dependent Structures.

- A. Applicability. The provisions of this Section apply to individual private piers installed or maintained by riparian landowners, which are not part of a subdivision that provides community piers, boat lifts, wharves, docks and bulkheads, as well as the maintenance, repair or replacement of these existing structures and maintenance dredging.
- B. Standards.
- (1) Where proposed construction will conflict with existing facilities, the Department of Planning and Zoning shall specify the limits of construction to conform as closely as possible to the requirements as set forth within this Section so as to cause the least interference with existing and/or possible future construction. Notice of the proposed construction shall be given to the adjoining property owners affected.

- (2) Maintenance, repair or replacement of existing bulkheads, piers or maintenance dredging shall require all applicable permits from the Maryland Department of the Environment and the County prior to approval of any proposed work.
- (3) Interference with navigation caused by the proximity of a facility near State or Federally maintained channels shall constitute grounds for denial of an application.
- (4) Applicants shall meet all of the applicable requirements as set forth in §267-63.15I (Water-dependent Facilities and Activities, Slips and Piers).

C. Construction over waterways.

- (1) Waterfront construction shall not extend over or into waterways beyond the limit of pier or bulkhead lines, as established by the Army Corps of Engineers.
- (2) Divisional lines shall be established in the following manner for the purpose of defining applicable boundaries for waterfront construction:
 - (a) Where the shoreline is straight and property lines run parallel, each property line shall be extended in a continuing straight line over the water.
 - (b) Where the shoreline is straight and property lines are not parallel, property lines shall be extended perpendicular to the shoreline over the water.
 - (c) Where the shoreline is not straight, draw a straight line between the 2 corners of each lot to form a baseline. Property lines shall be extended perpendicular to the baseline over the water and:
 - [1] If the intrinsic nature of a curved shoreline causes extended property lines over the water to diverge from one other, the area excluded by both lines shall be equally divided between the 2 adjoining lots; and
 - [2] If the intrinsic nature of a curved shoreline causes extended property lines over the water to converge with one other, the area included by both lines shall be equally divided between the 2 adjoining lots.
 - (d) No construction, including mooring piles, shall be permitted within 10 feet of the established divisional lines in effort to maintain a 20-foot open access area between the facilities of adjoining lots.

D. Nonwater-dependent structures on piers. The following standards shall apply to all nonwater-dependent structures:

- (1) Nonwater-dependent structures, including, but not limited to, boat houses and renewable energy systems such as solar panels and wind turbines, shall not be constructed on existing pilings or on a pier.
- (2) Construction of a nonwater-dependent structure shall be prohibited in or over State or private waters in the Critical Area, including wetlands.

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- (3) Nonwater-dependent structures do not include:
- (a) A fuel pump or other fuel-dispensing equipment on a pier;
 - (b) A sanitary sewage pump or other wastewater removal equipment on a pier; or
 - (c) A water-dependent facility or activity covered under § 267-63.15 (Water-dependent Facilities and Activities) or COMAR 27.01.03.

§ 267-63.17. Shore Erosion Protection.

- A. Standards. All development activities conducted on lands immediately adjacent to tidal waters or where existing developments are experiencing shoreline erosion problems shall follow and meet the following criteria:
- (1) The maps developed and maintained by the Department of the Environment.
 - (2) In accordance with Environment Article, §16-201(C), Annotated Code of Maryland, and COMAR 26.24.04.01, improvements to protect a property against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation or a living shoreline.
 - (3) Where no significant shore erosion control occurs and nonstructural measures are ineffective or impractical, stone revetments or riprap shall be used whenever possible to conserve fish and plant habitat.
 - (4) Bulkheads and other structural measures shall only be permitted when the use of nonstructural measures and revetments are deemed infeasible by the Maryland Department of the Environment or where their use is needed as part of a water-dependent facility.
 - (5) Performance of mitigation measures applicable to the type of shoreline stabilization measure to be undertaken, as specified in the Shore Erosion Control Buffer Mitigation Form supplied by the Commission.
 - (6) In accordance with COMAR 26.24.04.01-3 and 27.01.09.01-3, delivery to the Commission of an approved Buffer Management Plan for each approved shoreline stabilization measure.
- B. Process. As part of the application process for a County permit, zoning certificate or authorization for a shoreline erosion protection measure or development activity, the following documents shall be required:
- (1) An approved State wetlands license or permit from the Maryland Department of the Environment that meets all requirements as set forth in COMAR 26.24.02 and COMAR 26.24.04.
 - (2) A Buffer Management Plan that meets all requirements of §267-63.7 (the Critical Area Buffer) and §267-63.8 (Modified Buffer Areas) as applicable, and COMAR 27.01.09.

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- (3) When structural measures must be used, an erosion control plan shall be submitted that includes a site sketch of the existing shoreline, a site sketch of the proposed control measures and a brief description of the proposed methods and materials. The information required by the Army Corps of Engineers and the Maryland Department of the Environment's Nontidal Wetlands Division for a 404 Joint Permit Application is sufficient for submission as an erosion control plan.
 - (a) The approved plan must be kept on the project site and be available for inspection upon request of the County during the construction of the erosion control measures.
 - (b) An approved plan is not valid without all other documentation as listed in this Section.
 - C. Shoreline parks. The development and use of areas designated as natural parks shall recognize the limited ability of the natural systems to handle human impacts. The following standards shall apply to the development and use of such areas:
 - (1) The ability of a specific site to accommodate human disturbance on a daily or seasonal basis shall be considered in the design of visitor use facilities for natural parks areas.
 - (2) The Critical Area Buffer shall be maintained in the development of any natural park site. Trees or other suitable vegetation shall be planted within areas of the Critical Area Buffer that are not vegetated.
 - (3) All areas identified as Habitat Protection Areas in §267-63.9 (Habitat Protection Areas) shall be protected on a natural park site.
 - (4) Forest cover on the site shall be maintained to the maximum extent feasible and in accordance with §267-63.18 (Forest and Woodland Protection).
 - (5) All publicly owned lands leased for agricultural activities shall have current soil conservation and water quality plans.

§ 267-63.18. Forest and Woodland Protection.

- A. Purpose. Forests and woodlands are recognized for their water quality benefits and sustainable wildlife habitats while accommodating the utilization of forest resources. For these reasons, forest protection and conservation shall be achieved by avoiding or otherwise minimizing the removal of trees associated with development activities. Where such disturbances cannot be avoided, the standards as set forth in this Section shall be met.
- B. Process. The following shall be addressed as part of the application process for all proposed projects involving the removal and replacement of any existing forest cover and developed woodlands in the Critical Area :
 - (1) A site-specific field investigation shall be conducted prior to forest harvesting or development to determine if sensitive species are present. Applications shall be forwarded to the Department of Natural Resources Wildlife and Heritage Service for environmental review.

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- (2) A development plan or timber harvest plan shall be submitted with all information as described in Appendix C of the Harford County Chesapeake Bay Critical Area Program Manual. Appropriate protection measures for sensitive species and recommendations made by the Department of Natural Resources shall also be incorporated into the development plan or timber harvest plan.
 - (3) When proposing development activities within riparian forests or forest interior dwelling species habitat, the applicant shall demonstrate that conservation methods will be utilized from *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, as may be amended in Appendix J of the Harford County Chesapeake Bay Critical Area Program Manual.
 - (4) The proposed project shall demonstrate that the following standards have been met, where feasible:
 - (a) Avoid or otherwise minimize forest and woodlands disturbance from off-road vehicles, public use or logging from May through August of each year.
 - (b) Focus all development on the periphery of the forest or woodlands, known as edge habitat.
 - (c) Retain the forest canopy as well as the tree and shrub understory.
 - (d) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles.
 - (e) Avoid the creation of small clearings and expansion of forest edge habitats.
 - (f) Re-establish or enhance native forests and woodlands.
 - (g) Adopt harvest techniques to maintain or improve habitat.
 - (5) A Forest Conservation Plan shall be required for the removal and replacement of forest and developed woodlands and shall adhere to the following requirements:
 - (a) The document shall be prepared as specified in Appendix C of the Harford County Chesapeake Bay Critical Area Program Manual.
 - (b) For properties requiring subdivision approval, Forest Conservation Plans shall be submitted along with the preliminary or site plan.
 - (c) For all other projects, Forest Conservation Plans shall be submitted and approved by the Department of Planning and Zoning prior to application for a grading permit.
 - (d) A surety bond shall be deposited and a covenant recorded in the Land Records of Harford County to ensure that all required afforested and reforested areas are completed in accordance with the approved Forest Conservation Plan. The surety amount shall be equal to 110% of the value of \$4.00 per square foot of planting required and shall be held until the established forested area meets or exceeds standards specified in the Forest Conservation Plan.

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- (e) Grading permits shall not be issued until the covenant and surety have been accepted by the County. The covenant, which shall be established by the owner of the property, shall establish and protect the afforested or reforested areas from future development activities.
 - (f) The following survivability standards shall apply:
 - [1] If more than 25% of the plantings die within the first 2 growing seasons, the plantings shall be replaced with new stock.
 - [2] If more than 25% of the plantings do not survive the first 3 growing seasons, the surety bond shall be held an additional 3 years or until the survivability requirements have been satisfied, as described in this Section.
 - [3] Two-thirds of the surety bond will be returned if all components of the project meet or exceed the standards, as determined by an inspection from the Department of Planning and Zoning, and at least 75% of the plantings survive the first 2 growing seasons.
 - [4] The remaining surety bond will be released if all standards are met after the third growing season.
 - (6) In addition to all other applicable requirements of this Section, the following requirements shall also be met for all projects in the Limited Development Area and Resource Conservation Area involving the removal and replacement of any existing forest cover or developed woodlands:
 - (a) A Forest Stand Delineation shall be required for any development in the Critical Area where forest covers greater than 40,000 square feet, unless no forest will be disturbed, and shall be prepared according to the standards described in Chapter 4 of the Harford County Forest Cover Conversation and Replacement Manual.
 - (b) Fifteen percent of an unforested development site shall be afforested. If the afforestation comprises 1 acre or more, a Forest Conservation Plan, financial surety bond and covenant as specified in paragraph (5) of this Subsection shall be required. For afforestation areas less than 1 acre in size, plantings shall be installed according to the Forest Management Guide found in Appendix C of the Harford County Chesapeake Bay Critical Area Program Manual.
 - C. Mitigation. The removal and replacement of any existing forest cover and developed woodlands shall meet the following standards in the Critical Area :
 - (1) The replacement or establishment of forest or developed woodlands shall ensure a diversified plant community and should include native species of canopy trees, understory trees, shrubs and herbaceous plants.

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- (2) Maryland native species shall be planted to the maximum extent possible on-site. If the applicant can demonstrate that the on-site location is not feasible for all required plantings, the applicant shall plant in another permissible location, as described in Appendix K of the Harford County Chesapeake Bay Critical Area Program Manual.
 - (3) Canopy coverage mitigation shall occur at a 1:1 square foot ratio, rounded to the nearest 100 square feet, except as set forth in paragraphs (4) through (6) of this Subsection.
 - (4) Mitigation for Critical Area Buffer disturbance shall be fulfilled as set forth in §267-63.7D (The Critical Area Buffer, Mitigation and Planting Credit for the Critical Area Buffer).
 - (5) Routine vegetative maintenance and/or emergency repairs may occur in existing public utility rights-of-way provided that:
 - (a) The disturbance that occurs shall be the minimum amount necessary;
 - (b) Mechanical methods shall be used whenever feasible as opposed to chemical means; and
 - (c) Notification and coordination with the Department of Planning and Zoning shall occur prior to commencement of activity.
 - (6) The following mitigation standards shall also apply to any proposed projects in the Limited Development Area and Resource Conservation Area:
 - (a) The total acreage in forest coverage within the County 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% 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% of the forest or developed woodlands cleared.
 - (d) An applicant may not clear more than 30% 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 entire areal extent of the forest or developed woodlands cleared. If an applicant is authorized to clear any percentage of forest or developed woodlands, the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by the County.

D. Fee-in-lieu of planting mitigation.

- (1) If the applicant can demonstrate to the director of Planning and Zoning that plantings are not feasible, a payment of \$4.00 per square foot of mitigation will be accepted in lieu of the plantings to be replaced. Fee-in-lieu shall otherwise not be accepted by the County.
- (2) Funds shall be paid to the Harford County Department of Treasury at the time of issuance of a grading permit, prior to any clearing of forest or developed woodland cover on a development site.
- (3) Funds shall be maintained in a separate account from the general fund and administered by the Harford County Department of Planning and Zoning in the following manner:
 - (a) Funds contributed under this Section shall be used for mitigation planting and/or offsets, as described in Appendix K of the Harford County Chesapeake Bay Critical Area Program Manual, to enhance wildlife habitat, improve water quality or otherwise promote the goals of the County Chesapeake Bay Critical Area Program and Green Infrastructure Plan.
 - (b) The funds shall be used for site identification, acquisition, design, preparation, planting or installation and monitoring of vegetation or project success at the selected regional water quality and wildlife improvement areas.
 - (c) The funds shall not be used to accomplish a project or measure that would have been required under existing local, State or Federal laws, regulations, statutes or permits.
 - (d) Fee-in-lieu monies shall be collected and held in a special fund, which may not revert back to Harford County's general fund.
 - (e) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected.

E. Enforcement.

- (1) Unauthorized clearing, cutting or removal of vegetation inside or outside of the Critical Area Buffer or other Habitat Protection Areas, as well as clearing, cutting or removal of vegetation in excess of the area permitted to be cleared shall be considered a violation of the County Chesapeake Bay Critical Area Program and shall result in enforcement action as set forth in §267-63.2 (Administrative Enforcement).
- (2) A violation that takes place in the Critical Area Buffer or other Habitat Protection Area shall receive mitigation at a ratio of 4:1, rounded to the nearest 100 square feet. In addition, all other requirements and standards shall be met, including the preparation of a Buffer Management Plan and the posting of the surety and recordation of the covenant.

- (3) A violation that takes place in the Critical Area, outside of a Habitat Protection Area, shall receive mitigation at a ratio of 3:1, rounded to the nearest 100 square feet. In addition, all other requirements and standards shall be met, including the preparation of Forest Conservation Plans and the posting of the surety and recordation of the covenant.

§ 267-63.19. Timber Harvesting.

- A. General policies. A goal of the County Chesapeake Bay 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.
- (1) Landowners proposing to harvest timber within any 1-year interval shall submit a Forest Management Plan. The applicable plan shall be prepared by a Registered Professional Forester in the State of Maryland, and separate copies of the plan shall be submitted to the Department of Planning and Zoning, the Department of Natural Resources and the Harford County Forestry Board for their review.
 - (2) The Department of Planning and Zoning shall be notified by the Department of Natural Resources or the Forestry Board if any Forest Management Plan is inadequate. If additional information for the plan is required, the applicant will be notified in writing.
 - (3) Once the Forest Management Plan has been approved by the Department of Planning and Zoning, a copy of the plan shall be sent to the Department of Natural Resources and the Forestry Board. The Department of Planning and Zoning shall notify the applicant in writing when the plan is approved. The plan shall be approved prior to the start of any work.
- C. Timber Harvest Plans.
- (1) Forest Management Plans shall include measures to protect surface water and ground water quality, as well as any Habitat Protection Areas as identified in §267-63.7 (The Critical Area Buffer) through §267-63.9 (Habitat Protection Areas). To provide for the continuity of plant and wildlife habitat, a copy of Timber Harvest Plans shall be addressed within the Forest Management Plan, describing the proposed timber harvest. Plans shall be submitted according to the procedures contained in the Forest Management Guide in Appendix C of the Harford County Chesapeake Bay Critical Area Program Manual.
 - (2) Harvesting operations shall be implemented in accordance with the specifications set forth in the State guidelines contained in the Standard Erosion and Sediment Control Plan for Forest Harvest Operations, as well as any other specification established by the Department of Natural Resources.
- D. Erosion and 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 an Erosion and 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 contained in the 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 the Department of Planning and Zoning. This plan shall be enforced by the Maryland Department of the Environment and the County.

- (1) If cuts and fills are 3 feet or more, if grades for roads are 15% or more or if landings are on slopes of 10% or more, then the landowner must get a Custom Erosion and 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.
 - (2) If a Custom Erosion and Sediment Control Plan is not required, a Standard Erosion and Sediment Control Plan is available through the Harford 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) The Erosion and Sediment Control Plan shall be submitted to the Harford Soil Conservation District for approval and notice of approval shall be sent to the Harford County Department of Inspections, Licenses and Permits.
 - (4) The applicant shall take responsibility for the implementation of the Erosion and Sediment Control Plan.
 - (5) The landowner must sign the agreement to certify that he or she 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. No timber harvesting shall be permitted in the Critical Area Buffer or the expanded Critical Area Buffer, nor shall harvesting be permitted within Habitat Protection Areas and their associated buffers.

§ 267-63.20. Agriculture.

- A. Purpose. Agricultural lands are identified and recognized as a protected land use and are managed in an effort to minimize agricultural pollutant loadings into the Chesapeake Bay and its tributaries. The County works cooperatively with the Harford Soil Conservation District, Agricultural Land Preservation Advisory Boards, the Farm Bureau and other appropriate agencies to promote sound land and water stewardship on agricultural lands.
- B. Standards. In addition to all other applicable regulations as set forth in the County Chesapeake Bay Critical Area Program, the applicant shall comply with all of the following standards in regard to agriculture in the Critical Area :
 - (1) The creation of new agricultural lands or expansion of agricultural activities shall not be accomplished by:

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- (a) Diking, draining, dredging or filling wetlands;
 - (b) Clearing forests or woodlands on soils with a slope greater than 15%, or on highly erodible soils with a "K" Factor greater than .35 and a slope greater than 5%; or
 - (c) Disturbing lands identified as Habitat Protection Areas, including existing vegetation within the Critical Area Buffer, as set forth in the County Chesapeake Bay Critical Area Program.
 - (2) The drainage of nontidal wetlands for the purpose of existing agriculture shall be done in accordance with a Soil Conservation and Water Quality Plan, approved by the Harford Soil Conservation District.
 - (3) Existing farm ponds and other existing man-made bodies of water for the purpose of impounding water for agriculture, water supply, recreation or waterfowl habitat are not classified as wetlands.
 - (4) Best Management Practices shall be used for the control of nutrients, animal wastes, pesticides and sediment runoff to protect the productivity of the land base and enhance water quality. These practices shall avoid or otherwise minimize the contamination of surface water and ground water, as well as the adverse effects on plants, fish and wildlife resources.
 - (5) Animal feeding operations, including retention and storage ponds, feed lot waste storage and manure storage shall avoid or otherwise minimize the contamination of water bodies.
 - (6) Agricultural activities permitted in the Critical Area shall use Best Management Practices in accordance with a Soil Conservation and Water Quality Plan and a Nutrient Management Plan approved by the Harford Soil Conservation District. Mitigation is not required for permitted agricultural activities.
 - (7) Sludge that is used for agricultural or horticultural purposes shall not be applied in the Critical Area Buffer or other Habitat Protection Areas as defined in §267-63.9 (Habitat Protection Areas).
- C. Process. The following shall be completed for all lands in agricultural use, or land to be converted to agricultural use, within the Critical Area:
- (1) The agricultural components of the State's Water Quality Management Plan shall be applicable to all agricultural activities in the Critical Area .
 - (2) Each agricultural operation in the Critical Area shall develop and comply with a Soil Conservation and Water Quality Plan and Nutrient Management Plan, as approved by the Harford Soil Conservation District. This plan shall incorporate Best Management Practices that demonstrate:
 - (a) Protection of the productivity of the land base;
 - (b) Preservation or enhancement of water quality;

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- (c) Conservation of fish, wildlife and plant habitats;
 - (d) Control of nutrients, animal wastes, pesticides and sediment runoff;
 - (e) Protection and conservation of Habitat Protection Areas as set forth in §267-63.7 (the Critical Area Buffer) through §267-63.9 (Habitat Protection Areas);
 - (f) The implementation of a grassland and manure program, where appropriate; and
 - (g) Other Agricultural Best Management Practices that include, but are not limited to, strip cropping, terracing, contour stripping, cover crops, conservation tillage, riparian buffers, nutrient management, grass waterways, animal waste management, ponds, grass, naturally vegetated filter strips and stream protection practices such as fencing, stream crossings and remote watering devices.
- (3) A Nutrient Management Plan shall be prepared by a Certified Nutrient Management Consultant or Certified Farm Operator in accordance with COMAR 15.20.04, .07 and .08.
 - (4) A Forest Management Plan shall be submitted and all requirements as outlined in Appendix C of the Harford County Chesapeake Bay Critical Area Program Manual shall be adhered to for each agricultural operation that harvests timber.
 - (5) Landowners who have signed up as Conservation District Operators, but who do not have a Conservation Plan prepared for them by the Harford Soil Conservation District, shall be allowed to continue to farm in the Critical Area until a Conservation Plan is developed provided that the other regulations of the County Chesapeake Bay Critical Area Program are being met.
 - (6) A landowner shall select and implement, with the assistance of a technically trained Soil Conservation Planner or Technician, from among the several Agricultural Best Management Practices that minimize impacts to water quality, conserve fish, wildlife and plant habitat and integrate best with the farming operation.
 - (7) Until such time as all applicable plans, as described in this Section, are developed and implemented, farmers shall be encouraged to use the following practices:
 - (a) Cover crops shall be planted to reduce erosion.
 - (b) Nutrients shall be applied at the appropriate time and appropriate application methods shall be used.
 - (c) Reduced tillage and/or no till practices shall be utilized where practical.
 - (d) Crop rotations shall be implemented where effective.
- D. Agricultural activities in the Critical Area Buffer. Agricultural activities are permitted in the Critical Area Buffer in accordance with COMAR 27.01.09.01-6 and as described in the

County Chesapeake Bay Critical Area Program provided that the following provisions are met:

- (1) Prior to the development of a Soil Conservation and Water Quality Plan as required in Subsection C(2) above, a 25-foot vegetated filter strip comprised of trees with a dense ground cover or a thick sod grass shall be installed and maintained adjacent to tidal waters, tidal wetlands or tributary streams so as to provide water quality benefits and habitat protection.
 - (a) The width of this filter strip shall be increased by a distance of 4 feet for every 1% increase in slopes over 6%.
 - (b) Strategies to control noxious weeds, invasive plants or animals may be approved by the Harford Soil Conservation District to be used within this filter strip and elsewhere on agricultural lands.
- (2) The feeding or watering of livestock shall not take place within 50 feet of the mean high-water line of tidal waters, tidal wetlands or tributary streams.
- (3) Agricultural activities, including the grazing of livestock, shall not disturb stream banks, tidal shorelines or other Habitat Protection Areas as identified in §267-63.7 (the Critical Area Buffer) through §267-63.9 (Habitat Protection Areas).
- (4) The clearing of existing vegetation within the Critical Area Buffer shall be prohibited.

§ 267-63.21. Surface Mining.

- A. Applicability. The provisions of this Section shall apply to all existing and proposed expansion operations engaged in the extraction or removal of minerals, sand, gravel, rock, stone, earth or fill and activities related to surface mining. These activities include, but are not limited to, operations engaged in processing minerals at the site, removal and mining when done for the purpose of prospecting, washing, loading and transporting mined material. Notwithstanding any other provisions of law, the provisions of this Section may not be construed to prohibit the location or use of a water-dependent facility, in accordance with COMAR 27.01.03, for the transport of a surface mining product or by-product.
- B. General policies. All available measures shall be 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, spillage, storage and disposal of waste, dusts and spoils. Surface mining shall facilitate site reclamation, including renewable resource land, as soon as possible.
- C. Standards. The establishment of new surface mining operations within the Critical Area shall be prohibited. The following standards shall be met in order to continue existing surface mining operations in the Critical Area :
 - (1) In conjunction with, as applicable, the Departments of Agriculture, Environment and Natural Resources, and any other appropriate Federal or State agency, develop a Mineral Resources Plan and Management Program that is included in the Comprehensive Plan and consists of:

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- (a) In accordance with Land Use Article, §§ 1-411 and 3-107, Annotated Code of Maryland, the Identification and Mapping of the Undeveloped Land in the Critical Area that is best kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals;
 - (b) Each surface mining area that includes a Habitat Protection Area under COMAR 27.01.09; and
 - (c) In accordance with COMAR 27.01.02, at each location where surface mining is, or has been, conducted the identification of:
 - [1] Post-reclamation land uses that, where applicable, prioritize the establishment or re-establishment of renewable resource products, such as agriculture and forestry, and other land uses that benefit water quality and habitat, such as wetlands, habitat restoration and open space; and
 - [2] Any other appropriate post-reclamation land use, such as recreation and development.
 - (2) Renewed surface mining operation permits shall be obtained from the Maryland Department of the Environment, who shall perform periodic site inspections of permitted areas to determine whether the conditions of the permit and the accompanying reclamation plan are being fulfilled.
 - (3) The applicant shall obtain all applicable permits from the required Federal, State and local regulatory agencies in effort to manage air pollution, water pollution and sediment control.
 - (4) The operation shall not have an unduly adverse effect on wildlife, forests, fresh water or estuarine and marine fisheries.
 - (5) Reclamation shall occur on each segment of a site as mining is completed.
 - (6) All surface mining operations, including roads, accessory improvements, equipment and storage areas, shall be conducted in a manner that:
 - (a) Does not adversely impact water quality, identified Habitat Protection Areas or contiguous properties;
 - (b) Retains the Critical Area Buffer in natural vegetation between the operation and tidal waters, tidal wetlands and tributary streams; and
 - (c) Permits the rapid reclamation of the site, including any wash pond, when the operation has terminated.
 - D. Expansion sites. The expansion of existing surface mining operations in the Critical Area shall be reviewed and may be permitted as a Special Exception pursuant to §267-88 (Specific Standards). Prior to accepting any application to the Board of Appeals for a Special Exception for the expansion of an existing surface mining operation, the Director of Planning and Zoning shall review the application and shall forward the application to the Board of Appeals only upon making findings that such expansion shall have met the following conditions:

- (1) A Reclamation Plan shall have been developed that specifies the proposed use to be made of the site following reclamation, the manner in which the 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 County for the implementation of these reclamation measures.
- (2) The operation shall not have an adverse impact on Habitat Protection Areas, or other important natural resource areas such as those of scientific value or areas where assemblages of rare species occur and in accordance with the provisions of COMAR 27.01.09, Habitat Protection Areas.
- (3) The operation shall not be located on lands which are within 100 feet immediately landward of the mean high-water line of tidal waters or the top of a bank of tributary streams unless:
 - (a) A license, permit or other approval to conduct a specific aspect of surface mining was issued before the date of the County's Chesapeake Bay Critical Area Program approval; and
 - (b) If expansion of the scope or size of the surface mining activity has occurred since the date of the County's Chesapeake Bay Critical Area Program approval, the expansion complies with State law and the County Chesapeake Bay Critical Area Program requirements.
- (4) The operation shall not be located on land with highly erodible soils.
- (5) The operation shall not result in a degradation of water quality or a loss of vital habitat.
- (6) Reclamation of a wash pond shall be required in accordance with State law and program requirements.

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