

Article 22. Critical Area

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22-1 GENERAL

A. Purpose and Goals

1. Purpose

The Critical Area Act recognizes that the land immediately surrounding the Chesapeake Bay and its tributaries has the greatest potential to affect water quality and wildlife habitat. The General Assembly enacted the Critical Area Act for the following purposes:

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

2. Goals

The goals of the Critical Area Program are to accomplish the following:

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

B. Implementation of the Critical Area Provisions

1. Critical Area Program

Calvert County adopted its Critical Area Program on December 13, 1988. The Calvert County Critical Area Program consists of the County Zoning Ordinance and the Official Critical Area maps.

- a. Notwithstanding any provision in this Ordinance, or the lack of a provision in this Ordinance, all of the requirements of Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 shall apply to, and be applied by Calvert County as minimum standards.
- b. In the case of conflicting provisions, the most restrictive provision applies.

2. Critical Area Overlay Map

The Official Critical Area Overlay Map is maintained as part of the Official Zoning Map for Calvert County. The Official Critical Area Map delineates the extent of the Critical Area Overlay that shall include:

- a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide and all State and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland.

- b. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- c. Within the designated Critical Area Overlay, all land is assigned one of the following land management and development area classifications, based on land uses and development in existence on December 13, 1988:
 - i. Intensely Developed Area (IDA)
 - ii. Limited Development Area (LDA)
 - iii. Resource Conservation Area (RCA)
- d. The Critical Area Map may be amended by the Board of Calvert County Commissioners in compliance with amendment provisions in this Ordinance and the Maryland Critical Area Law COMAR Title 27.

C. Regulated Activities & Applicability

The County Zoning Administrator shall be the oversight authority for development and redevelopment activities in the Critical Area for compliance with this Ordinance and COMAR Title 27. These activities include, but are not limited to, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities. Unless otherwise specified, development and redevelopment activities shall be subject to: the building/grading permit process; the site plan, subdivision and plot plan process.

1. Agriculture

The County's intent is to maintain agriculture and forestry as viable and productive land uses within the Critical Area. The County has identified agriculture and the protection of agricultural land uses and activities as a priority in the County's Comprehensive Plan. The County works cooperatively with the Calvert Soil Conservation District, the County Agricultural Land Preservation Advisory Boards, the Farm Bureau and other appropriate agencies to promote sound land and water stewardship on agricultural lands. The County shall adhere to all the following policies regarding agriculture in the Critical Area:

- a. Assure that agricultural lands area identified and that programs are established for the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the greatest extent possible.
- b. Recognize that agriculture is a protective land use that should be properly managed so that it minimizes its contribution to pollutant loadings to the Chesapeake and Atlantic Coastal Bays and their tributaries.
- c. Assure that the creation of new agricultural land in the Critical Area is prohibited when:
 - i. If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in Habitat Protection Area regulations.
 - ii. Diking, draining, or filling of any class or subclass of palustrine wetland, which have a seasonally flooded or wetter water regime, unless the wetlands are mitigated in accordance with applicable State and County regulations. The appropriate permits shall be obtained from the Maryland Department of the Environment and the Department of Planning & Zoning.
 - iii. By clearing of forests or woodland on soils with a slope greater than 15% or on soils with a "K" value greater than 0.35 and slope greater than 5%.
 - iv. By the clearing of existing natural vegetation within the Critical Area buffer as defined.
- d. Each agricultural operation is implementing a current Soil Conservation and Water Quality Plan, approved by the County Soil Conservation District.
- e. Assure that Best Management Practices for the control of nutrients, animal wastes, pesticides, and sediment runoff shall be used to protect the productivity of the land base and enhance water quality. These

practices shall minimize contamination of surface and groundwater and, further, shall minimize adverse effects on plants, fish, and wildlife resources.

f. Agricultural activities authorized in the Buffer shall be in accordance with the provisions of COMAR 27.01.09.01-6

g. Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage, and manure storage minimize the contamination of water bodies.

h. Assure that any agricultural activity permitted within the Critical Area uses Best Management Practices in accordance with a Soil conservation and Water Quality Plan approved by the County Soil Conservation District.

i. The following performance standards shall be adopted for all land in agricultural use or to be converted to agricultural use in the Critical Area:

i. The County hereby incorporates the agricultural components of the State 208 Water Quality Plan into this program. These components shall be applicable to all agricultural activities in the Critical Area.

ii. Soil Conservation and Water Quality Plans and Best Management Practices shall be developed and implemented for those portions of farms which lie within the Critical Area. Local farmers shall cooperate with the Calvert Soil Conservation District for approval of their proposed plans. Landowners who have signed up as Soil Conservation District operators but who do not have a Conservation Plan i.e., Farm Plan prepared for them by the Calvert Soil Conservation District Office shall be allowed to continue to farm until a Farm Plan is developed provided that the goals of this program are being met.

iii. A landowner shall select and implement, with the assistance of a technically trained soil conservation planner or technician, from among the several best management practices that minimize impacts to water quality, conserve fish, wildlife, and plant habitat, and integrate best with the farming operation.

iv. Best management practices shall include a requirement for the implementation of a grassland and manure management program and that the feeding or watering of livestock is prohibited within 50 feet of the MHW of tidal water and tributary streams, or from the edge of tidal wetlands, whichever is further inland.

v. Until such time as the farm plans are developed and implemented farmers shall as a part of the program be encouraged to use the following practices:

(1) Cover crops shall be planted to reduce erosion.

(2) Nutrients shall be applied at the appropriate time and appropriate methods shall be used.

(3) Reduced tillage i.e., no till practices shall be used where practical.

(4) Crop rotations shall be implemented where effective.

2. Non-Agricultural Uses

a. The following uses, including expansion of such uses, because of their intrinsic nature, or because of their potential for adversely affecting habitats or water quality, are only permitted in the IDA and only after the applicant has demonstrated to all appropriate State and local permitting agencies that there will be a net improvement in water quality of the adjacent body of water.

i. Non-maritime heavy industry.

ii. Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities shall cross tidal waters (utility transmission facilities do not include power plants).

iii. Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate

approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100-foot buffer.

b. The following uses, including expansion of such uses, because of their intrinsic nature, or because of their potential for adversely affecting habitat and water quality, shall not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.

i. Solid or hazardous waste collection or disposal facilities.

ii. Sanitary landfills.

c. The County shall assure that all available measures are taken to protect the Critical Area from all sources of pollution from surface mining operations including, but not limited to sedimentation, siltation, chemical and petrochemical use and spillage, and storage and disposal of waste, dusts and spoils. The County shall further assure that surface mining is conducted in a way to permit the reclamation of surface mining sites as soon as possible and to the extent possible. Areas such as the following shall not be used for surface mining.

i. Habitat Protection Areas (HPA) and other important natural resource areas such as those of scientific value or areas where assemblages of rare species occur.

ii. Areas where highly erodible soils exist.

iii. Areas where the use of renewable resource lands would result in the substantial loss of long range (25 years or more) productivity of forest and agriculture or would result in a degradation of water quality or a loss of vital habitat.

iv. Lands that are within 100 feet of the mean high water (MHW) line of tidal waters, tidal wetlands, or the edge of streams.

d. Existing, permitted uses noted in this subsection are subject to the standards and requirements of the Maryland Department of the Environment.

D. Roads, Bridges, Utilities and Habitat Protection Areas

Roads, bridges, or utilities in any portion of the Critical Area shall not be located in Habitat Protection Area, unless there is no feasible alternative. If the location of a road, bridge or utility in a Habitat Protection Area is authorized, the design, construction, and maintenance of the road, bridge or utility shall be conducted to:

1. Provide maximum erosion protection.
2. Minimize negative impact on wildlife, aquatic life, and their habitats.
3. Maintain hydrologic processes and water quality.
4. Reduce or maintain existing levels of flooding attributable to the development activity.
5. Retain tree canopy to maintain stream water temperature within normal variation.
6. Provide a natural substrate for streambeds.
7. Minimize adverse water quality and quantity impacts of stormwater.

E. Cutting or Clearing for Utility Corridors, Road Rights-of-Way and Percolation Tests

The following regulations shall apply for cutting or clearing of forests or developed woodland for utility corridors, road rights-of-way, and percolation tests:

1. For percolation tests, reforestation or payment of fees-in-lieu is required for clearing corridors greater than 12 feet in width. Clearing for percolation access shall be minimized and the removal of trees greater than six inches in diameter shall be avoided. Clearing for percolation test sites shall be limited to the number of test sites required by the Health Department and shall not exceed a total of 2,500 square feet per test site (does not

include area cleared for access). If clearing will exceed 2,500 square feet for the percolation test sites, then a grading permit, grading exemption or vegetation removal permit and reforestation or payment of fees-in-lieu is required.

2. If these areas, which are exempt from reforestation and fees-in-lieu, are later changed to another development use (e.g., access lanes to percolation test sites become roadways) these areas will be considered as having been forested in calculations of clearing limits and clearing mitigation.

3. Clearing in public road and utility rights-of-way shall be minimized to the greatest extent possible, but may exceed 30% of the right-of-way, and required mitigation will be on an equal area basis as described in this section. Those portions of road and utility corridors in which small trees and shrubs are maintained are exempt from reforestation requirements. Trees or their limbs that may strike utility lines or structures may be removed without reforestation if small trees and shrubs are maintained.

4. A vegetation removal permit (or grading permit if applicable) shall be obtained for the following clearing activities associated with percolation test sites, road rights-of-way, and utility corridors in the Critical Area:

- a. Total clearing for percolation test site areas per proposed lot or parcel that exceed 2,500 square feet.
- b. Proposed public utility corridors or percolation access lanes greater than 12 feet in width.
- c. Clearing in public road rights-of-way that exceed 30% of the right-of-way.
- d. Private utility corridors and private roads rights-of-way.
- e. For any-sized road right-of-way, utility corridor or percolation access lane proposed in a Habitat Protection Area such as a waterway buffer or wetland buffer, wetland, rare, threatened, or endangered species habitat, or forest interior dwelling (FIDs) bird habitat.

5. Abandoned utility corridors, percolation access and percolation site areas are allowed to naturally regenerate unless, at time of development, these areas have been mitigated for by reforestation or payment of fees-in-lieu.

a. Though mitigation requirements for clearing utility corridors are as described in this section, the limits to the percentage allowed to be cleared do not apply to utility corridor rights-of-way. These clearing limits do not apply to public road rights-of-way which are external to subdivisions. Though clearing should be minimized, up to 100% of these rights-of-way may be cleared. Mitigation for clearing public road rights-of-way that are external to subdivisions is on a one-for-one basis.

b. Offsite mitigation is allowed for public entities including public utilities with the following conditions:

- i. It is on a site within the Calvert County Critical Area, excluding the lands within the corporate limits of Chesapeake Beach and North Beach.
- ii. It is on property owned by the public entity.
- iii. The mitigation meets the requirements of the Calvert County Critical Area Program.
- iv. A planting plan is submitted to and approved by the Department of Planning & Zoning.

F. Commercial Timber Harvests

1. Process

Landowners proposing to harvest timber within any one year interval and affecting one or more acres in the Critical Area shall submit a "Timber Harvest Plan." This plan shall be prepared by a registered professional forester. The Timber Harvest Plan shall be reviewed and approved by the Department of Natural Resources and the District Forestry Board. The approved plan shall be filed with the County Soil Conservation District and the approved plan shall be sent to the Department of Planning & Zoning prior to beginning timbering operations. The office shall review the plan to assure its consistency with this program.

2. Timber Harvest Plan Standards

Plans shall include measures to protect surface and groundwater quality and identify whether the activities will

disturb or affect Habitat Protection Areas as identified in this ordinance and shall incorporate protection measures for these areas as To provide for the continuity of habitat, the plans shall address mitigation through forest management techniques which shall include scheduling size, timing and intensity of harvest cuts, afforestation and reforestation.

3. Sediment Control Plans

In the Critical Area, any landowner who plans to harvest timber on an area which will disturb 5,000 square feet or more including harvesting on agricultural lands shall submit a Sediment Control Plan. This plan is also required for any harvests which will cross perennial or intermittent streams. This plan shall be developed according to the State guidelines entitled: "Standard Erosion and Sediment Control Plan for Harvest Operations". The operations shall be implemented in accordance with specifications set out by the Department of Natural Resources and enforced by the Department of the Environment and the County.

- a. If cuts and fills are three feet or more, if grades for roads are 15% or more, or if landings are on slopes of 10% or more, then the landowner shall get a custom Sediment Control Plan for the operation. These are prepared by Registered Professional Foresters and include controls necessary to prevent site erosion and to ensure site stabilization. This plan shall be submitted to the local Soil Conservation District for approval and notice of approval sent to the Division of Inspections and Permits.
- b. If a custom Sediment Control Plan is not required, a Standard Erosion and Sediment Control Plan is available through the Soil Conservation District. The landowner shall provide the following information:
 - i. Location description.
 - ii. Harvest operation description.
 - iii. Sketch map of the property showing acres to be cleared.
 - iv. Identification of the landowner, licensed timber harvest operator, and other operators or subcontractors.
- c. Either the owner or the operator shall take responsibility for implementation of the Sediment Control Plan or each subcontractor shall file a separate plan.
- d. The landowner shall sign the agreement to certify that he understands the terms of the plan and is responsible for preventing erosion and sedimentation during the forest harvesting.

4. Buffer Protection Standards

Timber harvests are permitted in the Buffer in accordance with the provisions of COMAR 27.01.05.02.

G. Natural Resource Protection and Forest Conservation Outside the Critical Area

Sometimes a parcel or lot is only partially inside the Critical Area boundary and the remainder is outside the boundary. Only proposed impacts inside the Critical Area shall be subject to Critical Area regulations. However, the portion of the parcel outside the Critical Area may be subject to Natural Resource Protection requirements of Article 21 and the Forest Conservation requirements of Article 20.

H. Steep Slopes

1. Development on slopes greater than or equal to 15%, as measured before development, is prohibited unless the project is the only effective way to maintain or improve the stability of the slope, and is consistent with the policies of this Ordinance. For new subdivisions, slopes greater than or equal to 15% shall be platted as "steep slope conservation areas" unless a variance has been granted to disturb these slopes.
2. The following regulations apply for development of slopes greater than 15% and highly erodible soils:
 - a. Super silt fence shall be installed and maintained around the disturbed area until grading is stabilized with vegetative cover.
 - b. After final grading, erosion control matting or stabilization planting shall be installed over the entire area of disturbed soil.

c. Stormwater management measures shall be consistent with the requirements of the Calvert County Stormwater Management Ordinance.

3. At environmental planning staff recommendation, the Zoning Officer or its designee is authorized to grant administrative variances for disturbance to steep slopes for the purposes of slope stabilization (See Section 30-4 of this Ordinance). The applicant must demonstrate that erosive conditions exist, and the proposed stabilization method minimizes land disturbance and clearing of existing vegetation. Slope stabilization activities include the prevention of soil movement by any of the various vegetative or structural means. Stabilization can include minimal grading; retaining walls; erosion control mats, blankets and fiber logs; or, other environmentally sensitive practices. It shall not include the use of accessory structures including but not limited to patios, terraces or gazebos. If an administrative variance is granted, mitigation by planting on the site at a rate of 2:1 per square foot of the disturbance shall be required, whether inside or outside of the Buffer. The Department of Natural Resources (Critical Area Commission) shall be included in the notice letters for any administrative variance under this provision.

I. Text and Map Amendments

The requirements for amendments of this Ordinance shall be met.

1. The Critical Area provisions of the Zoning Ordinance and the Critical Area maps shall be comprehensively reviewed at least every six years.
2. An amendment to the LDA, LDA-3, RCA, or IDA boundaries may be granted only upon proof of a mistake in the zoning existing at the time of adoption of the Critical Area law in 1985 (Critical Area Law, Section 8-1809(h)) or by the use of Growth Allocation (as per Section 22-5 below).
3. For Critical Area Program refinements, the County shall not adopt the refinements until the Chairman of the Critical Area Commission has approved them.
4. For Critical Area Program amendments, a panel of the Critical Area Commission will hold a public hearing in the County. The panel will then make a recommendation to the full Critical Area Commission. The County cannot adopt the amendments until the Critical Area Commission has approved them.
5. When the County submits a request for review and approval of changes to any element of the County's Critical Area Program including, but not limited to, the Zoning Ordinance, subdivision regulations, or Critical Area Maps, the request must include all relevant information necessary for the Chairman of the Critical Area Commission, and as appropriate, the Critical Area Commission, to evaluate the changes. The Chairman or the Critical Area Commission will 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 Critical Area Commission.
6. In accordance with the determination of consistency, the Chairman of the Critical Area Commission, or as appropriate, the Critical Area Commission will either:
 - a. Approve the proposed program refinement or amendment and notify the County.
 - b. Deny the proposed program refinement or amendment.
 - c. Approve the proposed program refinement or amendment subject to one or more conditions.
 - d. Return the proposed program refinement or amendment to the County with a list of changes to be made.

J. Notification

1. Public Notification

- a. For all County government major development projects and other County projects not exempt as provided in Section 22-1.J.1.c below shall, as part of a project submittal to the Critical Area Commission, provide proof of the following:
 - i. Public notice published in a newspaper of general circulation in the area where the proposed development activity would occur.

- ii. A minimum 14 day comment period in the local jurisdiction in which the proposed development activity will occur was provided.
- iii. Certification that the property was posted.
- b. Proof of public notice and public comment shall include the following minimum documentation:
 - i. A copy of the notice as it appeared in the newspaper.
 - ii. The name of the newspaper in which the notice appeared.
 - iii. The date the notice appeared in the newspaper.
 - iv. All copies of correspondence received as a result of the public notice.
 - v. A list of any neighborhood associations contacted, if applicable.
- c. The following classes of development activities of State and local governments in the Critical Area of the Chesapeake Bay are exempt from the notice and comment requirement of this section of this regulation:
 - i. Any State or local agency development activity of local significance on private lands or lands owned by local jurisdictions that have been determined by the Commission to be consistent with the local Critical Area Program as provided by COMAR 27.02.02 and for which the local agency has submitted a consistency report relative to its Critical Area Program.
 - ii. Any State or local government development activity that is included in a General Approval as provided by COMAR 27.02.03.
 - iii. Any State development activities on State lands for which the Commission has approved a Memorandum of Understanding, including notice requirements.

2. Critical Area Commission Notification

- a. Significant Actions in the Critical Area require Critical Area Commission staff review. Any activity listed in Table 22-1 and indicated with a "Y", is considered a Significant Action.
- b. Minor Actions in the Critical Area do not require Critical Area Commission staff review. Any activity listed in Table 22-1 and indicated by either an "N" or "NA" is considered a minor action.
- c. All development actions by a County agency, or on County property, in the Critical Area require Critical Area Commission staff review and of a submitted "Consistency Report" by the County.
- d. For activities that require notification, notification consists of copies of preliminary site plans and subdivisions, grading and building permit applications for activities that are not a site plan or subdivision and complete variance applications. If comments are not received from the Critical Area Commission within 30 days of notification to the Commission, the County will proceed with the review and potential approval of these projects. The County will also submit copies of final site plans and subdivision to the Critical Area Commission. No permits will be issued until at least 30 days after the approval of final site plans, subdivisions and variances. However, administrative variances for the disturbance of steep slopes for the purposes of slope stabilization where there is an imminent danger of loss of life or property may be exempted from this requirement by the Zoning Officer, in consultation with the Environmental Planner.
- e. Shore erosion control measures and private piers that do not involve disturbance to the Buffer, are constructed solely from the water, including all construction related and staging activities, and are permitted by MDE do not require Commission notification.

Table 22-1: Required Notification to Critical Area Commission			
<i>Y = Yes // N= No // NA = Not Applicable</i>			
Application	IDA	LDA	RCA
Disturbance to Habitat Protection Areas*	Y	Y	Y
Physical disturbance to Buffer	Y	Y	Y
Variance or Administrative Variance from Critical Area Regulations*	Y	Y	Y

Table 22-1: Required Notification to Critical Area Commission Y = Yes // N= No // NA = Not Applicable			
Application	IDA	LDA	RCA
Less than 5,000sf disturbance	N	N	N
Between 5,000sf and 15,000sf of disturbance	N	N	Y
Greater than 15,000 sf of disturbance*	Y	Y	Y
Subdivision of three lots or fewer*	N	N	Y
Subdivision of four to ten lots*	N	Y	Y
Subdivision of greater than ten lots*	Y	Y	Y
Use of growth allocation	NA	Y	Y
Intrafamily transfer*	NA	NA	Y
Rezoning that occurs wholly or partially within the Critical Area*	Y	Y	Y
Special exception or conditional use for industrial, commercial, institutional, non-residential or multi-family*	N	Y	Y
Substantial alteration to applications previously submitted to the Critical Area Commission	Y	Y	Y
Lot consolidation or reconfiguration	Y	Y	Y

Footnote:

* For columns in these rows indicated with a "Y", final subdivision plats, final site plans, final decisions or orders shall be submitted to the Critical Area Commission within 15 days of the decision.

K. Grandfathering

1. After Critical Area Program approval (December 13, 1988), the continuation of any use legally in existence on the date of Critical Area Program approval shall be permitted. In the Critical Area, if the use or structure has been abandoned for more than one year, then it is no longer grandfathered or vested. If any existing use or structure does not conform to the provisions of the Critical Area Program, its intensification or expansion shall be permitted only in accordance with the variance procedures outlined in Section 22-9 below.

- a. Lawns or landscaped areas may continue so long as they are cut or maintained at least once a year.
- b. Nonconforming buildings are allowed to remain.
- c. Nonconforming houses outside ER50 Cliff Setback and greater than 100 feet from cliff edge may be replaced or expanded upward with a second story.

2. Except as otherwise provided, a single lot or parcel of land that was legally of record on the date of Critical Area Program approval (December 13, 1988) may be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of Calvert County's approved Critical Area Program.

3. Lots in subdivisions which received the County's approval prior to June 1, 1984 may be consolidated or reconfigured in accordance with Section 22-1.M below without the consolidation or reconfiguration being considered a resubdivision.

4. Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval after December 1, 1985 is permitted provided that development of any such land conforms to the IDA, LDA or RCA requirements in this Ordinance. Existing non-conforming uses in the RCA shall only be expanded 10,000 square feet or 10%, whichever is less, before requiring Growth Allocation.

5. For purposes of implementing this regulation, the Board of County Commissioners has determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of development areas described in this Article.

6. Nothing in the Critical Area regulations within the three types of development areas described in this Article shall be interpreted as altering any requirements of this Ordinance for development and redevelopment activities for Water Dependent Facilities and Habitat Protection Areas.

L. Lot Consolidation and Reconfiguration in the Critical Area

The provisions of COMAR 27.01.02.08 shall be met for lot consolidation and reconfiguration/re-platting in the Critical Area. The provisions of this regulation do not apply to a conforming parcel or lot.

1. Applicability

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

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

2. Procedure

- a. An applicant seeking a parcel or lot consolidation or reconfiguration through an administrative plat shall provide the required information in Section 22-1.L.3 below to the Department of Planning & Zoning.
- b. The Department of Planning & Zoning shall not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with Section 22-1.L.4 below and COMAR 27.01.02.08.F.
- c. The Department of Planning & Zoning shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
- d. After a final written decision or order is issued, the County shall send a copy of the decision or order and a copy of any approved development plan within 10 business days by U.S. mail to the Critical Area Commission's business address.
- e. A building permit shall not be issued until the appeal time has expired.

3. Application

An application for the consolidation or reconfiguration of any nonconforming legal parcel of land or recorded legally buildable lot shall contain at least the following information:

- a. The date of recordation of each legal parcel of land or legally buildable lot to be consolidated or reconfigured.
- b. A plan drawn to scale that shows all existing and proposed lot or parcel boundaries.
- c. Information sufficient for the Department of Planning & Zoning to make the findings set forth in Section 22-1.L.4 below.
- d. A table that lists the number of all legal parcels of land or recorded legally buildable lots and the number of proposed lots or parcels or dwelling units to be derived.
- e. All information required in the administrative plat procedures checklist as established by the Department of Planning & Zoning.

4. Standards

The County shall review a proposed lot consolidation or reconfiguration and will make written findings that each one of the following standards has been met:

- a. The proposed consolidation or reconfiguration will result in no greater number of lots, parcels, or dwelling units in the Critical Area than the existing configuration would allow.
- b. The proposed lot consolidation or reconfiguration will result in no greater lot coverage than the existing configuration would allow.
- c. The proposed consolidation or reconfiguration does not:
 - i. Create an additional riparian lot or parcel, waterfront lot, or any other lot or parcel deeded with water access; or
 - ii. Intensify or increase impacts associated with riparian access.

- d. The proposed consolidation or reconfiguration does not create:
 - i. A lot or parcel or portion of a lot or parcel that will serve development activities outside the Critical Area; or
 - ii. A Resource Conservation Area lot or parcel that serves development activities in the Intensely Developed Area or Limited Development Area.
- e. The proposed consolidation or reconfiguration identifies each Habitat Protection Area and if impacts to a Habitat Protection Area are proposed, the proposal demonstrates that:
 - i. No greater impact to a Habitat Protection Area would result than the impact that would have resulted from the existing lot configuration.
 - ii. Adverse impacts to a Habitat Protection Area are minimized.
 - iii. Protective measures and restoration measures are included that provide for the least possible impact.
- f. The proposed consolidation or reconfiguration provides:
 - i. Stormwater management for all proposed development activities.
 - ii. Benefits to fish, wildlife, and plant habitat that are clearly identified.

M. Fines and Penalties

Enforcement of the Critical Area regulations is pursuant to the requirements of the Maryland Annotated Code, Natural Resources Article, 8 subtitle 18, and the provisions of COMAR Title 27 subtitle 01, notwithstanding any provision in a County law or ordinance or the lack of a provision in a County law or ordinance. The County's Critical Area violation process and procedures are further described in Section 22-10 below.

22-2 INTENSELY DEVELOPED AREA (IDA)

A. Purpose

The purpose of the Intensely Developed Area (IDA) is to serve as the area where future intense development activities will be directed.

B. Goals

The following goals guide development in the IDA:

1. Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary stream.
2. Accommodate additional development of the type and intensity designated by the local jurisdiction provided that water quality is not impaired.
3. Minimize the expansion of intensely developed areas into portions of the Critical Area designated as Habitat Protection Areas.
4. Conserve and enhance fish, wildlife, and plant habitats, to the extent possible, within intensely developed areas.
5. Encourage the use of retrofitting measures to address existing stormwater management problems.

C. IDA Boundaries

Boundaries are as shown on the official Calvert County Critical Area Map as IDA.

D. Designation of IDAs

1. IDAs are those areas within the Critical Area where residential, commercial, institutional, or industrial developed land uses predominate, and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features:

- a. Housing density is equal to or greater than four dwelling units per acre;
- b. Industrial, institutional, or commercial uses are concentrated in the area; or
- c. Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

2. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

E. Permitted Uses

Uses permitted in the underlying district are permitted as long as they meet the conditions of Section 22-2.G below

F. Special Exception Uses

Uses allowed as special exceptions may also be allowed as long as they meet the conditions of Section 22-2.G below.

G. Criteria for Development in the IDA

In addition to the development requirements of this Ordinance, development and redevelopment is subject to the criteria contained in the Habitat Protection Areas regulations.

1. Stormwater management as follows:

- a. The Department of Planning & Zoning requires, at the time of development or redevelopment, technologies as required by applicable State and local ordinances to minimize adverse impacts to water quality caused by stormwater.
- b. In the case of redevelopment, if these technologies do not reduce pollutant loadings by at least 10% below the level of pollution on the site prior to redevelopment, then offsets as described in this section shall be provided to achieve this 10% reduction.
- c. In the case of new development, if these technologies do not reduce pollutant loadings by at least 10% below the level of pollution on the site prior to development, then offsets as described in this section and as determined by the County Engineer shall be used to reduce pollutant loadings by at least 10% of the pre-development levels.
- d. Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that their benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring, or other computation of mitigation measures. The offsets shall be approved by the County Engineer.
- e. The 10% reduction is calculated in the manner developed by the Critical Area Commission in its document entitled "Critical Area 10% Rule Guidance Manual - Fall 2003", and as amended from time to time.
- f. To meet the 10% reduction requirement through offsets, priority is given to planting pervious areas with native vegetation. Examples of acceptable offsets include but are not limited to:
 - i. Installing a new BMP in an existing urbanized area not already served by a stormwater BMP. No offset credits can be taken for a new BMP that is already required under State stormwater management law.
 - ii. Installing or financing an agricultural BMP in the Resource Conservation Area.
 - iii. Modifying an existing stormwater BMP to improve its pollutant removal capability.
 - iv. Modifying a public storm sewer network to trap pollutants (e.g., modify catch basins, installing plate separators or swirl concentrators).

substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:

1. Housing density ranging from one dwelling unit per five acres up to four dwelling units per acre.
2. Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open space.
3. Areas meeting the conditions of IDA but comprising less than 20 acres.
4. Areas having public sewer or public water, or both.

E. Density Limitation

1. In the LDA, the maximum density is four dwelling units per acre. If the underlying zoning district is more restrictive, then those regulations apply.
2. All properties which are designated LDA-3 shall have a minimum lot size of three acres except for those one-acre exception lots which cannot be accommodated outside of the Critical Area and those created in clustered residential developments as described in Article 25 of this Ordinance.

F. Permitted Uses

Uses permitted in the underlying district are permitted as long as they meet the conditions of Section 22-3.H below.

G. Special Exception Uses

Uses allowed as special exceptions may also be allowed as long as they meet the conditions of Section 22-3.H below.

H. Criteria for Development, Redevelopment, and Maintenance

In addition to the development requirements of this Ordinance, development and redevelopment is subject to the criteria contained in the Habitat Protection Areas regulations in Section 22-6 below. For development and redevelopment, the owner or agent of the owner is required to identify and locate any environmental or natural features described in this section and meet all the following environmental protection standards.

1. Criteria as required for the Habitat Protection Area and those for the Water-Dependent Facilities regulations of this Ordinance.
2. All development sites shall incorporate a wildlife corridor system that connects the largest undeveloped, or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas. The establishment of conservation easements, restrictive covenants, or similar instruments through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts, and other organizations is required before final approval of the site plan or subdivision may be granted.
3. To reduce stormwater runoff, lot coverage is limited as described below:
 - a. In general, lot coverage is limited to 15% of a lot or parcel.
 - b. If a parcel or lot existed on or before December 1, 1985 in the Chesapeake Bay Critical Area and is one-half acre or less in size, then the lot coverage is limited to 25% of the lot or parcel.
 - c. For lots of one acre or less in size, the lot coverage is limited to 15% of the entire parcel being subdivided. The lot coverage on each lot may exceed 15% as long as the lot coverage over the entire parcel being subdivided does not exceed 15%.
 - d. Lots created after December 1, 1985 or properly permitted in accordance with this ordinance and impervious surface policies in effect prior to July 1, 2008 may be considered legally nonconforming for purposes of lot coverage requirements.
 - e. Lot coverage limits do not apply to a Manufactured Home Community that was in residential use on or before December 1, 1985 in the Critical Area.

- f. A 4-foot walkway or stairway through the Buffer that provides direct access to a pier is not included in lot coverage calculations.
- g. There is no allowable, by right, percentage of lot coverage within the 100-foot buffer. Lot coverage may be permitted in the Buffer, in accordance with the provisions outlined in the following regulations contained within this Ordinance: Water-Dependent Facilities, Special Buffer Management Areas, and variances..
- h. Addition or alteration of any lot coverage including but not limited to sidewalks, paving of driveways, construction of sheds, decks, etc. requires either a grading exception, grading permit, or building permit.
- i. For grandfathered lots or parcels of record that predate the Critical Area Program, a local government may allow a property owner to exceed the lot coverage limits outlined above and comply with the lot coverage limits set forth in Table 22-2 if the following requirements are met:
 - i. Lot coverage associated with new development activities has been minimized.
 - ii. Water quality impacts associated with runoff from development activities that contribute to lot coverage have been minimized.
 - iii. The property owner performs on-site mitigation or pays a fee-in-lieu of mitigation at a rate of 2:1 to offset potential adverse water quality impacts.
 - iv. The property owner shall perform mitigation as per Section 22-3.I for the square footage of lot coverage added above 15% of the parcel or, if such is not feasible, the property owner may pay a fee-in-lieu of performing the on-site mitigation (in an amount approved by the Board of County Commissioners) multiplied by the area in square feet of the new Lot Coverage that exceeds 15% of the lot/parcel. All fees-in-lieu collected under this section will be placed in the Critical Area fees-in-lieu fund to support projects that improve water quality.

Lot/Parcel Size (in square feet)	Lot Coverage Limit
0 - 8,000	25% of lot/parcel plus 500 square feet
8,001 - 21,780	31.25% of lot/parcel
21,781 - 36,300	5,445 square feet
Greater than or equal to 36,301	15% of lot/parcel

- j. If the Zoning Officer designee makes the findings set forth in Section 22-3.H.3.i above and authorizes an applicant to use lot coverage limits set forth in that paragraph, the applicant shall:
 - i. Demonstrate that the water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
 - ii. Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of development activity.
 - iii. If the applicant cannot provide appropriate stormwater treatment and planting due to site constraints, then the County shall require the property owner to pay a mitigation fee to the County in lieu of performing the on-site mitigation. The amount of the fee shall be established by the Board of County Commissioners. The County shall use all fees collected under this provision to fund projects that improve water quality within the Critical Area, consistent with the County's Critical Area Program and Zoning Ordinance. The first priority is to fund the Critical Area Landscape Conservation Project.
- k. Grandfathering provisions are as follows:
 - i. Projects for which a building or grading permit was issued prior to January 1, 2010 or a site development plan was approved by July 1, 2010 may be considered legally developed with respect to lot coverage if done in accordance with Natural Resources Article 8-1808.3.

- ii. Lot coverage (impervious surface) limits existing at the time of permit approval shall apply to these permitted projects.
 - iii. Development plans and lot coverage plans may be modified with appropriate permits; however, the amounts of impervious surface, partially pervious, and developed pervious areas shall not be increased beyond set limits. Reductions in these areas are permitted.
 - iv. Projects, including new subdivisions, for which an initial application for development was filled by October 1, 2008 and approval was obtained by July 1 2010, but for which there was no approved lot coverage plan shall be required to comply with all of the lot coverage provisions.
- I. For lot coverage on split parcels and growth allocation envelope sites, lot coverage shall be limited as follows:
- i. When a site is mapped entirely as LDA: 15% of the total site.
 - ii. When a portion of a lot or parcel is mapped as LDA: 15% of that portion of that lot or parcel.
 - iii. In the case of growth allocation award to change a designation from RCA to LDA either:
 - (A) 15% of the growth allocation development envelope; or,
 - (B) 15% of the acreage proposed for growth allocation deduction.
4. Modifications in road standards to reduce potential impacts to the site and Critical Area resources are allowed where the reduced standards do not affect safety.
5. To reduce the extent of lot coverage, i.e., impervious areas, and maximize areas of natural vegetation, cluster development is encouraged as the preferred development method.
6. If less than 15% forest cover is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15% of the lot area within the Critical Area. New accessory structures, additions, minor commercial uses without permanent structures or parking, or remodeling projects are exempt from this requirement. For these projects, mitigation planting requirements shall be calculated by multiplying the area of disturbance by two.
7. For the maintenance of forest and developed woodland in the LDA, the following standards shall apply:
- a. The recommendations, when provided, of the Maryland Department of Natural Resources shall be followed.
 - b. Development activities shall be designed and implemented to minimize destruction of forest and developed woodland vegetation, and a Developed Woodland Management Plan (DWMP) is required to be submitted to the Department of Planning & Zoning. The Department of Planning & Zoning shall, at its discretion, send the DWMP to the Maryland Department of Natural Resources for review and comment. The DWMP shall include methods for:
 - i. Minimizing forest loss.
 - ii. Maintaining the health of the existing or remaining forest.
 - iii. Maintaining the functions of the forest or developed woodland area relative to removing stormwater, preventing flooding, providing habitat, controlling runoff, and the uptake of nutrients and other pollutants.
 - iv. Removal or inhibition of invasive species.
 - v. Mitigation as per this section.
 - vi. Forest maintenance activities proposed in Habitat Protection Areas are subject to the provisions of the Habitat Protection Areas.

vii. Development activities proposed in Habitat Protection Areas are subject to the provisions of the Habitat Protection Areas.

I. Cutting or Clearing

For the cutting or clearing of natural vegetation in forests and developed woodland areas within the LDA, a permit (grading permit or Critical Area vegetation removal permit) or grading exemption is required and the following criteria shall apply:

1. If no more than 6,000 square feet or 20%, whichever is greater, of existing natural vegetation is cleared, replacement on an equal area basis (1:1) is required. The remaining natural vegetation shall be designated on the permit to remain in natural vegetation in perpetuity.
2. If more than 6,000 square feet and more than 20%, but less than 30%, of existing natural vegetation is cleared, replacement required for the amount of clearing is one-and-a-half times the area of the entire clearing (1.5:1). The remaining natural vegetation shall be designated on the permit to remain in natural vegetation in perpetuity.
3. Clearing of existing forest or developed woodland in excess of 30% shall be prohibited. If Board of Appeals approval is obtained and more than 30% of natural vegetation is cleared, replacement on a 3:1 basis shall be required. The remaining natural vegetation shall be designated on the permit to remain in natural vegetation in perpetuity.
4. No person shall cut or clear existing natural vegetation, or cause existing natural vegetation to be cut or cleared before a permit for such cutting or clearing has been issued by the Department of Planning & Zoning. No person shall cut or clear in excess of the amount of existing natural vegetation permitted in a permit issued by the Department of Planning & Zoning.
5. Clearing or alteration of vegetation inconsistent with this section or unauthorized clearing or alteration of vegetation prior to having obtained the required permit shall subject to fines and mitigation as described in the Section 22-10 below.
6. The area of vegetation planted to mitigate these requirements shall be designed to replicate a natural forest and shall be planted in accordance with this section (See Table 22-5 Landscaping Stock for mitigation credits). Guidance on allowed tree and shrub species and coverages are given in the document entitled, "Calvert County Native Plant List" which has been adopted by the Board of County Commissioners and is available from the Department of Planning & Zoning Office. This document can also be found on the County Department of Planning & Zoning website on the Critical Area webpage.
7. When homeowner actions are necessary in emergency situations to remove a tree(s), i.e., the tree poses an imminent danger of falling and causing damage to a dwelling or other structure, the homeowner shall take photographs of the tree, prior to removal, remove the tree that poses imminent danger, and submit a Critical Area vegetation removal permit application with the photo documentation within seven days of removal.
8. Clearing or disturbance violations will be mitigated at 4:1. After-the-fact projects that require a variance(s) shall mitigate an additional 3:1. An approved mitigation plan by the Department of Planning & Zoning and payment of the Critical Area bond, fees and fine shall be required before being referred to the Board of Appeals.

J. Surety

1. A person required to conduct replanting as part of a mitigation plan or afforestation requirement shall post a bond or other financial security to insure compliance with the mitigation plan.
2. Requirements for bond or other financial security:
 - a. Financial security shall be furnished in the form of a surety bond, an irrevocable letter of credit, cash bond, certificate of guarantee, or other surety as authorized by the Board of County Commissioners and approved by the Office of the County Attorney. The surety shall include:
 - i. Name the Board of County Commissioners as obligee.
 - ii. Assure that the mitigation replanting is conducted in accordance with the Department of Planning & Zoning approved mitigation plan.

- iii. Be in an amount as approved by the Department of Planning & Zoning and set by the County Commissioners. This fee shall be submitted with the bond.
 - iv. Remain in force until all requirements of the mitigation plan have been fulfilled to the satisfaction of the Department of Planning & Zoning.
 - b. The surety shall not be cancelled by the issuing entity unless both of the following requirements are fulfilled:
 - i. The issuer notifies the Board of County Commissioners and the principal of its intention to cancel the surety, in writing, by registered mail, not less than 90 days before cancellation.
 - ii. At least 45 days before the cancellation date indicated in the notice, the principal files a commitment from another entity to provide a substitute surety that will be effective on the cancellation date indicated in the notice.
 - c. The surety amount and terms shall remain constant even upon transfer to a new property owner.
3. Forfeiture of surety:
- a. The surety is subject to forfeiture if the principal fails to comply with the mitigation plan within the prescribed time.
 - b. If the surety is forfeited, the County and its agents shall be allowed access to the property to accomplish the previously bonded planting as needed to bring the property into compliance. The bond forfeiture shall constitute a County zoning violation and compliance shall require an additional 4:1 mitigation.
 - c. A bond or surety or letter of credit shall have written into the documents that it may not be cancelled or closed without written consent from the Department of Planning & Zoning.
4. Release of surety:
- a. Bonds shall be held for two years or growing seasons as defined in the bond agreement from the deadline specified in the bond agreement.
 - b. If, after the time period described above, the survival of the plantings associated with the mitigation plan meets or exceeds the standards of the mitigation plan, the amount of the surety shall be refunded to the bond holder.

K. Fees-in-Lieu

1. If there is not sufficient area on the site to plant the required mitigation area, the Department of Planning & Zoning shall collect fees-in-lieu of replanting from the owner. The fees-in-lieu rate is established by the Board of County Commissioners as approved by the Critical Area Commission. The fees-in-lieu shall be used to plant native woody vegetation in the following types of areas with the Critical Area Buffer always being a priority planting area:
- a. State, County, and private lands in need of reforestation, buffers, or habitat corridors
 - b. Severely eroding land (non-farm)
 - c. Severely eroding farm land
 - d. Unreclaimed surface mines abandoned prior to the current reclamation regulations
 - e. Fallow fields
 - f. Community open space
 - g. Currently operating surface mines

- h. Abandoned pastures
 - i. Subdivision lots
 - j. Forested areas following the eradication of invasive species that have effectively destroyed a natural forested area.
2. If reforestation exceeds 100% of the areal extent of forest lost in the Critical Area, then the remaining funds may be used for the following activities in priority order within the Critical Area, with the approval of the Critical Area Commission planning staff:
- a. Projects that improve water quality and increase habitat
 - b. Invasive plant control and management
 - c. Public education and outreach

22-4 RESOURCE CONSERVATION AREA (RCA)

A. Purpose

The Resource Conservation Area (RCA) is chiefly designated for agriculture, forestry, fisheries activities, and other resource utilization activities and for habitat protection. Development is limited in the Resource Conservation Area.

B. Goals

The following goals will guide development in the RCA:

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

C. Area Boundaries

Boundaries are as shown on the Official Calvert County Critical Area Map as RCA.

D. Designation of Resource Conservation Areas

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

1. Density is less than one dwelling unit per five acres.
2. Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

E. Density Limitations

The maximum allowable density is one lot per 20 acres. This lot density shall only be increased through an intra-family transfer if the parcel is eligible. A variance to density in the RCA shall not be authorized. For parcels divided by the Critical Area line, the density requirements in the Resource Conservation Area are applied to the portion of the property lying within the Critical Area, and the density requirements for the underlying zoning district is applied to the portion of the property lying outside the Critical Area. A variance shall not be granted to modify the density requirements.

1. Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes shall be in accordance with the requirements of the underlying zoning district.

2. In calculating the density of development that is permitted on a parcel located within the Resource Conservation Areas, the area of any private or State tidal and non-tidal wetlands located on the property is not included.
3. An accessory apartment will not be considered an additional dwelling unit if the criteria under either of the following criteria apply. The provisions of Section 22-4.E.4 below also apply to any accessory apartment that qualifies as exempt from consideration as an additional dwelling unit.
 - a. The accessory apartment is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit, the accessory apartment does not exceed 900 square feet in total enclosed area, and the accessory apartment is served by the same sewage disposal system as the primary dwelling unit.
 - b. The accessory apartment is located within the primary dwelling unit, by its construction, the accessory apartment does not increase the amount of lot coverage already attributed to the primary dwelling unit, and the accessory apartment is served by the same sewage disposal system as the primary dwelling unit.
4. Any accessory apartment that qualifies as exempt from consideration as an additional dwelling unit per Section 22-4.E.3 above is subject to the following:
 - a. An accessory apartment that is separate from the primary dwelling unit may not be subdivided or conveyed separately from the primary dwelling unit.
 - b. An accessory apartment that qualifies as exempt from consideration as an additional dwelling unit is subject to density calculations only.

F. Permitted Uses

Uses permitted in the underlying district are permitted as long as they meet the conditions of Section 22-4.H below.

G. Special Exception Uses

Uses allowed in the underlying district as special exceptions are allowed as long as they meet the conditions of Section 22-4.H below.

H. Criteria for Development

1. Development activity within the Resource Conservation Area shall be in accordance with the criteria for the Limited Development Area.
2. Land use management practices shall be consistent with the policies and criteria for Habitat Protection Areas.
3. Agricultural and conservation easements are strongly encouraged.
4. Existing industrial, commercial, and institutional facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in Section 22-4.E above are allowed in Resource Conservation Areas. Expansion or intensification of such uses may be permitted only in accordance with the applicable grandfathering or nonconforming use provisions. Additional land may not be zoned for industrial or commercial development, except as provided in Section 22-6 below. New commercial, industrial, or institutional uses are not permitted.
5. The Department of Planning & Zoning shall ensure that the overall acreage of forest and woodland within the Resource Conservation Areas does not decrease by:
 - a. Not permitting cutting of trees without replacement unless it is approved thinning or timber stand improvement under a Forest Management Plan.
 - b. Requiring that commercially harvested land shall be reforested or mitigated as per the applicable sections of this Article.
6. Nothing in this section limits the ability of a participant in the Agriculture Land Preservation Program to convey real property with such a conservation easement to family members provided that no such conveyance

will result in a density greater than one dwelling unit per 20 acres except as described in the Section 22-4.1 below.

7. For lot coverage on split parcels, lot coverage is limited as follows:
 - a. When a site is mapped entirely as RCA: 15% of the total site.
 - b. When a portion of a lot or parcel is mapped as RCA: 15% of that portion of the lot or parcel.
8. A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with Section 22-8 below.

I. Intrafamily Transfers

1. Bona fide intrafamily transfer lots may be created only from parcels of land that:
 - a. Were of record on March 1, 1986;
 - b. Are 7 or more acres and less than 60 acres in size; and,
 - c. Do not have the potential to create eight lots or more including the intrafamily transfer lots.
2. It shall be required as a condition of approval that:
 - a. An intrafamily transfer lot shall only be created for an immediate family member and that family member shall be identified on the subdivision preliminary and final plats.
 - b. Any deed for a lot that is created by a bona fide intrafamily transfer shall identify the member of the family to receive the lot and contain a covenant stating that the lot is created subject to the provision of this section.
 - c. A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than the person identified in items a and b above, except under procedures established pursuant to Section 22-4.1.3 below.
 - d. This subsection does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.
 - e. After the adoption of this Ordinance, the number of intrafamily transfer lots that can be created is limited to one lot per parcel of record. If the parcel of record has already platted intrafamily transfer lots permitted under previous Ordinances, no additional intrafamily transfer lots are permitted.
 - f. The purchase of five Transferable Development Rights (TDRs) is required.
3. The subsequent conveyance of lots to persons other than immediate family members shall be permitted if the following conditions are met:
 - a. The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale.
 - b. The Planning Commission determines that either:
 - i. Extenuating circumstances, including but not necessarily limited to declining health, military or professional transfer, divorce, or death, has occurred since the original transfer was made that is not inconsistent with this section and that warrants an exception; or
 - ii. Other extenuating circumstances that are consistent with this section and with the County's Critical Area Program to maintain land areas necessary to support the protective uses of agriculture, forestry, open space, and natural habitats in Resource Conservation Areas warrant an exception.
 - c. An affidavit affirming the truth of the requirements of Section 22-4.1.3.b above signed by the family member who received the lot through the intrafamily transfer provisions.

J. Certification of Transferable Development Rights

1. Under the County's Agricultural Preservation Program, for Agricultural Preservation Districts recorded prior to July 1, 2009, property in the Resource Conservation Area shall be eligible for the same number of Transferable Development Rights as properties located outside the Critical Area.
2. For Agricultural Preservation Districts recorded after July 1, 2009, the Board of County Commissioners shall certify TDRs separately for lands in the Critical Area, and such lands will be allocated one TDR for every four acres of land in the RCA.
3. Such TDRs shall only be applied to land outside the Critical Area.

22-5 GROWTH ALLOCATION

A. Description

Growth Allocation is the number of acres of land available to Calvert County for new LDAs or IDAs and is equal to 5% of the original acreage of RCA lands that are not tidal wetlands or federally owned. The original amount of Growth Allocation allotted to Calvert County was 684 acres of which 459.05 acres have been used. Chesapeake Beach was allotted 100 acres of which 68.37 acres remain unused; and North Beach was allotted 20 acres and 20 acres remain unused as of the adoption date of this Ordinance. Calvert County has 224.95 acres of Growth Allocation remaining as of the adoption of this Ordinance.

When planning future expansion of IDA and LDA lands, the Board of County Commissioners will cooperate with the municipalities of North Beach and Chesapeake Beach to establish a process to accommodate the growth needs of the municipalities.

B. Purpose

Growth Allocation is available for use in an RCA or in a LDA in the Calvert County Critical Area. The purpose is to authorize a change in the Critical Area classification to: 1) develop at a higher density; or 2) allow a use other than what the current classification allows.

C. Standards

When locating a new IDA or LDA, the Board of County Commissioners shall use the following standards:

1. Locate new IDAs in LDAs or adjacent to an existing IDA and within growth areas defined by the Master Plan. A new IDA shall be at least 20 acres in size unless it is either:
 - a. Contiguous to an existing IDA or LDA; or,
 - b. In a grandfathered commercial, industrial, or institutional use that existed when the Critical Area Program was adopted (December 13, 1988). The amount of growth allocation deducted shall be the equivalent to the area of the entire parcel or parcels subject to the growth allocation request.
2. Locate new LDAs adjacent to an existing LDAs or IDAs.
3. Except as provided in item 6 below, no more than half of the expansion allocated in the Critical Area Commission criteria shall be located in RCAs.
4. New IDAs or LDAs to be located in the RCA shall conform to all criteria of the Critical Area regulations of the Annotated Code of Maryland Natural Resources Article 8-1808.1(c), as amended from time to time, for such areas.
5. Locate a new LDA or an IDA in a manner that minimizes impacts to a Habitat Protection Area, as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality.
6. If the Board of County Commissioners is unable to designate a portion of the growth allocation in items 1 and 2 above within or adjacent to existing IDAs or LDAs as demonstrated in the Calvert County Critical Area Program approved by the Critical Area Commission, or in any amended Critical Area Program approved by the Critical Area Commission, then that portion of the allocated expansion which cannot be so located shall be located in RCAs, in addition to the expansion allocated in item 3 above. Proof of this situation shall be

demonstrated to and approved by the Critical Areas Commission, or in any Critical Area Program amendment approved by the Critical Area Commission. A developer shall be required to cluster any development in an area of expansion authorized under this regulation allocation and is consistent with Calvert County's Comprehensive Plan. Existing nonconforming uses in the RCA shall only be expanded 10,000 square feet or 10% whichever is less before requiring growth.

7. Locate a new IDA or LDA in a manner that minimizes impacts to the defined land uses of the RCA.
8. Locate a new IDA or LDA at least 300 feet from the landward edge of tidal wetlands or tidal waters.
9. Growth allocation shall only be used for commercial or industrial projects.
10. Only projects where the applicant can demonstrate that a measurable public benefit will be realized from the project shall be approved for use of the 5% growth allocation.
11. All projects submitted during the calendar year shall be reviewed and allocated by the Board of County Commissioners upon the recommendation of the Planning Commission.
12. In approving the use of the growth allocation, priority shall be given to:
 - a. Projects within the Solomons Town Center.
 - b. Projects outside the Solomons Town Center in which meet all of the following:
 - i. The building envelope is located at least 300 feet from the landward edge of tidal waters, tidal wetlands or tributary streams.
 - ii. The undeveloped remainder is contiguous and retains its natural features.
 - iii. The undeveloped remainder is restricted from future development through covenants or other restrictive instruments.
 - iv. Development activities shall be designed and implemented to minimize destruction of woodland vegetation.
13. No growth allocation shall be allowed that adversely affects Habitat Protection Areas.

D. Factors

In reviewing map amendments or refinements involving the use of growth allocation, the County shall consider the following factors:

1. Consistency with the County's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.
2. For a map amendment or refinement involving a new IDA, whether the development is:
 - a. To be served by a public wastewater system.
 - b. Have an allowed average density of at least 3.5 units per acre.
 - c. If greater than 20 acres, be located in a priority funding area.
 - d. Have a demonstrable economic benefit to the area;
3. For a map amendment or refinement involving a new LDA, whether the development is:
 - a. To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology.
 - b. A completion of an existing subdivision.
 - c. An expansion of an existing business.

- d. To be clustered.
- 4. The use of existing public infrastructure, where practical;
- 5. Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
- 6. Impacts on a priority preservation area, as defined under §2-518 of the Agriculture Article;
- 7. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
- 8. Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

E. Process Requirement

An applicant shall submit to the County a complete application for growth allocation that complies with the submittal requirements below.

- 1. A growth allocation request shall be reviewed and approved according to the local process for a Zoning Map Amendment.
- 2. Upon approval of the growth allocation request by the Board of County Commissioners, the County shall send a request to the Critical Area Commission to utilize a portion of their growth allocation.
- 3. The request shall be accompanied by pertinent findings, plans, environmental reports, and studies as described below:
 - a. A finding that ensures the growth allocation is consistent with the purposes, policies, goals, and provisions of the Critical Area law and all criteria of the Critical Area Commission.
 - b. All information and documentation relevant to Calvert County's determination that the project meets the standards listed under Natural Resources Article, §8-1808.1(c)(2).
 - c. A conceptual site development plan and environmental features map in accordance with COMAR 27.01.02.06-1.
 - d. If applicable, an environmental report in accordance with COMAR 27.01.02.06-2 including a Buffer Management Plan or Habitat Protection Plan in accordance with COMAR 27.01.02.06-2.B and C.
 - e. If applicable, the preliminary stormwater management plan for compliance with the 10% pollutant reduction rule, including all worksheets and supporting documentation.
 - f. For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Maryland Department of the Environment, Maryland Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:
 - i. Rare, threatened, and endangered species.
 - ii. Forest interior dwelling birds and colonial water birds.
 - iii. Anadromous fish and their propagation waters and any other aquatic species located onsite.
 - iv. Plant and wildlife habitat and historic waterfowl staging and concentration areas.
 - v. Submerged aquatic vegetation.
 - vii. Riparian forests and tidal and nontidal wetlands.
 - viii. Natural heritage areas and other historical and cultural resources.

- a. Deduction of more than one growth allocation envelope will provide water quality or habitat benefit.
 - b. The Commission approves more than one growth allocation envelope.
5. When a 300 foot setback is not provided, the County shall require deduction of the area of the Buffer.
6. The acreage of the area deducted shall match the acreage of the area shown on the official Critical Area map as amended by the County and Critical Area Commission.

22-6 HABITAT PROTECTION AREAS

A. Introduction

The State has designated certain areas and plant and animal species as Habitat Protection Areas meriting special protection. Habitat Protection areas include the Critical Area Buffer; nontidal wetlands; the habitat of rare, threatened, and endangered species, and species in need of conservation; plant and wildlife habitat; anadromous fish propagation water; and Habitat Protection Areas for the Calvert County Critical Area as defined by the Department of Natural Resources – Wildlife and Heritage Service.

B. Boundaries

The boundaries for each type of habitat protection area are described in the applicable section.

C. Criteria for Development

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

D. Critical Area Buffer

1. Purpose

The Critical Area Buffer is the largest and most common Habitat Protection Area. There are a number of significant environmental benefits of maintaining a protected buffer between developed areas and adjacent waters and wetlands. The purpose of the Critical Area Buffer shall be to:

- a. Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Chesapeake Bay and its tributaries.
- b. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, tidal waters, and aquatic resources.
- c. Maintain an area of transitional habitat between aquatic and upland communities.
- d. Maintain the natural environment of streams.
- e. Protect riparian wildlife habitat and wildlife corridors.
- f. Reduce erosion by stabilizing slopes and the shoreline.

2. Buffer Description and Delineation

- a. A Buffer of at least 100 feet shall be delineated based on existing field conditions and shown on all applications for a development activity or proposed land use change. It shall be delineated landward from:
 - i. The mean high water (MHW) line of a tidal water.
 - ii. The edge of each bank of a tributary stream.
 - iii. The upland boundary of a tidal wetland.
- b. The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, whose development or disturbance may impact streams, wetlands, or other aquatic environments. The minimum 100-foot Buffer shall be expanded to include the following contiguous areas:

- i. In the case of contiguous, steep slopes of 15% or greater, the Buffer shall be expanded to the top of the slope, plus 50 feet.
 - ii. A nontidal wetland and its contiguous 100-foot buffer.
 - iii. A "Wetland of Special State Concern" (COMAR §26.23.06.01) and its contiguous 100-foot buffer.
 - iv. Highly erodible soils on a slope less than 15% and greater than 5% to the landward edge of the highly erodible soil or 300 feet, whichever is less. The Buffer cannot be expanded beyond a drainage divide on grandfathered lots or parcels.
 - v. Hydric soils to the landward edge of the hydric soil or 300 feet, whichever is less.
- c. The expansion of the Buffer shall be drawn perpendicular to the shoreline, tidal wetland, or tributary stream to be protected. The Buffer shall not be expanded beyond a drainage divide on grandfathered lots or parcels. The Planning & Zoning Department has the authority to require a reverification of the Buffer through field inspection. The provisions of Section 22-6.D.7 below apply to clearing within the expanded buffer area.

3. Buffer Applicability

The Zoning Officer, in consultation with the Environmental Planner(s), may authorize disturbance to the Buffer for the following activities, provided mitigation is performed as required in Section 22-6.D.7 below with an approved Buffer Management Plan according to the standards stated in Section 22-6.D.6 below. All measures shall have all applicable approvals. Items a, c, and e below shall require administrative variance approval, and all criteria of Section 22-9.D shall be met.

- a. A new development or redevelopment activity associated with a water-dependent facility under COMAR §27.01.03 and this Ordinance. The approval of an administrative variance is required.
- b. In accordance with COMAR §26.24.02, a shore erosion control measure under COMAR §26.24.04 and this Ordinance. The applicant shall consult with the Maryland Department of the Environment to obtain authorization or a license for the proposed project which shall be submitted with the County permit application package. When work associated with a shore erosion control application extends landward of the Mean High Water line the following provisions shall apply:
 - i. Bulkheads or retaining walls are prohibited.
 - ii. The existing bank shall not be graded except to allow minimal access, no greater than 20 feet wide. No other clearing or cutting of existing vegetation shall be permitted.
 - iii. Work shall be performed from the channelward side of the site except when the landward side is lawn. Staging areas shall be 15 feet wide or less.
 - iv. Minor fill of eroded gullies or depressions created by root wads, tree falls or undercut, or to protect septic recovery areas and wells are permitted.
 - v. Mitigation for disturbance to the Buffer to install the shore erosion measures shall be 2:1 based on the area of disturbance plus a 10- foot wide filter strip of native grasses at the top of the slope parallel to the shore line. Mitigation shall be in-kind with the vegetation removed unless an alternative planting plan is approved by the Department of Planning & Zoning. The mitigation requires a Buffer Management Plan.
 - vi. Mitigation for work associated with a shore erosion control application that does not fall under item v above shall require a variance from the Board of Appeals.
- c. A slope stabilization activity as defined in Article 2, if the applicant demonstrates erosive conditions and the proposed stabilization method minimizes land disturbance and clearing of existing vegetation and maximizes replanting the disturbed area with native vegetation. The approval of an administrative variance is required.

- d. On a lot or parcel that was created before January 1, 2010, a development activity may be allowed that impacts the expanded Buffer for highly erodible soils on slopes less than 15% or hydric soils, if the following are met:
 - i. The development activity is in the expanded portion of the Buffer, but not in the 100-foot Buffer or Buffer expanded for 15% slopes.
 - ii. The entire Buffer occupies at least 75% of the lot or parcel.
 - iii. Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- e. A septic system on a lot or parcel created before December 13, 1988, where mitigation is provided at a 1:1 ratio for the clearing of any area of forest or developed woodland. The approval of an administrative variance is required.
- f. An in-kind replacement of an existing legally permitted structure.
- g. Maintaining an existing yard/lawn area. However, reducing mowed areas of turf grass is encouraged to enhance the Buffer functions.
- h. Direct riparian access that is 4-feet wide or less with a landing no greater than 4 x 4 feet in size.

4. Agricultural Activities in the Buffer

- a. Agriculture is authorized in the Buffer if, as a minimum Agricultural Best Management Practice, a vegetated filter strip of at least 25 feet measured landward from the mean high water line of tidal waters or tributary streams (excluding drainage ditches), or from the edge of tidal wetlands, whichever is further inland, is established, and further provided that:
 - i. The filter strip is composed of native trees, shrubs, grasses or mixed vegetation and managed to provide water quality benefits and habitat protection. Noxious weeds, including Johnson grass, Canada thistle, multiflora rose and other invasive plants which occur in the filter strip, shall be controlled by authorized means.
 - ii. The filter strip is expanded by a distance of four feet for every 1% of slope, for slopes greater than 6%.
 - iii. The filter strip is maintained until the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of Agricultural Best Management Practices for the specific purposes of improving water quality and protecting plant and wildlife habitat, and provided that the Plan being implemented achieves the water quality and habitat protection objectives of the filter strip
 - iv. The feeding or watering of livestock does not occur within 50 feet of the mean high water line of tidal water and tributary streams or from the edge of tidal wetlands, whichever is further inland.
 - v. The clearing of existing natural vegetation in the Buffer is prohibited.
 - vi. Agricultural activities, including the grazing of livestock, shall not disturb stream banks, tidal shorelines, or Habitat Protection Areas.
- b. Where agricultural use of lands within the area of the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established as per a Buffer Management Plan approved by the Department of Planning & Zoning (see Section 22-6.D.6 below).
- c. The drainage, diking or filling of nontidal wetlands for the purpose of new agricultural lands is prohibited.

5. Commercial Tree Harvests in the Buffer

- a. Commercial harvesting of trees shall be permitted in the Buffer as described in b below, under a Timber Harvest Plan approved by the Department of Natural Resources and the District Forestry Board. These plans shall be submitted to the Department of Planning & Zoning for approval.

b. Cutting or the clearing of trees within the Buffer is prohibited, except that commercial harvesting of trees by selection or the clearcutting of loblolly pine and tulip poplar is permitted to within 50 feet of the edge of intermittent streams, and to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams or to the edge of tidal wetlands if this cutting does not occur in other Habitat Protection Areas described in COMAR 27.01.09.02, .03, .04 and .05.

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 creation of logging roads and skid trails within the Buffer is prohibited

6. Buffer Establishment

a. The Buffer establishment requirements shall be applicable to:

i. A development or redevelopment activity that occurs on a lot or parcel that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream even if that development or redevelopment activity is located outside the Buffer.

ii. The approval of a subdivision that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream including in the RCA.

iii. Conversion from one land use to another land use on a lot or a parcel.

b. When the Buffer is not fully forested or is not fully established in existing, naturally occurring woody or wetland vegetation, an applicant shall establish the Buffer to the extent as follows:

i. For new development on a vacant lot or parcel created prior to December 13, 1988, an area of the Buffer shall be established equal to the total lot coverage approved.

ii. For new development on a vacant lot or parcel created on or after December 13, 1988, the entire B Buffer shall be established.

iii. For a new subdivision or new lot, the entire Buffer shall be established.

iv. For a new lot with an existing dwelling unit, the Buffer shall be established based on the total square footage of lot coverage outside the Buffer.

v. For the conversion of a land use on a parcel or lot to another land use, the entire Buffer shall be established.

vi. For an addition or accessory structure, an area of the Buffer shall be established equal to two times the area of new lot coverage approved.

vii. For substantial alteration, an area of the Buffer shall be established equal to the total lot coverage, existing and newly approved.

All required Buffer establishment shall be bonded as described in the LDA regulations and shall require a Buffer Management Plan approved by the Department of Planning & Zoning.

c. If an applicant for a subdivision uses or leases the proposed lot(s) for an agricultural purpose, the applicant:

i. In accordance with local land recordation requirements, shall record an approved Buffer Management Plan (Sections 22-6.D.8 and 9 below) for buffer establishment.

ii. If authorized by the Department of Planning & Zoning, may delay implementation of the Buffer Management Plan until the use of the lot is converted to a nonagricultural purpose.

- d. The Buffer shall be established in native vegetation in accordance with a Buffer Management Plan approved by the Department of Planning & Zoning.
- e. For the establishment of more than one acre (Table 22-3), natural regeneration may be used for up to 50% of the area required to be established, if:
 - i. The plan does not include any managed lawn or turf and includes invasive species control.
 - ii. All of the natural regeneration is within 300 feet of a natural forest that contains a seed bank of native species adequate for natural regeneration.
 - iii. The plan includes a supplemental planting plan for subsequent implementation if the natural regeneration does not succeed.
 - iv. The financial assurance provided for implementing the Buffer Management Plan is sufficient to cover the cost of planting an equivalent area; and specifies that release of the financial assurance may not occur until five years after the date of plan approval or the areal coverage of the Buffer is at least 300 native woody stems, on a per acre basis, that are at least four feet in height, whichever is later.
 - v. At the end of five years, after the date of approval of a natural regeneration plan, an applicant shall implement a supplemental planting plan for at least two years if the areal coverage of the Buffer is not, on a per acre basis, at least 300 native woody stems of at least four feet in height.
- f. Buffer establishment requirements are not applicable to an in-kind replacement of a structure.
- g. Any lot coverage removed from the Buffer may be deducted from the total cumulative amount of establishment required if:
 - i. The lot coverage existed before December 13, 1988 or was allowed by local procedures.
 - ii. The total area is stabilized.
- h. For subdivisions or development activities in the RCA and all projects in the RCA that require a site plan or change in use which were submitted on or after July 1, 2008, shall include a minimum Buffer of at least 200 feet landward from the Mean High Water Line of tidal waters and tidal wetlands and a 100-foot buffer from the edge of the bank of tributary streams. If the Buffer is not fully forested or is not fully established in existing naturally occurring woody or wetland vegetation, it shall be established as per this section. The Buffer shall be expanded beyond 200 feet or 100 feet for tributary streams for the same reasons and in the manner as described below. The 200- foot Buffer for subdivisions located in the RCA may be reduced to no less than 100 feet or to the edge of the extended buffer under the following conditions:
 - i. An application for subdivision of site plan approval is submitted before July 1, 2008 and legally recorded by July 1, 2010.
 - ii. The subdivision or site plan receives growth allocation.
- i. If the maximum density (1 dwelling unit per 20 acres) cannot be achieved on site using minimum lot sizes and standard County setbacks without impacting the 200 foot buffer, then minimal impacts to the 200-foot Buffer may be approved.
- j. An intrafamily transfer allowed under Section 22-4.I is disallowed. The minimum reduction in the Buffer necessary to accommodate the proposed development shall be applied as determined by the Zoning Officer after consultation with the Critical Area Planner, but not to impact the 100-foot Buffer.

7. Buffer Regulations and Mitigation

Development activity that results in disturbance in the Buffer shall require mitigation for impacts. The following regulations govern activities within the Critical Area Buffer.

- a. The Buffer shall be maintained in natural vegetation and managed to achieve or enhance the purpose of Section 22-6.D.1.

- i. Except as authorized in Section 22-6.D.7.b below, disturbance in the Buffer is prohibited.
 - ii. Any unauthorized disturbance including cutting, clearing, or topping of trees and any removal of existing vegetation, including shrubs and ground cover (including fallen trees), within the Buffer is prohibited.
 - iii. On areas of the property where land disturbance or clearing comes within 50 feet of the Critical Area Buffer, the Buffer shall be demarcated using snow fencing or a silt fence prior to clearing, grading, or construction and these protective devices shall remain until construction is complete.
 - iv. A 10-foot building setback shall be maintained from the edge of the vegetated buffers. A reduction of the setback may be obtained through either an administrative variance or a variance from the Board of Appeals after review and recommendation by the Environmental Planner. The setback reduction may only be granted to allow activities permitted for the construction of primary residences which could not normally be built because of unusual lot configuration or other site constraints.
 - v. The installation or cultivation of new lawn or turf in the Buffer is prohibited.
- b.** Notwithstanding the prohibitions of Section 22-6.D.7.a above, the following activities shall be allowed with an approved BMP and a grading permit. Tree replacement is required at the ratios in Table 22-3.
- i. Tree or vegetation removal may be permitted for water access. No more than one access through the Buffer shall be permitted per waterfront lot or parcel. A 4-foot wide pedestrian access is allowed, such as steps or a pathway. A 12 foot wide vehicular access shall be allowed to a boat ramp.
 - ii. Individual trees, living or dead, may be removed which are in imminent danger of falling and causing damage to dwellings or other structures, or which are in imminent danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion (mitigation ratio = 1:1, except that no mitigation or BMP is required for the removal of a tree within ten feet of a cliff, which is in imminent danger of falling and has a diameter at four feet above the ground of four inches or greater.
 - iii. Appropriate horticultural practices may be used to maintain the health of individual trees, including removal of noxious, invasive, and exotic species which impair the function and growth of a forested buffer. Inappropriate horticultural practices such as topping, girdling, over pruning or severely damaging existing vegetation, are prohibited.
 - iv. Other cutting techniques may be undertaken within the Buffer under the advice and guidance of the Department of Agriculture or Natural Resources, if necessary, to preserve the forest from extensive pest or disease infestation, threat from fire, or to remove invasive species.
 - v. Selective thinning and cutting may be approved by the Department of Planning & Zoning if the Department determines that the function of the Buffer will not be impaired.
 - vi. Mitigation as required within this Article shall be cumulative in nature. Example: Clearing or disturbance violations shall be mitigated at 4:1. After-the-fact projects that require a variance(s) shall mitigate an additional 3:1 for a total mitigation requirement of 7:1.
 - vii. Removal of vegetation for permitted development or redevelopment activities in the Buffer may be permitted. The mitigation ratio is 3:1 outside Special Buffer Management Areas, unless otherwise specified (See Table 22-3). See Section 22-6.D.13.d for required mitigation in Special Buffer Management Areas.

Table 22-3 - Buffer Mitigation Ratios	
Activity	Mitigation Ratio
Septic on a lot or parcel created before December 13, 1988 if located in existing grass or if clearing is not required	Not Applicable
Septic system in a forest or developed woodland on a lot or parcel created before December 13, 1988 if clearing is required	1:1
Invasive Plant/Pest Control	1:1
Shore Erosion Control	1:1
Slope Stabilization	2:1

Riparian Water Access	2:1
Water-dependent Facility or Activity	2:1
Variance	3:1
Violation	4:1

- c.** As long as there is no removal of trees or existing vegetation, the following activities do not require a permit.
- i.** Maintenance of existing lawns and gardens.
 - ii.** Removal of foundation plantings such as ornamental shrubs, as long as replacement occurs within 30 days.
 - iii.** Pruning of trees provided appropriate horticultural pruning techniques are used and according to the latest edition of the American National Standards Institute Inc. (ANSI) A300 as follows:
 - (1)** No more than 20% of the canopy leaf area or root area is removed.
 - (2)** Pruning is limited to branches on the lower one-third of the tree.
 - (3)** The pruning will not jeopardize the health of the tree.
 - (4)** Inappropriate practices, such as topping, girdling, over pruning, or severely damaging the canopy, trunk or roots of trees which leads to the death of the tree, are prohibited in the Buffer, and shall be considered a violation subject to 4:1 mitigation requirements.
- d.** A permit is required for the removal of a dead tree. If the tree is completely dead, mitigation is not required but the affected area shall be stabilized with native groundcover or other native vegetation as necessary.
- e.** When homeowner actions are necessary in emergency situations to remove a tree(s) in the Buffer, i.e., the tree poses an imminent danger of falling and causing damage to a dwelling or other structure, the homeowner shall take photographs of the tree before cutting it, remove the tree that poses imminent danger, and submit a permit application (a grading permit application or Critical Area vegetation removal permit application as applicable) with the photo documentation and plan within seven days of removal.
- f.** The removal of a diseased, dying invasive or hazardous tree requires a permit and shall be mitigated with one tree of at least ¾-inch caliper for each tree removed.
- g.** Any unauthorized development activity, including clearing, in the Buffer is a zoning violation. Unauthorized clearing requires mitigation at a ratio of four times the area disturbed (4:1) and surety as described in Section 22-3.J.
- h.** Fences, four feet or less in height, are permitted in the Critical Area Buffer provided that the owner or the owners' agent obtains a permit and the fence is made of wood, a material that has a wood-like appearance, chain-link, or wire. Fences that require a foundation are prohibited.
- i.** On grandfathered lots or parcels in the Critical Area, additions to the principal structure of less than 50 square feet of lot coverage are permitted in the Critical Area Buffer provided:
- i.** No trees are removed during construction.
 - ii.** The addition is more than 50 feet from mean high water, the edge of tidal wetlands, or tributary streams.
 - iii.** The addition is not on slopes 15% and greater.
 - iv.** The addition is not within the cliff setbacks.
 - v.** A permit shall be obtained and mitigation will be at a 1:1 ratio.

- vi. When grading or clearing is allowed in the Buffer, super silt fencing shall be installed and a vegetative mat shall be installed at finished grade.
- j. Planting location priorities are as follows:
 - i. First priority: On-site in the Critical Area Buffer. Other priorities can only be considered when all area in the Buffer has been planted.
 - ii. Second priority: On-site and adjacent to the Buffer.
 - iii. Third priority: A fee-in-lieu payment (2:1) at a rate set by the Board of County Commissioners.
- k. As applicable to a site, an area in the Critical Area Buffer that is temporarily disturbed by a development activity shall be restored to pre-disturbance conditions.
- l. All bonds or fees shall be in compliance with COMAR and as approved by the Board of County Commissioners.

8. Buffer Management Plan Submittal Requirements

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

- a. Any permit for a development activity that requires Buffer establishment or mitigation shall not be issued until a BMP is approved by the Department of Planning & Zoning.
- b. An applicant shall not obtain final approval of a subdivision application until the BMP has been reviewed and approved by the Department of Planning & Zoning.
- c. A BMP shall not be approved unless:
 - i. The plan clearly indicates that all planting standards under this will be met; and
 - ii. Appropriate measures are in place for the long-term protection and maintenance of the Buffer.
- d. For a BMP that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy shall not be issued until the applicant:
 - i. Completes the implementation of a BMP; or
 - ii. Provides financial assurance at a rate set by the Board of County Commissioners for the long term survivability requirements as set forth in COMAR 27.01.09.01-2.
- e. Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
- f. Failure to implement a BMP shall constitute a violation of this Ordinance and no permits for any development activity shall be issued until the applicant comes into to compliance.
- g. A BMP that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4 with a five-year surety requirement.
- h. In accordance with COMAR 27.01.09.01-2 before recordation of a final subdivision:
 - i. Permanent signs delineating the upland boundary of the Buffer at a ratio of at least one sign per lot or parcel, or per 200 linear feet of shoreline, whichever is greater, shall be posted.
 - ii. The signs shall be designed to be at least 11 inches wide and 15 inches in height, placed at a height of 21.5 feet (but not attached to a tree), and state "*Critical Area Buffer-No clearing or disturbance permitted.*"

- iii. Concurrent with the recordation of a final plat, an applicant shall record a protective easement for the Buffer.
- i. When a Buffer Management Plan (BMP) is required, a final subdivision application shall not be approved and a permit for a development activity shall not be issued until the County has reviewed and approved the BMP.

9. Buffer Management Plan Standards

An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall apply the following standards:

- a. If planting to meet a mitigation requirement, the following combination of plantings shall be used:
 - i. If required to plant less than one acre, the entire requirement shall be met using landscape stock as noted in Table 22-5.
 - ii. If required to plant 1 acre or more, at least 50% of the planting requirement shall be met in landscape stock and the remainder may be met in flexible stock as noted in Table 22-6.

Requirement	Amount	Options
Establishment	Less than 1/4 acre	Landscaping stock according to Table 22-5 for the entire area
	1/4 acre to less than or equal to 1 acre	At least 50% of area in landscaping stock according to Table 22-5, the remainder according to Table 22-6
	Greater than 1 acre to less than or equal to 5 acres	At least 25% of area in landscaping stock according to Table 22-5, the remainder according to Table 22-6
	Greater than 5 acres	At least 10% of area in landscaping stock according to Table 22-5, the remainder according to Table 22-6
Mitigation	Less than 1 acre	Landscaping stock according to Table 22-5 for the entire area
	1 acre or greater	At least 50% of area in landscaping stock according to Table 22-5, the remainder according to Table 22-6

Vegetation Type <i>Refer to Calvert County Native Plant List</i>	Minimum Size Eligible for Credit	Maximum Credit Allowed (square feet)	Maximum Percent of Credit
Canopy tree	2-inch caliper and 8 feet high	200	Not applicable
Canopy tree	3/4-inch caliper and 6 feet high	100	Not applicable
Understory tree	3/4- inch caliper and 6 feet high	75	Not applicable
Large species shrub	3 feet high	50	30
Small species shrub	18 inches high	25	20
Herbaceous perennial	1 quart or based on the area covered by plugs or seed mix	2	10
Planting Cluster 1* <i>Option only available only for buffer establishment & buffer mitigation of less than 1/2 acre</i>	1 canopy tree; and 3 large species shrubs or 6 small species shrubs of sizes listed above	300	Not applicable
Planting Cluster 2* <i>Option only available only for buffer establishment & buffer mitigation of less than 1/2 acre</i>	2 understory trees; and 3 large species shrubs or 6 small species shrubs of sizes listed above	350	Not applicable

Stock Size of Trees Only	Required Number of Stems Per Acre	Survivability Requirement	Minimum Financial Assurance Period After Planting
Bare-root seedling or whip	700	50%	5 years
1/2" to 1" container grown trees	450	75%	2 years
1" or more container grown trees	350	90%	2 years

- b.** If planting to meet an establishment requirement, the following combination of plantings shall be used as noted in Table 22-4:
- i.** If required to plant less than one-quarter acre, the entire requirement shall be met using landscape stock (Table 22-5).
 - ii.** If required to plant at least one-quarter acre and up to one acre, at least 25% of the requirement shall be met using landscape stock according and the remainder may be met in flexible stock (Table 22-6)
 - iii.** If required to plant more than one acre, at least 10% of the requirement shall be met using landscape stock and the remainder may be met in flexible stock.
- c.** The percentage of shrubs or herbaceous perennials in Table 22-5, for the land scape stock component of Buffer establishment or mitigation, may be increased, as specified in COMAR 27.01.09.01-2:

- i. If the Buffer has existing canopy coverage of at least 50%.
- ii. If site constraints preclude canopy planting, including severely eroding slopes, saltwater intrusion, predominately sandy soils, or unconsolidated fill.
- iii. To allow buffer planting in shrubs and herbaceous perennials, rather than trees, within an area no wider than 15 feet located immediately adjacent to a marsh creation.
- d. All landscaping stock planted shall be 100% guaranteed for at least two years after planting is completed.
- e. A variance to the Critical Area Buffer planting and mitigation standards shall not be permitted.
- f. A BMP shall include the following:
 - i. Limits of disturbance (LOD), including the entire area of all vegetation being removed. This includes trees, shrubs and ground cover being removed.
 - ii. Planting schedule, which includes species, number of each species, size and spacing of proposed plantings to mitigate removals.
 - iii. Maintenance plan, including invasive species control, watering and monitoring for at least a period of 2 years.
 - iv. Estimated amount and type of surety bond (Section 22-3.J).

10. Types of Buffer Management Plans

- a. A Simplified Buffer Management Plan (SBMP) shall be required for these activities as follows:

- i. Access to a private pier or shoreline that is up to 4-feet wide.
- ii. Manual removal of non-native, invasive or noxious vegetation.
- iii. Filling to maintain an existing grass lawn.
- iv. Managing storm damage.
- v. Repairing or replacing a septic system.
- vi. Cutting up to five trees that are diseased, dying, invasive, or hazardous trees.

A SBMP shall include: a brief narrative describing the proposed activity and method(s) to be used, the anticipated start date, proposed mitigation and planting date, photo documentation and the signature of the party responsible for the proposed activity and for ensuring the survival of the mitigation planting.

- b. Minor Buffer Management Plan (MiBMP) is required when buffer establishment or required mitigation (planting) is less than 5,000 square feet. A MiBMP shall include:

- i. A scaled plan that shows the proposed LOD.
- ii. The total number of trees and square footage of areas of vegetation to be removed and their location within the LOD.
- iii. The information on which the calculation of the amount of buffer to be mitigated was based.
- iv. A mitigation plan, to scale, and landscape schedule showing the plant species and quantity, size, location and estimated planting date.
- v. A maintenance plan for the control of invasive species, pests, and predation including invasive species and pest control practices.

- vi. The provision of at least two years of monitoring, a reinforcement planting provision if survival falls below the standards set in Section 22-6.D.9 above.
 - v. An inspection agreement that grants permission to the County to inspect the plantings at appropriate times.
 - vi. The signature of the party responsible for the proposed mitigation and for ensuring the survival of the planting.
- c. Major Buffer Management Plan (MaBMP) is required when buffer establishment or required mitigation (planting) is equal to or greater than 5,000 square feet. A MaBMP shall be prepared by a landscape design professional or site design engineer and shall include:
- i. A scaled plan that shows the proposed LOD.
 - ii. The total number of trees and square footage of areas of vegetation to be removed and their location within the LOD.
 - iii. The information on which the calculation of the amount of Buffer to be mitigated was based.
 - iv. A mitigation plan, to scale, and landscape schedule that shows the plant species and quantity, the quantity of plants, the size of plants, installation location and estimated planting date.
 - v. A maintenance plan for the control of invasive species, pests, and predation including invasive species and pest control practices.
 - vi. The provision of at least two years of monitoring; and a reinforcement planting provision if survival falls below the standards set in Section 22-6.D.9 above.
 - vii. A long-term protection plan that includes evidence of financial assurance, an anticipated planting date before construction or the sale of the lot or parcel.
 - viii. An inspection agreement that grants permission to the County to inspect the plantings at appropriate times.
 - ix. The signature of the party responsible for the proposed activity and for ensuring the survival of the planting.

11. BMP Installation Standards

- a. Beneath required plantings, vegetated ground cover or mulch shall be required until buffer plantings are established. No bare soil is permitted.
- b. Mitigation is meant to offset area disturbed and to restore the ecological function.
- c. Mitigation requires planting of canopy and understory unless otherwise approved by the Department of Planning & Zoning.
- d. Individual trees removed will be mitigated based on canopy coverage lost in square feet.
- e. Forested areas will be mitigated based on square footage of forest removed. Where canopy does not exist, mitigation will be based on the square footage of subcanopy or herbaceous coverage.
- f. The *Calvert County Native Plant List* indicates the acceptable tree and shrub species that can be used to satisfy planting mitigation. This list is available from the Department of Planning & Zoning Office or on the County's Critical Area webpage.
- g. Single species shall not exceed 20% of the total planting requirement, except as allowed in Section 22-6.D.9 above.
- h. Large and small shrubs may not exceed 50% of the total planting requirement, except as allowed in Section 22-6.D.9 above.

- i. Buffer stocking standards are given in Tables 22-5 and 22-6.

12. Fee-In-Lieu of Buffer Mitigation

- a. The County shall collect a fee-in-lieu of buffer mitigation when planting requirements cannot be met onsite.
- b. The fee-in-lieu rate shall be set by the Board of County Commissioners for mitigation not accommodated onsite and shall be held in the Critical Area Fee in Lieu Special Revenue Fund.

13. Special Buffer Management Areas

- a. The location of Special Buffer Management Areas are designated by the Board of County Commissioners and approved by the Critical Area Commission and are depicted on Figures 22-1 and 22-2.
- b. New development or redevelopment is permitted provided that the development and redevelopment rules and offsetting requirements set forth in Section 22-6.D.13.h below are observed.
- c. Shore erosion protection measures are permitted provided that such measures are consistent with the shore erosion protection policies described in Section 22-7 below and provided that the measures have all applicable state and federal permits.
- d. Cutting or clearing of trees and removal of vegetation is permitted as described in Section 22-3.I. Mitigation ratio is 2:1 inside of Special Buffer Management Areas, unless otherwise specified (See Table 22-3).
- e. In the Solomons Town Center, the minimum Critical Area Buffer is 30 feet. Outside the Solomons Town Center, the minimum Critical Area Buffer is the average of the setbacks of structures on adjacent properties or 50 feet, whichever is greater and offsets described in Sections 22-6.D.13.h and i below are required.
- f. Subdivision within LDA and LDA-3 Special Buffer Management Areas may be subdivided and retain its status if it meets all of the following criteria:
 - i. The original parcel is less than five acres and it is designated LDA.
 - ii. Structures, roads, and parking areas shall be a minimum of 50 feet from tidal waters, the edge of wetlands, or the edge of tributary streams. The total area of existing and new accessory structures per lot in the Buffer in the subdivision cannot exceed 1,000 square feet.
 - iii. Community sewer shall serve the property.
 - iv. Offsetting requirements listed in Section 22-6.D.13.h below shall be met.
 - v. Housing density does not exceed two dwelling units per acre.
 - vi. Any future shore erosion control on the property shall be non-structural if it is practical and effective at the proposed site.
 - vii. A 10% reduction in pollutants from stormwater will be met on-site through the implementation of Best Management Practices (BMPs) unless findings are made by the Department of Planning & Zoning or the Planning Commission that the implementation of BMPs on site is not feasible because of site conditions such as soil type or depth to water table. This requirement applies to all subdivisions in Special Buffer Management Areas in the Critical Area. If the 10% reduction cannot be obtained, the offsets as described in Sections 22-6.D.13.h and i below shall be required.
 - viii. If land is subdivided, but does not meet the criteria of this section for subdivision, only the parcel or lot that retains the original primary structure will remain in Special Buffer Management Area status. Any new lots shall fully comply with the provisions of this Ordinance.

FIGURE 22-1

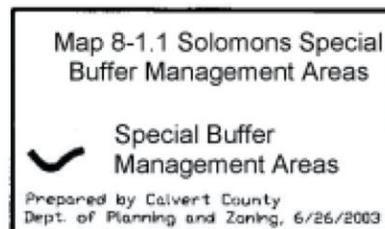
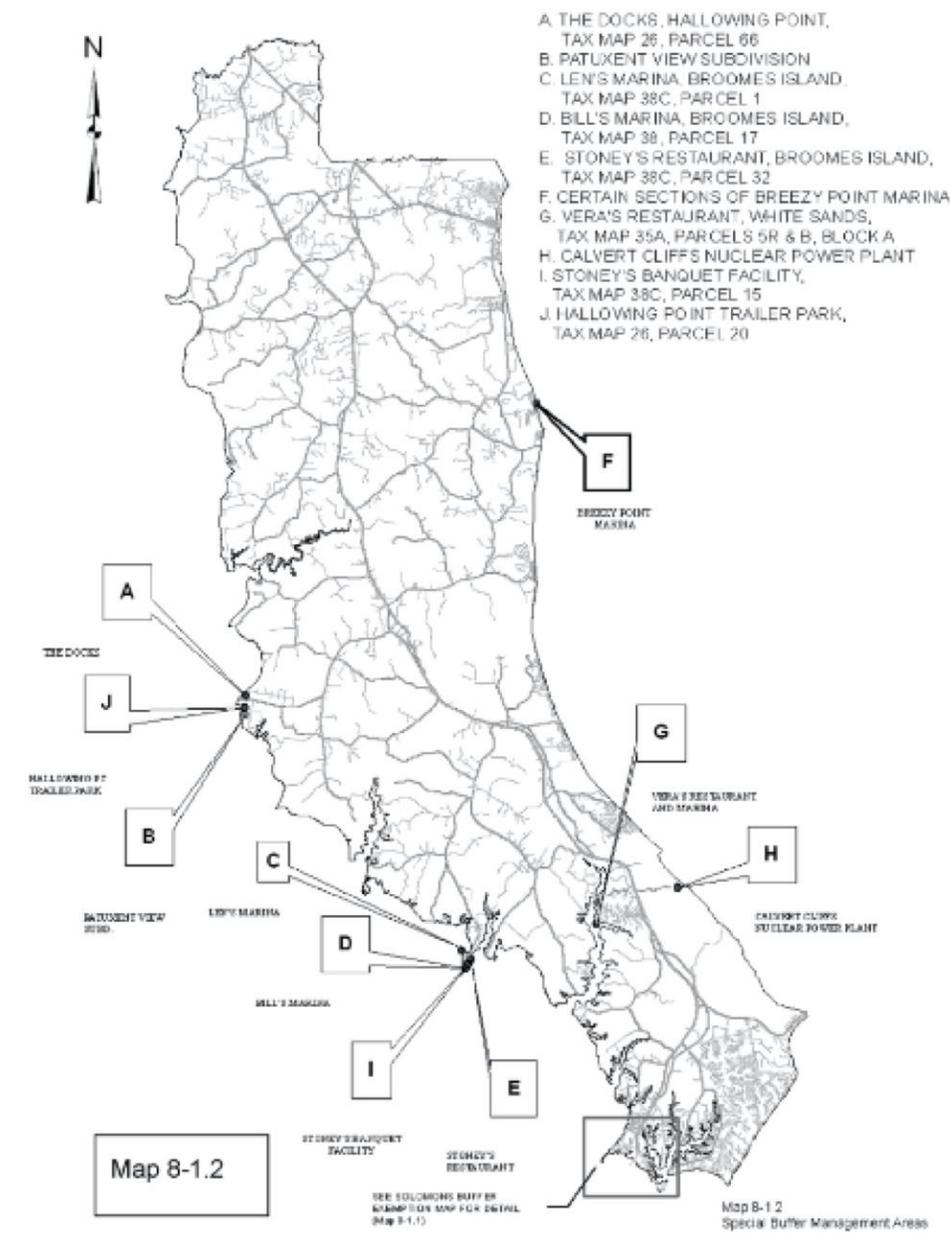


FIGURE 22-2



- g.** Subdivision within IDA Special Buffer Management Areas may be subdivided and retain its status if it meets all of the following criteria:

 - i.** Any development activity, including structures, roads, and parking areas, shall be set back a minimum of 50 feet from tidal waters, tidal wetlands, or tributary streams. Accessory structures may be permitted within the Buffer, but not within the minimum 50 foot setback.
 - ii.** Community sewer shall serve the property.
 - iii.** The stormwater management plan for a development shall meet the Intensely Developed Area stormwater criteria for development, except that 20% reduction in pollutants is required (rather than the 10% specified in the section).
 - iv.** The development activity within the Special Buffer Management Area shall minimize impact to the Buffer.
 - v.** Development or redevelopment within the Special Buffer Management Areas requires that at least 15% of the total acreage of the lot or parcel be in forest or developed woodland.
 - vi.** Existing vegetation may not be removed from the Special Buffer Management Area except in accordance with an approved Buffer Management Plan designed to enhance the Buffer.
 - vii.** The offset requirements of Section 22-6.D.13.h below are required.
- h.** Offset requirements are as follows:

 - i.** Except for authorized proposed or existing access to the water, the extent of the lot or parcel shoreward of the new development or redevelopment is required to remain, or established and maintained, in natural vegetation.
 - ii.** Natural vegetation of an area twice the extent of the lot coverage created or altered shall be planted on-site or in an offset area or other location as may be determined by the Department of Planning & Zoning. The Department of Planning & Zoning may collect fees in lieu of such planting for purposes described in the Buffer Offset Program described in Section 22-6.D.13.i below.
 - iii.** A landscape plan showing existing and proposed vegetation within the Buffer shall be submitted and approved as part of the subdivision review process. For projects that are required to be submitted to the Critical Area Commission for review and comment, the landscape plan shall be part of the submittal.
 - i.** Buffer offset program: Fees-in-lieu of planting, as described in this section, shall only be used for replanting through the annual County Critical Area Conservation Landscape Project.

E. Other Habitat Protection Areas

Other Habitat Protection Areas (HPAs) in the Critical Area include, but are not limited to, nontidal wetlands; rare, threatened, and endangered species and species in need of conservation; plant and wildlife habitat; and anadromous fish propagation waters. Additional HPAs could be designated in the future, and if so, would require development criteria. All applications for a development activity, redevelopment activity or change in land use shall identify HPAs and prepare a Habitat Protection Plan (HPP) if required.

1. HPP Process

- a.** If the proposed development activity impacts a designated HPA, the applicant shall coordinate technical review with the Department of Natural Resources, Wildlife and Heritage Service, and, as necessary, the United States Fish and Wildlife Service. Agency review letter(s) shall be submitted to the Department of Planning & Zoning at the earliest stage of development. Review by the Department of Natural Resources may not be required for bald eagle protection zones.
- b.** If the presence of an HPA is confirmed, the applicant shall be required to develop an HPP that provides for the protection and conservation of the species and habitats identified.

- c. The habitat protection plan shall:
- i. Delineate the boundaries of the habitat protection area, as well as a 10-foot setback from the habitat protection area.
 - ii. Propose management guidelines in accordance with the guidelines provided by the Department of Natural Resources, and other agencies as applicable.
 - iii. Contain a detailed plan of the proposed activity and an analysis of possible adverse impacts associated with the proposed activity.
 - iv. The Planning & Zoning Department, in consultation with appropriate local, State, or Federal agencies, will review the proposed protection measures to determine if the measures are adequate for the species and/or habitat area.
 - v. Revisions by the applicant to the HPP may be necessary to incorporate the comments of the reviewing agencies.
 - vi. Once all of the requirements and comments have been adequately addressed, submit the draft HPP to the Planning & Zoning Department so it can be submitted to the Critical Area Commission for review and approval.
 - vii. The HPP shall be incorporated into the proposed development proposal. No preliminary subdivision plan, final plat, site plan, infrastructure or building/grading permit shall be approved until the HPP has been approved and incorporated into the development plan.
 - viii. The HPP shall be recorded in the Land Records of Calvert County and on a record plat, where applicable.

2. HPA Objectives

- a. Establish buffer areas as recommended by DNR, including for colonial water bird nesting sites so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
- b. Provide that new water-dependent facilities do not disturb sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.
- c. Provide protection measures, including buffer areas where appropriate, for the plant and wildlife habitat.
- d. Protect and conserve those forested areas required to support wildlife species identified in this section by developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. The programs should assure that development activities, or the clearing or cutting of trees which might occur in the areas, is conducted so as to conserve riparian habitat, forest interior wildlife species, and their habitat. Management measures may include incorporating appropriate wildlife protection elements into forest management plans, and cluster zoning or other site design criteria which provide for the conservation of wildlife habitat. Measures may also be included in soil conservation plans which have wildlife habitat protection provisions appropriate to the areas defined in this section, and incentive programs containing the acquisition of easements and other similar techniques.
- e. Require that, when development activities or the cutting or clearing of trees occur in forested areas, corridors of existing forest or woodland vegetation be maintained to provide effective connections between wildlife habitat areas.
- f. Protect, by appropriate means, those plant and wildlife habitats designated and mapped by the County as Locally Significant Habitat. Examples of these areas are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high concentrations.
- g. Protect Natural Heritage Areas from alteration due to development activities or cutting or clearing so that the structure and species composition of the areas is maintained.

h. If the State proposes new HPA and protective measures, these shall be adopted within one year in accordance with procedures required by the Maryland Department of Natural Resources.

3. HPP Criteria

- a. Minimization of the removal of vegetation.
- b. Plant and wildlife habitat protection.
- c. Reduction of the runoff of pollutants.
- d. Required reforestation and/or afforestation including a planting plan and other mitigation measures.
- e. Protection of the area during development activities.

4. Wetlands

The provisions of this Section apply to tidal and non-tidal wetlands within the Critical Area. Any filling or destruction of wetlands may only occur if required County, State, and Federal permits are obtained.

a. Purpose

Regulations governing development in and adjacent to wetlands are intended to protect wetlands from the negative effects of siltation and nitrification caused by development. The County's intent is to suffer no significant loss of wetlands.

b. Applicability

Boundaries are as delineated and verified by qualified professionals as meeting the definition of jurisdictional wetlands according to State or Federal regulation. A MDE license or authorization is required for all regulated activities within nontidal wetlands in the Critical Area.

c. Delineation

- i. Wetlands and buffers shall be delineated on all site plans, subdivision plats, and grading and building permit applications by qualified professionals. Delineation as per the applicable "Federal Manual for the Identifying and Delineating of Jurisdictional Wetlands", as amended from time to time, may be required. The delineation shall be made using the best available and most current information from state and federal sources. The delineation shall be made within five years of any site plan, subdivision plat, grading and building permit application. A wetland report compiled by a qualified expert shall be submitted to confirm the delineation. The Zoning Officer, or its designee, shall determine if the wetland report and delineation are acceptable and may also require a Jurisdictional Determination by the U.S. Army Corps of Engineers to verify wetland location.
- ii. If a development is a minimum of 100 feet from a wetland, the delineation may be waived by the Zoning Officer, upon a recommendation by the Environmental Planner that the development will not impact the wetlands or buffers and the project will not affect the lot density.
- iii. If it is determined prior to final site plan or subdivision approval that more wetlands exist on the site than originally delineated on the preliminary site plan or plat, preliminary approval of the original submittal granted by the Planning Commission shall lapse. The applicant shall submit subsequent revisions of the plan for staff review and reconsideration by the Planning Commission prior to reapproval.
- d. All site plan, subdivision plat, building and grading permits shall have a disclaimer placed on them that reads: "*The issuance of County permits or approvals is a local process and does not imply that the applicant has met State and Federal requirements for wetlands under COMAR; the Federal Water Pollution Control Act; or the Rivers and Harbors Act.*" The disclaimer shall be signed by the applicant.
- e. If a site plan or subdivision has received preliminary approval and the site plan or subdivision is changed as a result of the Federal or State wetland permitting process, the preliminary approval previously granted is null and void. The applicant shall submit subsequent revisions of the plan for staff review and reconsideration by the Planning Commission prior to reapproval.

- f. Filling of wetlands:
 - i. Land cannot be subdivided in a manner that requires filling of wetlands for any activities except to provide access to property that is otherwise inaccessible or to provide for stormwater management outside the wetlands. In these instances, approval from the Planning Commission is required.
 - ii. Filling of wetlands for the construction of single-family detached residential dwellings is prohibited. Filling of wetlands and impacts to wetland buffers for commercial, industrial and institutional uses requires Planning Commission Conceptual Site Plan approval as well as appropriate Federal, State and County permits.
 - iii. For development activities that require Planning Commission approval, receipt of Maryland Department of the Environment approval shall be required. For development activities that do not require Planning Commission approval, receipt of Maryland Department of the Environment approval shall be required prior to application for County permits.
 - iv. For development activities that require Planning Commission approval, receipt of Maryland Department of the Environment approval shall be required. For development activities that do not require Planning Commission approval, receipt of Maryland Department of the Environment approval shall be required prior to application for County permits.
 - v. Wetlands that are filled after receiving Federal, State and County approval will no longer be defined as wetlands and will not require wetland buffers.
- g. Wetland buffers:
 - i. A buffer of 50 feet is required adjacent to nontidal wetlands. For nontidal wetlands adjacent to steep slopes, highly erodible soils, or wetlands of special state concern, the buffer shall be expanded as per COMAR § 26.23.01.04 or as required by the Maryland Department of the Environment.
 - ii. These areas shall be designated on the preliminary and final subdivision plat or site plan or plot plan, with a note included on each stating the following: "*These areas are to be left undisturbed in perpetuity and to serve for water quality benefits.*"
 - iii. When any disturbance is proposed within 100 feet of the edge of the wetlands buffer, enhanced sediment and erosion control protective measures must be placed along the limit of disturbance.
 - iv. A ten foot building setback shall be maintained from the edge of the wetland buffer.
 - v. The tidal wetland buffer shall be expanded when required by this Article.
 - vi. Existing vegetation in the nontidal wetland buffers shall be maintained except for approved wetland fill, crossings, and stormwater management that is located outside of the wetland. In addition, trees that are a threat to structures and invasive species may be removed within the Buffer with a vegetation removal permit. Mitigation as required by the Critical Area is required for the removal of vegetation for any of these approved activities in the nontidal wetland buffer but on a 2:1 basis unless within the Critical Area Buffer or expanded buffer, then the required mitigation shall be on a 3:1 basis.

5. Rare, Threatened, and Endangered Species and Species in Need of Conservation

a. Purpose

To provide protection for those species in need of conservation and rare, threatened, and endangered species, and their habitats which occur in the Critical Area.

b. Administration

- i. Development activities and other disturbances shall be prohibited in HPAs unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats.
- ii. At such time as an activity is proposed which might adversely affect a HPA, protection measures will be developed using the expertise of the Maryland Department of Natural Resources and other appropriate public agencies and private organizations as documented in the HPP.

iii. Bald eagles are federally regulated and any disturbance of a bald eagle nest from June 16th to December 14th of any year shall be reported to the United States Fish and Wildlife Service (USF&WS).

6. Plant and Wildlife Habitat

a. Purpose

- i. Conserve wildlife habitat in the Critical Area.
- ii. Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue.
- iii. Protect those wildlife habitat types which are required to support the continued presence of various species.
- iv. Protect those wildlife habitat types and plant communities which are determined by the Board of County Commissioners to be of significance to Calvert County, including Kings Landing Park, Battle Creek Cypress Swamp Sanctuary, and Flag Ponds Nature Park.
- v. Protect Natural Heritage Areas, including Briscoe Gray Heritage Farm and Jefferson Paterson Park.

b. Boundaries

Boundaries of HPAs are as determined by the State of Maryland, except for Forest Interior Dwelling Birds (FID) habitat and the Critical Area Buffer. HPAs, excluding Critical Area Buffers, are identified on the official County Critical Area Habitat Protection Area map. Any impacts to FID habitat in the Critical Area shall be minimized and mitigated as prescribed in a document entitled, "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area" prepared by and available from the Critical Area Commission. FID habitat disturbed under a Timber Harvest Plan shall follow the guidelines of the approved plan. FID habitat is defined as follows:

- i. Forests of at least 50 acres in size with ten or more acres of "forest interior habitat" (i.e., forest greater than 300 feet from the nearest forest edge). The majority of the forest tract should be dominated by pole-sized timber (5 inches in diameter or more at breast height (DBH) or have a closed canopy; or
- ii. Riparian forests of at least 50 acres in size with an average total width of at least 300 feet. The stream within the riparian forest should be perennial. The majority of the forest tract should be dominated by pole-sized or larger trees or have a closed canopy; or
- iii. Any forested habitat until documented otherwise as required by "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area" June 2000.

c. Habitat Protection Plans

The following types of habitats shall require an HPP be developed prior to any development plans or permits being approved.

- i. Colonial water bird nesting sites.
- ii. Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands.
- iii. Existing riparian forests (for example, those relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline and which are documented breeding areas).
- iv. Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species shown on the Calvert County FID Bird Habitat Map.
- v. Other areas which may in the future be identified by state and federal agencies as important plant or wildlife habitat areas.

- vi. Other plant and wildlife habitats determined to be of significance to Calvert County.
- vii. Natural Heritage Areas.
- viii. State-listed species sites.

7. Anadromous Fish Propagation Waters

a. Purpose

- i. Protect the instream and streambank habitat of anadromous fish propagation waters.
- ii. Promote land use policies and practices in the watershed of spawning streams within the Critical Area which will minimize the adverse impacts of development on the water quality of the streams.
- iii. Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

b. Boundaries

Boundaries of Anadromous Fish Propagation Waters are as determined by the State of Maryland.

c. Administration

The following regulations apply:

- i. The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams is prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
 - ii. Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, is prohibited.
 - iii. The construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams is prohibited. If practical, the removal of existing barriers shall be affected.
 - iv. The construction, repair, or maintenance activities associated with bridges, or other stream crossings or with utilities and roads, which involve disturbance within the Buffer, or which occur instream, is prohibited between March 1 and June 14.
- d. The County shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
- i. Minimize development activities or land disturbances within the watershed.
 - ii. Maintain, or if practicable, improve water quality in affected streams or other water bodies.
 - iii. Minimize to the extent possible the discharge of sediments into affected streams or other water bodies.
 - iv. Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams.

8. Appeals

Appeals of decisions made by the Department of Planning & Zoning with regard to HPPs, including Buffer Management Plans for subdivisions and site plans, as well as Buffer Management Plans for other activities proposed in the Critical Area Buffer, may be appealed to the Board of Appeals.

22-7 SHORELINE AND CLIFF AREAS ON THE CHESAPEAKE BAY, PATUXENT RIVER, AND THEIR TRIBUTARIES

A. Purpose

1. The shorelines are a significant part of the character of the County and State. The cliffs provide natural heritage, scenic vistas, paleontological resources, and habitat for endangered species. Their preservation is vital to our current and future identity.
2. The geology of the shorelines of Calvert County and the naturally occurring erosion processes combine to present landowners with three complex problems: the possibility of moderate to severe shoreline erosion, greater exposure to storms, and cliff failure.
3. Regulations governing development along the shoreline are designed to allow development in a manner that will protect the property and the lives of residents, reduce various forms of pollution (sediment/ pesticides/ herbicides/ septic leachate) and protect the scenic, paleontological, and natural resource values of the shoreline.
4. There are many factors to be considered when dealing with shore erosion control measures. By allowing shore erosion control within the cliff and shoreline areas, the risk of altering many of the existing features increases. For example, shore erosion control stops the natural erosion process which supplies sand to Calvert County beaches. The Puritan Tiger Beetle, an endangered species, depends on the natural erosion process for its survival. Shore erosion control allows the cliffs to reach a natural angle of repose which will become vegetated and destroy the paleontology, natural beauty and scenic vistas of the cliffs.

B. Boundaries

Boundaries include all cliff and shoreline areas on the Chesapeake Bay, Patuxent River, and their tidal tributaries. The cliff areas have been separated into three categories based on their priority for preservation. Category 1 is given the greatest priority. Category 1 and 2 areas are listed in Sections 22-7.B.1 and 2 below and are shown on the Cliff Category Overlay Map. Category 3 includes all remaining cliff areas along tidal waters.

1. Category 1 is designated for undeveloped cliff sections with significant preservation needs requiring the highest priority for total preservation:
 - a. All park and preserved land with cliffs fronting on the Chesapeake Bay and Patuxent River
 - b. Cove Point LNG Plant to Calvert Cliffs Nuclear Power Plant
 - c. Parkers Cliffs including the Parkers Creek mouth shoreline
 - d. Randle Cliffs
 - e. Matoaka Cliffs (partial: area north of jetties)
 - f. Governors Run Cliffs
 - g. Cliffs north of Willows Beach Colony
 - h. Roosevelt Cliffs Subdivision
2. Category 2 is designated for developed cliff sections with significant preservation needs:
 - a. Scientists Cliffs
 - b. Little Cove Point
 - c. Plum Point South Cliffs
 - d. Matoaka Cliffs (partial: in area of jetties)
 - e. Camp Roosevelt Cliffs
3. Category 3 is any cliff sections not placed in Category 1 and 2. These sections are mostly developed.

C. Conditions for Development: Existing Lots and Parcels

1. The minimum cliff setbacks as measured from the top edge of the cliff for primary structures including septic systems and accessory structures over 150 square feet are:
 - a. Category 1: 300 feet or the ER50 line, whichever is greater (Figure 22-3). The ER50 line is established by multiplying the annual average erosion rate (Maryland Geological Survey, Erosion Rate Maps, or recent survey data over at least a 10- year period) for the area multiplied by 50. This line represents where the shoreline is estimated to be in 50 years. Shore erosion control measures are not permitted.
 - b. Category 2: 200 feet or the ER50, whichever is greater (Figure 22-4). Moving or relocating of structures should be considered before permitting shore erosion control devices to be installed. Shore erosion control will only be permitted if it is the only way to protect the structure. New structures will not be permitted to use shore erosion control.
 - c. Category 3: 100 feet or the ER50, whichever is greater (Figure 22-5).
 - d. Categories 1, 2, and 3: If the toe of the cliff is greater than 100 feet from the mean high water line, then the minimum setback is 60 feet from the edge of the cliff (Figure 22-6).

FIGURE 22-3

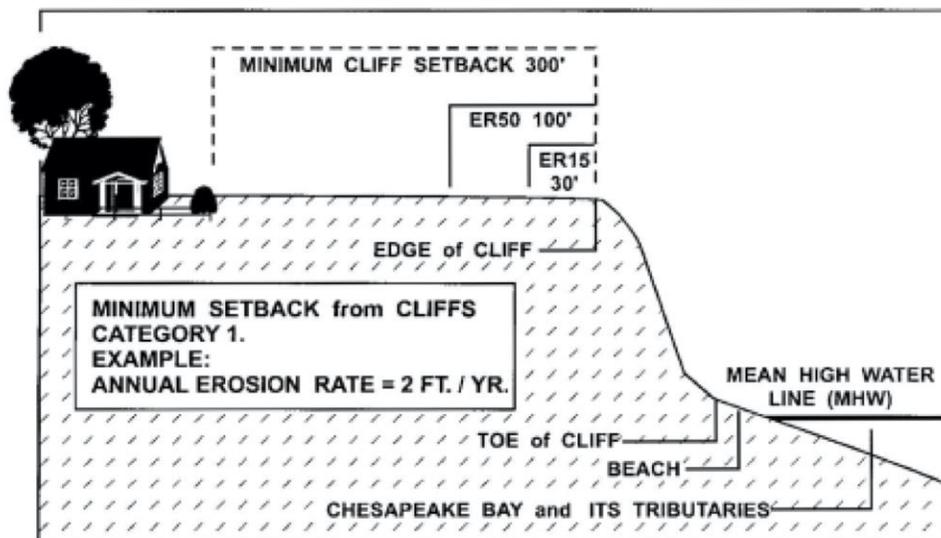


FIGURE 22-4

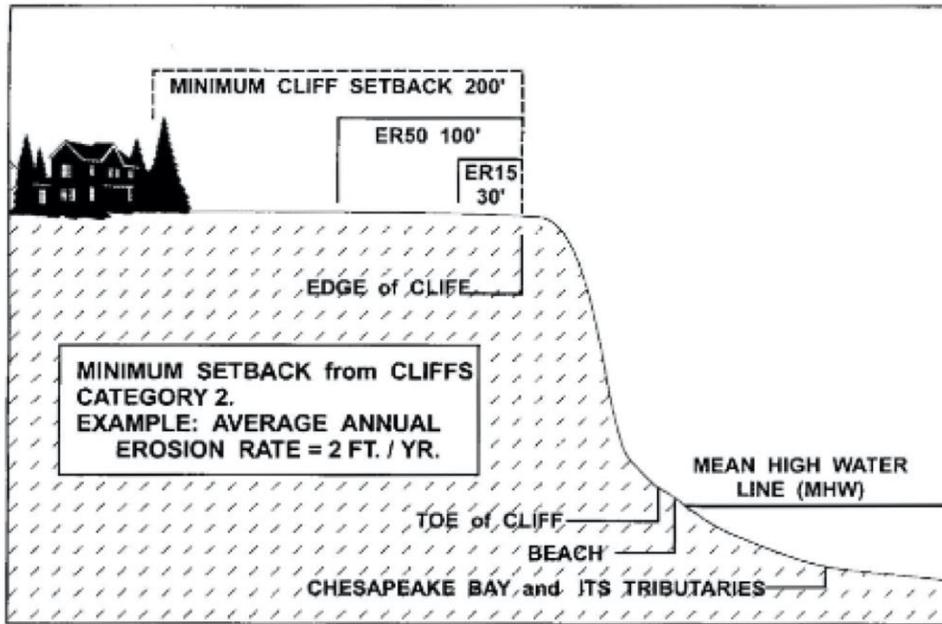


FIGURE 22-5

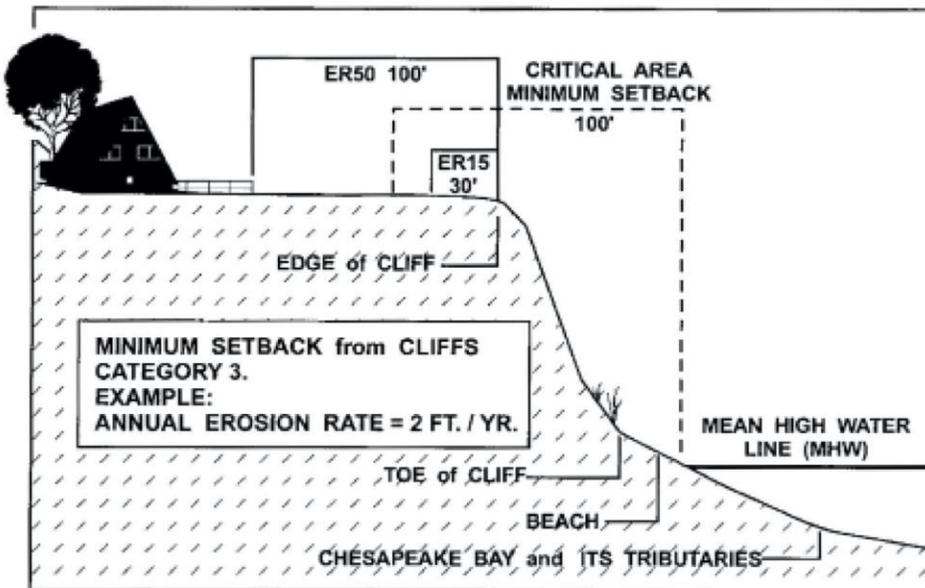
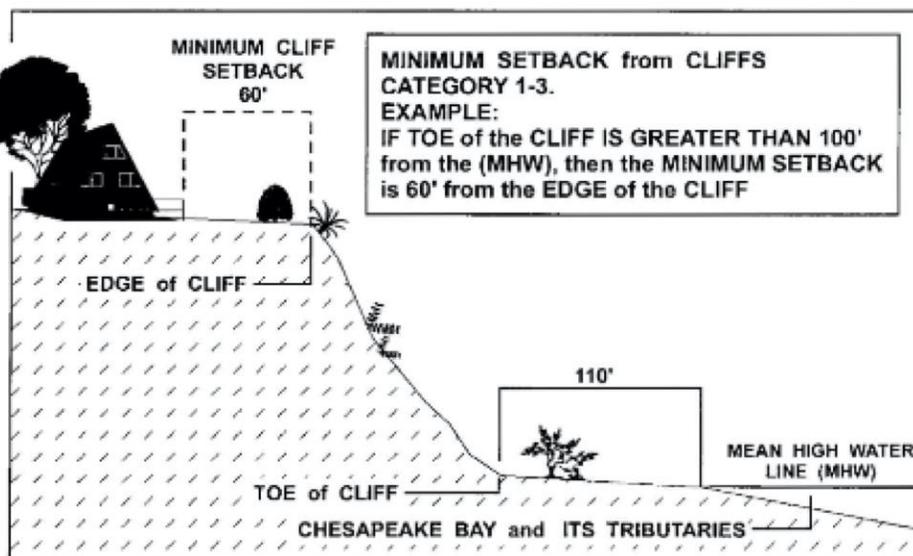


FIGURE 22-6



2. The minimum cliff setbacks as measured from the top edge of the cliff for accessory structures less than 150 square feet are:
 - a. Category 1: 300 feet or the ER50 whichever is greater.
 - b. Category 2: 200 feet or the ER50, whichever is greater.
 - c. Category 3: The ER15 line or 60 feet whichever is greater. The ER15 is established by multiplying the annual average erosion rate for the area multiplied by 15. This setback will be measured from the top edge of the cliff. No primary or accessory structure (except for access) will be permitted within the ER15.
3. In cases where shore erosion control measures are established and functional (erosion rate considered zero) the cliff setback will be 1.5 times the cliff height plus 20 feet measured from the toe of slope.
4. Readily movable structures and special construction techniques are required if an entire site is within or if any part of a proposed structure (including septic system and well) is within the ER50 zone.
 - a. Readily movable structures are:
 - i. On masonry piers or crawlspaces, with no walls below grade
 - ii. Steel beam base or modular construction
 - iii. Stud wall (not masonry) construction
 - b. Special construction techniques are:
 - i. Gutters and roof runoff is piped away from cliff edge; and
 - ii. Septic systems are landward as far as possible from the structure and cliff edge; and
 - iii. Excavation is minimized by flush cutting trees except in septic system trenches; and
 - iv. Runoff is directed away from the cliff areas or into stormwater management facilities to reduce the amount of surface and ground water runoff directed toward the cliff unless otherwise indicated by the Department of Public Works.
5. If structures on a property are damaged due to cliff failure or shoreline erosion, property owners are financially liable for all cleanup costs.

6. If a cliff setback has been previously recorded on a plat of a property, then the recorded setback applies.
7. Applicants shall sign a Cliff Liability Waiver, approved by the County Attorney, to hold the Board of County Commissioners, employees, and representatives harmless for any personal injury or property damage sustained by result of construction, development, building or building permit issued or allowed by the County. The Waiver shall be recorded in the Land Records of Calvert County prior to issuance of a building permit.

D. Conditions for Subdivisions

All lots shall be set back 300 feet from the cliff edge for land in Category 1, and 200 feet for land in Category 2. Shore erosion control is prohibited.

22-8 RENEWABLE ENERGY GENERATING SYSTEMS

A. Application Requirements

1. To ensure compliance with the requirements of this Article for a major solar energy generating system in a resource conservation area the Department of Planning & Zoning shall require a site plan that addresses the requirements of COMAR 27.02.07 and includes the following:
 - a. Calculations of any required reservation of resource conservation area density development rights; and
 - b. The identification and location of property restrictions including the boundary and area of a conservation easement, restrictive covenant, or other protective instrument.
2. The Department of Planning & Zoning may require a site plan for a minor solar energy generating system.

B. Authority of the Public Service Commission; Applicability

1. The provisions of this chapter may not be construed to limit the authority of the Public Service Commission under Public Utilities Article, § 7-207, Annotated Code of Maryland.
2. The requirements of this Article are applicable to major, minor, and small residential accessory solar energy generating systems, where not superseded by State law.

C. General Provisions

1. The Department of Planning & Zoning may authorize:
 - a. A major or minor solar energy generating system within the Critical Area in accordance with Section 22-8.D below;
 - b. A major solar energy generating system in the resource conservation area without growth allocation in accordance with this Article and COMAR 27.01.14; and
 - c. A small residential accessory solar energy generating system in the Buffer or in a modified buffer area if:
 - i. There is not an alternative location outside the Buffer;
 - ii. The lot or parcel is 1/4 acre or less in size and created before December 13, 1988; and
 - iii. Provided mitigation is required at a 1:1 ratio.
2. The Department of Planning & Zoning may authorize a major and minor solar energy generating system in a Special Buffer Management Area in accordance with the Calvert County Critical Area program provided the project is located over existing legally developed lot coverage as described in Section 22-3.H above.
3. In addition to meeting the requirements of this Article, the Department of Planning & Zoning may not authorize a growth allocation to accommodate a major or a minor solar energy generating system in the limited development area or the resource conservation area.

4. Except for a regulated activity that is authorized by the Maryland Department of the Environment in accordance with COMAR 26.23.02, the Department of Planning & Zoning may not authorize a major or minor solar energy generating system:
 - a. In a habitat protection area designated under Section 22-6 of this Article except as described in item 2 above; or
 - b. On a steep slope or a highly erodible soil.
5. The Department of Planning & Zoning may not authorize a variance, modification, waiver, or other local procedure or approval that alters the requirements of this Section.

D. Criteria for a Solar Energy Generating System

1. Except for a small residential accessory solar energy generating system as provided in Section 22-8.C above, the provisions of this regulation are applicable to a major and minor solar energy generating system in an Intensely Developed Area, a Limited Development Area, and a Resource Conservation Area.
2. The Department of Planning & Zoning shall not count the area of a solar panel as lot coverage and:
 - a. For a minor solar energy generating system, the solar panel is:
 - i. Located over existing, legally developed lot coverage as described in Natural Resources Article, § 8-1808.3, Annotated Code of Maryland; or
 - ii. Elevated above the ground and the area under the solar panel is maintained as an area of existing grass, established grass, or other natural vegetation, or as an agricultural use; and
 - b. For a major solar energy generating system, the solar panel is:
 - i. Located over existing, legally developed lot coverage as described in Natural Resources Article, § 8-1808.3, Annotated Code of Maryland; or
 - ii. Elevated above the ground and the area under the solar panel is maintained in accordance with the planting plan requirements of Section 22-8.F below as pollinator habitat, native vegetation other than pollinator habitat, or an agricultural use.
3. The Department of Planning & Zoning shall require the following minimum standards for the Critical Area Buffer:
 - a. Measure and delineate the Buffer in accordance with Section 22-6.D.2 above;
 - b. Unless there is no feasible alternative, prohibit access through the Critical Area Buffer to the project area; and
 - c. When there is no feasible alternative to access through the Critical Area Buffer, authorize one point of access through the Buffer to the project area, or where a project includes noncontiguous parcels, minimize the number of access points through the Buffer if:
 - i. The disturbance inside the Buffer is replanted at a 2.5:1 ratio; and
 - ii. A buffer management plan is required in accordance with Section 22-6.D above.
4. Except when a project area is in an Intensely Developed Area, the Department of Planning & Zoning shall minimize the clearing of forest and developed woodlands and not exceed the following standards:
 - a. In a Limited Development Area, limit clearing of forest and developed woodlands to 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located; and

- b. Transferred through a transfer of development rights program;
- c. Preserved or conserved through an easement; or
- d. Otherwise reserved in association with an area of land to be utilized for the solar energy generating system.

8. The Department of Planning & Zoning may propose alternatives to a Reservation of Resource Conservation Area Density Rights Agreement in the Resource Conservation Area if the Department of Planning & Zoning submits those standards to the Commission and they are approved as part of the Calvert County Critical Area program. The standards may include:

- a. A transfer of development rights program; or
- b. A permanent restriction of development rights of other lands that proffer water quality and habitat benefits such as wetland migration areas.

F. Planting Plan Requirements

1. Based on the constraints and opportunities presented by a project area, the Department of Planning & Zoning shall select from the following options to address the requirements for a planting plan in Sections 22-8.D.4 and 6 above:

- a. Plant on-site in one of the following planting areas:
 - i. The area within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream;
 - ii. Contiguous to or within a designated forest interior dwelling bird habitat; or
 - iii. A wildlife corridor;
- b. If the Department of Planning & Zoning has in a place an agreement with the Critical Area Commission:
 - i. Plant off-site in accordance with the options specified in Section 22-8.F.1.a above;
 - ii. Create a wetland migration area, nonstructural shoreline erosion control project, or other nature-based practice that naturally adjusts to changing environmental conditions through the lifespan of the practice and is designed to address future sea level rise, precipitation-induced flooding, or other climate change impacts;
 - iii. Create, restore, or enhance a nontidal wetland that results in habitat and water quality benefits provided it is authorized by the Maryland Department of the Environment; or
 - iv. Propose alternative mitigation options that include provisions for Critical Area Commission review; or
- c. Collect a fee in lieu in accordance with Section 22-8.G below.

2. The Department of Planning & Zoning shall ensure that any general landscape screening requirements for an energy generating system are not included as part of the mitigation planting required in Section 22-8.D above.

3. The Department of Planning & Zoning shall require a planting plan for:

- a. The area under the solar panels; or
- b. Replanting required in Section 22-8.D.4 and 6 above.

4. The Department of Planning & Zoning shall ensure long-term maintenance of the plantings through financial assurance measures.

5. The Department of Planning & Zoning shall require that all planting is in accordance with local reforestation and planting plan requirements, including protecting all planted areas through conservation easements, restrictive covenants, or other protective instruments.

G. Fee In Lieu

1. All fees in lieu for mitigation required in Section 22-8.F above shall be in compliance with COMAR 27.01.14.07 and as approved by the Board of County Commissioners;
2. Ensure the fee is adequate to cover the cost associated with administration, acquisition, planting, monitoring, and maintenance for the required mitigation or required planting requirements of Section 22-8.D.4 and 6 above;
3. Establish a separate account independent of other Critical Area funds, which may not revert to the Department of Planning & Zoning's general fund, for the collection of the fee in lieu;
4. Prohibit the use of the fees to meet other landscaping requirements; and
5. Use the fees to accomplish:
 - a. Off-site plantings in accordance with the options provided in Section 22-8.F.1a above; or
 - b. Other water quality and habitat enhancement projects provided in Section 22-8.F.1.b above, and as described in the Calvert County Critical Area program approved by the Critical Area Commission or in an agreement between the Department of Planning & Zoning and the Critical Area Commission.

22-9 VARIANCES

A. Authority

The Board of Appeals has the authority to grant variances from the Critical Area requirements within this Ordinance, unless otherwise stated.

B. Applicability

The County has established provisions where, owing to special features of a site or other circumstances, implementation of this Ordinance or a literal enforcement of provisions within this Ordinance would result in unwarranted hardship to an applicant; a Critical Area variance may be obtained.

1. In considering an application for a variance, The Board of Appeals shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is requested, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of this Ordinance.
2. 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.

C. Standing

In accordance with Natural Resources Article 8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under Federal law, the person shall have standing to participate as a party in a local administrative proceeding.

D. Criteria

The provisions for granting such a variance shall include evidence demonstrated by the applicant that the standards of COMAR 27.01.12.04 are met, in addition to the standards of Section 30-6.C of this Ordinance.:

E. Process

Applications for a variance shall be made in writing. The County shall provide a copy of the application package to the Critical Area Commission. The County shall follow its established procedures for advertising and notification of affected property owners.

1. After hearing an application for a Critical Area Program variance, the Board of Appeals shall make written findings reflecting analysis of each standard. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - a. The applicant.
 - b. County or any other government agency.
 - c. Any other person deemed appropriate by the County.
2. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the County shall consider that fact.
3. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance.
4. The County shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

F. After-the-Fact Requests

1. The Department of Planning & Zoning may not accept an application of a variance to legalize a violation of this Ordinance, including an unpermitted structure or other development activity until the County:
 - a. Issues a Notice of Violation.
 - b. Assesses a citation for the violation.
2. The County may not approve an after-the-fact variance unless an applicant has:
 - a. Fully paid all mitigation bonds, fees and fines imposed under Section 22-10 below and the adopted fee schedule.
 - b. Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation.
 - c. Performed the abatement measures in the approved plan in accordance with the local Critical Area program.
3. If the Board of Appeals denies the requested after-the-fact variance, then the County shall:
 - a. Order removal or relocation of any structure.
 - b. Order restoration of the affected resources.
4. Application for a variance pursuant to violation constitutes a waiver of the right to appeal the terms of a Notice of Violation and its final adjudication including the payment of any assessed penalties and costs.

G. Conditions and Mitigation.

The Board of Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of this Ordinance is maintained, including, but not limited to, the following:

1. For any variance granted by the Board of Appeals, mitigation by planting on the site at a rate of 3:1 per square foot of the disturbance shall be required at minimum.
2. New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

H. Commission Notification

Within ten working days of the date a written decision is issued, a copy of the decision shall be sent to the Critical Area Commission. Within 30 days after the date the Critical Area Commission receives the order or decision of the

Board of Appeals, the Commission may file a petition for judicial review of that decision. The County may not issue a permit for the activity that was the subject of the order or decision until the Commission's 30 day appeal period has elapsed.

- I. See Section 30-5 for Board of Appeals procedure.

22-10 ENFORCEMENT

A violation of any provision of this Article or a failure to comply with any requirement of this Article by any person, corporation, association, partnership, or the agent of any such person, may be processed as a zoning violation under this Ordinance (see Article 33 for additional enforcement regulations).

A. Consistency

The Critical Area provisions of this Ordinance, in accordance with the Critical Area Act and criteria supersede any inconsistent Law, Chapter or Plan of Calvert County's Code. In the case of conflicting provisions, the stricter provisions shall apply.

B. Violations

1. No person shall violate any provision of this Article. Each violation that occurs and each calendar day that a violation continues shall be a separate offense.
2. Each person who violates a provision of this Article shall be subject to separate civil penalties, abatement and restoration orders, and mitigation for each offense.
3. Noncompliance with any permit, notice of violation or citation issued by the County related to the Critical Area shall be a violation of this Article and shall be enforced as provided herein.

C. Responsible Persons

The following persons may each be held jointly or individually responsible for a violation:

1. Persons who apply for or obtain any permit or approval
2. Contractors
3. Subcontractors
4. Property owners
5. Managing agents
6. Any person who has committed, assisted, or participated in the violation

D. Required Enforcement Action

In the case of zoning violations of this Ordinance, the County shall take enforcement action including:

1. Conduct and assess civil penalties necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, reviewing mitigation plans, and ensuring compliance with these plans. Mitigation is calculated at 4 times the area disturbed (4:1).
2. Issue abatement, restoration, and mitigation orders as necessary to:
 - a. Stop work on unauthorized activity.
 - b. Restore and stabilize the site to its condition prior to the violation, or to a condition that provides the same water quality and habitat benefit.
3. Require the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation.

E. Administrative Civil Penalties

In addition to any other penalty applicable under State or County law, every violation of a provision of the Critical Area provisions of this Ordinance shall be punishable by a fine in accordance with Article 33 of this Ordinance for each violation per calendar day.

F. Cumulative Remedies

The remedies available to the County under this Ordinance are cumulative and not alternative or exclusive, and the decision to pursue one remedy does not preclude pursuit of others.

G. Injunctive Relief

1. The County is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Ordinance, an administrative order, a permit, a decision, or other imposed condition.
2. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent the County from seeking injunctive relief to enforce an administrative order, permit, decisions, or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.

H. Variances Pursuant to a Violation

The County may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an order, permit, plan, or this Ordinance in accordance with the variance provisions of this Ordinance. However, the application shall not be reviewed, nor shall a final decision be made, until all abatement, restoration, and mitigation measures have been implemented and inspected and approved by the County.

I. Appeals

An appeal to the Board of Appeals may be filed by any person aggrieved by any order, requirement, decision or determination by the County in connection with the administration and enforcement of this Ordinance.

1. An appeal is made by filing a written notice of appeal with the Board of Appeals in accordance with the provisions in the Calvert County Zoning Ordinance and accompanied by the appropriate filing fee.
2. An appeal shall be filed within 30 days after the date of the decision or order being appealed.
3. An appeal stays all actions by the County while seeking enforcement or compliance with the order or decisions being appealed, unless the County certifies to the Board of Appeals that (because of facts stated in the certificate) such stay will cause imminent peril to life or property. In such a case, action by the County shall not be stayed except by order of the Board of Appeals or a Court, upon application of the party seeking the stay.
4. Application for a variance pursuant to a violation constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication including the payment of any penalties and costs assessed.
5. The Board of Appeals shall be divested of any jurisdiction or authority to adjudicate any matter for which there is a pending criminal or civil enforcement proceeding or enforcement action for injunctive relief before a court of competent jurisdiction.