

The Chesapeake Bay Foundation reviewed this section recently for Friends of Harford. Their comments are in GREEN.

FOH Note: Throughout this section of the code the Department of Planning and Zoning or the Zoning Administrator would now able to make judgement calls alone about uses in the Chesapeake Bay Critical Area. We recommend that every time this department makes any approvals or decisions, a state department, e.g., MDE, DNR, etc. must concur. These decisions are of lasting import on the health of the Bay and should not rest only in the hands of a county department head whose responsibility is to plan for development. The Mission of the department as found on their website is:

Our Mission : The Department of Planning & Zoning is responsible for planning the physical development and growth of Harford County, including the preparation and revision of Master Plans and the preparation and revision from time to time of rules and regulations governing subdivisions. It is also responsible for the preparation, administration and enforcement of a Zoning Map and of zoning rules and regulations, which shall constitute a Zoning Code. All plans and maps and all rules and regulations relating to planning and zoning shall be approved by legislative act of the Council prior to their taking effect as law.

It does not state that it is there to protect the environment nor should it be allowed to be the sole arbiter of the health of the environment of this county.

We also note that there is a very real possibility that this Critical Areas legislation will be updated in the 2008 Maryland Legislative session. Maps will be redrawn. Variances will be scrutinized. Allowing the Counties to grant variances for building within critical areas has led to abuse of this law and one hopes this practice will be stopped.

New Stormwater Management regulations will also override some of the archaic language in this section of the code.

The purpose of editing the Critical Areas legislation by the County is to restrict more, allow less disturbance and protect more than the state law requires. We do not see this in action in this code.

1§267-63. Chesapeake Bay Critical Area Overlay District.

A. Purpose and intent. The State of Maryland has recognized the Chesapeake Bay as an estuarine system of great importance to the State and to the nation as a whole. As such, it has enacted the Chesapeake Bay Critical Area Act (Chapter 794, Laws of 1984, as amended) and the Chesapeake Bay Critical Area Program Development Criteria pursuant to that Act, which require that local jurisdictions implement a management and resource protection program for those areas within 1,000 feet of tidal waters and tidal wetlands and any additional areas that a local jurisdiction deems important to carry out the purpose of the Act. Harford County also recognizes the importance of protecting the resources of the Chesapeake Bay and hereby establishes that the goals of this management program are to:

- (1) Minimize adverse impacts on water quality resulting from sedimentation and stormwater runoff from development in the coastal areas of the County.
- (2) Conserve fish, wildlife and plant habitat.
- (3) Maintain and, if possible, increase the amount of forested area in the County's coastal areas because of its benefits to water quality and plant and wildlife habitat.
- (4) Minimize the adverse secondary impacts of development occurring in the coastal areas of the County.
- (5) Monitor and control development in the County's Critical Area so that the natural resources of the Chesapeake Bay, its tidal tributaries and their shoreland areas will be protected and preserved for future generations.

B. Creation. In order to carry out the provisions of this resource protection and management program, a Critical Area Overlay District is hereby established, in conjunction with existing zoning regulations and districts which shall apply to all development and redevelopment within the County's Critical Area. The regulations of the overlay district are intended to foster environmentally sensitive development within the County's Critical Area by setting forth standards requiring the minimization of adverse impacts on water quality and protection of the natural plant, fish and wildlife habitats in the County's Chesapeake Bay Critical Area. The management program developed for land areas lying within the overlay district shall be the County's Master Plan for such areas.

C. Application. The requirements of the Critical Area Overlay District shall apply to all areas shown on each Zoning Map Overlay, to include, at a minimum, all areas within 1,000 feet of tidal waters and State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, and such additional areas as designated

to meet the purpose of the district. The overlay district as shown on each Zoning Map Overlay is further divided into 3 separate land use management categories for the purposes of planning, regulating and monitoring the type and intensity of land use development and redevelopment activities occurring within the County's Critical Area. The 3 land use management categories are as follows:

- (1) Intensely Developed Areas (IDA).
- (2) Limited Development Areas (LDA).
- (3) Resource Conservation Areas (RCA).

D. Soil types. Soil types in Harford County's Critical Area with development constraints are set forth in Table 63-1, attached hereto and incorporated herein by reference as part of this Section as though it were fully stated herein.

Changed Table XVI to Table 63-1

E. Prohibited uses.

(1) The following uses shall be prohibited within this overlay district:

- (a) New or expanded sanitary landfills and rubble landfills.
- (b) New or expanded solid or hazardous waste collection or disposal facilities.
- (c) New storage tanks for vehicle fuels on residential lots.

(2) All existing facilities of these types shall be operated in conformance with all applicable County, State and Federal regulations.

F. Regulation of uses in the Critical Area Overlay District.

(1) Existing zoning. Unless otherwise specified in this Section, the rights and limitations pertaining to the use of the land as specified in this Zoning Code shall remain in effect, subject to compliance with any additional requirements of this Section.

(2) This Section supplements existing County zoning and other regulations governing development in the Critical Area and is superimposed upon all existing zones and land use activity specified in this Section. All development or redevelopment activity must conform to the existing zoning regulations, to the development regulations specified in the subdivision regulations and to the special conditions and regulations set forth in this Section. In the event of conflicts between existing zoning regulations, subdivision regulations and other overlay district regulations and this Section, the more restrictive Section shall apply.

(3) Development activities. Permitted development activities are regulated in accordance with §267-63, and the following standards for the specific management area categories within which such activities are proposed: .

Changed, "in accordance with the following standards" to "in accordance with §267-63."

(a) Intensely Developed Areas (IDA).

[1] Pollutant loadings associated with new development or redevelopment in an IDA shall be reduced by a minimum of 10% from predevelopment levels through the use of on-site stormwater management/best management practices or similar measures located off site within the same watershed and within the Critical Area. Stormwater management/best management practice sites will only be considered outside of the Critical Area and outside of the same watershed if the County Department of Planning and Zoning determines that no feasible alternative within the Critical Area can be provided. The procedures contained in the technical report entitled "Critical Area 10% Rule Guidance Manual, Fall 2003" (Appendix C of the Harford County Chesapeake Bay Critical Area Management Program, as amended) shall be used to determine the amount of reduction required and what specific measures are needed to meet this requirement.

CBF: IDA stormwater management – reference to 10% rule is appropriate, but there are currently many innovative stormwater management techniques permitted and approved under the Maryland's 2000 Stormwater Manual, Chapter 5, that should be emphasized and promoted within the Critical Area. Direct reference and preference for these techniques would also be appropriate. (2)(b)(5) does this with reference to LIDs, but it would not hurt to emphasize it in this section as well.

FOH: We would recommend requiring innovative stormwater management.

[2] Pollutant loadings associated with construction outside of the Critical Area buffer of accessory structures and minor additions that disturb greater than 250 square feet and result in the permanent construction of an impervious surface area greater than 250 square feet on residential lots of record as of 12/31/85 in the IDA shall be mitigated by the use of stormwater management/Best Management Practices (BMPs) as specified in Appendix C, as amended, and/or through the use of additional landscaping plantings on that lot or parcel. If the cumulative total square footage exceeds 250 square feet, then mitigation must be provided for that area above 250 square feet.

[a] BMPs are specified in the "The Applicant's Guide for 10% Rule Compliance - Urban Stormwater Quality Guidance for the Maryland Chesapeake Bay Critical Area in Intensely Developed

Areas (IDA)" (Appendix C of the Harford County Chesapeake Bay Critical Area Management Program, as amended).

[b] Mitigative plantings shall be permeable areas equal to or greater in area than the increase of impervious surfaces; shall be planted with at least one tree per 100 square feet (Added) and/or 1 shrub per 50 square feet of impervious surface added to the lot, and shall be established and maintained in accordance with a landscaping plan and covenant as approved by the Department of Planning and Zoning. Where possible, such new plantings should be located between the new construction and surface waters. (Added) Tree and shrub plantings shall be of native species.

[c] If mitigative landscaping and/or BMPs are not feasible as determined by the Zoning Administrator, the applicant is required to pay a fee in lieu of \$1.20 per square foot of additional impervious surfaces. Monies contributed under this Section shall be deposited in a separate account, and shall be used according to Subsection G(4)(a) [11][a][ix]e of this Section, and shall not revert to the general fund.

CBF: increase fee-in-lieu to \$2.00/square foot.

[d] Construction of accessory structures which disturb less than 250 square feet are exempt from mitigative planting requirements.

[3] Unless determined to be technically infeasible by the Zoning Administrator, Omitted: “. . . in consultation with the Director of the Department of Public Works and the Harford County Soil Conservation District, . . .” permeable areas shall be established and maintained in vegetation in accordance with a landscaping plan approved by the Department of Planning and Zoning.

FOH: All state agencies have been eliminated from oversight. We are concerned that the Department of Planning and Zoning does not have the expertise to deal capably with these matters.

CBF: Why is consultation with Soil Conservation District and Public Works no longer necessary?

[4] Development shall be designed and constructed so as to minimize the destruction of existing forest vegetation. (Added) Any forest removed must meet the replacement standards set forth in 267- 63F(3)(b)[5][b]-[f]

NEW [5] Low impact development techniques are encouraged to be utilized in the IDA to maintain pre-development hydrological conditions.

[6] Existing areas of public access to the shoreline shall be maintained. If possible, the establishment of new areas of public access to the shoreline shall be included in the plans for development or redevelopment of shoreline areas.

[7] Cluster development shall be used in developing in the IDA as a means of minimizing the amount of impervious surface area and the destruction of existing natural vegetation unless it is determined by the Zoning Administrator to be infeasible or inappropriate for a specific site. This requirement does not supersede the requirements of §267-70, pertaining to Conventional with Open Space (COS) and Planned Residential Development (PRD).

(b) Limited Development Areas (LDA).

CBF: LDA requirements – imperviousness standards: the standards here reflect the minimums in the law for lots of various sizes (e.g. for a lot ½ acre or less, if in existence on or before December 1, 1985, imperviousness cannot exceed 25% of the part of the lot in the Critical Area). But there’s no reason why a local ordinance cannot go beyond these standards, for example, in requiring less impervious cover. Similarly, the ability to exceed these standards as long as effective water quality mitigation is provided (e.) comes from the Critical Area statute, but there is no reason why the County couldn’t be more stringent. The increasing demands and better understanding of stormwater runoff impacts to the Bay and tributaries, since the passage of the Act, makes the minimizing of imperviousness in LDAs and RCAs more important than ever.

[1] Pollutant loadings associated with development in the LDA are to be maintained at predevelopment levels through the use of stormwater management/best management practices specified in "The Applicant's Guide for 10% Rule Compliance - Urban Stormwater Quality Guidance for the Maryland Chesapeake Bay Critical Area in IDA, and the Technical Guide for 10% Rule Compliance - Urban Stormwater Quality Guidance for the Maryland Chesapeake Bay Critical Area in IDA." (Appendix C of the Harford County Chesapeake Bay Critical Area Management Program, as amended).

[2] Man-made impervious surfaces shall not exceed 15% of the portion of the lot or parcel within the Critical Area, except for the following: Omitted the words, “. . . proposed to be developed . . .”

[a] If a parcel or lot ½ acre or less in size existed on or before December 1, 1985, then man-made impervious surfaces may not exceed 25% of the portion of the parcel or lot within the Critical Area.

[b] If a parcel or lot greater than ½ one-half acre and less than 1 acre in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to 15% of the portion of the parcel or lot within the Critical Area.

[c] On lots less than or equal to 1 acre in size located in subdivisions approved after December 1, 1985, man-made impervious surfaces may not exceed 25% of the portion of the lot within the Critical Area. However, the total of the impervious surfaces over the entire subdivision may not exceed 15% of the portion of the lot within the Critical Area.

[d] Subsection F(3)(b)(2)(a)-[c] does not apply to a mobile home park in residential use on or before December 1, 1985.

[e] Limitations on impervious surfaces provided in Subsection F(3)(b)(2)(a) and [b] of this Section may be exceeded if the following conditions exist:

Omitted: New impervious surfaces on the property have been minimized.

[i] For a lot or parcel ½ acre or less in size, total impervious surfaces do not exceed impervious surface limits in Subsection F(3)(b)(2)(a) of this Section by more than 25% of the impervious surface limitation or 500 square feet, whichever is greater.

[ii] For a lot or parcel greater than ½ acre and less than 1 acre in size, total impervious surfaces do not exceed impervious surface limits in subsection f(3)(b)(2)(b) of this Section or 5,445 square feet, whichever is greater.

[iii] Water quality impacts associated with runoff from the new impervious surfaces can be and have been minimized through mitigative plantings or use of best management practices listed in Appendix C of the Harford County Chesapeake Bay Critical Area Management Program, as amended.

[iv] Mitigative plantings shall be permeable areas equal to or greater in area than the increase of impervious surfaces. These areas shall be planted with at least 1 ½ inch caliper tree per 100 square feet, or 1 3-5 gallon containerized shrub per 50 square feet of impervious surface added to the lot or parcel and established and maintained in accordance with a landscaping plan as approved by the Department of Planning and Zoning. Where possible, such new plantings should be located between the new construction and surface waters. Mitigative plantings shall be of native species. **Changed “planted with at least one tree per 100 square feet, or one shrub per 10 square feet of impervious surface,” to: “planted with at least 1 ½ inch caliper tree per 100 square feet, or 1 3-5 gallon containerized shrub per 50 square feet of impervious surface .**

[v] If mitigative plantings and/or BMPS are not feasible as determined by the Zoning Administrator, the applicant is required to pay a fee in lieu of \$1.20 per square foot of additional impervious surfaces. Monies contributed under this Section shall be deposited in a separate account, and shall be used according to Subsection G(4)(a)(11)(a)(ix) of this Section. These monies shall not revert to the general fund.

CBF: The fee-in-lieu should be raised, as above, to \$2.00/square foot. In fact, such fees should be raised across the board, throughout the Ordinance, wherever they appear.

[3] No development shall be permitted on slopes greater than 15%.

[4] Development on soils with development constraints, i.e., highly erodible soils, hydric soils, soils with severe septic constraints and soils with hydric inclusions as listed in Table 63-1 of this Section, shall be restricted. ~~The Zoning Administrator may permit development on such soils if adequate mitigation measures are applied to address the identified constraints and to avoid significant adverse impacts on water quality or fish, plant and wildlife habitats.~~ **Omitted, hydric soils “less than 40,000 square feet in extent**

CBF: contains the proscription against developing on steep slopes or hydric soils...unless the Zoning Administrator waives this requirement upon a judgment that enough mitigation will be required. First, the Zoning Administrator should not solely be accorded this authority; some other municipal civil engineering, environmental quality, or conservation district official should be required to jointly review and approve. Additionally, the previous language only permitted lots less than an acre in size to be so developed; such a restriction should be reinstated and strengthened: only individual lots (i.e. not lots part of a subdivision), less than ½ acre in size, should be so permitted.

[5] The removal and replacement of existing forest cover for development in an LDA area shall meet the following conditions:

[a] Area to be cleared. On a wooded development site, no more than 20% of the forest cover may be cleared provided that the remaining 80% is maintained through recorded restrictive covenants or similar instruments. This cover must be replaced on a 1:1 square-footage basis, rounded to the nearest 100 square feet. An additional 10% of the forest cover may be cleared, provided that replacement of the total forested area disturbed is made

on 1:1.5 square-footage basis. Unless no forest will be disturbed by the development, a forest stand delineation is required for any development within the Critical Area in which forest covers an area greater than 40,000 square feet. The forest stand delineation shall be prepared according to the standards presented in Chapter 4 of the Harford County Forest Cover Conservation and Replacement Manual.

[b] Replacement of forest cover. The forest cover removed shall be replaced elsewhere on the same site or on another parcel within the Critical Area. If the replacement is not practical at the time of removal, the Zoning Administrator may approve the payment of a forest replacement fee of \$0.40 per square foot area of forest cleared and not otherwise mitigated in lieu of the actual planting. Monies contributed under this Section shall be deposited in a separate account, and shall be used according to Subsection G(4)(a)[11][a][ix]e of this Section, and shall not revert to the general fund.

CBF: Forest replacement fee: it is currently set at \$0.40/square foot. A higher fee-in-lieu should be considered to reflect current materials and labor costs.

[c] Forest conservation plan. The removal and replacement of forest cover for development must be undertaken as specified in an approved forest conservation plan developed in accordance with procedures specified in the Forest Management Guide (Appendix F, of the Harford County Chesapeake Bay Critical Area Management Program as amended). For properties requiring subdivision approval, forest conservation plans shall be submitted along with the preliminary plan. For all other projects, forest conservation plans shall be submitted to the Department of Planning and Zoning for review and approval prior to application for a grading permit.

[d] Performance guarantee required. To ensure that all afforested or reforested areas required by this Section are completed in accordance with approved forest conservation plans and are adequately preserved and maintained after installation, a surety shall be deposited and a covenant recorded with Harford County. Grading permits will not be issued until the covenant and surety have been accepted by the County. The covenant shall be established between the County and the owner of the property which shall establish and protect the afforested or reforested areas from future development activities. The amount of the surety shall be equal to 110% of the value of \$0.40 per square foot of planting required. The surety will be held until the forested area established meets or exceeds standards specified in the Forest Management Guide. If more than 25% of the plantings in the afforested or reforested area die within the first 2 growing seasons after planting, these must be replaced with new stock. If after 2 complete growing seasons from the time of planting, all components of the project meet or exceed the standards as determined by an inspection by the Department of Planning and Zoning and at least 75% of the planted trees have survived, two-thirds of the surety will be returned. The remainder will be released if, after the third growing season, all standards are met. If however, additional plantings are required to replace more than 25% of the original plantings which did not survive, the surety shall be held an additional 3 years from the time of the last planting. **Changed title from "Covenant and Surety Required" to Performance Guarantee Required."**

[e] Timing of payment. The forest replacement fees shall be paid prior to any clearing of the forest cover on a development site. If not paid previously, the forest replacement fee shall be due and payable at the time of issuance of a grading permit for a site.

[f] Trust fund. Forest replacement fees shall be paid to the Harford County Department of the Treasury and maintained in a **SEPARATE ACCOUNT**, which shall be administered by the Harford County Department of Planning and Zoning. Expenditure of such funds shall be solely for the purpose of afforestation and reforestation of areas in the Critical Area, whether on public or private lands. **Changed: fees shall be maintained in the Harford County Critical Area Forestry Trust Fund Account, to fees shall be maintained in a "separate account,"**

FOH: That fund should remain separate and should be specified here.

[6] If a development site is unafforested, a minimum of 15% of the site shall be afforested. If the afforestation comprises an area of 1 acre or greater, a forest conservation plan, financial surety, and covenant as specified in Subsection F(3)(b)[5][c] and [d] of this Section shall be required. For afforestation of areas less than 1 acre in size, plantings shall be installed according to the guidelines contained in the Forest Management Guide (Appendix F).

[7] All development plans shall incorporate a wildlife corridor system that connects the largest, most undeveloped or most vegetated tracts of land within and adjacent to the site, thereby providing a continuity of existing on-site and off-site plant and wildlife habitats.

[8] Cluster development shall be used for developing in the LDA as a means of minimizing the amount of impervious surface area and the destruction of existing natural vegetation, unless it is determined by the Zoning Administrator to be infeasible or inappropriate for a specific site. This requirement does not supersede the requirements of §267-70, pertaining to Conventional Development with Open Space (COS) and Planned Residential Development (PRD).

CBF: – besides "cluster development," the ordinance should promote and encourage smart growth-type designs within IDAs: compact and higher density; mixed-use; gridded streets; walkable and bikable; transit-friendly/transit-ready; etc.

(c) Resource conservation areas (RCA).

[1] Agriculture, forestry and areas of natural habitat shall be considered preferred land uses within this area.

[2] New industrial, commercial and institutional, ~~except for County owned parks and recreation facilities,~~ development shall be prohibited. **Current Code: New industrial and commercial development shall be prohibited.**

FOH: We recommend keeping the old language which does not allow for parks and recreation facilities. Too often these recreation areas use large tracts of impervious surface which are not compatible with Resource Conservation Areas. Since these facilities are not near where people live, automobiles are needed to access them further harming a critical area.

[3] New residential development shall be permitted at a maximum density of 1 dwelling unit per 20 acres. One residential structure shall be permitted on any existing undeveloped parcel or lot of record as of December 1, 1985, regardless of the density requirement, provided that all other provisions of this Section are met. For purposes of this subsection, "dwelling unit" means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence. **Rewritten. Added one residential structure shall be permitted on any existing undeveloped parcel OR LOT of record. Added, "For purposes of this subsection, 'dwelling unit' means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence."**

[4] The requirements and standards for development activities in the RCA designation shall be the same as for developments in the LDA designation.

NEW ~~[5] Certain uses may be permitted in the RCA if it is determined by the Zoning Administrator, with the concurrence of the Critical Area Commission, that the impacts of the proposed use on plant and wildlife habitat and water quality would be minimized and that the proposed use would be consistent with the intent of the RCA classification and the County's Critical Area Program.~~

FOH: Again we do not feel the Zoning Administrator nor his department should be making this decision.

Professionals in the area of critical areas should determine if any extra uses should occur, not a development permitting agency.

CBF: "certain uses" may be "permitted by the Zoning Administrator with the concurrence of the Critical Area Commission," but I can't find what these "certain" uses are. This is a very open-ended permission.

(d) Forest clearing violation.

[1] Clearing of forested areas anywhere within the Critical Area, other than as set forth in this Section and in the buffer as specified in §267-63, Chesapeake Bay Critical Area Overlay District, prior to issuance of a grading permit, or of areas exceeding the maximum amount allowed by this Section constitutes a violation of this Section in addition to any other applicable County regulations. Afforestation/reforestation of an area 3 times the extent of the area cleared in violation will be required as mitigation for such clearing. All standards and requirements of §267-63 Chesapeake Bay Critical Area Overlay District must be met, including the preparation of forest conservation plans and the posting of the required surety and covenant. **Omitted: Clearing of forested areas GREATER THAN 5,000 SQUARE FEET. Added: AS SET FORTH IN THIS SECTION AND IN THE BUFFER AS SPECIFIED IN §267-63, CHESAPEAKE BAY CRITICAL AREA OVERLAY DISTRICT, Changed Section 267-41.1F(3)(b)[5][c]and[D], to §267-63 Chesapeake Bay Critical Area Overlay District.**

(4) Agriculture. Agricultural activities as otherwise permitted by the Zoning Code shall meet the following additional requirements:

- (a) Each agricultural operation in the Critical Area shall have and be implementing an approved soil and water conservation plan to protect the productivity of the land base, preserve or enhance water quality and conserve fish, wildlife and plant habitat, by incorporating best management practices which protect areas identified as habitat protection areas and adequately address the control of nutrients, animal wastes, pesticides and sediment runoff. **Omitted, "By May 13, 1991**

CBF: Agriculture – the previous language included a May 13, 1991 deadline for the development and implementation of agricultural soil and water conservation plans. That is now deleted. The question is, have these plan all been completed and are they now all being implemented? If not, County should consider a follow-up, very short new deadline, with a consequence of some kind for failing to implement by the new date.

(b) Prior to the development of soil and water conservation plans as required in Subsection F(4)(a), a 25-foot vegetated filter strip comprised of trees with a dense ground cover or a thick sod grass shall be maintained adjacent to tidal waters, tidal wetlands or tributary streams. The width of this strip shall be increased by a distance of 4 feet for every 1% increase in slope over 6%. Measures approved by the Harford County Soil Conservation

District may be used within this filter strip and elsewhere in the Critical Area to control noxious weeds such as Johnson grass, Canada thistle and multiflora rose.

(c) The feeding or watering of livestock is not permitted within 50 feet of tidal waters, tidal wetlands or tributary streams.

(d) Agricultural activities, including the grazing of livestock, shall not disturb the stability of tidal shorelines.

(e) Agricultural activities shall not be expanded in the Critical Area by:

[1] The destruction of nontidal wetlands by diking, dredging or filling operations.

[2] Clearing of forest or woodland on soils with a slope greater than 15% or on highly erodible soils.

[3] Clearing of lands identified as habitat protection areas, including the clearing of natural vegetation within the buffer.

(f) Timber harvesting operations on agricultural lands shall be done in accordance with the requirement of this Section.

(5) Forestry operations. Forests are to be considered a protective land use in the Critical Area and, thus, should be managed to protect their value for plant and wildlife habitat and water quality protection.

(a) Timber harvesting affecting 1 acre or more of forested area in the Critical Area, including timber harvesting on agricultural land and that described above in Subsection F(3)(b)[5] of this Section, shall be undertaken in accordance with a forest management, or forest conservation plan prepared by a forester registered in the State of Maryland and approved by the Department of Natural Resources based upon recommendations of the Harford County Forestry Board and the Department of Planning and Zoning. **Throughout (5) Changed Maryland Forest Service to Department of Natural Resources.**

[1] Plans in accordance with the provisions in Appendix F of the Harford County Chesapeake Bay Critical Area Management Program, as amended which do not involve cutting in the buffer or identified habitat protection areas may be conditionally approved by the project forester. Copies of such conditionally approved plans shall be sent to the Forestry Board and the Department of Planning and Zoning. If no adverse comments are received within 2 weeks after submittal of the plans to the Board and the Department, such plans are formally approved.

[2] For plans involving disturbance to a habitat protection area, a preharvest meeting must be held with the landowner and/or his designee, the Department of Planning and Zoning and the Department of Natural Resources before approval of the timber harvest may be granted. Forest management plans must be approved by the Harford County Department of Planning and Zoning, the Harford County Forestry Board and the Department of Natural Resources before an applicant may proceed with a timber harvest involving disturbance to a habitat protection area.

[3] Separate copies of forest management plans shall be submitted to the Department of Natural Resources, the Department of Planning and Zoning and the Forestry Board for their review and approval. Plans approved by the Department of Planning and Zoning and the Forestry Board shall be submitted by these agencies to the Department of Natural Resources. If any of the 3 reviewing agencies find the forest management plan to be inadequate, that agency must contact the applicant in writing as to what additional information is required. The Department of Natural Resources shall notify the applicant that the timber harvest has been approved, and the applicant may proceed with the harvest.

[4] Forest management plans shall include measures to protect surface and ground water quality, identified habitat protection areas and the continuity of plant and wildlife habitat and shall include a copy of the timber harvest plan which is the plan describing a proposed timber harvest that is required to be submitted to the Department of Natural Resources for a harvest of timber within the State of Maryland. Forest management plans shall show all buffers and other habitat protection areas. Forest management plans shall also show all proposed: stream crossings, culverts, landing areas, log decks, stockpile areas, skidder trails and haul roads to the nearest public road, and the limits of disturbance.

(b) Sediment control plans shall be developed for all timber harvesting in the Critical Area involving 5,000 square feet or more, including those undertaken on agricultural land. Such plans shall be approved by the Harford County Soil Conservation District based upon recommendations of the Department of Natural Resources and the Department of Planning and Zoning. Plans shall be submitted according to the procedures contained in the Forest Management Guide. The timber harvesting operation covered by such plans shall be implemented in accordance with the specifications contained in the document, Standard Erosion and Sediment Control Plan for Forest Harvest Operations, and any additional specifications established by the Department of Natural Resources.

(c) Timber harvesting within the Critical Area buffer shall be subject to the requirements set forth in Subsection G(4)(a)[4] of this Section. Timber harvesting within the Critical Area buffer requires that a Buffer Management Plan be included in the Forest Management Plan.

(6) Water-dependent facilities. Those structures associated with industrial, maritime, recreational, educational or fisheries activities requiring a location at or near the shoreline shall be considered water-dependent facilities and, thus, may be allowed within the Critical Area buffer, subject to the additional conditions of this subsection. An activity is water-dependent if it cannot exist outside the buffer and is dependent on the water by the intrinsic nature of its operation.

CBF: Water dependent facilities – not sure why the 5,000 square foot definition of expansion was deleted. Whether that is the correct number, or the expansion that triggers the following requirements is made smaller, it would be useful for the local jurisdiction to define a trigger size for reporting and further analysis.

(a) Except as otherwise provided in this regulation, new or expanded waterdependent activities may not be permitted in those portions of the buffer which occur in the RCA. Except as otherwise provided below, development activities or uses may be permitted in the Critical Area buffer in IDA and LDA provided that it can be shown: **Rewritten. Current Code: Except as otherwise provided below, new or expanded development activities or uses may be permitted in the critical area buffer in IDA and LDA provided that it can be shown:**

- [1] That they are water-dependent;
- [2] That the project meets a recognized private right or public need;
- [3] That adverse effects on water quality and fish, plant and wildlife habitat are minimized;

and

[4] That, insofar as possible, nonwater-dependent structures or operations associated with water-dependent projects or activities are located outside of the buffer.

(b) Expansion of an existing water dependent facility **Omitted “WHICH INCREASE THE TOTAL IMPERVIOUS SURFACES BY MORE THAN 5,000 SQUARE FEET, OR INSTALLATION OF NEW . . .”** includes: expansion of services, extension or construction of additional slips or piers, construction of new buildings, expansion of existing impervious surfaces or installation of new or additional boat storage facilities. Expansion does not include maintenance or repair or replacement of existing bulkheads, piers, or buildings, or maintenance dredging. All new or expanded waterdependent facilities shall be located and operated in accordance with the following conditions:

- [1] The activities shall not significantly alter existing water circulation patterns or salinity regimes.
- [2] The water body upon which the facility is proposed must have adequate flushing characteristics in the area for natural dispersal of and removal of pollution.
- [3] Disturbance to wetlands, submerged aquatic vegetation or other areas identified as important aquatic habitats shall be minimized.
- [4] Adverse impacts to water quality occurring as a result of the facility and associated activities, such as nonpoint source runoff, sewage discharge from land activities or vessels or pollutant runoff from boat cleaning and maintenance operations, shall be minimized.
- [5] Shellfish beds shall not be disturbed or made subject to discharge which would render them unsuitable for harvesting.
- [6] Dredging associated with the facility and associated activities shall utilize the method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the immediate vicinity of the dredging operation or within the Critical Area.
- [7] Dredged material shall not be placed within the Critical Area buffer or elsewhere in designated habitat protection areas except in previously approved channel maintenance disposal areas or as used for shore erosion protection measures.
- [8] Interference with the natural transport of sand shall be minimized.
- [9] Location of such facilities in or adjacent to waterfowl staging and concentration areas shall be avoided to the maximum extent possible. The use of new or existing water-dependent facilities in waterfowl staging and concentration areas shall be minimized during the period of November through March to avoid disturbance to waterfowl wintering there or using the areas as migratory staging areas.
- [10] A building permit for any construction in or over tidal waters is not valid without a concurrent State wetlands license or permit, and Sections 404/10 permits (as appropriate) from the Army Corps of Engineers.
- [11] Construction of a non-water dependent structure on new or existing pilings or pier over State or private wetlands in the Critical Area shall not be permitted. New boathouses located over State or private wetlands in the Critical Area shall not be permitted. "Boathouse" means a structure with a roof or cover, or similar device placed over open water to protect a boat or other vessel.

(c) All applications for new or expanded water-dependent facilities shall be required to submit such pertinent information and materials as are listed in the technical document, Program Requirements for Water-Dependent Facilities (Appendix I of the Harford County Chesapeake Bay Critical Area Management Program, as amended) and as determined necessary by the Zoning Administrator. Based on the project size and scope,

environmental sensitivity of the project site and potential adverse impacts to water quality, aquatic habitats or terrestrial habitats, the Zoning Administrator may require a comprehensive water-dependent facility plan (Changed Reprt to PLAN) as detailed in Appendix I of the Harford County Chesapeake Bay Critical Area Management Program, as amended. (ADDED) This plan must be approved by the Zoning Administrator. It is recommended that an applicant consult with the Department of Planning and Zoning before developing and submitting this information.

FOH: Outside oversight is recommended.

(d) Conditions relating to specific types of water-dependent uses. The development of the following water-dependent uses shall be subject to the following conditions:

[1] Commercial marinas, community marinas and piers, private piers, industrial water-dependent facilities, and other associated maritime uses, including boating, docking and storage facilities.

[a] New, commercial marinas and related maritime facilities shall not be permitted in resource conservation areas. Expansion of existing commercial marinas located in the RCA is allowed only if it is determined by the Zoning Administrator that the expansion will result in an overall improvement in water quality at the marina site or a reduction in the pollutant loading from the marina.

[b] New or expanded commercial marinas and related maritime facilities in areas designated as limited or intensely developed areas must meet the following conditions:

(i) The best management practices cited in the technical report, Program Requirements for WaterPart Dependent Facilities in the Critical Area (Appendix I of the Harford County Chesapeake Bay Critical Area Management Program as amended), shall be applied to the location and operation of new or expanded marinas and related maritime facilities, where applicable.

(ii) State sanitary requirements for such facilities are complied with.

[c] New or expanded community marinas and other noncommercial boating, docking and storage facilities may be located in the Critical Area buffer (ADDED:) in the RCA, LDA and IDA if they meet the following conditions:

(i) The facilities do not offer food, fuel or other goods and services for sale and adequate sanitary facilities shall be provided.

(ii) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded subdivision.

(iii) The facilities are associated with a residential development approved by the County for the Critical Area and are consistent with all the standards and regulations for the Critical Area as set forth in this Section.

(iv) Any disturbance of the Critical Area buffer is the minimum necessary to provide a single point of access to the proposed facilities.

(v) If community piers or slips are provided as part of a development built or constructed after June 24, 1988, private piers in the development shall not be permitted. Reworded. Current Code: If community piers or slips are provided as part of the new development, private piers in the development shall not be permitted.

(vi) The number of slips or piers permitted at the facility shall be the lesser of a and b below:

a. One slip for each 50 feet of shoreline in a subdivision in the intensely and limited development areas and 1 slip for each 300 feet of shoreline in a subdivision in the resource conservation area; or

b. A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Platted Lots or Dwellings in the

Critical Area Slips and Dwellings

Up to 15 1 for each lot

16 to 40 15 or 75%, whichever is greater

41 to 100 30 or 50%, whichever is greater

101 to 300 50 or 25%, whichever is greater

Over 300 75 or 15%, whichever is greater

[d] No structure connected to the shoreline, such as a dock, pier or boathouse, 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.

[e] New or expanded private water dependent facilities for residential lots must meet the following conditions:

(i) New or expanded private water dependent facilities will accommodate no more than 4 boats.

(ii) Non-water dependent facilities shall not be constructed on piers.

[f] New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of IDA exempted from the Critical Area buffer and are subject to the provisions of Subsection F(6)(a).

[2] Public beaches or other public water-oriented recreation or education areas. Public beaches or other public water-oriented recreation or education areas, including publicly owned boat launching and docking facilities and fishing piers, are allowed in the Critical Area buffer in the (ADDED) RCA, LDA and IDA, provided that the following conditions are met:

[a] Adequate sanitary facilities shall be provided.

[b] Service facilities shall be located outside the buffer.

[c] Permeable surfaces shall be used as the primary surfacing material if no degradation of groundwater would result.

[d] Disturbance to natural vegetation shall be minimized.

[e] Habitat protection areas shall be protected as consistent with provisions in

Subsection G below.

[f] Areas for passive recreation such as nature study, hunting and fishing, and for education may be permitted in the buffer, if nonwater-dependent structures or facilities associated with these projects are located outside of the buffer.

[3] Water-dependent scientific research and fishery-related facilities. Water-dependent scientific research facilities operated by governmental agencies or educational institutions and commercial water-dependent fisheries facilities, such as structures for crab-shedding, fish off-loading, docks and shore-based facilities necessary for fisheries activities, can be located in the Critical Area buffer, provided that associated non-waterdependent structures or facilities are located outside the buffer. (NEW) Commercial water-dependent fisheries activities and shore based facilities necessary for aquaculture operations may be located in the buffer in RCA, LDA and IDA.

(7) Surface mining.

(a) The establishment of new surface mining operations within the Critical Area shall be prohibited.

(b) Existing operations, including roads, accessory improvements, equipment and storage areas, may be continued within the Critical Area, provided that all such operations shall be conducted in a manner which:

[1] Does not adversely impact water quality, identified habitat protection areas or contiguous properties.

[2] Permits the rapid reclamation of the site, including any wash pond, when the operation has terminated.

[3] Retains the Critical Area buffer of natural vegetation between the operation and tidal waters, tidal wetlands and tributary streams.

(c) The expansion of existing (Changed existing SAND AND GRAVEL OPERATIONS to: surface mining operations in the Critical Area shall be reviewed and may be permitted as a special exception. Prior to accepting any application for Board of Appeals review, the Zoning Administrator shall review the application and shall forward the application to the Board only upon making findings that such expansion shall have met the following conditions.

[1] The operation shall not have an adverse impact on identified habitat protection areas.

[2] The operation shall not be located on lands which are within 100 feet of the mean high water line of tidal waters, tidal wetlands or the edge of streams.

[3] The operation shall not be located on land with highly erodible soils.

[4] The operation shall not be permitted if the mining activity would prevent the use of the site for agricultural or forestry purposes for more than 25 years.

[5] Wash plants, including ponds, spoil piles, related equipment, roads, parking areas and other impervious surfaces, shall not be located within the Critical Area buffer.

[6] An adequate reclamation plan has been developed.

(8) Shore erosion control measures. All development activities conducted on lands immediately adjacent to tidal waters or where existing developments are experiencing shoreline erosion problems shall be required to meet the following standards regarding the control of shoreline erosion:

(a) Nonstructural measures (i.e., vegetative stabilization, regrading, etc.) for controlling shore erosion shall be used wherever possible in order to conserve and protect plant, fish and wildlife habitat.

(b) Where non-structural measures are ineffective or impractical, stone revetments or rip rap shall be used whenever possible to conserve fish and plant habitat. Bulkheads and other structural measures shall be used only where the use of revetments is infeasible or where their use is needed as part of a water-dependent facility. Changed "Where structural measures must be used, stone revetments . . ." to "Where NON-STRUCTURAL"

(c) Erosion control plan. Where structural measures must be used, these must be established as specified in an erosion control plan approved by the Department of Planning and Zoning. The approved plan must be kept on the project site and be available for inspection upon request of the Zoning Inspector during the construction of the erosion control measures. An approved plan is not valid without all State and Federal permits and licenses required to conduct such erosion control measures. The erosion control plan contains a site sketch of the existing shoreline and a site sketch of the proposed control measures. The erosion control plan also contains a brief description of the proposed methods and materials. The information required by the Army Corps of Engineers and Maryland Department of the Environment/Nontidal Wetlands Division (CHANGED from MD DNR) for a 404 joint permit application is sufficient for submission as an erosion control plan.

NEW (d) Slope stabilization. Where erosion of the slope in the buffer is occurring above mean high water, stabilization of the slope may only occur in accordance with an approved Buffer Management Plan and in consultation with the Soil Conservation District and Critical Area Commission.

(9) Natural 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:

(a) 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.

(b) The Critical Area buffer shall be maintained in the development of any natural parks site. Trees or other suitable vegetation shall be planted within areas of the buffer which are presently unvegetated.

(c) All areas listed as identified habitat protection areas in §267-4 (Definitions) shall be protected on a natural park site.

(d) Forest cover on the site shall be maintained to the maximum extent feasible.

(e) All publicly owned lands leased for agricultural activities shall have current soil and water conservation plans.

G. Habitat protection areas.

(1) The purpose of this subsection is to ensure protection for the following types of areas with significant resource value, called "habitat protection areas," no matter where they are located within the Critical Area.

(2) The following areas of significant natural value are classified "habitat protection areas" and are so designated on each Zoning Map Overlay or herein defined:

(a) Critical Area buffer. An area a minimum 100 feet in width as measured from the mean high water line of tidal waters, tidal wetlands and tributary streams shall be established and maintained in a natural condition. The Critical Area buffer shall be expanded beyond 100 feet to include the following contiguous sensitive areas:

[1] Hydric soils, highly erodible soils, wetlands or other aquatic habitats, and steep slopes.

[2] Steep slopes are defined as slopes which equal or exceed 15% slope. In the case of steep slopes within or contiguous to the Critical Area buffer, the buffer is additionally expanded beyond the expansions for the above-listed sensitive areas 4 feet for every 1% of slope as averaged over the contiguous steeply sloped area or to the top of the contiguous steeply sloped area, whichever is greater. Topographic information contained in Harford County's GIS will be used to determine the presence of steep slopes unless field verifications are provided to detail the locations of these slopes.

(b) Nontidal wetlands. Those areas which meet the definition of nontidal wetlands as set forth in §267-4 (Definitions), both mapped and located by field survey. **Omitted "A minimum area of 40,000 square feet is hereby established for designation as a non-tidal wetlands, is otherwise identified as a habitat protection area in this section or is shown to be hydrologically connected through surface or subsurface flow to streams and tidal water** FOH: We recommend erring on the side of caution by retaining the omitted section above.

(c) Habitats of State-designated threatened or endangered species or species in need of conservation, natural heritage areas and habitats of local significance.

(d) Colonial waterbird nesting sites.

(e) Riparian forests and other forested areas utilized as breeding habitat by forest-interior-dwelling species.

(f) Anadromous fish propagation waters.

(g) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and nontidal wetlands.

(3) General provisions.

(a) Development activities or other land disturbances, including commercial tree harvesting and agricultural activities, are prohibited within the boundaries of an identified habitat protection area unless the Zoning Administrator certifies that the location of the activities and/or the limitations and restrictions placed on

them will avoid adverse impacts on the water quality protection and plant and wildlife habitat values of the area or to the species dependent upon such areas.

(b) The location of roads, bridges or utilities shall be prohibited within the boundaries of a habitat protection area unless there is no **feasible (CHANGED from "reasonable"** alternative, as determined by the Zoning Administrator 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, to minimize adverse effects on wildlife, aquatic life and their habitats and to maintain hydrologic processes and water quality.

(c) All development activities that must cross or otherwise affect streams shall be designed to:

- [1] Retain tree canopy so as to maintain stream water temperatures within normal variation;
- [2] Provide a natural substrate for streambeds; and
- [3] Minimize adverse water quality and quantity impacts of stormwater.

(4) Specific provisions. Activities affecting particular habitat protection areas shall comply with the following requirements:

(a) Critical Area buffer.

[1] The buffer shall be maintained in natural vegetation and may include planted native vegetation where necessary to protect, stabilize or enhance the shoreline. In the case of **(Omitted "new")** development where the buffer is not entirely established in woody vegetation, the buffer shall be planted **(ADDED) and maintained** according to the standards set forth in the Forest Management Guide for buffer plantings.

[2] New development activities, including redevelopment activities and including structures, under-ground petroleum product storage tanks, roads, parking areas and other impervious surfaces, mining and related facilities or septic systems (and other disposal systems), may not be permitted in the buffer, except for those necessarily associated with water-dependent facilities as approved in accordance with Subsection F(6) of this Section. Replacement of existing under-ground petroleum product storage tanks shall be with above-ground tanks.

[3] Where agricultural use of lands within the area of the Critical Area buffer ceases and the lands are proposed to be converted to other uses, the Critical Area buffer shall be established. Establishment of the buffer shall include the establishment of appropriate forest vegetation as specified in the Forest Management Guide. Appropriate surety and covenant shall also be required as specified in Subsection F(3)(b)[5][d] of this Section.

[4] For any commercial timber harvesting of trees **OR FOR ANY CUTTING OR CLEARING OF LAND WITHIN THE CRITICAL AREA BUFFER** **Omitted, ". . . or for any cutting or clearing of land within the critical area buffer . . ."** by selection, a buffer management plan shall be prepared by a registered forester and approved by the Department of Natural Resources based upon recommendations of the Harford County Forestry Board and the Harford County Department of Planning and Zoning. Cutting or clearing operations specified in such plans shall be conducted in accordance with the following requirements:

FOH: This language(Omitted, ". . . or for any cutting or clearing of land within the critical area buffer . . .") should be reinstated and number [5] below should be deleted.

[a] Selective cutting may be permitted to within 50 feet of the mean high water line of tidal waters, perennial tributary streams and tidal wetlands.

[b] Nontidal wetlands and other identified habitat protection areas shall not be disturbed.

[c] Disturbance to stream banks and shorelines shall be avoided.

[d] The area disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and reestablishes the wildlife corridor function of the buffer.

[e] The cutting shall not create logging roads and skid trails within the buffer.

NEW ~~[5] Except as specified below, any clearing of vegetation or removal of trees within the buffer is prohibited unless a buffer management plan is submitted and approved by the Department of Planning and Zoning prior to any clearing or removal. Any violation of this Section shall require mitigation at a ratio of 2:1.~~

FOH: Again, this should be under the purview of a department such as the Soil Conservation District which has the expertise to understand critical areas.

[6] The cutting of trees or removal of natural vegetation may be permitted in the Critical Area buffer where necessary to provide access to private piers, to install or construct a shore erosion protection device, an **(ADDED) approved** slope erosion control measure or a water-dependent facility, provided that the device, measure or facility has received all necessary State and Federal permits and **(ADDED) provided that a buffer management plan has been approved by the Department of Planning and Zoning.**

[7] Individual trees may be cut for personal use, provided that this cutting does not impair the water quality or existing habitat value or other functions of the buffer, and provided that the trees are replaced on an equal basis for each tree cut, **as provided in a buffer management plan (ADDED) approved by the Department of Planning and Zoning.** Planting specifications for replaced trees are given in Appendix F of the Harford County Chesapeake Bay Critical Area Management Program, as amended.

[8] Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures or which are in danger of falling and therefore causing the blockage of streams or resulting in accelerated shore erosion. Individual trees removed must be replaced on an equal basis for each tree cut, as provided in a buffer management plan and approved by the Department of Planning and Zoning.

[9] (ADDED) Under the guidance of the Department of Natural Resources, horticultural practices may be used in the buffer to maintain the health of individual trees. (ADDED) However, the clearing of understory may only be undertaken with a buffer management plan approved by the Department of Planning and Zoning.

[10] Other cutting techniques may be undertaken within the buffer under the advice and guidance of the Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire. (ADDED) A buffer management plan approved by the Department of Planning and Zoning is required.

[11] Buffer exempt areas. The following provisions apply to shoreline areas that have been identified as buffer exempt areas in the Harford County Critical Area Program as shown on the buffer exempt area maps attached hereto and incorporated herein by reference. Buffer exempt areas are those lots of record as of December 1, 1985 where the pattern of residential, industrial, commercial or recreational development prevents the buffer from fulfilling its intended purposes as stated in COMAR 27.01.09.01.B. (ADDED) For purposes of this buffer exempt area Section, development refers to sites with less than 15% existing impervious surface and redevelopment pertains to sites with greater than 15% existing impervious surface.

CBF: Habitat protection areas, Buffer Exempt – Not sure of wording. If the area is declared buffer exempt, how can there be a buffer from which intrusion is to be guarded.?

Omitted: “for these buffer exempt areas, construction or placement of new or accessory structures, minor additions and associated new impervious surfaces on developed lots or parcels is permitted provided that:”

Completely rewritten [a] through [f]

[a] For single-family, detached residential areas designated as buffer exempt areas, construction or placement of new or accessory structures, minor additions and associated new impervious surfaces on developed lots or parcels is permitted in the buffer provided that:

(i) The applicant can demonstrate that there is no feasible alternative for the location of the new development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems.

(ii) New development or redevelopment shall minimize the shoreward extent of intrusion into the buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).

(iii) Existing principal or accessory structures in the buffer may be replaced in the same location. Any increase in impervious area within the buffer shall comply fully with the requirements of this Section.

(iv) New accessory structures may be permitted in the buffer in accordance with the following setback requirements:

(a) New accessory structures may be located closer to the water or edge of tidal wetlands than the dwelling only if there are no other locations for the accessory structures;

(b) The area of the accessory structures within the buffer shall be minimized and the cumulative total area of all new and existing accessory structures within the buffer shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total; and

(c) In no case shall new accessory structures be located less than 25 feet from the water or edge of tidal wetlands.

(v) Variances to other setback requirements have been considered before additional development within 100 feet of mean high tide is approved.

(vi) No natural vegetation may be removed in the buffer except that required by proposed construction. The applicant will be required to maintain any other existing natural vegetation in the buffer. Any clearing of trees or other removal of vegetation shall be completed consistent with Section 267-63G(4) above.

(vii) Development does not impact any other habitat protection areas other than the buffer, including nontidal wetlands, other State and Federal permits notwithstanding.

(viii) Buffer exempt area designations shall not be used to facilitate the filling of tidal wetlands that are contiguous to the buffer to create additional buildable land for new development or redevelopment.

(ix) Any development in the buffer exempt area requires mitigation in the form of plantings, offsets or fees in lieu.

(a) Natural vegetation of an area twice the extent of the footprint of the development activity within the 100-foot buffer shall be planted on-site in the buffer or other location as may be determined by the Zoning Administrator. If it is not possible to carry out offsets or other mitigation within the Critical Area, any planting or other habitat/water quality improvements should occur within the affected watershed.

(b) Applicants who cannot comply with the planting requirements may use offsets to meet the mitigation requirement. Offsets may include the removal of an equivalent area of existing impervious surfaces in the buffer, the construction of best management practices for stormwater, wetland creation or restoration or other measures approved by the Zoning Administrator that improve water quality or habitat.

(c) Applicants who cannot comply with either the planting or offset requirements above on-site or off-site within the Critical Area shall pay a fee in lieu of \$1.20 per square foot for the area to be planted.

(d) Any required reforestation, mitigation or offset areas must be designated under a development agreement or other instrument and recorded among the Land Records.

(e) The County may establish regional areas for plantings and/or stormwater management facilities to fulfill the water quality and wildlife habitat functions of the Critical Area buffer for those areas which have been exempted from the buffer exempt area provisions using the fee in lieu paid. Monies contributed under this Section shall be deposited in a separate account and shall be used for site identification, acquisition, design, preparation and planting of vegetation at selected regional water quality and wildlife improvement areas, and shall not revert to the general fund.

[b] For commercial, industrial, institutional, recreational and multi-family residential areas designated as buffer exempt areas, construction or placement of new structures and associated new impervious surfaces on developed parcels in the buffer is permitted provided that:

(i) The applicant can demonstrate that there is no feasible alternative for the location of the new developed or redeveloped activity, including structures, roads, parking areas and other impervious surfaces or septic systems.

(ii) The applicant can demonstrate that efforts have been made to minimize buffer impacts by locating activities as far as possible from mean high tide, the landward edge of tidal wetlands or the edge of tributary streams, and variances to other local setback requirements have been considered before additional intrusion into the buffer. Convenience or expense shall not be factors considered when evaluating the extent of allowable impacts to the buffer.

(iii) New development, including accessory structures, shall minimize the extent of intrusion into the buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the zoning district setback or ~~50 feet~~ 100 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The ~~50 feet~~ 100 feet setback shall be maintained for all subsequent development or redevelopment of the property.

(iv) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the zoning district setback or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. Existing structures located within the 25 foot setback may remain. A new structure may be constructed on the footprint of an existing structure or impervious surface if it complies with all of the setbacks of this Section and other applicable district regulations. Opportunities to establish a 25-foot setback should be maximized.

(v) Development and redevelopment may not impact any habitat protection areas other than the buffer, including nontidal wetlands, other State or Federal permits notwithstanding.

(vi) No natural vegetation may be removed in the buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the buffer.

(vii) Buffer exempt area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the buffer or to create additional buildable land for new development or redevelopment.

(viii) Any development or redevelopment in the buffer exempt area requires mitigation in the form of plantings, offsets or fees in lieu.

(a) A forested or landscaped buffer yard, 25 feet wide, shall be established on the project site between the development and the water. This buffer yard shall be densely planted with trees and shrubs.

(b) On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted buffer yard may be made on a case-by-case basis as approved by the Zoning Administrator.

(c) In addition to the 25 foot buffer yard, natural forest vegetation of an area twice the extent of the footprint of the development activity shall be planted within the 100 foot buffer on-site, or at another location, preferably on-site.

(d) Applicants who cannot comply with the planting requirements in Subsection C above may use offsets to meet mitigation requirements, such as removal of an equivalent area of existing impervious surfaces in the buffer, the construction of best management practices for stormwater, wetland creation or restoration or other measure approved by the Zoning Administrator that improve water quality or habitat. If it is not possible to carry out offsets or other mitigation within the Critical Area, any planting or other habitat/water quality improvements should occur within the affected watershed.

(e) Applicants who cannot comply with either the planting or offset requirements shall pay a fee in lieu of \$1.20 per square foot for the area to be planted.

CBF: \$2.00

(f) Any required reforestation/mitigation offset areas must be designated under a development agreement or other instrument and recorded among the Land Records.

(g) The County may establish regional areas for plantings and/or stormwater management facilities to fulfill the water quality and wildlife habitat functions of the Critical Area buffer for those areas which have been exempted from the buffer exempt area planting provisions and use the fee in lieu alternative. Monies contributed under this Section shall be deposited in a separate account and shall be used for site identification, acquisition, design, preparation and planting of vegetation at selected regional water quality and wildlife improvement areas, and shall not revert to the general fund.

(b) Nontidal wetlands.

[1] A ~~75-foot~~ 100-foot buffer shall be established adjacent to nontidal wetlands.

[2] Development activities shall not be permitted in nontidal wetlands (ADDED) or the ~~75-foot~~ 100-foot nontidal wetland buffer, except for permitted development associated with water-dependent facilities as listed in Subsection F(6) of this Section.

[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 specifically excluded from coverage by the provisions of this district.

[4] Development activities in the drainage areas to nontidal wetlands shall not adversely affect the quality or quantity of surface or subsurface flow to the nontidal wetland so as to adversely affect its water quality and protection of fish, plant or wildlife habitat value.

[5] The location of stormwater management measures is not allowed in nontidal wetlands (ADDED) and the ~~75-foot~~ 100-foot nontidal wetland buffer unless it is demonstrated, and only if the Zoning Administrator concurs that there is no other technically feasible location and that the water quality benefits of the measures outweigh the adverse impacts on water quality and plant and wildlife habitat values of the nontidal wetlands affected. In determining the adverse impacts of the location of such facilities, consideration can be given to the compensatory value of mitigation measures proposed to replace the lost water quality and habitat value of the affected nontidal wetlands. (ADDED) All Federal and State wetland permits must be obtained.

FOH: We believe that if development occurs which must go in a non-tidal wetland area, then that development should not occur.

(c) Habitats of State-designated threatened or endangered species or species in need of conservation, designated natural heritage areas and habitats of local significance. **Changed all from MD Wildlife or MD Forest Service or MD Fish, Heritage and Wildlife Administration to DNR.**

[1] Development activity and other land disturbances shall be prohibited in State-designated natural heritage areas, State designated habitats of threatened and endangered species and species in need of conservation or identified habitats of local significance. Subject to the review of a site-specific study prepared in consultation with the Department of Natural Resources, the Zoning Administrator may approve development activities or disturbances if it can be shown that the proposed activities will not have or cause adverse impacts on the identified habitats.

[2] Forest management plans and soil and water conservation plans developed for forestry or agricultural operations within such protection areas shall include measures to protect the integrity of these habitats.

(d) Colonial waterbird nesting sites.

[1] A minimum 1/4 mile protection area buffer shall be established around any identified colonial waterbird nesting sites unless, subject to the review of a site-specific study prepared in conjunction with the Department of Natural Resources, it can be shown that development activity or disturbances will not have or cause adverse impacts on the identified habitats. Any development activities or other disturbances which are allowed should not occur during the nest-building and incubation periods, approximately February through April.

[2] Noise from construction or development activities ~~should be minimized~~ **SHALL NOT BE ALLOWED** during the breeding season of February through April in areas adjacent to the one-fourth mile protection area buffer in order to avoid adverse impacts on nesting colonial waterbirds. The applicant is required to contact the Department of Natural Resources for information on the specific breeding seasons.

FOH: We should do more than minimize noise in this instance. We should not allow it.

(e) Riparian forests and other forested areas utilized as breeding habitat by forest interior dwelling species. The following management practices shall be followed in the case of development, forest operations or other activities in areas identified as breeding habitat for forest-interior-dwelling species in accordance with the procedures specified in the technical report, A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area. (Appendix N of the Harford County Chesapeake Bay Critical Area Management Program):

[1] Minimize disturbance during the May-August breeding season.

[2] Locate development or other activities that would cause disturbance to the forested areas such as roads, utility line corridors, structures and intensive timber harvesting on the periphery of the site.

[3] To the maximum extent feasible, retain the forest canopy and trees and shrubs underneath the canopy. A timber harvest within forest interior dwelling species habitat shall not open the canopy by more than 30%.

[4] Timber harvesting shall be undertaken utilizing techniques which help to maintain or improve habitat for forest interior dwelling species. The Department of Natural Resources shall be consulted for advice on the use of proper techniques prior to any timber harvesting operations.

(f) Anadromous fish propagation waters. The following management measures shall apply to any streams identified as anadromous fish propagation waters:

[1] The installation or introduction of concrete rip rap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.

[2] Channelization or other physical alterations which may change the course or circulation of a stream shall be prohibited.

[3] Construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams shall be prohibited.

[4] The construction, repair or maintenance activities associated with bridges or other stream crossings or with utilities and roads, which involve disturbance within the Critical Area buffer or which occur in streams, shall be prohibited between March 1 and June 15.

[5] All proposed in-stream construction projects shall maintain the natural stream channel bottom and predevelopment conditions.

H. Variances.

(1) Variances from the provisions of this Section may only be granted if, due to special features of a site or other circumstances, implementation of this Section or a literal enforcement of its provisions would result in unwarranted hardship (see subsection (4), below) to an applicant.

(2) All applications for variances shall be reviewed by the Zoning Administrator for conformance with applicable provisions of this Section, and a written report shall be provided to the Board of Appeals.

(3) In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

NEW (a) That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.

(b) That a literal interpretation of the provisions of this Section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.

(c) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this Section to other lands or structures within the Critical Area.

(d) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

(e) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the purpose and intent of this Section.

(f) That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.

(g) That the growth allocation for the County will not be exceeded by the granting of the variance.

(h) That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

NEW (4) For purposes of this subsection, "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. In considering whether unwarranted hardship exists, the County must consider the following:

(a) The County shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of the Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.

(b) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the County may consider that fact.

(c) An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (a), above.

(d) Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.

(e) With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

[1] the applicant;

[2] the County or any other government agency; or

[3] any other person deemed appropriate by the County.

(5) All applications for variance requests shall be filed in writing in accordance with §267-9D of the Zoning Code. Notice of all variance requests and copies of applications filed in accordance with this Section shall be sent to the Chesapeake Bay Critical Area Commission within 10 calendar days of filing with the Department of Planning and Zoning. A copy of the recommendation of the hearing examiner or of the Board in acting on the variance shall be promptly sent to the Commission.

I. Special exceptions. All projects requiring approval as special exceptions within the Critical Area must meet the standards of this Section. The Zoning Administrator may require such additional information, studies or documentation deemed necessary to ensure that applicable requirements of this district are met. Applications will not be considered complete for processing until all information as required by the Zoning Administrator has been received.

J. Nonconforming uses and structures. Subject to those requirements governing nonconforming uses or structures contained in §267-20 of this Code, any use or structure in existence, as of the date of the enactment of this Section, shall be allowed to continue as originally built and utilized. Any intensification or expansion of such existing nonconforming uses or structures shall only be allowed subject to the approval of a variance along with all necessary findings, as described in Subsection H of this Section.

K. Grandfathering provisions. Notwithstanding the density provisions of Subsection F(3)(c) of this Section, the following development activities shall be allowed in the Critical Area, provided that the development activity conforms to all applicable provisions for the protection of identified habitat protection areas, for the development of waterdependent facilities and for adequate stormwater management measures including the limitation of impervious surfaces in **(ADDED) LDA and RCA**; in accordance with F(3)(b) and F(3)(c) of this Section:

(1) Construction of a single-family dwelling on an undeveloped, legal parcel of land or lot of record that existed as of December 1, 1985.

(2) Construction of subdivisions that received final approval prior to June 1, 1984, provided that lots not individually owned are consolidated or reconfigured to comply with the provisions of this Section to the maximum extent possible.

(3) Construction of subdivisions which received final approval between June 1, 1984, and December 1, 1985.

(4) Construction of subdivisions which received final approval after December 1, 1985, and prior to the date of approval of this Section. Such subdivisions shall be consistent with the provisions of this Section, or the development of these areas must utilize a portion of the County's growth allocation.

(5) The expansion by no more than 50% of commercial uses on parcels designated as limited development areas because they did not meet the minimum 20-acre size required for IDA designation.

L. Amendments to management area boundaries and general Program amendments. As defined in this Section, the boundaries shown on the critical area maps depicting the critical area land use management areas (IDA, LDA, RCA), (ADDED) and provisions in the Critical Area Program, may require amendment from time to time. All such amendments or changes shall be reviewed in accordance with the following procedures and shall conform to the required standards as outlined in this subsection:

(1) For purposes of this Section, the following definitions apply:

(a) Program amendment means any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a program refinement.

NEW (b) "Program refinement" means any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area in a manner consistent with the adopted program, or that will not significantly affect the use of land or water in the Critical Area. Program refinement may include:

NEW [1] A change to an adopted program that results from State law;

NEW [2] A change to an adopted program that affects local processes and procedures;

NEW [3] A change to a local ordinance or code that clarifies an existing provision; and

NEW [4] A minor change to an element of an adopted program that is clearly consistent with the provisions of State Critical Area Law and all the criteria of the Commission.

(2) General procedures.

(a) The County Council may propose changes or amendments to the boundaries as shown on the critical area maps. The basis for approval of such amendments shall be due to:

[1] A mistake in the original designation of a management area; or

[2] The periodic review of the overall management program; or

[3] A request for a growth allocation.

(b) All proposed amendments shall be reviewed in accordance with the procedures and standards of this Subsection. (ADDED) In addition, all proposed amendments to the County's Critical Area Program, including, but not limited to, the Zoning Code, Subdivision Regulations, and Critical Area maps, shall be consistent with the purposes, policies, goals and provisions of the Critical Area Law and all criteria of the Critical Area Commission.

(c) Application submittal. All applications for amendments shall be reviewed (OMITTED) "REVIEWED ON AN ANNUAL BASIS" in the following manner:

[1] Amendments involving a growth allocation (ADDED) or other amendment request shall be submitted to the Department of Planning and Zoning. (OMITTED) by June 1. The Department of Planning and Zoning shall hold a preapplication meeting with the applicant, and shall notify the applicant in writing of the sufficiency of their application within 30 days of receipt of the application. The Department of Planning and Zoning shall present a report with a recommendation on the proposed amendment to the Planning Advisory Board (PAB) and the Environmental Advisory Board (EAB) within 90 days of the determination of a complete application. The PAB and EAB shall transmit their recommendations on the proposed amendment to the County Council within 90 days of receipt of the Planning and Zoning staff report. The Department of Planning and Zoning shall present a staff report with a recommendation on the amendment to the County Council concurrent with the PAB recommendation.

[2] If the Department of Planning and Zoning determines that an application is insufficient, the applicant shall submit whatever additional information the Department requires within 30 calendar days from the time of notification of insufficiency. If the required information is not submitted within 30 days, the application shall be considered void. (OMITTED:) Requirement that all applications for amendments be submitted by January 1.

[3] The County Council shall hold a public hearing on the proposed amendment.

(ADDED) The Department of Planning and Zoning shall publish notice of the date, time and place of the hearing at least once in at least 2 newspapers published in the County at least 2 weeks prior to the hearing date and shall send notice of the hearing a minimum of 2 weeks prior to the hearing to all property owners whose land is immediately adjacent to or lies wholly or in part within the proposed amendment area. At any time after the hearing, the Council may approve or deny these proposed amendments (OMITTED "by resolution.").

(OMITTED) the requirement that Council SHALL HOLD A PUBLIC HEARING WITHIN SIXTY CALENDAR DAYS FOLLOWING RECEIPT OF THE PLANNING ADVISORY BOARD RECOMMENDATION

[4] All amendments approved by the Council shall be forwarded to the Critical Area Commission within 30 calendar days of the Council's final action. No amendment shall be considered final pending action by the State of Maryland Critical Area Commission.

NEW [5] The Chairman, and as appropriate, the Commission, shall determine if the requests for program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all criteria of the Commission.

NEW [6] In accordance with the determination of consistency as outlined in [5] above, the Chairman of the Critical Area Commission, or as appropriate, the Commission, shall approve the proposed program refinement or amendment and notify the County; deny the proposed program refinement or amendment; approve the proposed program refinement or amendment subject to one or more conditions; or return the proposed program refinement or amendment to the County with a list of changes to be made.

(d) Information required. At a minimum, all applications for amendments shall include the following information:

[1] The proposed boundaries of the amendment request showing the existing and proposed boundaries of the management area.

[2] A written justification describing how the proposed amendment conforms to the objectives of the County's Critical Area Management Program and addresses the required findings for the management area where the project is to be located as specified below.

[a] The Zoning Administrator shall require additional materials as may be necessary for the review of the proposed amendments. For those amendments involving a growth allocation request, the information required for concept plan or preliminary plan approval as listed in the Subdivision Regulations shall be submitted, including factors listed in Subsection M of this Section. For amendments involving the correction of a mistake in the original designation, the applicant shall also provide a statement specifying the mistake in the original designation of a land use management area that makes the proposed amendment necessary.

NEW [b] All relevant information necessary for the Chairman of the Commission, and as appropriate, the Commission, to evaluate the changes.

(3) Fees. The following fee schedule shall apply to all applications for amendments to management area boundaries:

(a) Publication and posting fee...\$200.00

(b) Filing fee (all projects)...\$500.00

(c) Plus \$15.00 per acre or portion of an acre within the critical area of Harford County.

(4) If the Council takes action to deny a growth allocation or boundary mistake argument, the applicant may not submit an application for the same request for 2 years following the decision unless a significant change has been made in the ownership or site conditions.

M. Expansion of intensely developed and limited development management areas.

(1) General requirements. The boundaries of the intensely developed and limited development management area, as shown on each Zoning Map overlay, may be expanded in accordance with the following procedures for use of a portion of the County's growth allocation:

CBF: Expansion – Re use of growth allocation, while these provisions appear to meet the letter of the state law, there is no reason why the local jurisdiction should not (and indeed, many reasons why it should) require that before growth allocation may be used in the County, the County shall first have designated IDA/LDA parts of its Critical Area, consistent with the state smart growth law, as a Priority Funding Area where such growth is appropriate, and that the County should provide for such growth allocation within its Comprehensive plan, ahead of time.

(a) Acreage. The total area of expansion shall not exceed an area equal to 5% of that portion of the total land in the County's resource conservation management area that is not designated tidal wetlands. No more than ½ of the allocated expansion shall occur in areas shown in the resource conservation management area.

(b) Location. Expansion of the intensely developed or limited development management areas may be approved subject to the following locational criteria:

[1] **(CHANGED “such areas to** New LDA shall be located adjacent to an existing limited development area or intensely developed management area. **(ADDED) New intensely developed areas shall be located in an LDA or adjacent to an existing IDA or are an existing grandfathered commercial, industrial or institutional use that existed as of the date of the original local program approval.**

[2] Such areas shall be located at least 300 feet from tidal waters or tidal wetlands if the land was originally designated in the original resource conservation management area, unless the Zoning Administrator certifies that a Critical Area buffer less than 300 feet in width is adequate to protect water quality and fish, plant and wildlife habitat.

[3] Such areas shall incorporate measures to protect water quality and identified habitat protection areas located on or adjacent to the proposed expansion areas.

[4] Such areas shall minimize impacts to habitat protection areas and lands in resource conservation management areas in proximity to such an expanded limited development or intensely developed area.

2) Additional requirements. All projects granted a growth allocation shall conform to the following additional standards:

(a) All forested area removed shall be replaced on a square-footage basis in accordance with the procedures specified in §267-63 of the Zoning Code and the Forest Management Guide. If such replacement is not feasible, fee in-lieu must be paid to the County in accordance with the procedures specified in this Section.

(b) Pollutant loadings associated with developments granted growth allocations shall be managed according to the levels required for the land use management area amendment. In the case of new intensely developed area, such loadings shall be reduced 10% from predevelopment levels. The procedures contained in the technical report entitled (CHANGED) "Applicant's Guide for 10% Rule Compliance – Urban Stormwater Quality Guidance for the Maryland Chesapeake Bay Critical Area in Intensely Developed Areas (IDA) to: "Critical Area 10% Rule Guidance Manual, Fall 2003" (Appendix C of the Harford County Critical Area Management Program, as amended) shall be used to determine the amount of reduction required and what specific measures are needed to meet these requirements.

(c) Development on slopes greater than 15% as measured prior to development shall be prohibited.

(d) Development on soils with development constraints; i.e., highly erodible soils, soils with severe septic constraints, hydric soils, and soils with hydric inclusions as listed in Table 63-1 shall be **PROHIBITED**. ~~restricted. The Zoning Administrator may permit development on such soils if adequate mitigation measures are applied to address the identified constraints and to avoid significant adverse impacts on water quality or fish, plant or wildlife habitats.~~ (OMITTED) ". . . hydric soils less than 40,000 square feet in extent . . ." FOH: If the soils are highly erodible and with severe constraints, there should be no development – EVER.

(3) Standards for review of expansion projects.

(a) Project review criteria. In addition to the requirements listed in Subsections M(1) and (2) above, all projects requesting an expansion of the IDA and LDA as a growth allocation shall be reviewed and evaluated for their conformance with the following factors:

[1] The amount of forested area and other vegetative cover that is left undisturbed and in a natural state on the site.

[2] Additional public improvements and the specific nature of such improvements that will be provided with the proposed development (Examples of these would include public access facilities to waterfront areas, acceleration of the provision of public water and sewer service to areas with existing health problems, dedication of lands for public park purposes, etc.)

[3] Use of innovative site design and construction design features to minimize the disturbance of natural areas and reduce potential impacts on habitat protection areas and adjacent communities and RCA areas. These features could include, but are not limited to:

[a] The use of cluster development;

[b] The use of shallow-marsh creation stormwater management measures;

[c] The use of buffer areas to minimize impacts on existing habitats and wildlife corridors and protect adjacent natural and developed areas from impacts of the proposed development;

[d] The use of appropriate landscaping plans and materials to enhance the establishment of vegetated buffer areas on the project site;

NEW [e] The use of conservation easements to permanently protect natural areas; and

NEW [f] The use of low-impact development (LID) practices. LID practices are described in the following documents, which are hereby incorporated by reference: U.S. Department of Housing and Urban Development, Office of Policy Development and Research, The Practice of Low Impact Development (July 2003); Prince George's County, Maryland Department of Environmental Resources, Low- Impact Development Design Strategies: An Integrated Design Approach (June 1999), and Prince George's County, Maryland Department of Environmental Resources, Low-Impact Development Hydrologic Analysis (July 1999). Low impact development techniques are encouraged as Environmentally Sensitive Development Credits in the 2000 Maryland Stormwater Management Design Manual, Volumes I and II.

FOH: We ask that these LID techniques be readily available to the Council and the public for study before one is asked to legislate based on these techniques.

(b) Annexation areas. Any area proposed for annexation by a municipality where the proposed use on the parcel requires a change in the land use management area (i.e., RCA to LDA or IDA, etc.) shall be subject to all the procedures for growth allocation as specified in this Section **AND TO COUNTY COUNCIL REVIEW AS OUTLINED BELOW..**

FOH: Annexation areas should retain the land usage until the County Council reviews the program.

N. Comprehensive review of the Critical Area program

(1) The Critical Area program shall be reviewed at least every (CHANGED) from 4 years at anniversary date to 6 years, and the County Council shall propose any necessary amendments to the program or its adopted maps. The basis for approval of such amendments shall be due to:

- (a) Updated resource inventory,
- (b) Refinement of program for better consistency with the State Critical Area criteria,
- (c) Refinement of program for more effective protection of natural resources within the Critical Area.

(2) General procedures. All such amendments or changes shall be reviewed in accordance with the following procedures and shall conform to the required standards as outlined in this subsection:

(a) The Department of Planning and Zoning shall submit program amendments to the Planning Advisory Board (PAB) and the Environmental Advisory Board (EAB) together with a summary of the reasoning for the amendments.

(b) Within 60 (ADDED) calendar days the PAB and the EAB shall transmit their recommendations on the proposed amendment to the County Council.

(c) The County Council shall hold a public hearing on the proposed amendment. (OMITTED) the words "within sixty calendar days following receipt of the Planning Advisory Board recommendation" Notice of the date, time and place of the hearing shall be published at least 1 time in at least 2 newspapers published in the County at least 2 weeks prior to the hearing date. In addition, notice shall also be sent a minimum of 2 weeks prior to the hearing to all property owners whose land lies wholly or in part within the proposed amendment area for map amendments. At any time after the hearing, the Council must approve or deny these proposed amendments (OMITTED) by resolution.

(d) All amendments approved by the Council shall be forwarded to the Critical Area Commission within 30 calendar days of the Council's final action. No amendment shall be considered final until approved by the State of Maryland Critical Area Commission.

O. Civil penalty for zoning violation.

(1) In addition to any other penalty applicable under State or County law, a person who violates a provision of the Maryland Natural Resources Article, Title 8 Subtitle 18, or this Section, is subject to a fine not exceeding ~~\$10,000~~ \$100,000 (FROM) "The local County legislative body may provide a civil penalty for a zoning violation, which shall be enforced as provided in this sub-section."

(2) The Zoning Administrator may deliver a citation to a person believed to be committing a civil zoning violation. A copy of the citation shall be retained by the Zoning Administrator and shall bear a certification attesting to the truth of the matters set forth. The citation shall contain:

- (a) The name and address of the person charged;
- (b) The nature of the violation;
- (c) The place where and the time that the violation occurred;
- (d) The amount of the fine assessed;
- (e) The manner, location, and time in which the fine may be paid; and
- (f) The person's right to elect to stand trial for the violation.

(3) A fine may be imposed for each violation UP TO \$1,000 A DAY PER VIOLATION. . The County may establish a schedule of fines for each violation and may adopt procedures for collection of these fines. In determining the amount of the penalty to be assessed under paragraph (1), the County may consider the following:

- (a) the gravity of the violation;
- (b) any willfulness or negligence involved in the violation; and
- (c) the environmental impact of the violation.

FROM Current Code: 'A pre-set fine, not to exceed \$500, may be imposed for each violation. The county may establish a schedule of fines for each violation and may adopt procedures for collection of these fines.'

FOH: We recommend a fee be included here and not set arbitrarily by the department. \$1,000 a day should be sufficient to enforce these rules.

(4) A person who receives a citation may elect to stand trial for the offense by filing with the Zoning Administrator a notice of intention to stand trial. The notice shall be given at least 5 (ADDED) calendar days before the date of payment as set forth in the citation. On receipt of the notice of intention to stand trial, the Zoning Administrator shall forward to the District Court having venue, a copy of the citation and the notice of intention to stand trial. On receipt of the citation, the District Court shall schedule the case for trial and notify the defendant of the trial date. All fines, penalties, or forfeitures collected by the District Court for zoning violations shall be remitted to the County in which the zoning violation occurred.

(5) If a person who receives a citation for a violation fails to pay the fine by the date of payment set forth on the citation and fails to file a notice of intention to stand trial, a formal notice of the violation shall be sent to the owner's last known address. If the citation is not satisfied within 15 (ADDED) calendar days from the date of the notice, the person is liable for an additional fine not to exceed twice the original fine. If, after 35 calendar days, the

citation is not satisfied, the Zoning Administrator may request adjudication of the case through the District Court. The District Court shall schedule the case for trial and summon the defendant to appear.

(6) Adjudication of a violation under this subsection is not a criminal conviction, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(7) In a proceeding before the District Court, the violation shall be prosecuted in the same manner and to the same extent as set forth for municipal infractions in Article 23a, §3(b)(8) through (15) of the code. The governing body of any County may authorize the County Attorney to prosecute a civil zoning violation.

(8) If a person is found by the District Court to have committed a civil zoning violation, the person shall be liable for the costs of the proceedings in the District Court.