

CITY COUNCIL
OF
HAVRE DE GRACE, MARYLAND

ORDINANCE NO. _____

Introduced by _____ Council Member [Last Name]

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HAVRE DE GRACE ADOPTED PURSUANT TO THE AUTHORITY OF ARTICLE XI-E OF THE MARYLAND CONSTITUTION, THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AND SECTIONS 33 AND 34 OF THE HAVRE DE GRACE CITY CHARTER, FOR THE PURPOSE OF AMENDING AND RESTATING “CHAPTER 49 – CRITICAL AREAS” OF THE HAVRE DE GRACE CITY CODE

On: _____ [Date]

at: _____ [Time]

Ordinance introduced, read first time, ordered posted and public hearing scheduled.

PUBLIC HEARING

A Public Hearing is scheduled for _____ [date] at [time] _____.

EXPLANATION

Underlining indicates matter added to existing law.

[Bold Brackets] indicate matter deleted from existing law.

Amendments proposed prior to final adoption will be noted on a separate page with line references or by handwritten changes on the draft legislation.

32 **CHAPTER 49, CRITICAL AREA**
33

34 **§ 49-1. Implementation of the Critical Area Program Purpose and Goals.**
35

36 **A. Goals.** The goals of the City of Havre de Grace Critical Area Program are to accomplish
37 the following:
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39 (1) Minimize adverse impacts on water quality that result from pollutants that are
40 discharged from structures or run off from surrounding lands;

41 (2) Conserve fish, wildlife, and plant habitat; and
42

43 (3) Establish land use policies for development in the Chesapeake Bay Critical Area
44 located within the City’s municipal boundary which accommodate growth while
45 minimizing the environmental impacts that the number, movement, and activities of
46 persons may have on the area.
47

48
49 **B. Havre de Grace Critical Area Program.** The City’s Critical Area Program consists of
50 this Chapter as applied under the State-required regulatory overlay to parcels within the City’s
51 mapped Critical Area and the Official Critical Area maps which were created through the State of
52 Maryland Department of Natural Resources by COMAR Title 27, Critical Area Commission for
53 the Chesapeake and Atlantic Coastal Bays. Digital State-developed maps supersede the original
54 maps created in 1988 as part of the City’s program and are being adopted at the same time as this
55 Chapter update.
56

57 These provisions regulate development activities and resource utilization activities. They
58 supplement existing land use regulations by imposing specific standards and requirements within
59 the Critical Area as set forth in the Critical Area criteria. General information about the Critical
60 Area program can be found on the City’s website and in the Comprehensive Plan. Related Critical
61 Area implementation provisions may be found in the following chapters of the City Code: Chapter
62 155, Site Plan Approval; Chapter 173, Subdivision of Land; and Chapter 205, Zoning.
63

64 **C. Applicability.** The Director of the Department of Planning or his/her designee shall review
65 a permit application for a development or redevelopment activity in the Critical Area for
66 compliance with this Chapter prior to issuance of a building permit or project approval as defined
67 herein.
68

69 **D. The Official Critical Area Overlay District Map.**
70

71 (1) The Official Critical Area Overlay District Map is applied as a regulatory overlay in
72 the City’s development review procedures. The Official Critical Area Map delineates the
73 extent of the Critical Area overlay district that shall include:
74

75 (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head
76 of tide, and all State and private wetlands designated under Title 16 of the
77 Environment Article of the Annotated Code of Maryland.
78

79 (b) All land and water areas within 1,000 feet beyond the landward boundaries of
80 State or private wetlands and the heads of tides designated under Title 16 of the
81 Environment Article of the Annotated Code of Maryland.
82

83 (2) Within the designated Critical Area Overlay District, all land shall be assigned one of
84 the following land management and development area classifications:
85

86 (a) Intensely Developed Area (IDA)
87

88 (b) Limited Development Area (LDA)
89

90 (c) Resource Conservation Area (RCA)
91

92 Land within the City’s Critical Area has been classified in two of the three categories, IDA
93 and RCA. This is based on initial State mapping performed in 1985. At this time, the City
94 does not include any areas that are mapped or otherwise designated as LDA. At such time
95 in the future that an area within the City is designated as an LDA through annexation or
96 the use of Growth Allocation, then appropriate modifications would be made to the City’s
97 program at the same time that the annexation or approval of the Growth Allocation takes
98 place.
99

100 (3) The Critical Area Overlay District Map may be amended by the Mayor and City
101 Council in compliance with amendment provisions in this Chapter, the Maryland Critical
102 Area Law, and COMAR Title 27.
103

104 **E. Notification of project approval.** The Department of Planning shall send copies of
105 applications for developments, subdivisions, and site plans wholly or partially within the Critical
106 Area as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and
107 comment.
108

109 (1) The application shall be accompanied by a completed “Project Notification
110 Application” form downloaded from the Commission’s website.
111

112 (2) The Department may not process an application which has been sent to the Commission
113 for notification until it has received notice of receipt by the Commission.
114

115 (3) Any action by the Department of Planning in violation of these procedures shall be
116 void.
117

118 In addition, the Department of Planning will notify the Commission for applications related to:
119 rezoning, including floating zones; special exceptions, conditional uses, and zoning variances;
120 variances; Buffer Management Plans; and shore erosion control plans as per COMAR 27.03.01.04.
121 The following table is a summary of notification requirements for all projects in the designated
122 zones of the Chesapeake Bay Critical Area, whether for public or private development. Since
123 there are no designated LDA mapped areas within the City, LDA notification is omitted from this
124 table.
125

SUMMARY OF NOTIFICATION REQUIREMENTS TO THE CRITICAL AREA COMMISSION (COMAR 27.03.01)		
Type of Application	Requires Notification to Critical Area Commission (Yes/No)	
	IDA	RCA
1. Disturbance to a Habitat Protection Area	Y	Y
2. Physical disturbance to Buffer	Y	Y
3. Variance from Critical Area provisions	Y	Y
4. Development resulting in less than 5,000 square feet of disturbance	N	N
5. Development resulting in between 5,000 and 15,000 square feet of disturbance	N	Y
6. Development resulting in greater than 15,000 square feet of disturbance	Y	Y
7. Subdivision of 3 lots or fewer	N	Y
8. Subdivision of 4 to 10 lots	N	Y
9. Subdivision of greater than 10 lots	Y	Y
10. Subdivision affecting Growth Allocation	N/A	Y
11. Intrafamily transfer	N/A	Y
12. Rezoning that would occur wholly or partially within the Critical Area	Y	Y
13. Special exception or conditional use for industrial, commercial, institutional, nonresidential or multifamily	N	Y
14. Substantial alteration to applications previously submitted to Critical Area Commission	Y	Y

126

127 **§ 49-2. Definitions.**

128 The following words have the following meanings for the purposes of implementing the Critical
129 Area Program, and the singular always include the plural, and vice versa, except where such
130 construction would be unreasonable:

131

132 **ABATEMENT**

133 The act of putting an end to a land alteration or development activity or reducing the degree
134 or intensity of the alteration or activity.

135

136 **ACCESSORY**

137 A structure that is detached from a principal structure, located on the same lot and clearly
138 incidental and subordinate to a principal structure, or if there is no principal structure on
139 the lot, a structure that is customarily incidental and subordinate to a principal structure.

140

141 **ADDITION**

142 A newly constructed area that increases the size of a structure.

143

144 **AFFORESTATION**

145 The establishment of a tree crop on an area from which it has always or very long been
146 absent, or the planting of open areas which are not presently in forest cover.

147 **AGRICULTURE**

148 All methods of production and management of livestock, crops, vegetation, and soil. This
 149 includes, but is not limited to, the related activities of tillage, fertilization, pest control,
 150 harvesting, and marketing. It also includes, but is not limited to, the activities of feeding,
 151 housing, and maintaining animals such as cattle, dairy cows, sheep, goats, hogs, horses,
 152 and poultry and handling their by-products.

153
154 **AGRICULTURAL EASEMENT**

155 A nonpossessory interest in land, which restricts the conversion of use of the land,
 156 preventing nonagricultural uses.

157
158 **ANADROMOUS FISH**

159 Fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to
 160 spawn.

161
162 **ANADROMOUS FISH PROPOGATON WATERS**

163 Those streams that are tributary to the Chesapeake Bay and Atlantic Coastal Bays in which
 164 the spawning of anadromous species of fish (e.g., rockfish, striped bass, yellow perch,
 165 white perch, shad, and river herring) occurs or has occurred. The streams are identified by
 166 the Department of Natural Resources.

167
168 **AQUACULTURE**

169 (a) The farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in
 170 lakes, streams, inlets, estuaries, and other natural or artificial water bodies or
 171 impoundments; (b) activities include hatching, cultivating, planting, feeding, raising, and
 172 harvesting of aquatic plants and animals and the maintenance and construction of necessary
 173 equipment, buildings, and growing areas; and (c) cultivation methods include, but are not
 174 limited to, seed or larvae development and grow-out facilities, fish pens, shellfish rafts,
 175 rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and
 176 subtidal areas. For the purpose of this definition, related activities such as wholesale and
 177 retail sales, processing and product storage facilities are not considered aquaculture
 178 practices.

179
180 **BARREN LAND**

181 Unmanaged land having sparse vegetation.

182
183 **BEST MANAGEMENT PRACTICES (BMPS)**

184 Conservation practices or systems of practices and management measures that control soil
 185 loss and reduce water quality degradation caused by nutrients, animal waste, toxics and
 186 sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing,
 187 contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass
 188 and naturally vegetated filter strips, and proper nutrient application measures.

189
190 **BUFFER**

191 Area that based on conditions at the time of development is immediately landward from
 192 mean high water of tidal waterways, the edge of bank of a tributary stream, or the edge of
 193 a tidal wetland; and the area exists in, or is established in, natural vegetation to protect a
 194 stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. The
 195 Buffer includes an area of at least 100-feet even if that area was previously disturbed by

196 human activity or is currently developed and also includes any expansion for contiguous
197 sensitive areas, such as a steep slope, hydric soil, highly erodible soil, nontidal wetland, or
198 a Nontidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.
199

200 **BUFFER MANAGEMENT PLAN**

201 (a) A narrative, graphic description, or plan of the Buffer that is necessary when an applicant
202 proposes a development activity that will:

- 203 (i) Affect a portion of the Buffer;
- 204 (ii) Alter Buffer vegetation; or
- 205 (iii) Require the establishment of a portion of the Buffer in vegetation.

206 (b) "Buffer Management Plan" includes a major Buffer Management Plan, a minor Buffer
207 Management Plan, and a simplified Buffer Management Plan.
208

209 **CANOPY TREE**

210 A tree that, when mature, reaches a height of at least 35 feet.
211

212 **CLEARCUTTING**

213 The removal of the entire stand of trees in one cutting with tree reproduction obtained by
214 natural seeding from adjacent stands or from trees that were cut, from advanced
215 regeneration or stump sprouts, or from planting of seeds or seedlings by man.
216

217 **CLUSTER DEVELOPMENT**

218 A residential development to which dwelling units are concentrated in a selected area or
219 selected areas of the development tract so as to provide natural habitat or other open space
220 uses on the remainder.
221

222 **COLONIAL NESTING WATER BIRDS**

223 Herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate
224 (that is "colonize") in relatively few areas, at which time, the regional populations of these
225 species are highly susceptible to local disturbances.
226

227 **COMAR**

228 Means the Code of Maryland Regulations, as from time to time amended, including any
229 successor provisions.
230

231 **COMMERCIAL HARVESTING**

232 A commercial operation that would alter the existing composition or profile, or both, of a
233 forest, including all commercial cutting operations done by companies and private
234 individuals for economic gain.
235

236 **COMMUNITY PIERS**

237 Boat docking facilities associated with subdivisions or similar residential areas, and with
238 condominium, apartment and other multiple-family dwelling units. Private piers are
239 excluded from this definition.
240

241 **COMPREHENSIVE OR MASTER PLAN**

242 A compilation of policy statements, goals, standards, maps and pertinent data relative to
243 the past, present and future trends of the local jurisdiction, including, but not limited to, its
244 population, housing, economics, social patterns, land uses, water resources and their use,

245 transportation facilities and public facilities prepared by or for the planning board, agency
246 or office.

247

248 **CONSERVATION EASEMENT**

249 A nonpossessory interest in land, which restricts the manner in which the land may be
250 developed in an effort to reserve natural resources for future use.

251

252 **CONSOLIDATION**

253 A combination of any legal parcel of land or recorded legally buildable lot into fewer lots
254 or parcels than originally existed. An application for consolidation may include a
255 subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot
256 line adjustment.

257

258 **CRITICAL AREA**

259 All lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code
260 of Maryland. They include:

261 (a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their
262 tributaries to the head of tide;

263 (b) All State and private wetlands designated under Title 16 of the Environment Article,
264 Annotated Code of Maryland;

265 (c) All land and water areas within 1,000 feet beyond the landward boundaries of State or
266 private wetlands and the heads of tides designated under Title 16 of the Environment
267 Article, Annotated Code of Maryland; and

268 d) Modification to these areas through inclusions or exclusions proposed by local
269 jurisdictions and approved by the Critical Area Commission as specified in §8-1807 of the
270 Natural Resources Article, Annotated Code of Maryland.

271

272 **CRITICAL AREA COMMISSION**

273 The Critical Area Commission for the Chesapeake Bay and Atlantic Coastal Bays as
274 established by the State of Maryland.

275

276 **DENSITY**

277 The number of dwelling units per acre within a defined and measurable area.

278

279 **DEVELOPED WOODLANDS**

280 An area of trees or an area of trees and natural vegetation that is interspersed with
281 residential, commercial, industrial, institutional, or recreational development.

282

283 **DEVELOPER**

284 As stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland,
285 Developer means:

286 (a) A person who undertakes development as defined in this section; or

287 (b) A person who undertakes development activities as defined in the criteria of the
288 Commission.

289

290 **DEVELOPMENT**

291 (a) "Development" means a human activity that materially affects the condition or use of
292 dry land, land under water, or a structure.

293 (b) "Development" includes redevelopment.

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DEVELOPMENT ENVELOPE

Includes an individually owned lot, the lot coverage on that individually owned lot, a road, a utility, a stormwater management measure, an onsite sewage disposal measure, any area subject to human use such as an active recreation area, any required buffers, and any additional acreage necessary to meet the requirements of the Program.

DISTURBANCE

An alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintaining an existing grass lawn.

DWELLING UNIT

A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. "Dwelling unit" includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or caretaker residence.

ECOSYSTEM

A more or less self-contained biological community together with the physical environment in which the community's organisms occur.

ENDANGERED SPECIES

A species of flora or fauna whose continued viability is determined to be in jeopardy, in accordance with the provision of:
(a) The federal Endangered Species Act of 1973, 16 U.S.C. §§1531—1544;
(b) Natural Resources Article, Title 4, Subtitle 2A or Title 10, Subtitle 2A, Annotated Code of Maryland; or
(c) COMAR 08.03.08.

ENDANGERED SPECIES ACT

"Endangered Species Act" means the Endangered Species Act of 1973, 87 Stat. 884.

ENVIRONMENTAL SITE DESIGN

As defined in COMAR 26.17.02.02, Maryland Department of Environment:
(a) "Environmental site design (ESD)" means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.
(b) "Environmental site design (ESD)" design methods are specified in the Design Manual.

ESTABLISHMENT

The planting or regeneration of native vegetation throughout the Buffer.

FINANCIAL ASSURANCE

A performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to a local jurisdiction.

FISHERIES ACTIVITIES

343 (a) "Fishery activity" means a commercial water-dependent fishery operation, including a
344 structure for the packing, processing, canning, or freezing of finfish, crustaceans, or
345 mollusks.

346 (b) "Fishery activity" includes a location where an activity related to a commercial water-
347 dependent fishery operation occurs, such as wholesale and retail sale, product storage, crab
348 shedding, off-loading, shellfish culture, or a shore-based facility necessary for an
349 aquaculture operation.

350

351 **FOREST**

352 A biological community dominated by trees and other woody plants covering a land area
353 of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre
354 with at least 50 percent (50%) of those trees having two (2)-inch or greater diameter at 4.5
355 feet above the ground and forest areas that have been cut, but not cleared. Forest does not
356 include orchards.

357

358 **FOREST INTERIOR DWELLING BIRDS**

359 Species of birds which require relatively large forested tracts in order to breed successfully
360 (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

361

362 **FOREST PRACTICE**

363 The alteration of the forest either through tree removal or replacement in order to improve
364 the timber, wildlife, recreational, aesthetic, or water quality values.

365

366 **FULLY ESTABLISHED**

367 The Buffer contains as much diverse, native vegetation as necessary to support a firm and
368 stable riparian habitat capable of self-sustaining growth and regeneration.

369

370 **GRANDFATHERED PARCEL/LOT**

371 A parcel of land that was subdivided into recorded, legally buildable lots where the
372 subdivision received final approval before December 1, 1985, or the date of local program
373 adoption.

374

375 **GROWTH ALLOCATION**

376 Growth Allocation is a process whereby local jurisdictions are allowed to approve
377 additional growth and development in certain parts of the Critical Area by changing the
378 Critical Area classification from RCA to either LDA or IDA or from LDA to IDA. Growth
379 Allocation is used to accommodate more intense land uses and development than what
380 would have been permitted based on the existing classification. Each county is allotted a
381 finite number of acres that can be used to reclassify land. Requests to use Growth
382 Allocation must go through a rigorous review and approval process at the local level and
383 must be approved by the local governing body. Following local approval, Growth
384 Allocation requests must be submitted to the Critical Area Commission for review and
385 approval.

386

387 **HABITAT PROTECTION AREA**

- 388 (a) "Habitat protection area" means an area that is designated for protection:
- 389 (i) Under Natural Resources Article, §8-1806, Annotated Code of Maryland,
390 regulations adopted under that authority, or a local program; or
 - 391 (ii) By the Secretary of Natural Resources.

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- (b) "Habitat protection area" includes:
- (i) The Buffer as described in COMAR 27.01.01.01B (8);
 - (ii) A nontidal wetland as defined in COMAR 26.24.01.02B;
 - (iii) A habitat of a threatened species as defined in COMAR 27.01.09.03A;
 - (iv) A habitat of an endangered species as defined in COMAR 27.01.09.03A;
 - (v) A habitat of a species in need of conservation as defined in COMAR 27.01.09.03A;
 - (vi) A plant habitat as defined in COMAR 27.01.09.04A;
 - (vii) A wildlife habitat as defined in COMAR 27.01.09.04A; and
 - (viii) Anadromous fish propagation waters as defined in COMAR 27.01.09.05A.

HIGHLY ERODIBLE SOILS

Those soils with a slope greater than 15 percent (15%); or those soils with a K value greater than 0.35 and with slopes greater than 5 percent (5%).

HISTORIC WATERFOWL STAGING AND CONCENTRATION AREA

An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

HYDRIC SOILS

Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

HYDROPHYTIC VEGETATION

Those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands "(Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in wet habitats).

IMPERVIOUS SURFACE

An area covered with solid material or that is compacted to the point where water cannot infiltrate underlying soils (e.g. parking lots, roads, houses, patios, swimming pools, tennis courts, etc.). Stormwater runoff velocity and volume can increase in areas covered by impervious surfaces.

IN-KIND REPLACEMENT

The removal of a structure and the construction of another structure that is smaller than or identical to the original structure in use, footprint area, width, and length.

INTENSELY DEVELOPED AREA (IDA)

An area of at least 20 acres or the entire upland portion of the Critical Area within a municipal corporation, whichever is less, where residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include an area with a housing density of at least four (4) dwelling units per acre and/or an area with public water and sewer systems with a housing density of more than three (3) dwelling units per acre.

441 **INVASIVE SPECIES**

442 A type of plant that is non-native to the ecosystem under consideration and whose
443 introduction causes, or is likely to cause, economic or environmental harm or harm to
444 human health.

445
446 **K VALUE**

447 The soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that
448 is experimentally determined.

449
450 **LANDWARD EDGE**

451 The limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary
452 stream.

453
454 **LIMITED DEVELOPMENT AREA (LDA)**

455 Areas which are currently developed in low or moderate intensity uses. They also contain
456 areas of natural plant and animal habitats, and the quality of runoff from these areas has
457 not been substantially altered or impaired. These areas shall have at least one of the
458 following features:

- 459 (a) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units
460 per acre;
- 461 (b) Areas not dominated by agriculture, wetland, forest, barren land, surface water, or open
462 space;
- 463 (c) Areas meeting the conditions of COMAR 27.01.02.03A, but not .03B;
- 464 (d) Areas having public sewer or public water, or both.

465
466
467 **LOCALLY SIGNIFICANT HABITAT**

468 A plant or wildlife habitat that may not be of statewide significance but, in a local
469 jurisdiction's Critical Area program, is considered to be significant in a local or regional
470 context because the habitat contains a species:

- 471 (a) Uncommonly found or of limited occurrence in that area; or
- 472 (b) With an unusually high concentration in that area.

473
474 **LOT COVERAGE**

475 The percentage of a total lot or parcel that is: occupied by a structure, accessory structure,
476 parking area, driveway, walkway, or roadway; or covered with a paver, walkway gravel,
477 stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade
478 material. Lot coverage includes the ground area covered or occupied by a stairway or
479 impermeable deck, but does not include: a fence or wall that is less than one foot in width
480 that has not been constructed with a footer; a walkway in the Buffer or expanded Buffer,
481 including a stairway, that provides direct access to a community or private pier; a wood
482 mulch pathway; or a deck with gaps to allow water to pass freely.

483
484 **MAJOR BUFFER MANAGEMENT PLAN**

485 A plan and supporting documentation required under Regulation 27.01.09.01-3J.

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487 **MARINA**

488 Any facility for the mooring, berthing, storing, or securing of watercraft, but not including
489 community piers and other noncommercial boat docking and storage facilities.

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MEAN HIGH WATER LINE (MHWL)

The average level of high tides at a given location.

MINOR BUFFER MANAGEMENT PLAN

A plan and supporting documentation required under Regulation 27.01.09.01-3I.

MITIGATION

An action taken to compensate for an adverse impact to the environment resulting from a development activity or a change in land use or intensity.

MODIFIED BUFFER AREA (MBA)

An area officially mapped by the City and approved by the Critical Area Commission as MBA, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional, or recreational development prevents the Buffer from fulfilling its water quality and habitat functions, and where development in accordance with specific MBA provisions can be permitted in the Buffer without a variance.

NATIVE

A species that is indigenous to the physiographic area in Maryland where the planting is proposed.

NATURAL HERITAGE AREA

Any communities of plants or animals which are considered to be among the best statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

NATURAL REGENERATION

The natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

NATURAL VEGETATION

Those plant communities that develop in the absence of human activities.

NEW DEVELOPMENT

For purposes of implementing specific provisions of this Chapter, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in IDA) or lot coverage (LDA and RCA) of less than 15 percent (15%) as of December 1, 1985.

NONPOINT SOURCE POLLUTION

Pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.

NONTIDAL WETLAND

538 Those areas regulated under Subtitle 26 of the Environment Article that are inundated or
539 saturated by surface water or groundwater at a frequency and duration sufficient to support,
540 and that under normal circumstances does support, a prevalence of vegetation typically
541 adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.
542 The determination of whether an area is a nontidal wetland shall be made in accordance
543 with the publication known as the “Federal Manual for Identifying and Delineating
544 Jurisdictional Wetlands,” published in 1989, and as may be amended. Nontidal wetlands
545 do not include tidal wetlands regulated under Title 16 of the Environment Article of the
546 Annotated Code of Maryland.

547

548 **OPEN SPACE**

549 Land and water areas retained in an essentially undeveloped state.

550

551 **PHYSIOGRAPHIC FEATURES**

552 The soils, topography, land slope and aspect, and local climate that influence the form and
553 species composition of plant communities.

554

555 **PIER**

556 Any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure.
557 Pier does not include any structure on pilings or stilts that was originally constructed
558 beyond the landward boundaries of State or private wetlands.

559

560 **PLANT HABITAT**

561 A community of plants commonly identifiable by the composition of its vegetation and its
562 physiographic characteristics.

563

564 **PORT**

565 A facility or area established or designated by the state or local jurisdictions for purposes
566 of waterborne commerce.

567

568 **PROJECT APPROVALS**

569 (a) "Project approvals" means the approval of development, other than development by a
570 State or local government agency, in the Critical Area by the appropriate local approval
571 authority;

572 (b) Project approvals includes approval of subdivision plats and site plans, inclusion of
573 areas within floating zones, issuance of variances, special exceptions, and conditional use
574 permits and issuance of zoning permits; and

575 (c) Project approvals does not include building permits.

576

577 **PUBLIC WATER-ORIENTED RECREATION**

578 Shore-dependent recreation facilities or activities provided by public agencies which are
579 available to the general public.

580

581 **RECONFIGURATION**

582 A change of the configuration of an existing lot or parcel line of any legal parcel of land or
583 recorded legally buildable lot. An application for reconfiguration may include a
584 subdivision, a lot line adjustment, a boundary line adjustment, a replatting request, or a
585 revision of acreage to increase density.

586

587 **REDEVELOPMENT**

588 The process of developing land which is or has been developed. For purposes of
 589 implementing specific provisions of this Chapter, redevelopment (as opposed to new
 590 development) means a development activity that takes place on property with pre-
 591 development imperviousness (in IDA) or lot coverage (in LDA and RCA) of 15 percent
 592 (15%) or greater.
 593

594 **REFORESTATION**

595 The act of returning a site or area to an original state or any action that reestablishes all or
 596 a portion of the ecological structure and functions of a site or area.
 597

598 **RESOURCE CONSERVATION AREA (RCA)**

599 An area that is characterized by nature dominated environments, such as wetlands, surface
 600 water, forests, and open space; and resource-based activities, such as agriculture, forestry,
 601 fisheries, or aquaculture. Resource Conservation Areas include areas with a housing
 602 density of less than one (1) dwelling per five (5) acres.
 603

604 **RIPARIAN HABITAT**

605 A habitat that is strongly influenced by water and which occurs adjacent to streams,
 606 shorelines, and wetlands.
 607

608 **ROAD**

609 (a) "Road" means a public thoroughfare under the jurisdiction of the State, a county, a
 610 municipal corporation, or any other public body.
 611 (b) "Road" does not include a drive aisle or driveway.
 612

613 **SIMPLIFIED BUFFER MANAGEMENT PLAN**

614 A plan required for an application under Regulation 27.01.09.01-3H.
 615

616 **SPECIES IN NEED OF CONSERVATION**

617 Those fish and wildlife whose continued existence as part of the State's resources are in
 618 question and which may be designated by regulation by the Department of Natural
 619 Resources as in need of conservation pursuant to the requirements of Natural Resources
 620 Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland.
 621

622 **STEEP SLOPES**

623 Slopes of fifteen-percent (15%) or greater incline.
 624

625 **STRUCTURE**

626 Building or construction materials, or a combination of those materials that are purposely
 627 assembled or joined together on or over land or water. Structure includes a temporary or
 628 permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse,
 629 platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating,
 630 sleeping, or recreating.
 631

632 **SUBSTANTIAL ALTERATION**

633 A repair, reconstruction, replacement, or improvement of a principal structure, with a
 634 proposed total footprint that is at least 50 percent greater than that of the structure that is
 635 the subject of the application.

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THREATENED SPECIES

A species of flora or fauna that appears likely within the foreseeable future to become endangered, including a species determined to be a “threatened species” in accordance with the provisions of:
(a) The federal Endangered Species Act of 1973, 16 U.S.C. §§1531-1544;
(b) Natural Resources Article, Title 4, Subtitle 2A or Title 10, Subtitle 2A, Annotated Code of Maryland; or
(c) COMAR 08.03.08.

TOPOGRAPHY

The existing configuration of the earth's surface, including the relative relief, elevation, and position of land features.

TRANSPORTATION FACILITIES

Anything that is built, installed, or established to provide a means of transport from one place to another.

TREE

Has the meaning stated in Natural Resources Article, §5-1601, Annotated Code of Maryland.

TRIBUTARY STREAMS

A perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local Chapter procedures approved by the Critical Area Commission.

UNDERSTORY TREE

A tree that, when mature, reaches a height of 12 to 35 feet.

UNWARRANTED HARDSHIP

Without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

UPLAND BOUNDARY

The landward edge of a tidal wetland or a nontidal wetland.

URBAN BEST MANAGEMENT PRACTICES FOR STORMWATER

Those structural or nonstructural devices designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities. These devices include, but are not limited to, stormwater ponds, stormwater wetlands, stormwater infiltration practices, stormwater filtering systems, and open channel systems.

UTILITY TRANSMISSION FACILITIES

Fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.

WATER-DEPENDENT FACILITIES

684 Those structures or works associated with industrial, maritime, recreational, educational,
685 or fisheries activities that require location at or near the shoreline within the Buffer. An
686 activity is water-dependent if it cannot exist outside the Buffer and is dependent on the
687 water by reason of the intrinsic nature of its operation. Such activities include, but are not
688 limited to, ports, the intake and outfall structures of power plants, water-use industries,
689 marinas and other boat docking structures, public beaches and other public water-oriented
690 recreation areas, and fisheries activities.

691
692 **WATER-USE INDUSTRY**

693 An industry that requires location near the shoreline because it utilizes surface waters for
694 cooling or other internal purposes.

695
696 **WATERFOWL**

697 Birds which frequent and often swim in water, nest and raise their young near water, and
698 derive at least part of their food from aquatic plants and animals.

699
700 **WILDLIFE CORRIDOR**

701 A strip of land having vegetation that provides habitat and safe passage for wildlife.

702
703 **WILDLIFE HABITAT**

704 A plant community and physiographic features that provide food, water and cover, nesting,
705 and foraging or feeding conditions necessary to maintain a population of animals in the
706 Critical Area.

707
708 COMAR 27.01.02.01 includes the following definition related to Growth Allocation:
709

710 **300-FOOT SETBACK**

711 An area that is at least 300 feet in width, as measured from the landward boundary of tidal
712 waters or wetlands, that is provided on a Growth Allocation site in order to provide habitat
713 and stormwater benefits to supplement benefits required in accordance with COMAR
714 27.01.09.

715
716 **§ 49-3. Development Standards in the Critical Area.**

717
718 **A. General requirements in all Critical Area Overlay Zones.**

719
720 (1) New solid or hazardous waste collection or disposal facilities, or sanitary landfills or
721 rubble fills, including transfer stations, may not be permitted in the Critical Area unless no
722 environmentally preferable alternative exists outside the Critical Area, and these
723 development activities or facilities are needed in order to correct an existing water quality
724 wastewater management problem. Existing permitted facilities shall be subject to the
725 standards and requirements of the Department of the Environment.

726
727 (2) Development and redevelopment shall be subject to the Habitat Protection Area
728 requirements prescribed in this Chapter.

729
730 (3) Development and redevelopment shall be subject to the water-dependent facilities
731 requirements of this Chapter.

732

733 (4) Utility transmission facilities:

734

735 (a) Utility transmission facilities, except those necessary to serve permitted uses, or
736 where regional or interstate facilities must cross tidal waters, may be permitted in
737 the Critical Area provided:

738

739 (i) The facilities are located in Intensely Developed Areas; and

740

741 (ii) Only after the activity or facility has demonstrated to all appropriate
742 local and State permitting agencies that there will be a net improvement in
743 water quality to the adjacent body of water.

744

745 (b) These provisions do not include power plants.

746

747 (5) Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no
748 feasible alternative exists. If a road, bridge, or utility is authorized the design, construction,
749 and maintenance shall:

750

751 (a) Provide maximum erosion protection;

752

753 (b) Minimize negative impacts on wildlife, aquatic life, and their habitats; and

754

755 (c) Maintain hydrologic processes and water quality.

756

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

758

759 (a) Reduce increases in flood frequency and severity that are attributable to
760 development;

761

762 (b) Retain tree canopy so as to maintain stream water temperature within normal
763 variation;

764

765 (c) Provide a natural substrate for stream beds; and

766

767 (d) Minimize adverse water quality and quantity impacts of stormwater.

768

769 (7) Reasonable accommodations for the needs of disabled citizens.

770

771 (a) An applicant seeking relief from the Critical Area standards contained in this
772 Chapter in order to accommodate the reasonable needs of disabled citizens shall
773 have the burden of demonstrating by a preponderance of evidence the following:

774

775 (i) The alterations will benefit persons with a disability within the meaning
776 of the Americans with Disabilities Act;

777

778 (ii) Literal enforcement of the provisions of this Chapter would result in
779 discrimination by virtue of such disability or deprive a disabled resident or
780 user of the reasonable use and enjoyment of the property;

781

782 (iii) A reasonable accommodation would reduce or eliminate the
783 discriminatory effect of the provisions of this Chapter or restore the disabled
784 residents’ or users’ reasonable use or enjoyment of the property;

785
786 (iv) The accommodation requested will not substantially impair the
787 purpose, intent, or effect of the provisions of this Chapter as applied to the
788 property; and

789
790 (v) The accommodation would be environmentally neutral with no greater
791 negative impact on the environment than the literal enforcement of the
792 statute, ordinance, regulation, or other requirement; or would allow only the
793 minimum environmental changes necessary to address the needs resulting
794 from the particular disability of the applicant/appellant.
795

796 (b) The Director for the Department of Planning shall determine the nature and
797 scope of any accommodation under this Chapter and may award different or other
798 relief than requested after giving due regard to the purpose, intent, or effect of the
799 applicable provisions of this Chapter. The Director may also consider the size,
800 location, and type of accommodation proposed and whether alternatives exist
801 which accommodate the need with less adverse effect.
802

803 (c) The Director for the Department of Planning may require, as a condition of
804 approval, that upon termination of the need for accommodation, that the property
805 be restored to comply with all applicable provisions of this Chapter. Appropriate
806 bonds may be collected or liens placed in order to ensure the City's ability to restore
807 the property should the applicant fail to do so.
808

809 **B. Review process, applicability, and project approvals.**

810
811 (1) Regulated activities and applicability. Any applicant for a permit or license to pursue
812 activities within the Critical Area, such as development or redevelopment (to include
813 single- family detached residential, commercial, industrial, institutional, recreational, and
814 single-family attached, townhouse, and multi-family residential projects), grading,
815 sediment and erosion control, shoreline erosion control, operation of a waste collection or
816 disposal facility, operation of a commercial or private marina or other water-related
817 commercial or industrial operation (whether public or private) shall only have such permits
818 issued by the City after review and approval under this Critical Area Program. This
819 includes the City itself when the City is the developer on projects within its jurisdiction.
820

821 In the event of State law or regulatory updates as may happen from time to time, the City
822 through its Department of Planning will apply updated State regulations in its review of
823 projects. This is to ensure compliance with State regulatory changes which may not be
824 reflected in its local program due to timing of local comprehensive review of its Critical
825 Area program.

826
827 (2) Responsible agency. All applications for local approval for site plans, subdivision plans,
828 and building permits shall be made to the Department of Planning. Stormwater
829 management, sediment and erosion control, and grading plans and/or permits are approved

830 by the Department of Public Works with Department of Planning review for Critical Area
831 compliance.
832

833 (3) Process for project approvals. Upon receiving a permit application, site plans, and
834 subdivision plans within the Critical Area, City staff shall review projects for compliance
835 with the requirements of this Chapter and notify Critical Area Commission staff of projects
836 of certain size and criteria. If the activity is in compliance, it shall be approved in a timely
837 manner of its receipt by the City and the applicant will be notified of the approval. If it is
838 not in compliance, the applicant shall be notified with the reasons for noncompliance. City
839 staff will work with property owners and/or their site designers/engineers for meeting
840 Critical Area requirements.
841

842 All applications requiring subdivision and/or site plan review shall follow procedures
843 outlined in the following municipal Chapters: Chapter 173, Subdivision of Land; Chapter
844 155, Site Plan Approval; and Chapter 205, Zoning. Projects within the mapped Critical
845 Area for the City are reviewed in accordance with this Chapter as a regulatory overlay to
846 those affected areas.
847

848 (4) State and local projects. For all development in the Critical Area resulting from State
849 and local agency projects, the City shall adhere to COMAR 27.02.02 and 27.02.04.
850 Consistency reports shall be submitted to the Commission for all City projects in the
851 Critical Area as required.
852

853 (5) Complementary state laws and regulations. In applying this Chapter, the City refers to
854 all of the following complementary existing state laws and regulations:
855

856 (a) For soil erosion and sediment control:
857

858 (i) Soil erosion and sediment control management measures shall be
859 consistent with the requirements of Environment Article, §§4-101—4-416,
860 Annotated Code of Maryland, and COMAR 26.17.01.
861

862 (ii) The City requires erosion control as the basis of sediment control plans
863 within the Critical Area.
864

865 (b) For stormwater runoff:
866

867 (i) Stormwater management measures shall be consistent with the
868 requirements of Environmental Article, §§4-201—4-215, Annotated Code
869 of Maryland, and COMAR 26.17.02, which is the Stormwater Criteria for
870 Maryland Critical Area IDA Zone (Appendix D.4 of the Maryland
871 Stormwater Design Manual, Volumes I and II, published in October 2000
872 and revised in May 2009). Appendix D.4 relates to the Critical Area 10%
873 Rule which is further expanded in the publication *Critical Area 10% Rule*
874 *Guidance Manual – Fall 2003*.
875

876 **C. Intensely Developed Areas (IDA).**
877

878 (1) The following uses may only be permitted in the IDA only after the activity or facility
879 has demonstrated to appropriate local and State permitting agencies that there will be a net
880 improvement in water quality to the adjacent body of water. These activities include the
881 following:

882
883 (a) Nonmaritime heavy industry;

884
885 (b) Permanent sludge handling, storage and disposal facilities, other than those
886 associated with water and/or wastewater treatment facilities. However, agricultural
887 or horticultural use of sludge under appropriate approvals when applied by an
888 approved method at approved application rates may be permitted in the Critical
889 Area, except in the 100' Buffer.

890
891 (2) Development activities shall be designed and implemented to minimize destruction of
892 forest and woodland vegetation.

893
894 (3) All development and redevelopment activities shall include stormwater management
895 technologies that reduce pollutant loadings by at least 10 percent (10%) below the level of
896 pollution on the site prior to development or redevelopment as provided in *Critical Area*
897 *10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.

898
899 There is a fee-in-lieu option if there is a demonstrated inability to meet the stormwater
900 management 10% Rule requirements due to lot constraints or unusual site circumstances.
901 Fees-in-lieu may not be applied to single-family residential development or residential
902 improvements; on-site plantings and/or mitigation are required. For all other projects, the
903 applicant shall compute the pollutant removal requirement in accordance with the guidance
904 specified by the Critical Area Commission, and fees in lieu of pollutant reduction shall be
905 assessed at the rate of \$32,500 per pound of phosphorous. The fee shall be appropriately
906 adjusted for fractions of pounds. A combination of best management practices and fees-in-
907 lieu may be used to meet the pollutant removal requirement.

908
909 Use of the fee-in-lieu is to be utilized as an option if and only if no other on-site
910 improvements can be made to achieve the stormwater management 10% Rule
911 requirements; this is at the discretion of the Director of the Department of Planning or
912 his/her designee. Fees collected are to be placed in the dedicated and restricted fund for use
913 on water quality projects by the City. All fee-in-lieu funds will be kept separately from the
914 Critical Area Taxing District funds described in §49-5 for appropriate mitigation.

915
916 (4) New, expanded, or redeveloped industrial or port-related facilities and the replacement
917 of these facilities may be permitted only in those portions of IDAs that have been
918 designated as Modified Buffer Area (MBA). In the case of the City of Havre de Grace, all
919 IDA is designated as MBA.

920
921 **D. Limited Development Areas (LDA).** The City does not include any areas that are mapped
922 or otherwise designated as Limited Development Areas (LDA). At such time in the future that an
923 area within the City is proposed for designation as LDA through annexation or the use of Growth
924 Allocation, then appropriate modifications to include the LDA development standards would be
925 made to the City's program at the same time that the annexation or approval of the Growth
926 Allocation takes place, provided approval of the Critical Area Commission is received by the City.

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E. Resource Conservation Areas (RCA).

(1) Nothing in this section shall limit the ability of a participant in an agricultural or environmental easement program to convey real property impressed with such an easement to family members, provided that no such conveyance will result in a density greater than one dwelling unit per twenty (20) acres.

(2) Land use management practices shall be consistent with the policies and criteria for Habitat Protection Area provisions of this Chapter.

(3) Development Activity. There is minimal opportunity for new development activity in RCA designated areas in the City. For private property in the RCA, development activity is limited to the construction of a single-family dwelling on existing grandfathered lots. (See §49-8. Grandfathering). No additional subdivision is allowed as per Chapter 173, Subdivision of Land, §173-14.

(a) For the purposes of calculating limitations on lot coverage, is as follows:

(i) When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and

(ii) When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.

(b) RCA designated areas are limited to:

(i) Elizabeth Street neighborhood of north of MD 763/Superior Street and residential sites located beneath the US 40 Thomas J. Hatem Bridge;

(ii) Exelon land holdings along the Susquehanna River, which are natural areas;

(iii) Public parklands and cultural resources, like McLhinney Park, North Park, and The Lock House Museum, adjoining grounds, and trail system;

(iv) Havre de Grace Police Department Shooting Range and Community Center property located on Lagaret Lane; and

(v) Tydings Island, which is created dredge spoils island that offers limited docking and harbor protection from southern storm events.

(4) Density. Land within the RCA are not allowed to be subdivided as per Chapter 205, Zoning, Article X, Critical Area Resource Conservation Zone, which was adopted as part of the City's Critical Area program in 1988. Only existing lots are grandfathered for development in the RCA, with the possible exception of cases where there may more than one single-family residences on a parcel, where continuation but not intensification or expansion of any use or construction of additional structures would be allowed (See §49-8. Grandfathering).

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Standards for lot coverage as determined by State law/COMAR reference are provided in Appendix I. Resource Conservation Area (RCA) Standards of Development on Existing Lots. These lot coverage standards are the same for Limited Development Areas as defined in State regulations.

(5) RCA Uses

(a) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding 1 per 20 acre density shall be allowed in RCAs.

(b) Expansion of existing industrial facilities and use in the RCA shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in §49-8 and may require Growth Allocation.

(c) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the City's Growth Allocation provisions or as listed below. Additional land may not be zoned, used or developed for industrial, commercial, or institutional development, except as provided by the City's Growth Allocation provisions.

(i) A home occupation as an accessory use on a residential property and as provided in Chapter 205, Zoning;

(ii) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility;

(iii) A cemetery provided lot coverage is limited to 15 percent (15%) of the site or 20,000 square feet, whichever is less;

(iv) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;

(v) A day care facility in a dwelling where the operators live on the premises and there are no more than eight (8) children;

(vi) A group home or assisted living facility with no more than eight (8) residents.

(6) The alteration of forest and woodlands shall be restricted and mitigated as follows:

(a) The total acreage in forest and developed woodlands with the City in the Critical Area shall be maintained or preferably increased;

(b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;

1025 (c) If an applicant is authorized to clear more than 20 percent of a forest or
1026 developed woodlands on a lot or parcel, the applicant shall replace the forest or
1027 developed woodland at 1.5 times the areal extent of the forest or developed
1028 woodlands cleared, including the first 20 percent of the forest or developed
1029 woodlands cleared;

1030
1031 (d) An applicant may not clear more than 30 percent of a forest or developed
1032 woodlands on a lot or parcel, unless the Board of Appeals grants a variance and
1033 the applicant replaces forest or developed woodlands at a rate of 3 times the
1034 areal extent of the forest or developed woodlands cleared.

1035
1036 (7) The following are required for forest or developed woodland clearing as required in (6)
1037 above:

1038
1039 (a) The applicant shall ensure that any plantings that die within twenty-four (24)
1040 months of installation shall be replaced. A performance bond in an amount
1041 determined by the City shall be posted to assure satisfactory replacement as
1042 required in (6) above and plant survival as required by this Subsection 7(a);

1043
1044 (b) A permit issued by the City before forest or developed woodland is cleared.
1045 Forests and developed woodlands which have been cleared before obtaining a
1046 permit is a violation and shall be replanted at three times the areal extent of the
1047 cleared forest;

1048
1049 (c) Clearing of forest or developed woodlands that exceed the maximum area
1050 allowed in (6) above shall be replanted at three times the areal extent of the
1051 cleared forest;

1052
1053 (d) If the areal extent of the site limits the applicant of the afforestation or
1054 reforestation standards in this section, the applicant may be allowed to plant
1055 offsite or pay a fee in lieu of planting.

1056
1057 (8) If no forest exists on proposed development sites, these sites shall be planted to provide
1058 a forest or developed woodland cover of at least 15 percent. The applicant shall designate,
1059 subject to the approval of the City, a new forest area on a part of the site not forested.

1060
1061 (9) All forest, including afforested areas, shall be maintained through conservation
1062 easements, restricted covenants, or other protective instruments.

1063
1064 (10) Development on slopes 15 percent or greater, as measured before development, shall
1065 be prohibited unless the project is the only effective way to maintain or improve the
1066 stability of the slope and is consistent with the policies and standards for Resource
1067 Conservation Areas.

1068
1069 **§ 49-4. The Buffer.**

1070 The Critical Area Buffer is the area of at least one hundred feet (100') located directly adjacent to
1071 the State's tidal waters, tidal wetlands, and tributary streams. It is a regulated Habitat Protection
1072 Area under COMAR 27.01.09.01. In the case of the City, IDA is designated as Modified Buffer

1073 Area and is subject to the standards in Section, §49-5. Modified Buffer Area (MBA) as created
1074 under provisions of COMAR 27.01.09.01-8.

1075
1076 For the purposes of this Chapter, 100' Buffer requirements are applied to projects in the RCA or
1077 areas of future Growth Allocation. See Appendix III. 100' Buffer Requirements for standards and
1078 mitigation requirements for projects subject to Buffer regulations.

1079
1080 **§ 49-5. Modified Buffer Area (MBA).**

1081
1082 **A. Applicability.** The following provisions apply to areas designated and mapped by the City
1083 as Modified Buffer Areas (MBA). These are areas where it has been sufficiently demonstrated that
1084 the existing pattern of residential, industrial, commercial, institutional, or recreational
1085 development in the Critical Area prevents the Buffer from fulfilling its intended functions for water
1086 quality protection and wildlife habitat conservation. Due to historic development patterns, the
1087 City's IDA is identified in its entirety as MBA as part of the original program in 1988. These areas
1088 were formerly referred to as Buffer Exemption Areas (BEA).

1089
1090 Limited development is allowed in the MBA due to the provision of a Critical Area Taxing District
1091 as described in Subsection C below and was created as part of the City's original program to fund
1092 habitat and water quality improvements in the IDA. New development and redevelopment activity
1093 within the MBA are subject to the following standards.

1094
1095 **B. Development and Redevelopment Standards.** New development or redevelopment
1096 activities, including structures, roads, parking areas and other impervious surfaces, will not be
1097 permitted in the Buffer in a designated MBA unless the applicant can demonstrate that there is no
1098 feasible alternative and the Director of the Department of Planning finds that efforts have been
1099 made to minimize Buffer impacts based on the following standards:

1100
1101 (1) Development and redevelopment activities have been located as far as possible from
1102 mean high tide, the landward edge of tidal wetlands, or the edge of each bank of tributary
1103 streams.

1104
1105 (2) Commercial, industrial, institutional, recreational, single-family attached, townhouse,
1106 duplex, and multi-family residential development and redevelopment shall meet the
1107 following standards:

1108
1109 (a) New development, including accessory structures, shall minimize the extent of
1110 intrusion into the Buffer. New development shall not be located closer to the water
1111 (or edge of tidal wetlands) than the City setback for the zoning district or 25 feet,
1112 whichever is greater. Structures on adjacent properties shall not be used to
1113 determine the setback line.

1114
1115 (b) Redevelopment, including accessory structures, shall minimize the extent of
1116 intrusion into the Buffer. Redevelopment shall not be located closer to the water (or
1117 edge of tidal wetlands) than the local setback for the zoning district or 15 feet,
1118 whichever is greater. Structures on adjacent properties shall not be used to
1119 determine the setback line. A new structure may be constructed on the footprint of
1120 an existing structure.

1121

- 1122 (3) Single-family detached residential development and redevelopment shall meet the
1123 following standards:
1124
- 1125 (a) New development or redevelopment shall minimize the shoreward extent of
1126 intrusion into the Buffer. New development and redevelopment shall not be located
1127 closer to the water (or edge of tidal wetlands) than principal structures on adjacent
1128 properties or the local setback for the zoning district, whichever is greater. In no
1129 case shall new development or redevelopment be closer than 25 feet from the water
1130 (or the edge of tidal wetlands).
1131
 - 1132 (b) Existing principal or accessory structures may be replaced in the same footprint.
1133
 - 1134 (c) In no case shall new accessory structures be located less than 25 feet from the
1135 water (or edge of tidal wetlands).
1136
- 1137 (4) Variances to other local setback requirements have been considered before additional
1138 intrusion into the Buffer.
1139
- 1140 (5) Development and redevelopment may not impact any HPA other than the Buffer,
1141 including nontidal wetlands, other State or federal permits notwithstanding.
1142
- 1143 (6) Public access to the waterfront is a priority in the development process and is to be
1144 achieved on a site-by-site basis when practicable.
1145
- 1146 (7) MBA designation shall not be used to facilitate the filling of tidal wetlands that are
1147 contiguous to the Buffer or to create additional buildable land for new development or
1148 redevelopment.
1149
- 1150 (8) No natural vegetation may be removed in the Buffer except that required by the
1151 proposed construction.
1152
- 1153 (9) Mitigation for development or redevelopment in the MBA approved under the
1154 provisions of this Subsection shall be implemented as follows. These requirements are in
1155 addition to meeting the 10% Rule requirements in the IDA as per §49-3. See §49-7 below
1156 for landscape stock credit table for square foot credits for native plant material.
1157
- 1158 (a) Natural vegetation of an area twice the extent of the footprint of the development
1159 activity within the 100' Buffer shall be planted on site in the Buffer or at another
1160 location approved by the Department of Planning. This design is to be provided in
1161 a Buffer Management Plan as per §49-8 and the size of which is determined by the
1162 amount of disturbance, requiring either a simplified, minor, or major Buffer
1163 Management Plan based on square footage.
1164
 - 1165 (b) Applicants who cannot fully comply with the planting requirements in (a) above
1166 may offset the mitigation requirement by removing an equivalent area of existing
1167 lot coverage in the Buffer.
1168
 - 1169 (c) Applicants who cannot comply with either the planting or offset requirements
1170 in (a) or (b) above shall pay into a fee-in-lieu program for permanent impacts to the

1171 Buffer, which is administered by the City. Fees-in-lieu of mitigation activities shall
1172 be assessed at a rate of \$2.50 per square foot of development activity in the Buffer.
1173

1174 (d) Any fees-in-lieu collected under these provisions shall be placed in an account
1175 that will assure their use only for projects within the Critical Area to enhance
1176 wildlife habitat, improve water quality, or otherwise promote the goals of State
1177 Critical Area regulations. These funds cannot be used to accomplish a project or
1178 measure that would have been required under existing local, State, or federal laws,
1179 regulations, statutes, or permits.
1180

1181 (e) Any required mitigation or offset areas shall be protected from future
1182 development through an easement, development agreement, plat notes or other
1183 instrument and recorded among the land records of Harford County.
1184

1185 (f) Any shoreline disturbance as defined by §49-6 will be treated separately and be
1186 subject to additional mitigation standards and shall require Buffer Management
1187 Plans as per §49-8.
1188

1189 (10) Additional mitigation requirements for commercial, industrial, institutional,
1190 recreational, single-family attached, townhouse, duplex, and multi-family residential
1191 development is as follows.
1192

1193 (a) For all development and redevelopment projects, a landscaped bufferyard,
1194 fifteen feet wide shall be established on the project site between the development
1195 and the water. This bufferyard shall be densely planted with native trees, shrubs,
1196 and herbaceous plants or other appropriate species in accordance with the
1197 bufferyard table below. Maintenance of the bufferyard shall minimize activities that
1198 may adversely affect the adjacent tidal water or wetlands. Any required
1199 mitigation/offset areas must be protected from future development through as
1200 easement development agreement, plat notes, or other instrument.
1201

1202 (b) On redevelopment sites, if existing structures or those rebuilt on an existing
1203 footprint limit the area available for planting, then appropriate modifications to the
1204 width of the planted bufferyard may be made on a case-by-case basis; however, the
1205 total area of required bufferyard shall be provided.
1206
1207

Bufferyard Table

Area	Quantity and Stocking	Suggested Species
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For every 100 linear feet of bufferyard	5 large trees (planting of large trees optional due to protection of waterfront views; however, trees must be replaced with understory trees/large shrubs on a 1:1 basis); AND	White Oak, Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar, Silver Maple, River Birch, Shagbark Hickory, Eastern Hemlock, Common Hackberry, American Beech, Green Ash, Common Honeylocust, Black Walnut, American Sweetgum, White Ash
	10 understory trees/large shrubs: AND	Red-Osier Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry, Inkberry, Sweetbay Magnolia, Rosebay Rhododendron, Highbush Blueberry, Arrowwood Viburnum, Nannyberry, Blackhaw Viburnum, Eastern Redbud, White Fringetree, Flowering Dogwood, Washington Hawthorn, Wax Myrtle, Common Witchhazel
	30 small shrubs; AND	Pepperbush, Chokeberry, Strawberry Bush, Sweetspire, Native Azaleas, Piedmont Azaleas, Swamp Azaleas
	40 herbaceous plants, grasses, etc.	Wild Columbine, Butterflyweed, Common Milkweed, Asters

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Additional native plant species may be found at the U.S. Fish & Wildlife Services publication: *Native Plants for Wildlife Habitat and Conservation Landscaping, Chesapeake Bay Watershed*: www.fws.gov/chesapeakebay/pdf/NativePlantsforWildlifeHabitatandConservationLandscaping.pdf

(11) Subdivision in the MBA must be designed to meet mitigation measures. New development and redevelopment in the MBA must adhere to the 10% Rule requirements for stormwater management as well as these standards for mitigation as defined in this Subsection.

(12) All unauthorized development activities in the MBA shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.

(13) The installation or cultivation of new lawn or turf in the Buffer is prohibited.

C. Critical Area Taxing District. To offset the reduced Buffer requirements for new development and redevelopment in the MBA at the edge of tidal waters, the City will continue to collect fees assessed on individual properties located within the Critical Area Taxing District. These fees are collected currently at a rate of \$.044 per \$100 of assessed value and applied to individual property tax bills on an annual basis. The tax rate is established each year and is subject to change by the Mayor and City Council.

1231 (1) Boundary description of Critical Area Taxing District. The boundary of Critical Area
1232 Taxing District is described as follows: beginning at the point where the center line of the
1233 right-of-way of US 40 crosses the shoreline of the Susquehanna River within the City of
1234 Havre de Grace and continuing southerly along the shoreline of the Susquehanna River to
1235 the point where a southerly projection of the center line of Concord Street crosses the
1236 shoreline of the Susquehanna River; then north along the center line of Concord Street to
1237 its intersection with Revolution Street; then west along the center line of Revolution Street
1238 to its intersection with Market Street; then north along the center line of Market Street to
1239 its intersection with St. John Street; then in a generally northwesterly direction along the
1240 center line of St. John Street to its intersection with Union Avenue; then north along the
1241 center line of Union Avenue to its intersection with Water Street; then north along the
1242 center line of Water Street to its intersection with Erie Street; then west along the center
1243 line of Erie Street to its intersection with Conestee Street; then north along the center line
1244 of Conestee Street to its intersection with a projection of Superior Street; then west along
1245 the center line of a projection of Superior Street to its intersection with US 40; then
1246 northeasterly along the center line of US 40 to the point of beginning at the shore of the
1247 Susquehanna River.

1248
1249 (2) Use of funds collected in the Critical Area Taxing District.

1250
1251 (a) Fees collected under the Critical Area Taxing District associated with the City's
1252 Modified Buffer Area provisions shall be placed in an account that will assure their
1253 use only for projects within the Critical Area to enhance wildlife habitat, improve
1254 water quality, or otherwise promote the goals of the City's Critical Area Program.
1255 The funds cannot be used to accomplish a project or measure that would have been
1256 required under existing local, state, or federal laws, regulations, statutes or permits.
1257 (For example, the restoration of a wetland required as mitigation for nontidal
1258 wetland impacts cannot be financed with funds collected in the Critical Area Taxing
1259 District.)

1260
1261 (b) Prior to using these funds to implement projects, the Department of Planning
1262 will provide a letter to the Critical Area staff for any projects to be performed on a
1263 project-by-project basis. This review letter includes a description of the project,
1264 the location of the project, the total cost of the project, and the cost of the project to
1265 be accomplished with Critical Area Taxing District funds.

1266
1267 (c) Acceptable projects that may be accomplished with these funds include, but are
1268 not limited to, the following:

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1270 (i) Planting native trees, shrubs, and herbaceous plants within the Critical
1271 Area;

1272
1273 (ii) Removing invasive plant species and providing replacement planting
1274 with native species;

1275
1276 (iii) Restoring a degraded or channelized stream in the Critical Area;

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1278 (iv) Creating or restoring a degraded tidal wetland in the Critical Area;

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- 1280 (v) Creating or restoring a degraded nontidal wetland in the Critical Area;
1281
1282 (vi) Removing existing impervious surface cover within the Buffer and
1283 permanently establishing it as a pervious area;
1284
1285 (vii) Removing existing impervious surface cover within a riparian area in
1286 the Critical Area and permanently establishing it as a pervious area;
1287
1288 (viii) Daylighting a piped stream;
1289
1290 (ix) Removing obstructions, debris, and structural channelizing elements
1291 from a stream;
1292
1293 (x) Educating the public about the Critical Area Program, wildlife habitat,
1294 water quality, etc. through publications, brochures, signs, and internet
1295 content;
1296
1297 (xi) Improving existing stormwater facilities, such as extended detention
1298 ponds, to include redesign and reconstruction of underperforming or
1299 older facilities and the planting on native vegetation and/or forested
1300 buffers around the facilities;
1301
1302 (xii) Design and implementation of urban retrofit projects for stormwater
1303 management that provide water quality benefits, planting native
1304 vegetation and/or, and the installation of urban best management
1305 practices (BMPs), such as micro-bio facilities and rain gardens;
1306
1307 (xiii) Cleaning up, capping or otherwise containing hazardous materials or
1308 site contamination within the Critical Area that prevents or eliminates
1309 the possibility of leaching into watercourses;
1310
1311 (xiv) Implementing a nonstructural shore erosion control measure such as
1312 marsh creation or living shoreline projects;
1313
1314 (xv) Retrofitting a best management practice for stormwater to achieve a
1315 higher pollutant removal;
1316
1317 (xvi) Modifying an existing stormwater conveyance network to enhance
1318 pollutant removal, or other measures that improve water quality or
1319 habitat;
1320
1321 (xvii) Any water quality project that achieves Watershed Implementation
1322 Plan credits through Maryland Department of the Environment (MDE);
1323
1324 (xviii) Engineering or landscape design for the abovementioned projects,
1325 not to exceed \$10,000.00 per project.
1326
1327 (d) Other projects may be considered; however they will be subject to the review
1328 and recommendations of the Critical Area Commission staff.

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D. Requirements for mapping new MBAs. The City has no intention of designating new MBAs at this time since all IDA is designated MBA. At such time in the future that an area is annexed into the City in the Critical Area, it would require Growth Allocation and shall follow 100’ Buffer Requirements that are outlined in Appendix III.

§49-6. Shoreline Disturbance Activities and Shore Erosion Control.

A. Shoreline Disturbance Activity. The City shall work with appropriate State and federal agencies to ensure compliance with applicable regulations, depending on a project’s location relative to the Mean High Water Line. The City may authorize disturbance for shoreline activities provided mitigation is performed in accordance with State agency and this Chapter’s requirements. Revetments, living shorelines, riparian access, bulkhead replacement, and invasive plant removal are identified shore disturbance activities and require the approval of a Buffer Management Plan as per §49-8.

- (1) A new development or redevelopment activity associated with a water-dependent facility as described in §49-10.
- (2) In accordance with COMAR 26.24.02, a shore erosion control measure under COMAR 26.24.04, and this Chapter.
- (3) Riparian access for water access, where mitigation is required at a rate of 2:1.
- (4) Invasive plant removal activities requiring native plant replacement at a rate of 1:1.

B. Mitigation for Shoreline Disturbance. An applicant for a development activity that includes disturbance to the shoreline, to include bulkhead replacement and invasive plant removal, shall mitigate for impacts and shall provide a Buffer Management Plan in accordance with the standards set forth in §49-8.

- (1) All authorized development activities shall be mitigated based on the ratios noted in the table below.

Mitigation Ratios Table

Activity	Mitigation Ratio	
	Permanent Disturbance	Temporary Disturbance
Shore Erosion Control	1:1	1:1
Riparian Water Access	2:1	1:1
Water-dependent Facility	2:1	1:1

(2) Planting mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then the City may permit planting in the following order of priority:

- (a) On-site and adjacent to the Buffer; and
- (b) On-site elsewhere in the Critical Area.

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(3) All unauthorized development activities along the shoreline shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.

§49-7. Mitigation Planting Standards.

Mitigation in the form of plantings is required for any new development or redevelopment activity in the Critical Area. The following planting standards provide a credit equivalent for square footage requirements for planting and/or replanting within the Critical Area. All mitigation plantings must be of native plant stock.

(1) An applicant that is required to plant native species to meet mitigation requirements shall apply the planting standards set forth in the table below.

Landscape Stock Credit Table

Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percentage of Landscape Stock Credit
Canopy Tree	2-inch caliper	200	Not Applicable
Canopy Tree	¾-inch caliper	100	Not applicable
Understory Tree	¾-inch caliper	75	Not applicable
Large Shrub	3 feet high	50	30%
Small 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 A (For less than ½ acre of planting)	1 canopy tree; and 3 large shrubs or 6 small shrubs of size listed above	300	Not applicable
Planting Cluster B (For less than ½ acre of planting)	2 understory trees; and 3 large shrubs or 6 small shrubs of size listed above	350	Not applicable

Native plant species may be found at the U.S. Fish & Wildlife Services publication, *Native Plants for Wildlife Habitat and Conservation Landscaping, Chesapeake Bay Watershed*: www.fws.gov/chesapeakebay/pdf/NativePlantsforWildlifeHabitatandConservationLandscaping.pdf

(2) A variance to the planting and mitigation standards of this Chapter is not permitted.

§49-8. Requirements for Submittal of Buffer Management Plans.

Buffer Management Plans are required for new development and redevelopment projects within the MBA and the 100’ Buffer in RCA as per Appendix III and for shore erosion control, shoreline restoration projects (including invasive removal), bulkhead replacement, riparian access improvements, and water-dependent facilities.

Buffer Management Plans may be either simplified, minor, or major depending on the square footage of disturbance and are described in 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.

- 1403 (1) Any permit for a development activity that requires Buffer mitigation will not be issued
1404 until a Buffer Management Plan is approved by the City.
1405
- 1406 (2) An applicant may not obtain final approval of a subdivision application until the Buffer
1407 Management Plan has been reviewed and approved by the City.
1408
- 1409 (3) The City may not approve a Buffer Management Plan unless:
1410
- 1411 (a) The Plan clearly indicates that all planting standards under §49-7 of this Chapter
1412 will be met; and
1413
 - 1414 (b) Appropriate measures are in place for the long-term protection and maintenance
1415 of all Buffer Areas.
1416
- 1417 (4) For a Buffer Management Plan that is the result of an authorized disturbance in the
1418 MBA, a permit authorizing final use and occupancy will not be issued until the applicant:
1419
- 1420 (a) Completes the implementation of a Buffer Management Plan; or
1421
 - 1422 (b) Provides financial assurance to cover the costs for:
1423
 - 1424 (i) Materials and installation; and
1425
 - 1426 (ii) If the mitigation or establishment requirement is at least 5,000 square
1427 feet, long-term survivability requirements.
1428
- 1429 (5) Concurrent with recordation of a site plan or subdivision plat, an applicant shall record
1430 a protective easement for any required Buffer planting area.
1431
- 1432 (6) If an applicant fails to implement a Buffer Management Plan, that failure shall
1433 constitute a violation of this Chapter. A permit for development or redevelopment activity
1434 will not be issued for a property until the violation is corrected.
1435
- 1436 (7) An applicant shall post a subdivision with permanent signs marking “Chesapeake Bay
1437 Critical Area Native Planting Area” prior to final recordation.
1438
- 1439 (8) Buffer Management Plans may include areas of natural regeneration and utilize the
1440 provisions of COMAR 27.01.09.01-4 for implementation guidance in the MBA.
1441

1442 **§ 49-9. Other Habitat Protection Areas.**
1443

1444 **A. Location.** Areas of threatened and endangered species and areas with species in need of
1445 conservation are those areas where these species, as designated by the Secretary of the Department
1446 of Natural Resources, are found or have historically been found and their surrounding habitats.
1447

1448 With regard to anadromous fish, Fountain Run and Lilly Run tributaries in the Critical Area are
1449 identified as anadromous fish propagation waters, as a spawning area for yellow perch, herring,
1450 and white perch. Striped bass spawning areas are documented downstream of Havre de Grace.
1451

1452 Maps provided by Department of Natural Resources Natural Heritage Program include one heron
1453 rookery on Tydings Island and identified Natural Heritage Areas in North Park. Please refer to the
1454 Department of Planning for specific locations and determination of needed review by the
1455 Department of Natural Resources.

1456

1457 **B. Identification.**

1458

1459 (1) Threatened or endangered species or species in need of conservation;

1460

1461 (2) Colonial waterbird nesting sites;

1462

1463 (3) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or
1464 tidal and nontidal wetlands;

1465

1466 (4) Existing riparian forests;

1467

1468 (5) Forest areas utilized as breeding areas by forest interior dwelling birds and other
1469 wildlife species;

1470

1471 (6) Other plant and wildlife habitats determined to be of local significance;

1472

1473 (7) Natural Heritage Areas; and

1474

1475 (8) Anadromous fish propagation waters.

1476

1477 **C. Standards.**

1478

1479 1) An applicant for a development activity proposed for a site within the Critical Area that
1480 is in or near a Habitat Protection Area listed above shall request review by the Department
1481 of Natural Resources Wildlife and Heritage Service (DNR WHS), and as necessary United
1482 States Fish and Wildlife Service (USFWS), for comment and technical advice. Based on
1483 the Department's recommendations, additional research and site analysis may be required
1484 to identify the location of threatened and endangered species and species in need of
1485 conservation on a site.

1486

1487 (2) If the presence of any Habitat Protection Area is confirmed by the Department of
1488 Natural Resources, the applicant shall follow all recommendations from DNR WHS, and
1489 as necessary USFWS.

1490

1491 (a) If potential FIDS habitat is identified, the proposed development shall conform
1492 to the Critical Area Commission's FIDS Guidance Manual, dated June 2000, as
1493 amended from time to time.

1494

1495 (b) If potential anadromous fish propagation waters are identified, the proposed
1496 development shall conform to the policies and criteria listed in COMAR
1497 27.01.09.05.

1498

1499 (3) The specific protection and conservation measures recommended by DNR WHS and
1500 USFWS shall be included on the site plan and shall be considered conditions of approval
1501 for the project.
1502

1503 **§ 49-10. Water Dependent Facilities.**
1504

1505 **A. Applicability.** The provisions of this Section apply those structures or works associated
1506 with industrial, maritime, recreational, educational, or fisheries activities that require location at
1507 or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the
1508 Buffer and is dependent on the water by reason of the intrinsic nature of its operation.
1509

1510 **B. Identification.** Water dependent facilities include, but are not limited to, ports, the intake
1511 and outfall structures of power plants, water-use industries, marinas and other boat docking
1512 structures, public beaches and other public water-oriented recreation areas, and fisheries activities.
1513 Excluded from this regulation are individual private piers installed or maintained by riparian
1514 landowners, and which are not part of a subdivision that provides community piers.
1515

1516 **C. Standards.** The following standards shall apply to new or expanded development activities
1517 associated with water-dependent facilities:
1518

1519 (1) New or expanded development activities may be permitted in the Buffer in the Intensely
1520 Developed Areas provided that it can be shown:

1521 (a) That they are water-dependent;

1522 (b) That the project meets a recognized private right or public need;

1523 (c) That adverse effects on water quality, fish, plant, and wildlife habitat are
1524 minimized;

1525 (d) That, insofar as possible, non-water-dependent structures or operations
1526 associated with water-dependent projects or activities are located outside the
1527 Buffer; and
1528

1529 (e) That the facilities are consistent with an approved local plan as set forth below.
1530

1531 (2) New or expanded development activities may not be permitted in those portions of the
1532 Buffer which occur in Resource Conservation Areas. Applicants for water-dependent
1533 facilities in a Resource Conservation Area, other than those specifically permitted herein,
1534 must apply for a portion of the City's Growth Allocation as set forth in this Chapter.
1535

1536 **D. Evaluating plans for new and expanded water-dependent facilities.** The City shall
1537 evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent
1538 facilities. The City shall work with appropriate State and federal agencies to ensure compliance
1539 with applicable regulations. The following factors shall be considered when evaluating proposals
1540 for new or expanded water-dependent facilities:
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1542 (1) That the activities will not significantly alter existing water circulation patterns or
1543 salinity regimes;
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(2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;

(3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;

(4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

(5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;

(6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area, generally;

(7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:

- (a) Backfill for permitted shore erosion protection measures;
- (b) Use in approved vegetated shore erosion projects;
- (c) Placement on previously approved channel maintenance spoil disposal areas; and
- (d) Beach nourishment.

(8) That interference with the natural transport of sand will be minimized; and

(9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in the Habitat Protection Area sections of this Chapter.

E. Industrial and port-related facilities. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas as described in this Chapter and are subject to the provisions set forth in that Section.

F. Marinas and other commercial maritime facilities. New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas subject to the requirements set forth in this Section. New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except as provided in this Section. Expansion of existing marinas may be permitted by the City within Resource Conservation Areas, provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site

1597 of the marina. New and existing marinas shall meet the sanitary requirements of the Department
 1598 of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of
 1599 minimizing the discharge of bottom wash waters into tidal waters.

1601 **G. Community piers.** New or expanded community marinas and other non-commercial boat
 1602 docking and storage facilities may be permitted in the Buffer subject to the requirements in this
 1603 Section provided that:

1604
 1605 (1) These facilities may not offer food, fuel, or other goods and services for sale and shall
 1606 provide adequate and clean sanitary facilities;

1607
 1608 (2) The facilities are community-owned and established and operated for the benefit of the
 1609 residents of a platted and recorded riparian subdivision;

1610
 1611 (3) The facilities are associated with a residential development approved by the City for
 1612 the Critical Area and consistent with all State requirements and program requirements for
 1613 the Critical Area;

1614
 1615 (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access
 1616 to the facilities; and

1617
 1618 (5) If community piers, slips, or moorings are provided as part of the new development,
 1619 private piers in the development are not allowed.

1620
 1621 **H. Number of slips or piers permitted.** The number of slips, or piers permitted at the facility
 1622 shall be the lesser of (1) or (2) below:

1623
 1624 (1) One slip for each 50 feet of shoreline in the subdivision in the Intensely Developed
 1625 Area and one slip for each 300 feet of shoreline in the subdivision in the Resource
 1626 Conservation Area; or

1627
 1628 (2) A density of slips or piers to platted lots or dwellings within the subdivision in the
 1629 Critical Area according to the following schedule:

1630
 1631 Number of slips permitted:

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

1632
 1633
 1634 **I. Public beaches, recreation or education areas.** Public beaches or other public water-
 1635 oriented recreation or education areas including, but not limited to, publicly owned boat launching
 1636 and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed

1637 Areas. These facilities may be permitted within the Buffer in Resource Conservation Areas
1638 provided that:

- 1639
- 1640 (1) Adequate sanitary facilities exist;
- 1641
- 1642 (2) Service facilities are, to the extent possible, located outside the Buffer;
- 1643
- 1644 (3) Permeable surfaces are used to the extent practicable, if no degradation of groundwater
1645 would result;
- 1646
- 1647 (4) Disturbance to natural vegetation is minimized; and
- 1648
- 1649 (5) Areas for passive recreation, such as nature study, hiking, and hunting and trapping,
1650 and for education, may be permitted in the Buffer within Resource Conservation Areas if
1651 service facilities for these uses are located outside of the Buffer.
- 1652

1653 **J. Research areas.** Water-dependent research facilities or activities operated by State,
1654 federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water-
1655 dependent structures or facilities associated with these projects are, to the extent possible, located
1656 outside of the Buffer.

1657

1658 **K. Fisheries activities.** Lands and water areas with high aquaculture potential will be
1659 identified by the City in cooperation with the State when applications for new or expanded fisheries
1660 or aquaculture facilities in these areas are submitted to the City. These areas are encouraged for
1661 that use and, if so used, should be protected from degradation by other types of land and water use
1662 or by adjacent land and water uses. Commercial water-dependent fisheries including, but not
1663 limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and
1664 shore-based facilities necessary for aquaculture operations and fisheries activities, may be
1665 permitted in the Buffer in Intensely Developed Areas and Resource Conservation Areas.

1666

1667 **§ 49-11. Grandfathering.**

1668

1669 **A. Continuation of existing uses.**

1670

1671 (1) The continuation, but not necessarily the intensification or expansion, of any use or
1672 structure in existence on or before June 6, 1988, which is the date of the City’s original
1673 program approval, unless the use or structure has been abandoned for more than one year
1674 or is otherwise restricted by existing local ordinances.

1675

1676 (2) If any existing use does not conform with the provisions of this Chapter, its
1677 intensification or expansion may be permitted only in accordance with the variance
1678 procedures in §49-9. Variances.

1679

1680 **B. Residential density on grandfathered lots.**

1681

1682 (1) Except as otherwise provided, the following types of land are permitted to be developed
1683 with a single-family dwelling, if a dwelling is not already placed there, notwithstanding
1684 that such development may be inconsistent with the density provisions of this Chapter.

1685

- 1686 (a) Any land on which development activity has progressed to the point of pouring
- 1687 of foundation footings or the installation of structural members;
- 1688
- 1689 (b) A legal parcel of land, not being part of a recorded or approved subdivision, that
- 1690 was recorded as of December 1, 1985;
- 1691
- 1692 (c) Land that received a building permit subsequent to December 1, 1985 but prior
- 1693 to June 6, 1988;
- 1694
- 1695 (d) Land that was subdivided into recorded, legally buildable lots, where the
- 1696 subdivision received final approval between June 1, 1984 and December 1, 1985;
- 1697 and
- 1698
- 1699 (e) Land that was subdivided into recorded, legally buildable lots, where the
- 1700 subdivision received the City's final approval after December 1, 1985 and provided
- 1701 that either development of any such land conforms to the IDA or RCA requirements
- 1702 in this Chapter or the area of the land is counted against the Growth Allocation
- 1703 permitted under this Chapter.
- 1704

1705 **C. Implementation.**

- 1706
- 1707 (1) For purposes of implementing this regulation, a local jurisdiction shall have determined,
- 1708 based on land uses and development in existence on December 1, 1985, which land areas
- 1709 fall within the three types of development areas described in this Chapter.
- 1710
- 1711 (2) Nothing in this Section may be interpreted as altering any requirements of this Chapter
- 1712 related to water-dependent facilities or Habitat Protection Areas.
- 1713

1714 **§ 49-12. Variances.**

1715

1716 **A. Applicability.** The City has established provisions where, owing to special features of a

1717 site or other circumstances, implementation of this Chapter or a literal enforcement of provisions

1718 within this Chapter would result in unwarranted hardship to an applicant, a Critical Area variance

1719 may be obtained.

1720

1721 (1) In considering an application for a variance, the City shall presume that the specific

1722 development activity in the Critical Area, that is subject to the application and for which a

1723 variance is required, does not conform with general purpose and intent of Natural

1724 Resources Article, Title 8 Subtitle 18, COMAR Title 27, and requirements of this Chapter.

1725

1726 (2) Unwarranted hardship means that without a variance, an applicant would be denied

1727 reasonable and significant use of the entire parcel or lot for which the variance is requested.

1728

1729 **B. Standing.** In accordance with Natural Resources Article, § 8-1808(d)(2), Annotated Code

1730 of Maryland, if a person meets the threshold standing requirements under federal law, the person

1731 shall have standing to participate as a party in a local administrative proceeding.

1732

1733 **C. Standards.** The provisions for granting such a variance shall include evidence submitted

1734 by the applicant that the following standards are met:

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1783

(1) Special conditions or circumstances that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of this Critical Area Chapter would result in unwarranted hardship;

(2) A literal interpretation of the provisions of this Chapter will deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Chapter;

(3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Critical Area Chapter to other lands or structures within the Critical Area;

(4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed;

(5) The request does not arise from any condition relating to land or building use, either permitted or nonconforming on any neighboring property;

(6) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area; and

(7) The granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and this Chapter.

D. Process. Applications for a variance will be made in writing to the City’s Board of Appeals with a copy provided to the Critical Area Commission. The City shall follow its established procedures for advertising and notification of affected landowners.

(1) After hearing an application for a Critical Area Program variance, the Board of Appeals shall make written findings reflecting analysis of each standard.

(2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the City shall consider that fact.

(3) The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection A above.

(4) The City shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

E. Procedures.

(1) Variance Procedures

(a) Based on competent and substantial evidence, the City’s Board of Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established in Subsection A above, and if applicable Subsection

1784 B above. With due regard for the person’s technical competence and specialized
1785 knowledge, the written findings may be based on evidence introduced and
1786 testimony presented by:

- 1787
- 1788 (i) The applicant;
- 1789
- 1790 (ii) The City or any other government agency; or
- 1791
- 1792 (iii) Any other person deemed appropriate by the City.
- 1793

1794 (2) After-the-fact Variance Procedures

1795

1796 (a) A local jurisdiction may not accept an application of a variance to legalize a
1797 violation of the subtitle, including an unpermitted structure or other development
1798 activity until the local jurisdiction:

- 1799
- 1800 (i) Issues a notice of violation; and
- 1801
- 1802 (ii) Assesses an administrative or civil penalty for the violation.
- 1803

1804 (b) A local jurisdiction may not issue a permit, approval, variance, or special
1805 exception to legalize a violation of this subtitle unless an applicant has:

- 1806
- 1807 (i) Fully paid all administrative, civil, and criminal penalties imposed under
1808 Natural Resources Article, § 8-1808(c)(1)(iii)14-15 and (2)(i), Annotated
1809 Code of Maryland;
- 1810
- 1811 (ii) Prepared a restoration or mitigation plan, approved by the local
1812 jurisdiction, to abate impacts to water quality or natural resources as a result
1813 of the violation; and
- 1814
- 1815 (iii) Performed the abatement measures in the approved plan in accordance
1816 with the local Critical Area program.
- 1817

1818 (c) If the Board denies the requested after-the-fact variance, then the City shall:

- 1819
- 1820 (i) Order removal or relocation of any structure; and
- 1821
- 1822 (ii) Order restoration of the affected resources.
- 1823

1824 **F. Appeals.** Appeals of decisions concerning the granting or denial of a variance under these
1825 regulations shall be taken in accordance with all applicable laws and procedures of the City for
1826 variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in
1827 accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm,
1828 corporation, or governmental agency aggrieved or adversely affected by any decision made under
1829 this Chapter.

1831 **G. Conditions and mitigation.** The Board of Appeals shall impose conditions on the use or
1832 development of a property which is granted a variance as it may find reasonable to ensure that the
1833 spirit and intent of this Chapter is maintained including, but not limited to, the following:
1834

1835 (1) Adverse impacts resulting from the granting of the variance shall be mitigated as
1836 recommended by the Department of Planning, but not less than by planting on the site per
1837 square foot of the variance granted at no less than a 3:1 basis.
1838

1839 (2) New or expanded structures or lot coverage shall be located the greatest possible
1840 distance from mean high water, the landward edge of tidal wetlands, tributary streams,
1841 nontidal wetlands, or steep slopes.
1842

1843 **H. Commission notification.** Within 10 working days after a written decision regarding a
1844 variance application is issued, a copy of the decision will be sent to the Critical Area Commission.
1845 The City may not issue a permit for the activity that was the subject of the application until the
1846 applicable 30-day appeal period has elapsed.
1847

1848 **§ 49-13. Lot Consolidation and Reconfiguration.**
1849

1850 **A. Applicability.** The provisions of this part apply to a consolidation or a reconfiguration of
1851 any nonconforming legal grandfather parcel or lot. These provisions do not apply to the
1852 reconfiguration or consolidation of parcels or lots which are conforming or meet all Critical Area
1853 requirements. Nonconforming parcels or lots include:
1854

1855 (1) Those for which a Critical Area variance is sought or has been issued; and
1856

1857 (2) Those located in the Resourced Conservation Area and are less than 20 acres in size.
1858

1859 **B. Procedure.** An applicant seeking a parcel or lot consolidation or reconfiguration shall
1860 provide the required information required in COMAR 27.01.02.08.E to the City.
1861

1862 (1) The City may not approve a proposed parcel or lot consolidation or reconfiguration
1863 without making written findings in accordance with COMAR 27.01.02.08.F.
1864

1865 (2) The City shall issue a final written decision or order granting or denying an application
1866 for a consolidation or reconfiguration.
1867

1868 (a) After a final written decision or order is issued, the City shall send a copy of the
1869 decision or order and a copy of any approved development plan within 10 business
1870 days by U.S. mail to the Commission's business address.
1871

1872 **§ 49-14. Amendments.**
1873

1874 **A. Program amendments.** The Mayor and City Council may from time to time amend the
1875 City Critical Area provisions of this Chapter. Changes include, but are not limited to amendments,
1876 revisions, and modifications to these regulations, Critical Area Maps, implementation procedures,
1877 and local policies that affect the City's Critical Area. All such amendments, revisions, and
1878 modifications shall also be approved by the Critical Area Commission as established in Section 8-
1879 1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment

1880 shall be implemented without approval of the Critical Area Commission. Standards and procedures
1881 for Critical Area Commission approval of proposed amendments are as set forth in the Critical
1882 Area Law § 8-1809 (i) and § 8-1809(d), respectively.

1883
1884 **B. Zoning map amendments.** Except for program amendments or program refinements
1885 developed during a six (6)-year comprehensive review, a zoning map amendment may only be
1886 granted by the City Council upon proof of a mistake in the existing zoning. This requirement does
1887 not apply to proposed changes to a zoning map that meet the following criteria:

1888
1889 (1) Are wholly consistent with the land classifications as shown on in the adopted Critical
1890 Area Overlay Map; or

1891
1892 (2) The use of Growth Allocation in accordance with the Growth Allocation provisions of
1893 this Chapter is proposed.

1894
1895 **C. Process.**

1896
1897 (1) When an amendment is requested, the applicant shall submit the amendment to the
1898 Planning Commission for review and research. Upon completing Findings of Fact, these
1899 documents shall be forwarded to the City Council.

1900
1901 (2) The City Council shall hold a public hearing at which parties of interest and citizens
1902 shall have an opportunity to be heard. At least a fourteen (14) day notice of the time and
1903 place of such hearing shall be published in a newspaper of general circulation in the City.

1904
1905 (3) After the City Council approve an amendment, they shall forward their decision and
1906 applicable resolutions along with the amendment request to the Critical Area Commission
1907 for final approval.

1908
1909 **§ 49-15. Cutting or Clearing Trees.**

1910
1911 **A. Policies.** The following policies recognize the value of forested land for its water quality
1912 benefits and for habitat protection:

1913
1914 (1) Maintain and increase the forested vegetation in the Critical Area;

1915
1916 (2) Conserve forests and developed woodlands and provide for expansion of forested areas;

1917
1918 (3) Provide that the removal of trees associated with development activities shall be
1919 minimized and, where appropriate, shall be mitigated; and

1920
1921 (4) Recognize that forests are a protective land use and should be managed in such a manner
1922 so that maximum values for wildlife, water quality, timber, recreation, and other resources
1923 can be maintained, recognizing that, in some cases, these uses may be mutually exclusive.

1924
1925 **B. Identification.** Evaluation of forest and developed woodland resources on specific sites
1926 shall be accomplished as part of the environmental analysis required prior to site plan and
1927 subdivision approval.

1928

- 1929 C. **Protection of riparian and forest habitat in the Resource Conservation Area.**
 1930
 1931 (1) Vegetation shall be maintained in its natural condition along all streams to provide
 1932 wildlife corridors.
 1933
 1934 (2) A minimum 100' Buffer shall extend landward from the mean high water line of tidal
 1935 water, tributary streams and tidal wetlands. This area is to be conserved for wildlife
 1936 protection and water quality.
 1937
 1938 (3) Nontidal wetland forests should be left in a natural state for wildlife and water quality
 1939 protection.
 1940
 1941 (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other
 1942 wildlife species (for example relatively mature forested areas within the Critical Area of
 1943 100 acres or more, or forest connected with these areas) shall be conserved.
 1944
 1945 (5) Existing riparian forests (for example, those relatively mature forests of at least 300
 1946 feet in width which occur adjacent to streams, wetlands, or the Bay shoreline and which
 1947 are documented breeding areas) shall be conserved.
 1948
 1949 (6) For the establishment or replacement of forest in RCA, the following policies should
 1950 be used for afforestation and reforestation:
 1951
 1952 (a) The replacement or establishment of forests or developed woodlands should
 1953 ensure a diversified plant community and should include canopy trees, understory
 1954 trees, shrub scrub and herbaceous plants; and
 1955
 1956 (b) Native species should be used for all reforestation and afforestation.
 1957
 1958 **D. Tree cutting, clearing, and vegetation removal in the Modified Buffer Area.** Any
 1959 cutting or removal of natural vegetation as allowed below shall require a Buffer Management Plan
 1960 approved by the Department of Planning, as per §49-8. A planting agreement shall be executed to
 1961 ensure that trees or vegetation that are removed are replaced on an equal basis. Cutting or clearing
 1962 of trees and vegetation removal may be allowed within the Buffer under the following
 1963 circumstances:
 1964
 1965 (1) Cutting of trees or removal of natural vegetation may be permitted in the MBA based
 1966 on the standards for development and redevelopment established in §49-5. Modified Buffer
 1967 Areas and to provide access to private piers, to install or construct a shore erosion
 1968 protection device or measure, or a water-dependent facility, provided the device, measure
 1969 or facility has received all necessary State and federal permits. See §49-6 for required
 1970 mitigation ratios related to these shoreline disturbance activities.
 1971
 1972 (2) Individual trees may be removed which are in danger of falling and causing damage to
 1973 dwellings or other structures, or which area in danger of falling and therefore causing the
 1974 blockage of streams, or resulting in accelerated shore erosion.
 1975
 1976 (3) Horticulture practices may be used to maintain the health of individual trees.
 1977

1978 (4) Other cutting techniques may be undertaken within the MBA under the advice and
1979 guidance of the State Department of Agriculture and Natural Resources, if necessary to
1980 preserve the forest from extensive pest or disease infestation or threat from fire.
1981

1982 **E. Enforcement for tree and vegetation removal.** Unauthorized clearing, cutting, or
1983 removal of vegetation in the MBA; unauthorized clearing, cutting, or removal of vegetation in the
1984 RCA 100' Buffer; and clearing, cutting or removal of vegetation in excess of the area permitted to
1985 be cleared by this Chapter is considered a civil violation of this Chapter and shall result in fines
1986 and/or mandatory planting. The Department of Planning, or its designee, shall have the authority
1987 to issue a citation and are hereby declared to be the officials with the duty of enforcing these
1988 provisions. All replanting plans shall be prepared by a State or registered forester, landscape
1989 architect, or other restoration professional.

1990
1991 (1) For unauthorized clearing, cutting, or removal of vegetation in the MBA that does not
1992 exceed the area that could be authorized in accordance with this Chapter, fines shall be
1993 assessed in the amount of \$100 for each occurrence and reforestation shall be required at a
1994 ratio of 1:1 for the area of disturbance. See §49-7. Mitigation Planting Standards for
1995 landscape stock credit table for plant replacement credits based on square footage.

1996
1997 (2) For unauthorized clearing, cutting, or removal of vegetation in the MBA that exceeds
1998 the area that could be authorized in accordance with this Chapter, fines shall be assessed at
1999 \$100 for each occurrence and reforestation shall be required at a ratio 3:1 for the area of
2000 disturbance.

2001
2002 (3) For unauthorized clearing, cutting, or removal of vegetation in the 100' Buffer in the
2003 RCA, or another Habitat Protection Area, fines shall be assessed at \$100 for each
2004 occurrence and replanting shall be required at a ratio of 4:1 for the area of disturbance as
2005 per Appendix III. 100' Buffer Requirements for RCA.

2006
2007 (4) When trees or vegetative cover cannot be fully replaced on-site because of existing
2008 vegetation, existing development, or the size of the parcel, then planting shall take place
2009 on an off-site location approved by the Department of Planning or its designee. If an off-
2010 site location cannot be utilized then fees-in-lieu shall be collected. All off-site locations
2011 resulting from enforcement shall be located in the Buffer or Habitat Protection Area. Fees
2012 shall be assessed at \$1.50 per square foot of required mitigation.

2013
2014 (5) Fines collected from enforcement actions in the Critical Area shall be maintained in a
2015 separate account to be used by the municipality for reforestation or other habitat or water
2016 quality enhancing efforts.

2017
2018 (6) All violations resulting in on-site or off-site planting shall include a written planting
2019 agreement signed by the landowner and the Department of Planning designee. Said
2020 planting agreement shall include: size and species of trees, planting windows, survivability,
2021 follow-up inspection period, bonding, and other factors deemed to be relevant.

2022
2023 **§ 49-16. Enforcement.**

2024 With the exception of the enforcement policies as outlined in §49-15, Cutting or Clearing Trees,
2025 the following policies are in effect for program enforcement:
2026

2027 **A. Consistency.** The Critical Area provisions of this Chapter, in accordance with the Critical
2028 Area Act and Criteria supersede any inconsistent law, Chapter, or plan of the City of Havre de
2029 Grace. In the case of conflicting provisions, the stricter provisions shall apply.

2030
2031 **B. Violations.**

2032
2033 (1) No person shall violate any provision of this Chapter. Each violation that occurs and
2034 each calendar day that a violation continues shall be a separate offense.

2035
2036 (2) Each person who violates a provision of this Chapter shall be subject to separate
2037 administrative civil penalties, abatement and restoration orders, and mitigation for each
2038 offense.

2039
2040 (3) Non-compliance with any permit or order issued by the City related to the Critical Area
2041 shall be a violation of this Chapter and shall be enforced as provided herein.

2042
2043 **C. Responsible persons.** The following persons may each be held jointly or severally
2044 responsible for a violation: (1) developer or any persons who apply for or obtain any permit or
2045 approval, (2) contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6) any
2046 person who has committed, assisted, or participated in the violation.

2047
2048 **D. Required enforcement action.** In the case of violations of this Chapter, the City shall take
2049 enforcement action including:

2050
2051 (1) Assess administrative civil penalties as necessary to cover the costs associated with
2052 performing inspections, supervising or rendering assistance with identifying and citing the
2053 violation, issuing abatement and restoration orders, and reviewing mitigation plans and
2054 ensuring compliance with these plans;

2055
2056 (2) Issue abatement, restoration, and mitigation orders as necessary to:

2057 (a) Stop unauthorized activity;

2058 (b) Restore and stabilize the site, as appropriate, to its condition prior to the
2059 violation or to a condition that provides the same water quality and habitat benefits;
2060 and

2061
2062 (3) Require the implementation of mitigation measures, in addition to restoration activities,
2063 to offset the environmental damage and degradation or loss of environmental benefit
2064 resulting from the violation.

2065
2066
2067
2068 **E. Right to enter property.** Except as otherwise authorized and in accordance with the
2069 procedures specified herein, the City's Department of Planning designated personnel may obtain
2070 access to and enter a property in order to identify or verify a suspected violation, restrain a
2071 development activity, or issue a citation if the City has probable cause to believe that a violation
2072 of this Chapter has occurred, is occurring, or will occur. The City shall make a reasonable effort
2073 to contact a property owner before obtaining access to or enter the property. If entry is denied, the
2074 City may seek an injunction to enter the property to pursue an enforcement action.

2075

2076 **F. Administrative civil penalties.** In addition to any other penalty applicable under State or
 2077 municipal law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or
 2078 the Critical Area provisions of this Chapter shall be punishable by a civil penalty of up to \$10,000
 2079 per calendar day. This fine is payable to the City to be deposited in the City's Critical Area Fund.
 2080

2081 (1) Before imposing any civil penalty, the person(s) believed to have violated this Chapter
 2082 shall receive: written notice of the alleged violation(s) including which, if any, are
 2083 continuing violations, and an opportunity to be heard. The amount of the civil penalty for
 2084 each violation, including each continuing violation, shall be determined separately. For
 2085 each continuing violation, the amount of the civil penalty shall be determined per day. In
 2086 determining the amount of the civil penalty, the City shall consider:

2087 (a) The gravity of the violation;

2088 (b) The presence or absence of good faith of the violator;

2089 (c) Any willfulness or negligence involved in the violation including a history of
 2090 prior violations;

2091 (d) The environmental impact of the violation; and

2092 (e) The cost of restoration of the resource affected by the violation and mitigation
 2093 for damage to that resource, including the cost to the City for performing,
 2094 supervising, or rendering assistance to the restoration and mitigation.
 2095

2096 (2) Administrative civil penalties for continuing violations shall accrue for each violation,
 2097 every day each violation continues, with no requirements for additional assessments,
 2098 notice, or hearings for each separate offense. The total amount payable for continuing
 2099 violations shall be the amount assessed per day for each violation multiplied by the number
 2100 of days that each violation has continued.

2101 (3) The person responsible for any continuing violation shall promptly provide the City
 2102 with written notice of the date(s) the violation has been or will be brought into compliance
 2103 and the date(s) for City inspection to verify compliance. Administrative civil penalties for
 2104 continuing violations continue to accrue as set forth herein until the City receives such
 2105 written notice and verifies compliance by inspection or otherwise.
 2106

2107 (4) Assessment and payment of administrative civil penalties shall be in addition to and
 2108 not in substitution for recovery by the City of all damages, costs, and other expenses caused
 2109 by the violation.
 2110

2111 (5) Payment of all administrative civil penalties assessed shall be a condition precedent to
 2112 the issuance of any permit or other approval required by this Chapter.
 2113

2114 **G. Cumulative remedies.** The remedies available to the City under this Chapter are
 2115 cumulative and not alternative or exclusive, and the decision to pursue one remedy does not
 2116 preclude pursuit of others.
 2117
 2118
 2119
 2120
 2121
 2122
 2123

2124 **H. Injunctive relief.** The City is authorized to institute injunctive or other appropriate actions
2125 or proceedings to bring about the discontinuance of any violation of this Chapter, an administrative
2126 order, a permit, a decision, or other imposed condition.

2127
2128 (1) The pendency of an appeal to the Board of Appeals or subsequent judicial review shall
2129 not prevent the City from seeking injunctive relief to enforce an administrative order,
2130 permit, decisions, or other imposed condition, or to restrain a violation pending the
2131 outcome of the appeal or judicial review.

2132
2133 **I. Variances pursuant to a violation.** The City may accept an application for a variance
2134 regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an
2135 order, permit, plan, or this Chapter in accordance with the variance provisions of this Chapter.
2136 However, the application shall not be reviewed, nor shall a final decision be made until all
2137 abatement, restoration, and mitigation measures have been implemented and inspected by the City.

2138
2139 **J. Permits pursuant to a violation.** The City may not issue any permit, approval, variance,
2140 or special exception, unless the person seeking the permit has:

2141
2142 (1) Fully paid all administrative, civil, or criminal penalties as set forth in Section F. above;

2143
2144 (2) Prepared a restoration or mitigation plan, approved by the City, to abate impacts to
2145 water quality or natural resources as a result of the violation;

2146
2147 (3) Performed the abatement measures in the approved plan in accordance with the City's
2148 regulations; and

2149
2150 (4) Unless an extension of time is approved by the City because of adverse planting
2151 conditions, within 90 days of the issuance of a permit, approval, variance, or special
2152 exception for the affected property, any additional mitigation required as a condition of
2153 approval for the permit, approval, variance, or special exception shall be completed.

2154
2155 **K. Appeals.** An appeal to the City's Board of Appeals may be filed by any person aggrieved
2156 by any order, requirement, decision or determination by the City in connection with the
2157 administration and enforcement of this Chapter.

2158
2159 (1) An appeal is taken by filing a written notice of appeal with the Board of Appeals in
2160 accordance with the provisions in Chapter 25, Boards, Committees and Commissions or
2161 the City Code and accompanied by the appropriate filing fee;

2162
2163 (2) An appeal must be filed within thirty (30) days after the date of the decision or order
2164 being appealed; and

2165
2166 (3) An appeal stays all actions by the City seeking enforcement or compliance with the
2167 order or decisions being appealed, unless the City certifies to the Board of Appeals that
2168 (because of facts stated in the certificate) such stay will cause imminent peril to life or
2169 property. In such a case, action by the City shall not be stayed except by order of the Board
2170 of Appeals or a court up on application of the party seeking the stay.

2171
2172 **§ 49-17. Severability.**

2173 If any section, sentence, clause or phrase of this chapter is held invalid or unconstitutional by any
2174 court of competent jurisdiction, then said ruling shall not affect the validity of the remaining
2175 portions of this Chapter.

2176
2177 **§ 49-18. Appendix Information.**
2178

2179 **Appendix I. Resource Conservation Area (RCA) Lot Coverage Standards on Existing Lots.**

2180 The following are standards for lot coverage as required in Limited Development Areas and
2181 Resource Conservation Areas as taken from State regulations.

2182
2183 (1) Except as otherwise provided in this Subsection, lot coverage is limited to 15% of a lot
2184 or parcel, or any portion of a lot or parcel, that are designated LDA or RCA.

2185
2186 (a) If a parcel or lot of one-half acre or less in size existed on or before December
2187 1, 1985, then lot coverage is limited to twenty-five percent (25%) of the parcel or
2188 lot.

2189
2190 (b) If a parcel or lot greater than one-half acre and less than one acre in size existed
2191 on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%)
2192 of the parcel or lot.

2193
2194 (c) If an individual lot one acre or less in size is part of a subdivision approved after
2195 December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the
2196 individual lot; however, the total lot coverage for the entire subdivision may not
2197 exceed fifteen percent (15%).

2198
2199 (d) Lot coverage limits provided in (a) and (b) above may be exceeded, upon
2200 findings by the Department of Planning or its designee that the following conditions
2201 exist:

2202
2203 (i) The lot coverage is legally nonconforming. A lot or parcel legally
2204 developed as of July 1, 2008 may be considered legally nonconforming for
2205 the purposes of lot coverage requirements;

2206
2207 (ii) Lot coverage associated with new development activities on the
2208 property have been minimized;

2209
2210 (iii) For a lot or parcel one-half acre or less in size, total lot coverage does
2211 not exceed lot coverage limits in (a) above by more than twenty-five percent
2212 (25%) or five hundred (500) square feet, whichever is greater;

2213
2214 (iv) For a lot or parcel greater than one-half acre and less than one acre in
2215 size, total lot coverage does not exceed the lot coverage limits in (b) or five
2216 thousand and forty-five (5,445) square feet, whichever is greater;

2217
2218 (v) The following table summarizes the limits set forth in (i) through (iv)
2219 above;

2220
2221 **LOT COVERAGE LIMITS TABLE FOR LDA AND RCA**

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

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(e) If the Department of Planning or its designee makes the finding set forth in (d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:

- (i) Demonstrate that 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 the development activity.
- (iii) If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to the City in lieu of performing the on-site mitigation.

Appendix II. Growth Allocation.

A. Growth Allocation acreage and deduction.

- (1) Growth Allocation available to the City of Havre de Grace includes:
 - (a) An area equal to five (5) percent of the RCA acreage located within the City and;
 - (b) Growth Allocation available to the City as provided by Harford County.
- (2) The City’s original Growth Allocation is 20 acres.

The City’s current Growth Allocation acreage remaining is 20 acres, as of the date of adoption of this Chapter.
- (3) A local jurisdiction shall deduct acreage from its Growth Allocation reserves in accordance with COMAR 27.01.02.06-4.

B. Purpose. Growth Allocation is available for use in a Resource Conservation Area (RCA) or in a Limited Development Area (LDA) in the City’s Critical Area Overlay District. The purpose is to authorize a change in the Critical Area classification to develop at a higher density or use than the current classification allows.

2265 **C. Process.** An applicant shall submit to the City a complete application for Growth
2266 Allocation that complies with the submittal and environmental report requirements of COMAR
2267 27.01.02.06-1—.06-2. A Growth Allocation request shall be approved by the City Council prior
2268 to submission to the Commission.

2269
2270 **D. Requirements.** When locating new Intensely Developed or Limited Development Areas, the
2271 following requirements apply:

- 2272 (1) A new Intensely Developed Area shall be at least 20 acres.
- 2273
- 2274 (2) No more than one-half of the City’s Growth Allocation may be located in Resource
2275 Conservation Areas (RCAs) except as provided in Subsection (3) below.
- 2276
- 2277 (3) If the City is unable to utilize a portion of its Growth Allocation as set out in Subsection
2278 (2) above, then that portion of the Growth Allocation which cannot be so located may
2279 be located in the Resource Conservation Area if the following standards apply:
2280
2281 (a) Consistency with the City’s adopted comprehensive plan and whether the Growth
2282 Allocation would implement the goals and objectives of the adopted plan.
2283 “Consistency with” means that a standard or factor will further, and not be contrary
2284 to, the following items in the comprehensive plan:
2285 (i) Policies;
2286 (ii) Timing of the implementation of the development plan and/or rezoning;
2287 (iii) Development patterns;
2288 (iv) Land uses; and
2289 (v) Densities or intensities.
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2297 **E. Standards.** When locating new Intensely Developed or Limited Development Areas, the
2298 following standards shall apply:

- 2299 (1) A new Intensely Developed Area shall only be located in a Limited Development Area
2300 or adjacent to an existing Intensely Developed Area;
- 2301
- 2302 (2) A new Limited Development Area shall only be located adjacent to an existing Limited
2303 Development Area or an Intensely Developed Area;
- 2304
- 2305 (3) A new Limited Development Area or Intensely Developed Area shall be located in a
2306 manner that minimizes impacts to Habitat Protection Areas as defined herein and in
2307 COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
- 2308
- 2309 (4) A new Intensely Developed Area shall only be located where they minimize their
2310 impacts to the defined land uses of the Resource Conservation Area (RCA);
- 2311
- 2312

2313 (5) A new Intensely Developed Area or a limited Developed Area in a Resource
2314 Conservation Area shall be located at least 300 feet beyond the landward edge of tidal
2315 wetlands or tidal waters;

2316
2317 (6) New Intensely Developed Areas or Limited Development Areas to be located in
2318 Resource Conservation Areas shall conform to all criteria of the City for such areas, shall
2319 be so designated on the City's Critical Area Maps and shall constitute an amendment to
2320 this Chapter subject to review and approval by the City Planning Commission, the City
2321 Council, and the Critical Area Commission as provided herein.

2322
2323 **F. Additional Factors.** In reviewing map amendments or refinements involving the use of
2324 Growth Allocation, the City shall consider the following factors:

2325
2326 (1) Consistency with the City's adopted comprehensive plan and whether the Growth
2327 Allocation would implement the goals and objectives of the adopted plan.

2328
2329 (2) For a map amendment or refinement involving a new Limited Development Area,
2330 whether the development is:

2331
2332 (a) To be served by a public wastewater system or septic system that uses the best
2333 available nitrogen removal technology;

2334
2335 (b) A completion of an existing subdivision;

2336
2337 (c) An expansion of an existing business; or

2338
2339 (d) To be clustered.

2340
2341 (3) For a map amendment or refinement involving a new Intensely Developed Area,
2342 whether the development is:

2343
2344 (a) To be served by a public wastewater system;

2345
2346 (b) If greater than 20 acres, to be located in a designated Priority Funding Area; and

2347
2348 (c) To have a demonstrable economic benefit.

2349
2350 (4) The use of existing public infrastructure, where practical;

2351
2352 (5) Consistency with State and regional environmental protection policies concerning the
2353 protection of threatened and endangered species and species in need of conservation
2354 that may be located on- or off-site;

2355
2356 (6) Impacts on a priority preservation area;

2357
2358 (7) Environmental impacts associated with wastewater and stormwater management
2359 practices and wastewater and stormwater discharges to tidal waters, tidal wetland, and
2360 tributary streams; and

2361

- 2362 (8) Environmental impacts associated with location in a coastal hazard area or an increased
2363 risk of severe flooding attributable to the proposed development.
2364

2365 **Appendix III. 100' Buffer Requirements.**

2366 The following are the Buffer requirements applicable to RCA and areas of future Growth
2367 Allocation, as per §49-4 of this Chapter and COMAR 27.01.09.01.
2368

2369 **A. Applicability and Delineation.** An applicant for a development activity or a change in
2370 land use shall apply all of the required standards as described below. The Buffer shall be delineated
2371 in the field and shall be shown on applications as follows:
2372

2373 (1) A Buffer of at least 100 feet is delineated, and expanded as described in A(3), based on
2374 existing field conditions landward from:

- 2375 (a) The mean high water line of a tidal water;
2376
2377 (b) The edge of each bank of a tributary stream; and
2378
2379 (c) The upland boundary of a tidal wetland.
2380

2381
2382 (2) Applications for development activity on land located within the RCA requiring site
2383 plan approval after July 1, 2008 shall include a minimum Buffer of at least 200 feet from
2384 a tidal waterway or tidal wetlands. Subdivision activity in the RCA is prohibited by Chapter
2385 205, Zoning and most RCA is publicly-owned land.
2386

2387 (3) The 100' Buffer shall be expanded beyond 100 feet as described in A(1) above, and
2388 beyond 200 feet as described in A(2) above, to include the following contiguous land
2389 features:
2390

- 2391 (a) A steep slope at a rate of four feet for every one percent (1%) of slope or the
2392 entire steep slope to the top of the slope, whichever is greater;
2393
2394 (b) A nontidal wetland to the upland boundary of the nontidal wetland;
2395
2396 (c) The 100' Buffer that is associated with a Nontidal Wetland of Special State
2397 Concern as stated in COMAR 26.23.06.01; and
2398
2399 (d) For an area of hydric soils or highly erodible soils, the lesser of:
2400
2401 (i) The landward edge of the hydric or highly erodible soils; or
2402
2403 (ii) Three hundred feet where the expansion area includes the minimum
2404 100' Buffer.
2405

2406 **B. Development Activities in the Buffer.** The City may authorize disturbance to the Buffer
2407 for the following activities, provided mitigation is performed in accordance with Subsection D
2408 below and an approved Buffer Management Plan is submitted as required per Subsection F below:
2409

2410 (1) A new development or redevelopment activity associated with a water-dependent
2411 facility as described in §49-7.
2412

2413 (2) A shore erosion control activity constructed in accordance with COMAR 26.24.02, a
2414 shore erosion control measure under COMAR 26.24.04, and this Chapter.
2415

2416 (3) A development or redevelopment activity approved in accordance with the variance
2417 provisions of this Chapter.
2418

2419 (4) A new development or redevelopment activity on a lot or parcel that was created before
2420 January 1, 2010, where:
2421

2422 (a) The Buffer is expanded for highly erodible soil on a slope less than 15 percent
2423 (15%) or is expanded for a hydric soil and the expanded Buffer occupies at least 75
2424 percent (15%) of the lot or parcel;
2425

2426 (b) The development or redevelopment is located in the expanded portion of the
2427 Buffer and not within the 100-foot Buffer; and
2428

2429 (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed
2430 development activity that is in the expanded Buffer.
2431

2432 (5) Riparian access for water access, where mitigation is required at a rate of 2:1.
2433

2434 **C. Buffer Establishment.**
2435

2436 (1) The requirements of this regulation are applicable to:
2437

2438 (a) A development or redevelopment activity that occurs on a lot or parcel that
2439 includes a Buffer to tidal waters, a tidal wetland, or a tributary stream if that
2440 development or redevelopment activity is located outside the Buffer; and
2441

2442 (b) The approval of a subdivision that includes a Buffer to tidal waters, a tidal
2443 wetland, or a tributary stream.
2444

2445 (2) If an applicant for a subdivision of a lot uses or leases the lot for an agricultural
2446 purpose, the applicant:
2447

2448 (a) In accordance with local land recordation requirements, shall record an
2449 approved Buffer Management Plan under Part F of this Chapter; and
2450

2451 (b) If authorized by the local jurisdiction, may delay implementation of the Buffer
2452 Management Plan until the use of the lot is converted to a nonagricultural
2453 purpose.
2454

2455 (3) The requirements of this regulation are not applicable to an in-kind replacement of a
2456 structure.
2457

2458 (4) A local jurisdiction shall require an applicant to establish the Buffer in vegetation in
 2459 accordance with the table below and Part E of this Chapter and to provide a Buffer
 2460 Management Plan under Part F of this Chapter when an applicant applies for:

- 2461 (a) Approval of a subdivision;
- 2462
- 2463 (b) Conversion from one land use to another land use on a lot or a parcel; or
- 2464
- 2465 (c) Development on a lot or a parcel created before January 1, 2010.
- 2466
- 2467

2468 (5) When the Buffer is not fully forested or is not fully established in existing, naturally
 2469 occurring woody or wetland vegetation, an applicant shall establish the Buffer to the
 2470 extent required in COMAR 27.01.09.01-1(C).

2471 (6) A local jurisdiction may authorize an applicant to deduct from the total establishment
 2472 requirement an area of lot coverage removed from the Buffer if:

- 2473 (a) The lot coverage existed before the date of local program adoption or was
 2474 allowed by local procedures; and
- 2475
- 2476 (b) The total area is stabilized.
- 2477
- 2478
- 2479

2480 **D. Mitigation for Impacts to the Buffer.** An applicant for a development project that
 2481 includes disturbance to the Buffer shall mitigate for impacts to the Buffer and shall provide a
 2482 Buffer Management Plan in accordance with the standards set forth in this Subsection.

2483 (1) All authorized development activities shall be mitigated based on the ratios noted in the
 2484 table below, in addition to the area of canopy coverage removed for an individual tree,
 2485 developed woodland or forest.

2486 **Table for Buffer Mitigation Ratios**

Activity	Mitigation Ratio	
	Permanent Disturbance	Temporary Disturbance
Septic on a lot created before local program approval if located in existing grass or if clearing is not required*	Not Applicable	0
Septic system in a forest or developed woodland on a lot created before local program approval if clearing is required*	1:1	Not applicable
Shore Erosion Control	1:1	1:1
Riparian Water Access	2:1	1:1
Water-dependent Facility	2:1	1:1
Variance	3:1	1:1

2487 *In no case is septic applicable in the City of Havre de Grace.

2488 (2) All unauthorized development activities and/or disturbance in the Buffer shall be
 2489 mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.

2494 (3) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting
 2495 cannot be located within the Buffer, then the City may permit planting in the following
 2496 order of priority:

2497
 2498 (a) On-site and adjacent to the Buffer; and

2499
 2500 (b) On-site elsewhere in the Critical Area.

2501
 2502 (4) The installation or cultivation of new lawn or turf in the Buffer is prohibited.

2503
 2504 **E. Buffer Planting Standards.**

2505
 2506 (1) An applicant that is required to plant the Buffer to meet establishment or mitigation
 2507 requirements shall apply the planting standards set forth in the table below.

2508
 2509 **Table for Landscape Stock Credit**

Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percentage of Landscape Stock Credit
Canopy Tree	2-inch caliper	200	Not Applicable
Canopy Tree	¾-inch caliper	100	Not applicable
Understory Tree	¾-inch caliper	75	Not applicable
Large Shrub	3 feet high	50	30%
Small 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 A (For less than ½ acre of planting)	1 canopy tree; and 3 large shrubs or 6 small shrubs of size listed above	300	Not applicable
Planting Cluster B (For less than ½ acre of planting)	2 understory trees; and 3 large shrubs or 6 small shrubs of size listed above	350	Not applicable

2510
 2511 (2) A variance to the planting and mitigation standards of this Chapter is not permitted.

2512
 2513 **F. Required submittal of Buffer Management Plans.** An applicant that is required to plant
 2514 the Buffer to meet establishment or mitigation requirements shall submit a Buffer Management
 2515 Plan in accordance with COMAR 27.01.09.01-3. The provisions of this Section do not apply to
 2516 maintaining an existing grass lawn or an existing garden in the Buffer.

2517
 2518 (1) Any permit for a development activity that requires Buffer establishment or Buffer
 2519 mitigation will not be issued until a Buffer Management Plan is approved by the City.

2520
 2521 (2) An applicant may not obtain final approval of a subdivision application until the Buffer
 2522 Management Plan has been reviewed and approved by the City.

2523
 2524 (3) The City may not approve a Buffer Management Plan unless:

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(a) The plan clearly indicates that all planting standards under Subsection E of this Chapter will be met; and

(b) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.

(4) For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:

(a) Completes the implementation of a Buffer Management Plan; or

(b) Provides financial assurance to cover the costs for:

(i) Materials and installation; and

(ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.

(5) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.

(6) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Chapter. A permit for development activity will not be issued for a property that has the violation.

(7) An applicant shall post mitigation area with permanent signs in accordance with COMAR 27.01.09.01-2.

(8) Buffer management plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

G. Fee-In-Lieu of Buffer Mitigation. A fee in-lieu of mitigation will be collected if the planting requirements of Subsection D above cannot be fully met onsite, in accordance with the following standards:

(1) Fee-in-lieu monies shall be collected and held in the restricted Critical Area Fund, which may not revert to the City's general fund;

(2) Fee-in-lieu shall be assessed at \$1.50 per square foot of required Buffer mitigation;

(3) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and

(4) Fee-in-lieu monies shall be used for the following projects:

(a) To establish the Buffer on sites where planting is not a condition of development or redevelopment;

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2575

(b) For water quality and habitat enhancement projects as approved by the Critical Area Commission or by agreement between the City and the Critical Area Commission.

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Appendix IV. Renewable Energy Generating Systems.

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Renewable Energy regulations are in effect under COMAR Title 27. Critical Area Commission for the Chesapeake and Coastal Bays. The purpose of the regulations is to provide development standards for minor (2 MW or less) and major (greater than 2MW) solar projects in the Critical Area on private lands, State lands, and lands owned by a local jurisdiction. The regulations include provisions related to Buffer disturbance, forest clearing, habitat protection areas, mitigation, and density provisions for location in the Resource Conservation Area of the Critical Area.

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There is little applicability for renewable energy generating systems being located in the Critical Area in Havre de Grace. Please see applicable sections of COMAR for requirements for any such projects.

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NOW THEREFORE, it is determined, decided, and ordained by the City Council that foregoing amendments to the City Code are hereby approved.

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2593

ADOPTED by the City Council of Havre de Grace, Maryland this ___ day of _____, 2021.

2594

2595

SIGNED by the Mayor and attested by the Director of Administration this ___ day of _____, 2021.

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ATTEST:

THE MAYOR AND CITY COUNCIL
OF HAVRE DE GRACE, MARYLAND

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2601

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Stephen J. Gamatoria
Director of Administration

William T. Martin
Mayor

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Introduced/First Reading: [mm/dd/yyyy]

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Public Hearing: [mm/dd/yyyy]

2609

Second Reading/Adopted: [mm/dd/yyyy]

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Effective Date: [mm/dd/yyyy]

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Legislative History

2616

Ordinance No. _____, As Amended, enacted [Date] _____

2617

Ordinance No. _____, As Amended, enacted [Date] _____

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