

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2010 Legislative Session

Bill No. CB-75-2010

Chapter No. 67

Proposed and Presented by The Chairman (by request – County Executive)

Introduced by Council Member Dernoga

Co-Sponsors _____

Date of Introduction September 7, 2010

BILL

1 AN ACT concerning

2 Chesapeake Bay Critical Area Ordinance

3 For the purpose of updating Subtitle 5B, the Chesapeake Bay Critical Area Ordinance.

4 BY repealing and reenacting with amendments:

5 SUBTITLE 4. BUILDING.

6 Sections 4-123 and 4-345

7 SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA.

8 Sections 5B-101 through 5B-103, and 5B-105

9 The Prince George's County Code

10 (2007 Edition, 2009 Supplement).

11 BY repealing:

12 SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA.

13 DIVISION 1. AGRICULTURAL LAND MANAGEMENT.

14 SUBDIVISION 4. ENFORCEMENT AND PENALTIES

15 Sections 5B-106 and 5B-107

16 The Prince George's County Code

17 (2007 Edition, 2009 Supplement).

18 BY adding:

19 SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA.

20

21

DIVISION 2. URBAN AND RURAL LAND DEVELOPMENT
Sections 5B-108 through 5B-124
The Prince George's County Code
(2007 Edition, 2009 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 4-123 and 4-345 of Subtitle 4 and Sections 5B-101 through 5B-103, and 5B-105 of Subtitle 5B of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 4. BUILDING
DIVISION 1. BUILDING CODE.

Sec. 4-123. Definitions; Section 202, General Definitions.

(a) The following amendments, additions, and/or deletions are made to Section 202 of the IBC and the IRC:

(1) The following definitions are inserted alphabetically into Section 202:

[**Chesapeake Bay Critical Area:** All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps; and all State and private wetlands designated under the Annotated Code of Maryland, Natural Resources Article, Title 9; and all land and water areas within one thousand (1,000) feet beyond the landward boundaries of State or private wetlands and heads of tides designated under the Annotated Code of Maryland, Natural Resources Article, Title 9, as indicated on approved Chesapeake Bay Critical Area Overlay Zoning Map Amendments.]

* * * * *

DIVISION 5. ADMINISTRATIVE PROVISIONS.

Sec. 4-345. Requirements for Grading, Building Construction, Removal, etc., generally.

(a) The regulations contained in this Subtitle and the provisions of its Divisions jointly construed shall control all matters concerning grading, drainage, and erosion control, and the construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings and structures and their service equipment, and shall apply to existing or proposed buildings and structures in the County, except such matters as are otherwise provided for in the Prince George's County Code, in the rules and regulations pertaining to the Washington Suburban Sanitary District as lawfully adopted by the Washington Suburban

1 Sanitary Commission pursuant to the authorities contained in its organic statute, in Subtitle 27 of
2 this Code adopted by the Prince George's County Council sitting as the District Council for that
3 part of the Maryland-Washington Regional District in the County, as the same may from time to
4 time be amended and in all laws having general application in the County under the public
5 general and public local laws of the State, as well as rules and regulations of Maryland State
6 departments or agencies.

7 * * * * *

8 [(j) In the Chesapeake Bay Critical Area Overlay Zones, trees removed pursuant to an
9 approved Conservation Plan and Conservation Agreement shall be replaced in accordance with
10 the Conservation Manual by reforestation or afforestation, or a fee in lieu of reforestation or
11 afforestation may be paid prior to the issuance of any permits pursuant to this Subtitle. All fees
12 in lieu shall be maintained in a specially created fund under the administration of the Director,
13 Department of Environmental Resources, and shall be used solely for reforestation or
14 afforestation of land located in the Chesapeake Bay Critical Area Overlay Zones.]

15 [(k) (j) Permits applied for prior to July 1, 1992, for sanitary landfills and for clean earth
16 fills, when not pursuant to an approved plan of development, shall be exempted from compliance
17 with the provisions of Section 25-117 of this Code.

18 [(l) (k) No building permit shall be recommended for approval by the Planning Board or its
19 authorized representative, or issued by the Department of Environmental Resources, for any
20 building or structure in Prince George's County on a lot or parcel of land that is located within
21 the area of an adopted and approved Area Master Plan which includes a Zoning Proposal that has
22 been prepared pursuant to the provisions of Section 27-225.01, or a Sectional Map Amendment
23 which has been transmitted by the Planning Board to the District Council pursuant to the
24 provisions of Section 27-225, if the lot or parcel is in a Commercial or Industrial Zone, was
25 proposed by the Planning Board for a less intense zone in which the proposed use is not
26 permitted, is undeveloped, and has been in the same zone for more than ten (10) years, until final
27 action on the Sectional Map Amendment by the District Council. This Subsection shall not
28 apply to a lot or parcel of land for which a grading permit has been issued by Prince George's
29 County, sediment and erosion control devices have been installed by the permittee, and site
30 grading activities have been initiated by the permittee.

31 * * * * *

SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA.
DIVISION 1. AGRICULTURAL LAND MANAGEMENT.
SUBDIVISION 1. GENERAL PROVISIONS.

Sec. 5B-101. Short title; purpose

(a) The provisions of this Division shall constitute and be known as the "Agricultural Ordinance of Prince George's County, Maryland."

(b) The purpose of this [Ordinance] Division is to provide for the management of agricultural land so that nonpoint source pollution resulting from agricultural activities is minimized and natural habitats are conserved.

(c) All development and utilization of property located in a Chesapeake Bay Critical Area Overlay Zone shall be in accordance with this Division with regard to agricultural practices and [the Conservation Manual] Division 2; and, where appropriate, in accordance with a an approved Conservation Plan and Conservation Agreement.

Sec. 5B-102. [Definitions] Agriculture.

[(a) For the purpose of this Division, the following terms, phrases, and words and their derivations shall have the meaning given herein:]

[(1) **Agricultural Land.** Those lands which are assessed agricultural for tax purposes.]

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

[(3) **Best Management Practices.** Those conservation practices or systems of practices and management measures that control soil and nutrient loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment, including, but not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.]

[(4) **Buffer.** A naturally vegetated area or vegetated area established or managed to protect aquatic, wetland, shoreline, and terrestrial environments from disturbances. A primary

1 | buffer represents the minimum buffer required in the Chesapeake Bay Critical Area and includes
2 | the area within one hundred (100) feet of the mean high tide line and the area within one hundred
3 | (100) feet of each side of the channel of tributary streams. A secondary buffer includes areas
4 | contiguous to the primary buffer which are essential for the buffer to perform all of its integral
5 | functions, including but not limited to, palustrine nontidal wetlands, steep and severe slopes in
6 | excess of fifteen percent (15%), highly erodible soils, hydrologic soil (Group D) and the one
7 | hundred (100) year floodplain. The primary and secondary buffers, combined, constitute the
8 | "Buffer" in a Chesapeake Bay Critical Area Overlay Zone.]

9 | [(5) **Chesapeake Bay Critical Area or Critical Area.** All waters of and lands under
10 | the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands
11 | maps; and all State and private wetlands designated under the Annotated Code of Maryland,
12 | Natural Resources Article, Title 9; and all land and water areas within one thousand (1,000) feet
13 | beyond the landward boundaries of State or private wetlands and heads of tides designated under
14 | the Annotated Code of Maryland, Natural Resources Article, Title 9, as indicated on approved
15 | Chesapeake Bay Critical Area Overlay Zoning Map Amendments.]

16 | [(6) **Conservation Agreement.** A formal agreement which commits a grading or
17 | building permit applicant to the execution of various approved elements of a Conservation Plan,
18 | including a stormwater management concept plan, an erosion and sedimentation concept plan, a
19 | vegetation management plan, and other plans which may be required by the Department of
20 | Environmental Resources or the Prince George's County Planning Board.]

21 | [(7) **Conservation Manual.** The manual which describes how a Conservation Plan is
22 | to be prepared in order to meet the requirements of the Chesapeake Bay Critical Area program,
23 | and which is adopted by the District Council and revised and amended from time to time by the
24 | District Council.]

25 | [(8) **Conservation Plan.** A plan developed in accordance with the Conservation
26 | Manual, which demonstrates how a project has been designed to meet the specific Chesapeake
27 | Bay Critical Area criteria. The Conservation Plan consists of a stormwater management concept
28 | plan, an erosion and sedimentation concept plan, a vegetation management plan, and such other
29 | plans relating to environmental systems as may be required by the Washington Suburban
30 | Sanitary Commission, the Maryland-National Capital Park and Planning Commission, the Prince

1 George's County Health Department, the Prince George's County Department of Environmental
2 Resources, or the Prince George's Soil Conservation District.]

3 [(9) "**K Value.**" The soil erodibility factor in the Universal Soil Loss Equation.]

4 [(10)**Mean High Water Line.** The average level of high tides at a given location.]

5 [(11)**Nontidal wetlands.** Those lands in the Chesapeake Bay Critical Area Overlay
6 Zones, excluding tidal wetlands regulated under the Annotated Code of Maryland, Natural
7 Resources Article, Title 9, where the water table is usually at or near the surface, or lands where
8 the soil or substrate is covered by shallow water at some time during the growing season. These
9 lands are usually characterized by one or both of the following:

10 (A) At least periodically, the lands support predominantly hydrophytic
11 vegetation;

12 (B) The substrate is predominantly undrained hydric soils.]

13 [(12)**Prince George's Soil Conservation District.** One of twenty-four (24) soil
14 conservation districts created pursuant to the Annotated Code of Maryland, Agricultural Article,
15 Subtitle 3.]

16 [(13)**Soil Conservation and Water Quality Plan.** Land use plans for farms that assist
17 farmers in making the best possible use of their soil and water resources, while protecting and
18 conserving those resources for the future.]

19 [(14)**Streams.** Those perennial and intermittent streams in the Chesapeake Bay
20 Critical Area Overlay Zones which are so noted on the most recent Maryland-National Capital
21 Park and Planning Commission Topographic Survey Maps (scale: 1 inch = 200 feet at five-foot
22 contour intervals).]

23 [(15)**Tributary streams.** Those perennial and intermittent streams in the Chesapeake
24 Bay Critical Area Overlay Zones which are so noted on the most recent U. S. Geological Survey
25 7 1/2 minute topographic quadrangle map (scale: 1 inch = 24,000 feet).]

26 (a) **General Policies.** This section provides for the management of agricultural land so
27 that non-point source pollution resulting from agricultural activities is minimized and natural
28 habitats are conserved. All of the following policies shall be followed with regard to agriculture
29 in the Critical Area:

30 (1) Assure that agricultural lands are identified and that programs are established for
31 the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the

1 greatest extent possible.

2 (2) Recognize that agriculture is a protective land use that should be properly
 3 managed so that it minimizes its contribution to pollutant loadings to the Bay and its tributaries.

4 (3) In a Chesapeake Bay Critical Area Overlay Zone, new farmland may not be
 5 created:

6 (A) By diking, draining or filling of any class or subclass of wetlands, as
 7 described in the COMAR 27.01.09.02 and in this Subtitle, which have seasonally flooded or
 8 wetter than seasonably flooded water regime, unless mitigation is accomplished as provided by
 9 COMAR 27.01.09.02;

10 (B) By clearing of forests and woodland or soils with a slope of greater than
 11 fifteen percent (15%); or on soils with “K value” greater than thirty-five percent (35%) and a
 12 slope greater than five percent (5%);

13 (C) By clearing existing vegetation in a Buffer established landward from the
 14 Mean High Tide Line of tidal waters, tributary streams and tidal wetlands; or

15 (D) If the clearing adversely affects water quality or will destroy plant or wildlife
 16 habitat.

17 (4) Drainage of non-tidal wetlands for the purpose of agriculture shall be done in
 18 accordance with a Soil Conservation and Water Quality Plan, approved by the County Soil
 19 Conservation District.

20 (5) Best Management Practices (BMPs) for the control of nutrients, animal wastes,
 21 pesticides and sediment runoff shall be used to protect the productivity of the land base and
 22 enhance water quality. These practices shall minimize contamination of surface and groundwater
 23 and further, shall minimize adverse effects on plants, fish and wildlife resources.

24 (6) Animal feeding operations, including retention and storage ponds, feed lot waste
 25 storage and manure storage shall minimize the contamination of water bodies.

26 (7) Agricultural activity permitted within the Critical Area shall use (BMPs) in
 27 accordance with a Soil Conservation and Water Quality Plan approved by the County Soil
 28 Conservation District.

29 (8) The definitions contained in Section 5B-106, Definitions, shall also apply to this
 30 Division.

31 (9) The enforcement and penalties in Section 5B-109, Enforcement, shall also apply

1 to this Division.

2 **Sec. 5B-103 Soil Conservation and Water Quality Plans.**

3 (a) Effective May 13, 1991, each owner of agricultural land in a Chesapeake Bay Critical
4 Area Overlay Zone is required to have in place and implement a Soil Conservation and Water
5 Quality Plan approved by the Prince George's Soil Conservation District.

6 (b) The Prince George's Soil Conservation District shall review and renew Plans at a
7 maximum of five (5) year intervals.

8 (c) A soil Conservation Water Quality Plan shall:

9 (1) Require the implementation of a grassland and manure management program,
10 where appropriate;

11 (2) Require that farming activities, including the grazing of livestock, do not disturb
12 stream banks, tidal shorelines or other Habitat Protection Areas;

13 (3) Prohibit the feeding or watering of livestock within fifty (50) feet of the Mean
14 High Tide Line of tidal waters and tributary streams, or from the edge of tidal wetlands,
15 whichever is further inland;

16 (4) Prohibit the clearing of existing natural vegetation in the Buffer[, as described in
17 the Conservation Manual]; and

18 (5) Prohibit the [agricultural or other] use, storage or disposal of sludge within the
19 Buffer[, as defined in Section 5B-102(a)(4)].

20 (d) Until such time as a Soil Conservation and Water Quality Plan is implemented to the
21 satisfaction of the Department of Public Works and Transportation and the Soil Conservation
22 District, existing farms in the Chesapeake Bay Critical Area Overlay Zones are required to:

23 (1) Maintain a minimum twenty-five (25) foot vegetated filter strip landward from
24 tidal waters, tidal wetlands and streams (excluding drainage ditches), or from the edge of tidal
25 wetlands, whichever is further inland, and further provided that:

26 (A) The filter strip shall be composed of either trees with a dense ground cover,
27 or other appropriate vegetation, and shall be so managed as to provide water quality benefits and
28 habitat protection. Noxious weeds, including Johnson grass, Canada thistle, and Multiflora rose,
29 which occur in the filter strip, may be controlled by authorized means; and

30 (B) The filter strip shall be expanded by a distance of four (4) feet for every one
31 percent (1%) of slope, for slopes greater than six percent (6%).

1 (2) Further, farmers shall use the following practices:

2 (A) Cover crops shall be planted to reduce erosion.

3 (B) Nutrients shall be applied at the appropriate time and appropriate methods
 4 shall be used.

5 (C) Reduced tillage (e.g. Ano-till) practices shall be utilized where practical.

6 (D) Crop rotations shall be implemented.

7 (e) The Prince George’s Soil Conservation District shall provide documentation and
 8 periodic updates of approved Soil Conservation and Water Quality Plans in the Chesapeake Bay
 9 Critical Area Overlay Zones to the Director of the Department of Public Works and
 10 Transportation [Department of Environmental Resources].

11 (f) Agricultural activities in the Buffer. Agricultural activities are permitted in the Buffer,
 12 if, as a minimum best management practice, a twenty-five (25) foot vegetated filter strip
 13 measured landward from the Mean High Tide Line of tidal waters or tributary streams, or from
 14 the edge of tidal wetlands, whichever is further inland, is established and further provided that:

15 (1) The filter strip shall be composed of either trees with a dense ground cover or a
 16 thick sod of grass and shall be so managed as to provide water quality benefits and habitat
 17 protection consistent with the policies stated above. Noxious weeds, including Johnson grass,
 18 Canada thistle, and Multiflora rose, which occur in the filter strip, may be controlled by
 19 authorized means;

20 (2) The filter strip shall be expanded by a distance of four (4) feet for every one
 21 percent (1%) of slope, for slopes greater than six percent (6%);

22 (3) The twenty-five (25) foot vegetated filter shall be maintained until such time as
 23 the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a
 24 program of (BMPs) for the specific purposes of improving water quality and protecting plant and
 25 wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan
 26 implemented achieves the water quality and habitat protection objectives of the twenty-five (25)
 27 foot vegetated filter strip;

28 (4) Clearing of existing vegetation in the Buffer is not allowed; and

29 (5) Farming activities, including the grazing of livestock, shall not disturb stream
 30 banks, tidal shorelines or other Habitat Protection Areas as described in Subtitle 5B.

31 (g) When agricultural uses in the Buffer area cease and a new use is proposed, the Buffer

1 shall be established in forest vegetation. The Buffer shall be established landward from the mean
2 high water line of tidal waters, the edge of tributary streams, and the edge of wetlands. In
3 establishing the Buffer, management measures shall be undertaken to provide forest vegetation
4 that assures the Buffer functions set forth in that section of the Subtitle.

5 * * * * *

6 **SUBDIVISION 3. CREATION OF NEW FARMLAND.**

7 **Sec. 5B-105. Prohibitions.**

- 8 (a) In a Chesapeake Bay Critical Area Overlay Zone, new farmland may not be created:
- 9 (1) By diking, draining, or filling of any class or subclass of wetlands, as described in
- 10 the Code of Maryland Regulations ("COMAR") 14.15.09.02 and in [the Conservation Manual]
- 11 Subtitle 5B, which have a seasonally flooded or wetter than seasonally flooded water regime,
- 12 unless mitigation is accomplished as provided by COMAR 14.15.09.02; or
- 13 (2) By clearing of forests and woodland or soils with a slope of greater than fifteen
- 14 percent (15%); or on soils with "K value" greater than thirty-five percent (35%) and a slope
- 15 greater than five percent (5%); or
- 16 (3) In the vegetated Buffer as defined in Section 5B-102(a)(4) existing (as of May 13,
- 17 1986) landward from the Mean High Water Line of tidal waters, tributary streams, and tidal
- 18 wetlands; or
- 19 (4) If the clearing adversely affects water quality or will destroy wildlife habitat, as
- 20 defined in COMAR 14.15.09 and in the Environmental Technical Manual.

21 (b) The prohibitions contained in this Subdivision shall be included on every Soil
22 Conservation and Water Quality Plan filed.

23 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
24 Maryland, that Subdivision 4. Enforcement and Penalties, Sections 5B-106 and 5B-107 of
25 Division 1. Agricultural Land Management, of Subtitle 5B. Chesapeake Bay Critical Area of the
26 Prince George's County Code be and the same is hereby repealed:

27 **Sec. 5B-106 through Sec. 5B-107. Reserved.**

28 SECTION 3. BE IT ENACTED by the County Council of Prince George's County,
29 Maryland, that Division 2. Urban And Rural Land Development, Subdivision 1. General
30 Provisions, Sections 5B-108 through 5B- 124 of Subtitle 5B. Chesapeake Bay Critical Area, of
31 the Prince George's County Code be and the same is hereby added:

SUBTITLE 5B. CHESAPEAKE BAY CRITICAL AREA
DIVISION 2. URBAN AND RURAL LAND DEVELOPMENT.
SUBDIVISION 1. GENERAL PROVISIONS.

Sec. 5B-108. Definitions.

(a) **Applicability.** For the purpose of this Subtitle, the following terms, phrases, and words and their derivations shall have the meaning given herein:

(1) **Abatement.** The act of putting an end to a land alteration, development activity, or other action cited as a violation under this Subdivision. Abatement includes the act of reducing the degree or intensity of the alteration, activity, or action.

(2) **Afforestation.** The establishment of a biological community of perpetual woodlands either through the planting of trees on an area from which trees have always or very long been absent, or the planting of open areas which are not presently in forest cover.

(3) **Agricultural easement** - a non-possessory interest in land that restricts the conversion of use of the land, preventing non-agricultural uses.

(4) **Agricultural Land.** Those lands which are assessed agricultural for tax purposes.

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

(6) **Andromous fish.** Fish that travel upstream from their primary habitat in the ocean to freshwater in order to spawn.

(7) **Andromous fish propagation waters.** Those streams that are tributaries to the Chesapeake Bay where spawning of andromous species of fish (e.g., rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred.

(8) **Aquaculture.**

(A) **Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments.**

(B) **Activities include hatching, cultivating, planting, feeding, raising, and**

1 harvesting of aquatic plants and animals and the maintenance and construction of necessary
 2 equipment, buildings, and growing areas.

3 (C) Cultivation methods include, but are not limited to, seed or larvae
 4 development and grow-out facilities, fish pens, shellfish rafts, racks and loglines, seaweed floats
 5 and the culture of clams and oysters on tidelands and sub tidal areas.

6 For the purpose of this definition, related activities such as wholesale and retail sales,
 7 processing and product storage facilities are not considered aqua cultural practices.

8 (9) **Best Management Practices (BMPs).** Those conservation practices or systems
 9 of practices and management measures that control soil and nutrient loss and reduce water
 10 quality degradation caused by nutrients, animal waste, toxics, and sediment, including, but not
 11 limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures,
 12 ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application
 13 measures.

14 (10) **Bona fide Intra-family Transfer.** A transfer to a member of the owner's
 15 immediate family of a portion of the owner's property for the purpose of establishing a
 16 residence for that family member. See "immediate family."

17 (11) **Breeding bird areas.** Wooded areas where the occurrence of interior dwelling
 18 birds, during the breeding season, has been demonstrated as a result of on-site surveys using
 19 standard biological survey techniques.

20 (12) **Chesapeake Bay Critical Area or Critical Area (CBCA).** All lands and waters
 21 defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. This
 22 includes: (a) all waters of and lands under the Chesapeake Bay and its tributaries to the head of
 23 tide, and State and private wetlands designated under Title 16 of the Environment Article; (b) all
 24 land and water within one thousand (1,000) feet beyond the resources identified in (a); and (c)
 25 Modification to these areas through inclusions or exclusions proposed by local jurisdictions and
 26 approved by the Commission as specified in §8-1807 of the Natural Resources Article,
 27 Annotated Code of Maryland.

28 (13) **Clear cutting.** Removal of the entire stand of trees in one cutting with tree
 29 reproduction obtained by natural seeding from adjacent stands or from trees that were cut from
 30 advanced regeneration or stump sprouts or from planting of seeds or seedlings by man.

31 (14) **Clearing .** The removal of trees, understory trees, saplings, shrubs or herbaceous

1 plants even if the stumps or root systems remain intact. Clearing includes using a mechanical
 2 device to remove vegetation (e.g. bush hogging). Horticultural practices necessary to maintain
 3 the health of individual trees are not restricted, but must be approved if associated with any
 4 disturbance in the buffer.

5 (15) **Colonial nesting water birds.** Herons, egrets, terns, and glossy ibis. For the
 6 purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which
 7 time, the regional populations of these species are highly susceptible to local disturbances.

8 (16) **Commercial logging.** See timber harvesting.

9 (17) **Commission.** Critical Area Commission for the Chesapeake and Atlantic Coastal
 10 Bays.

11 (18) **Community piers.** Boat docking facilities associated with subdivisions or similar
 12 residential areas, and with condominium, apartment and other multiple family dwelling units.
 13 Private piers are excluded from this definition.

14 (19) **Conservation Agreement.** A formal agreement which commits a grading or
 15 building permit applicant to the execution of various approved elements of an approved
 16 conservation plan, planting plan or buffer management plan, including a stormwater
 17 management concept plan, an erosion and sedimentation concept plan, a vegetation management
 18 plan, and other plans which may be required by the Department of Public Works and
 19 Transportation or the Prince George's County Planning Board. Conservation Agreements shall
 20 be recorded in the land records prior to permit issuance.

21 (20) **Conservation Easement.** A recorded easement established for the protection of
 22 sensitive resources within the Critical Area.

23 (21) **Conservation Plan.** A plan developed in accordance with this Subtitle and the
 24 applicable provisions of Subtitles 24 and 27 which demonstrates how a project has been designed
 25 to meet the specific Chesapeake Bay Critical Area criteria. The Conservation Plan consists of a
 26 stormwater management concept plan, an erosion and sedimentation concept plan, a vegetation
 27 management plan, and such other plans relating to environmental systems as may be required by
 28 the Washington Suburban Sanitary Commission, the Maryland-National Capital Park and
 29 Planning Commission, the Prince George's County Health Department, the Prince George's
 30 County Department of Public Works and Transportation, or the Prince George's Soil
 31 Conservation District.

1 (22) **Contiguous.** Touching and sharing a common point or line.

2 (23) **Corrective Order.** A notice to the owner and/or person responsible for corrective
3 actions to a violation to this subtitle which shall be completed within the specified time as
4 indicated in the order.

5 (24) **County.** Prince George's County, Maryland

6 (25) **Cover crop.** Establishment of a vegetative cover to protect soils from erosion and
7 to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of
8 grasses or legumes, or crop residues such as corn, wheat or soybean stubble which maximize
9 infiltration and prevent runoff from reaching erosive velocities.

10 (26) **Critical Area Buffer ("the Buffer").** An area that is immediately landward from
11 mean high water of tidal waters, the edge of bank of a tributary stream, or the edge of a tidal
12 wetland; and exists or may be established in, natural vegetation to protect a stream, tidal wetland,
13 tidal water, or terrestrial environments from human disturbance. Delineation of the Buffer is
14 described in Section 5B-121(a).

15 (27) **Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.**
16 Previously referred to as the Chesapeake Bay Critical Area Commission and the entity charged
17 with state oversight for compliance and/or enforcement of the Annotated Code of Maryland,
18 Natural Resources Article, Title 9.

19 (28) **Density.** The number of dwelling units per acre of net lot area. In the R-C-O
20 Zone, the gross tract acreage is used to calculate density except as noted in Section 5B-115(f).

21 (29) **Developed woodlands.** Those areas of vegetation that do not meet the definition
22 of woodlands, but which contain trees and other natural vegetation and which also include
23 residential, commercial, or industrial structures and uses.

24 (30) **Developer.** A person who undertakes development activity as defined in this
25 Ordinance; or a person who undertakes development activity as defined in this Subtitle.

26 (31) **Development.** Any activity that materially affects the condition or use of dry
27 land, land under water, or any structure.

28 (32) **Development activities.** Human activity that results in disturbance to land,
29 natural vegetation, or a structure.

30 (33) **Director.** Director of the Prince George's County, Maryland, Department of
31 Public Works and Transportation.

1 (34) **Disturbance.** The alteration or change in land surfaces and any amount of
2 clearing, grading or construction activity.

3 (35) **Ecosystem.** A self-contained biological community together with the physical
4 environment in which the community's organisms occur.

5 (36) **Endangered species.** Any species of fish wildlife, or plants that have been
6 designated as "endangered" or "endangered extirpated" by regulation of the Secretary of the
7 Department of Natural Resources in Code of Maryland Regulations COMAR 08.03.08. This
8 includes any species determined to be an "endangered" species pursuant to the Federal
9 Endangered Species Act.

10 (37) **Environmental Technical Manual.** A technical manual, as approved and
11 amended by the Planning Board from time to time, that contains the technical requirements for
12 conformance to the Critical Area regulations.

13 (38) **Erosion and sediment control plan.** An erosion and sediment control strategy or
14 plan, to minimize erosion and prevent off-site sedimentation by containing sediment on-site or
15 by passing sediment laden runoff through a sediment control measure, prepared and approved in
16 accordance with the specific requirements of the Prince George's Soil Conservation District and
17 Subtitle 4 of the Prince George's County Code, and designed in accordance with the Standards
18 and Specifications.

19 (39) **Establishment of a buffer.** The creation of a vegetated area or planted area that
20 provides vegetative cover throughout the Buffer.

21 (40) **Fisheries activities.** Commercial water dependent fisheries facilities including
22 structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks,
23 amphibians and reptiles and also including related activities such as wholesale and retail sales
24 product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and
25 shore-based facilities necessary for aquacultural operations.

26 (41) **Forest.** See "woodlands".

27 (42) **Forest Management Plan.** A plan prepared in conformance with Subtitle 25.

28 (43) **Forest interior dwelling birds.** Species of birds that require relatively large
29 forested tracts in order to breed successfully (e.g., various species of flycatchers, warblers,
30 vireos, and woodpeckers).

1 (44) **Forest interior dwelling bird habitat.** Woodland areas of sufficient size as to be
 2 favorable to the breeding of forest interior dwelling bird species which are assumed to be present
 3 if the majority of the forest is dominated by pole-sized or larger trees (five inches or greater
 4 diameter at breast height), or has a closed canopy; and meets one the following conditions:

5 (A) The woodlands are a minimum of 50 acres in size and contain at least 10
 6 acres of "forest interior" habitat which is located more than 300 feet from the nearest forest edge;
 7 or

8 (B) Riparian forests at least 50 acres in size with a minimum average width of
 9 300 feet within the watershed of a regulated stream.

10 (45) **Forest management activity.** Activities such as the harvesting of forest products,
 11 thinning, wildlife habitat protection, and watershed protection as identified on an approved
 12 Forest Management Plan.

13 (46) **Highly erodible soils.** Those soils with a slope greater than 15 percent or those
 14 soils with a K value greater than 0.35 and with slopes greater than 5 percent.

15 (47) **Historic waterfowl staging and concentration area.** An area of open water and
 16 adjacent marshes where waterfowl gather during migration and throughout the winter season.
 17 These areas are historic in the sense that their location is common knowledge and because these
 18 areas have been used regularly during recent times.

19 (48) **Hydric soils.** Soils that are wet frequently enough to periodically produce
 20 anaerobic conditions, thereby influencing the species composition of growth, or both, of plants
 21 on those soils.

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

26 (50) **In-kind replacement.** The replacement of a structure with another structure that
 27 is identical to the original structure in all dimensions including footprint area, width, and length,
 28 and is also identical in use.

29 (51) **Intensely Developed Overlay (I-D-O) Zone.** As defined in Section 27-548-13 of
 30 Subtitle 27, an overlay zone that includes:

31 (A) An area with a housing density of at least four dwelling units per acre; or

1 (B) An area with public water and sewer systems with a housing density of more
 2 than three dwelling units per acre.

3 (52) **K-value.** The soil erodibility factor in the Universal Soil Loss Equation.

4 (53) **Limited Development Overlay (L-D-O) zone.** An area that includes:

5 (A) an area with a housing density ranging from one dwelling unit per five acres
 6 up to four dwelling units per acre;

7 (B) an area with a public water or sewer system;

8 (C) an area that is not dominated by agricultural land, wetland, forests, surface
 9 water, or open space;

10 (54) **Lot area, gross.** The total area of a tract of land, including all land area which is
 11 to be conveyed for “public facilities” exclusive of the area that lies within state wetlands.

12 (55) **Lot area, net.** The gross lot area minus the 100-year floodplain.

13 (56) **Lot consolidation.** A combination or adjustment of any legal parcels of land or
 14 record lots in accordance with Section 24-107(c)(9), (d) or 24-108 of Subtitle 24, in the
 15 Chesapeake Bay Critical Area.

16 (57) **Lot coverage in the Critical Area.** The percentage of a gross area of a lot or
 17 parcel that is existing or proposed to be (1) occupied by a structure, accessory structure, parking
 18 area, driveway, walkway, impermeable deck or stairway, or roadway; or (2) covered with,
 19 gravel, stone, shell, impermeable decking, pavers, permeable pavement, or any manmade
 20 material. Lot coverage in the Critical Area does not include (1) a fence or wall that is less than
 21 one-foot in width that has not been constructed with a footer; (2) a walkway in the Primary or
 22 Secondary Buffer, including a stairway that provides direct access to a community or private
 23 pier; (3) a wood mulch pathway, or (4) a deck with gaps to allow water to pass freely.

24 (58) **Marina.** Any facility for the mooring, berthing, storing, or securing of watercraft,
 25 but not including community piers and other non-commercial boat docking and storage facilities.

26 (59) **Mean high water line.** The average level of high tides at a given location.

27 (60) **Mitigation.** An action taken to compensate for adverse impacts to the
 28 environment resulting from development, a development activity, or a change in land use or
 29 intensity.

30 (61) **Natural Heritage Area.** Any communities of plants or animals that are
 31 considered to be among the best statewide examples of their kind, and are designated by

1 regulation by the Secretary of the Department of Natural Resources.

2 (62) **Natural regeneration.** The establishment or re-establishment of a biological
 3 community of woodlands from nearby seed sources without afforestation.

4 (63) **Natural vegetation.** Those plant communities that develop in the absence of
 5 human activities.

6 (64) **New development.** For purposes of implementing specific provisions of this
 7 Subtitle, new development (as opposed to redevelopment) means a development activity that
 8 takes place on a property with pre-development CBCA lot coverage of less than 15 percent as of
 9 December 1, 1985.

10 (65) **Non-point source pollution.** Pollution generated by diffuse land use activities
 11 rather than from an identifiable or discrete facility, and which is conveyed to waterways through
 12 natural processes, such as rainfall, stormwater runoff, or groundwater seepage rather than by
 13 deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe"
 14 treatment, but rather by changes in land management practices.

15 (66) **Nontidal wetland.** An area which:

16 (A) Is inundated or saturated by surface or ground water at a frequency and
 17 duration sufficient to support, and under normal circumstances supports a prevalence of
 18 vegetation typically adapted for life in saturated soil conditions; or

19 (B) Is identified as a "wetland" in accordance with the Federal Manual.

20 (67) **Palustrine.** All non-tidal wetlands dominated by trees, shrubs, persistent
 21 emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas
 22 where the salinity due to ocean-derived salts is below one-half part per one thousand (1,000)
 23 parts of water.

24 (68) **Person.** Includes an individual, partnership, corporation, contractor, property
 25 owner, or any other person or entity.

26 (69) **Physiographic features.** The soils, topography, land slope and aspect, and local
 27 climate that influence the form and species composition of plant communities.

28 (70) **Planning Board.** The Prince George's County Planning Board of the Maryland-
 29 National Capital Park and Planning Commission

30 (71) **Planning Director:** That person responsible for the functions of the Prince
 31 George's County Planning Department of the Maryland-National Capital Park and Planning

1 Commission.

2 (72) **Plant habitat.** A community of plants commonly identifiable by the composition
3 of its vegetation and its physiographic characteristics.

4 (73) **Port.** A facility or area established or designated by the state or Prince George's
5 County for purposes of waterborne commerce.

6 (74) **Primary Buffer.** The area one hundred (100) feet from the mean high water line
7 of tidal waters, the edge of the bank of tributary streams, and the landward extent of tidal
8 wetlands.

9 (75) **Prince George's Soil Conservation District.** One of twenty-four (24) soil
10 conservation districts created pursuant to the Annotated Code of Maryland, Agricultural Article,
11 Subtitle 3.

12 (76) **Private wetlands.** Any area of a lot or parcel not considered a "state wetland"
13 bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and
14 supports aquatic growth. Private wetlands include wetlands transferred by the state by a valid
15 grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the
16 extent of the interest transferred.

17 (77) **Program.** The Chesapeake Bay Critical Area Protection Program of Prince
18 George's County.

19 (78) **Project approvals.** The approval of development, other than development by the
20 state or local government in the Critical Area by the appropriate local approval authority. This
21 term includes approval of subdivision plans and site plans; inclusion of areas within floating
22 zones; issuance of variances, special exceptions, and conditional use permits; and issuance of
23 zoning permits, but does not include building permits.

24 (79) **Public water-oriented recreation.** Shore-dependent recreation facilities or
25 activities provided by public agencies which are available to the general public.

26 (82) **Redevelopment.** The process of developing land which is or has been developed.

27 (83) **Reforestation.** The establishment of a biological community of perpetual
28 woodlands through the planting of trees on an area from which trees were recently removed.

29 (84) **Regulated stream.** Streams that have water flowing year-round during a typical
30 year and streams that have water flowing during certain times of the year when groundwater
31 provides for stream flow. Water flow can be identified by a defined channel and movement of

1 leaf litter and debris by the movement of water. During dry periods some regulated streams may
 2 not have flowing water. Streams that only have water flowing during, or for a short duration
 3 after, precipitation events in a typical year are not regulated streams. This definition includes
 4 “perennial”, “intermittent” and “tributary” streams and does not include “ephemeral” streams.

5 (85) **Restoration.** The act of returning a site or area to an original state or any action
 6 that reestablishes all or a portion of the ecological structure and functions of a site or area.

7 (86) **Riparian habitat.** A habitat that is strongly influenced by water and which occurs
 8 adjacent to streams, shorelines, and wetlands.

9 (87) **Secondary Buffer.** Areas contiguous to the primary buffer which are essential for
 10 the buffer to perform all of its integral functions, including but not limited to, palustrine non-tidal
 11 wetlands, steep and severe slopes in excess of fifteen percent (15%), highly erodible soils,
 12 hydrologic soil (Group D), and the one hundred (100) year floodplain. The primary and
 13 secondary buffers, combined, constitute the "Buffer" in a Critical Area Overlay Zone.

14 (88) **Severe slopes.** Slopes of 25 percent or greater incline.

15 (89) **Soil Conservation and Water Quality Plan.** Land use plans for farms that assist
 16 farmers in making the best possible use of their soil and water resources, while protecting and
 17 conserving those resources for the future.

18 (90) **Species in need of conservation.** Those fish and wildlife whose continued
 19 existence as part of the state's resources are in question and which may be designated by
 20 regulation by the Secretary of Natural Resources as in need of conservation pursuant to the
 21 requirements of Natural Resources Articles 10-2A -06 and 4-2A-03, Annotated Code of
 22 Maryland.

23 (91) **State wetlands.** Any land under the navigable waters of the state below the mean
 24 high tide, affected by the regular rise and fall of the tide. Wetlands of this category which have
 25 been transferred by the state by valid grant, lease, patent or grant confirmed by Article 5 of the
 26 Maryland Declaration of Rights shall be considered “private wetlands” to the extent of the
 27 interest transferred.

28 (92) **Steep Slopes.** Slopes of 15 percent or greater incline.

29 (93) **Streams.** See “Regulated Streams” (84).

30 (94) **Structure.** Anything constructed or erected on or over land that may or may not
 31 result in lot coverage.

1 (95) **Substantial alteration.** Any repair, reconstruction, or improvement of a principal
 2 structure, where the proposed footprint equals or exceeds 50 percent of the existing principal
 3 structure.

4 (96) **Surface mining.**

5 (A) **Breaking of the surface soil in order to extract or remove minerals.**

6 (B) **Any activity or process constituting all or part of a process for the**
 7 extraction or removal of minerals from their original location.

8 (C) **Extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for**
 9 highway.

10 (D) **Construction purposes or other public facilities.**

11 (E) **Operations engaged in processing minerals at the site of extraction.**

12 (F) **Removal of overburden and mining of limited amount of any mineral when**
 13 done for the purpose of prospecting and to the extent necessary to determine the location,
 14 quantity, or quality of any natural deposit.

15 (G) **Mining operations, if the affected land exceeds one (1) acre or more in area.**

16 (97) **Threatened species.** Any species of fish, wildlife, or plants designated as such by
 17 regulation by the Secretary of the Department of Natural Resources in COMAR 08.03.08 that
 18 appears likely, within the foreseeable future, to become endangered, including any species of
 19 wildlife or plant determined to be a "threatened" species pursuant to the Federal Endangered
 20 Species Act, 16 U.S.C. 1531 et seq., as amended.

21 (98) **Timber harvesting or logging.** The severing of any size tree above ground level
 22 leaving the root system and all stumps intact, except for the purpose of providing a temporary
 23 access for some other use.

24 (99) **Tidal wetlands.** All state and private tidal wetlands, marshes, submerged aquatic
 25 vegetation, lands and open water affected by the daily and periodic rise and fall of the tide within
 26 the Chesapeake Bay and its tributaries.

27 (100) **Topography.** The existing configuration of the earth's surface including the
 28 relative relief, elevation, and position of land features.

29 (101) **Transportation facilities.** Anything that is built, installed, or established to
 30 provide a means of transport from one place to another.

31 (102) **Tributary streams** See "Regulated Streams"

1 (103) **Unwarranted hardship** means that without a variance, an applicant would
 2 be denied reasonable and significant use of the entire parcel or lot for which the variance is
 3 requested.

4 (104) **Utility transmission facilities.** Fixed structures that convey or distribute
 5 resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer
 6 lines.

7 (105) **Wash plant.** A facility where sand and gravel is washed during processing.

8 (106) **Water-based aquaculture.** The raising of fish and shellfish in any natural,
 9 open, free-flowing water body.

10 (107) **Water-dependent facilities.** Those structures or works associated with
 11 industrial, maritime recreational, educational, or fisheries activities that require location at or
 12 near the shoreline within the Buffer specified within the 100-foot Buffer section of this
 13 Ordinance. An activity is water-dependent if it cannot exist outside the Buffer and is dependent
 14 on the water by reason of the intrinsic nature of its operation. These activities include, but are
 15 not limited to, ports, the intake and outfall structures of power plants, water-use industries,
 16 marinas and other boat docking structures, public beaches and other public water-oriented
 17 recreation areas, and fisheries activities. Excluded from this regulation are individual private
 18 piers installed or maintained by riparian landowners, and which are not part of a subdivision
 19 which provides community piers.

20 (108) **Water-use industry.** An industry that requires location near the shoreline
 21 because it utilizes surface waters for cooling or other internal purposes.

22 (109) **Waterfowl.** Birds that frequent and often swim in water, nest and raise their
 23 young near water, and derive at least part of their food from aquatic plants and animals.

24 (110) **Wildlife corridor.** A strip of land having vegetation that provides habitat
 25 and safe passage for wildlife.

26 (111) **Wildlife habitat.** Those plant communities and natural features that provide
 27 food, water and cover, nesting, and foraging or feeding conditions necessary to maintain
 28 populations of animals in the Critical Area.

29 (112) **Woodlands.** A perpetual biological community dominated by trees and
 30 other woody or herbaceous plants covering a land area of 10,000 square feet or greater. This
 31 includes areas that have at least 100 trees per acre with at least 50 trees that are 2 inches or

1 greater in diameter at breast height. This also includes areas that have been timber harvested
 2 where the stumps remain in place for future regeneration. The terms “woodland,” “forest,” and
 3 “forest cover” are synonymous and do not include orchards or other areas without multiple layers
 4 of woody and herbaceous vegetation.

5 **Sec. 5B 109. Purpose and Intent.**

6 (a) **Intent.** To implement a Prince George’s County Critical Area Program countywide in
 7 response to and compliance with legislation passed by the Maryland General Assembly in 1984
 8 to address the decline of the quality and productivity of the waters of the Chesapeake Bay and its
 9 tributaries. The decline was found to have resulted, in part, from cumulative effects of human
 10 activity that caused increased levels of pollutants, nutrients and toxins, as well as a decline in
 11 protective land uses such as forest and agricultural lands in the Bay region. In 2002, the Atlantic
 12 Coastal Bays were added by the Maryland General Assembly to the Critical Area Program
 13 because these waterways also had begun to experience similar declines.

14 (b) **Purpose.** In accordance with the Annotated Code of Maryland, Natural Resources
 15 Article, Section 8-1801, et. seq., Prince George’s County adopted its Critical Area Program on
 16 May 30, 1990 and as amended from time to time for the following purposes:

17 (1) To establish a resource protection program for the Chesapeake Bay and Atlantic
 18 Coastal Bays and their tributaries by fostering more sensitive development activity for identified
 19 shoreline areas so as to minimize impacts to water quality and natural habitans;

20 (2) To implement a resource protection program on a cooperative basis between
 21 Prince George’s County and the State in order to implement a comprehensive, uniform and
 22 consistent Program that is subject to State Criteria and oversight; and

23 (3) To administer an effective Program that will positively affect the quality of life,
 24 health, safety and welfare of the citizens of Prince George’s County by enhancing and/or
 25 restoring the quality and productivity of the waters of the county associated with the Chesapeake
 26 Bay, Atlantic Coastal Bay, and their tributaries.

27 (c) **Goals.** The goals of Prince George’s County’s Critical Area Program are:

28 (1) To minimize adverse impacts on water quality resulting from pollutants that are
 29 discharged from structures or run off from surrounding lands;

30 (2) To conserve fish, wildlife, and plant habitat; and

31 (3) To establish land use policies for development in the Critical Area that

1 accommodate growth, as well as address the environmental impacts that the number, movement,
 2 and activities of people may have on said area.

3 (d) **Policies.** The policies of the Prince George's County Critical Area Program are
 4 generally intended to accommodate already existing land uses and growth within the Critical
 5 Area, while providing for the conservation of habitat and protection of water quality and include
 6 the following:

7 (1) **Protection of threatened and endangered species, those species in need of**
 8 conservation and their habitats, which occur in the Critical Area;

9 (2) **Conservation of wildlife habitat in the Critical Area;**

10 (3) **Protection of those wildlife habitats that tend to be least abundant or which may**
 11 become so in the future if current land-use trends continue;

12 (4) **Protection of those wildlife habitat types which are required to support the**
 13 continued present of various species;

14 (5) **Protection of those wildlife habitat types and plant communities which are of**
 15 local significance; and

16 (6) **Protection of Natural Heritage Areas.**

17 **Sec. 5B-110. Applicability and Administration.**

18 (a) **Implementation.** The Critical Area Program regulates vegetation removal,
 19 development activities and resource utilization activities, e.g., agriculture and forestry, within the
 20 Critical Area. The Critical Area provisions as set forth herein and in all other applicable
 21 regulations, supersede any inconsistent law, section or plan of the county. In the case of
 22 conflicting provisions, the stricter provisions shall apply. The Department of Parks and
 23 Recreation is considered a state agency for review of projects in the Critical Area per COMAR
 24 27.02.05.

25 (b) **Critical Area Program.** The Critical Area Program became effective on November
 26 17, 1989. The Program consists of this subtitle and related subtitles of the County Code passed
 27 by the County Council and Critical Area maps approved as part of the initial Program approval
 28 by the State of Maryland.

29 (c) **Regulated Activities and Applicability.** An applicant applying for a permit to pursue
 30 activities within the Critical Area, including, but not limited to, vegetation removal, development
 31 or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion

1 control, installation of a septic system and/or drainage filed, operation of a commercial or private
2 marina or other water-related commercial or industrial operation (public or private), mining
3 (surface or sub-surface) or quarrying, farming or other agricultural related activities shall have
4 obtained all required permits prior to initiation of the requested activity.

5 (d) **Responsible Agencies.** Review of applications for Staff Level Review are the
6 responsibility of DPW&T. Review of applications for the review of Conservation Plans are the
7 responsibility of The Maryland-National Capital Park and Planning Commission. Review of
8 permits and enforcement of this Subtitle are the responsibility of the Department of Public
9 Works and Transportation (DPW&T). Should an infraction of the provisions contained in any
10 law, regulation, or plan related to the Critical Area Program be brought to the attention of any
11 county or state official, said official shall contact the Director of DPW&T to consult with, and
12 when appropriate, the County Attorney, to determine the proper remedial course of action if
13 required. The Director of DPW&T or the Director's designee shall inform the Critical Area
14 Commission (CAC) about the infraction and any decision made regarding remedial action. The
15 CAC, at its discretion, may also take remedial action under the authority given it by state law.

16 (e) **State and Local Government Projects.**

17 (1) **Applicability.** For all development in the Critical Area conducted by County
18 agencies, the projects shall adhere to COMAR 27.02.02, COMAR 27.02.04, COMAR 27.02.05
19 and COMAR 27.02.06. If applicable, consistency reports shall be submitted to the Chesapeake
20 Bay Critical Area Commission.

21 (2) **Procedures.** The government agency proposing a development project within the
22 Critical Area shall work with the Planning Department to identify the appropriate procedures for
23 determining compliance with the Critical Area requirements.

24 (3) **Standards for projects of local significance.** For any government development
25 activity within the Critical Area, the agency proposing the project shall work with the Planning
26 Department to ensure that the project is consistent with all of the provisions and requirements of
27 the Critical Area Program. The Planning Department shall prepare a consistency report and
28 submit a copy of the report with relevant plans and information about the project to the Critical
29 Area Commission. If the Commission determines that the proposed project requires Commission
30 review, then the Commission shall notify the local jurisdiction within 15 days of receipt of the
31 report, and the project shall be reviewed in accordance with the provisions in paragraph (4)

1 below. If the project does not require Commission review, as determined by the Commission,
2 then it may be reviewed by the Planning Department and approved as appropriate by the
3 Planning Director or the Director's designee.

4 (4) **Standards for Commission review.** New major development by the State or a
5 County agency shall, to the extent practical be located outside the Critical Area. If the siting of
6 the development in the Critical Area is unavoidable because of water dependency or other
7 locational requirements that cannot be satisfied outside the Critical Area, the sponsoring agency
8 shall seek approval from the Critical Area Commission and shall provide the following
9 information:

10 (A) Findings and supporting documentation showing the extent to which the
11 project or development is consistent with the provisions and requirements of the Critical Area
12 Program and the provisions of this Subtitle; and

13 (B) An evaluation of the effects of the project on the County's Critical Area
14 Program.

15 (5) **Notice requirements for Commission review.** Public notice is required for all
16 major development projects unless the development is covered by a general approval from the
17 Commission. Public notice shall follow the Planning Board's administrative procedures and
18 include posting in accordance with Section 27-125.03 of Subtitle 27.

19 (A) Public notice shall be the responsibility of the County agency proposing the
20 project and the agency shall, as part of its submittal to the Critical Area Commission, provide
21 evidence that:

22 (i) Public notice was published for one business day in a newspaper of
23 general circulation in the geographic area where the proposed development would occur;

24 (ii) The publication included the identity of the sponsoring State agency or
25 local agency; description of the proposed development; the street address of the affected land and
26 a statement that its location is in the Critical Area; and the name and contact information of the
27 person within the sponsoring State agency or local agency designated to receive public comment,
28 including a fax number and email address, and the deadline for receipt of public comment;

29 (iii) At least 14 days were provided for public comment; and

30 (iv) The property proposed for development was posted in accordance with
31 the provisions noted herein.

1 (B) In addition to the public notice required above, public notice may be
 2 provided by electronic posting on a website, on the website of a newspaper of general circulation
 3 in the geographic area where the proposed development would occur, or by notification to a
 4 neighborhood association or residents of a particular geographic area.

5 (C) Evidence of public notice to be submitted to the Commission shall include
 6 the following documentation:

7 (i) The name of the newspaper and the date on which the notice was
 8 published;

9 (ii) A copy of the public notice as it was published in the newspaper; and

10 (iii) A copy of each written comment received in response to the public
 11 notice.

12 (6) Posting requirements for major development. The sponsoring agency for
 13 any major development project shall ensure that a sign is posted on the property indicating that
 14 the site is proposed for major development. Posting shall meet the requirements of Section 27-
 15 125.03. On a date not later than the date on which the notice is published in the newspaper, the
 16 sign shall be posted in a conspicuous location on the development site and remain there until
 17 after the Critical Area Commission has voted on the development.

18 (f) Zoning Ordinance. Subtitle 27 of the County Code contains the regulations regarding
 19 zoning and uses allowed in the Critical Area.

20 Section 27-107 contains the Definitions

21 Section 27-213 contains Map Amendment Approval regulations.

22 Section 27-229 contains Powers and Duties.

23 Section 27-230 contains Variance Findings.

24 Section 27-231 contains Variance Procedures.

25 Section 27-239 contains Variance Approval.

26 Section 27-241 contains Continuation of Non-conforming uses.

27 Section 27-242 addresses Alteration, Extension or Enlargements.

28 Section 27-255 addresses Referral to Planning Board

29 Section 27-296 contains Special Exceptions Application.

30 Section 27-317 contains Required Findings for Special Exception.

31 Section 27-325 addresses Minor Changes.

1 Section 27-337 contains Asphalt Mixing Plant regulations.

2 Section 27-343-01 contains Commercial Pier regulations.

3 Section 27-343 contains Concrete Batching Plant and Concrete Recycling Facility
4 regulations. Section 27-371 contains Marinas and Expansion regulations.

5 Section 27-384 addresses Nonconforming Buildings and Structures.

6 Section 27-410, 464, 548-01 address Surface Mining use in the Critical Area.

7 Section 27-548-10 to 17 contains the Introduction to the Chesapeake Bay Critical Area
8 regulations, uses, overlay zones and procedures.

9 (g) **Subdivision Ordinance.** Subtitle 24 of the County Code contains the regulations
10 regarding the subdivision of property in the Critical Area.

11 Section 24.101 contains the Definitions.

12 Section 24-107 addresses Jurisdiction.

13 Section 24-108 addresses Preliminary Plat exemptions

14 Section 24-115 contains the Application Procedures and Documents.

15 Section 24-117 addresses Minor Subdivision

16 Section 24-132 addresses Woodland Conservation, Tree Preservation, Clearing, and
17 Replacement.

18 Section 24-151 contains Limitations on Subdivision Approvals.

19 (h) **Grading, Stormwater and Building Ordinances** are found in Subtitle 32, Water
20 Resources Protection and Grading Code and Subtitle 4, the Building Ordinance, which contain
21 regulations with regard to the Chesapeake Bay Critical Area.

22 (i) **Project Notification.** Copies of applications for all developments, subdivisions, and
23 site plans wholly or partially within the Critical Area as specified in COMAR 27.03.01 shall be
24 sent to the Critical Area Commission. The application shall be accompanied by a completed
25 “Project Notification Application” form. The Commission shall send written notification of
26 receipt of the application within five business days. An application which has been sent to the
27 Commission for notification cannot be processed until notice of receipt by the Commission has
28 been received. Any action in violation of this procedure shall be void.

29 (j) **Growth Allocation.**

30 (1) Growth allocation means the number of acres of land in the Chesapeake Bay
31 Critical Area that may be used to create new I-D-O Zones and L-D-O Zones from existing L-D-

1 O and Resource Overlay Zones. The growth allocation shall be calculated based on five percent
 2 of the total R-C-O Zone in the County at the time of the original approval of the Program by the
 3 Commission, not including tidal wetlands or land owned by the federal government.

4 (2) At the time of adoption, approximately 693.3 acres were placed within the IDO,
 5 1,438.5 acres were in the LDO and 13,596.3 acres were in the RCO. Within the RCO,
 6 approximately 1,045.5 acres were in federal ownership and approximately 5,743.1 acres were
 7 tidal wetlands. The total allocation available at the time of adoption was 5% of the RCO or
 8 approximately 328.4 acres. Subsequent to adoption of the initial overlay zones, amendments
 9 were approved that resulted in the use of growth allocation.

10 (3) The provisions for application and approval of growth allocation are provided in
 11 Section 27-213.

12 (k) **Program Changes.** The County Council may from time to time amend the County
 13 Critical Area Program. Critical Area Program changes include, but are not limited to,
 14 amendments, revisions, and modifications to zoning regulations, subdivision regulations, Critical
 15 Area Maps, implementation procedures, and local policies that affect the County's Program. All
 16 such amendments, revisions, and modifications shall also be approved by the Critical Area
 17 Commission as established in Section 8-1809 of the Critical Area Law and shall not be officially
 18 implemented without approval of the Critical Area Commission. Standards and procedures for
 19 Critical Area Commission approval of proposed amendments are as set forth in the Critical Area
 20 Law Section 8-1809(i) and Section 8-1809(d), respectively.

21 (l) **Comprehensive Reviews.** The Critical Area Program shall be reviewed, and any
 22 necessary amendments proposed to the entire Program, including Critical Area Maps, at least
 23 every six years. The anniversary of the date that the last Program update became effective shall
 24 be used to determine when the review shall be completed.

25 (1) Within 60 days after the completion of the review, the following information will
 26 be submitted in writing to the Commission:

27 (A) A statement certifying that the required review has been accomplished;

28 (B) All necessary requests for Program amendments, Program refinements, or
 29 other matters that the County wishes the Commission to consider;

30 (C) An updated resource inventory;

31 (D) A statement quantifying acreages within each land classification, the growth

1 allocation used, and the growth allocation remaining.

2 (2) When an amendment is requested, the amendment shall be submitted to the
 3 County Council. After the County Council approves an amendment, the Director shall forward
 4 their decision and applicable ordinances and resolutions along with the amendment request to the
 5 Critical Area Commission for final approval.

6 (3) When a request for review and approval of changes to any element of the Critical
 7 Area Program is submitted to the Commission, including, but not limited to, the zoning
 8 ordinance, subdivision regulations, or Critical Area Maps, the request will include all relevant
 9 information necessary for the Chairman of the Commission, and as appropriate, the Commission,
 10 to evaluate the changes. The Chairman, and as appropriate, the Commission, shall determine if
 11 the requests for Program changes are consistent with the purposes, policies, goals, and provisions
 12 of the Critical Area Law and all Criteria of the Commission.

13 (4) Critical Area Commission Decision. In accordance with the determination of
 14 consistency outlined above, the Commission chair, or as appropriate, the Commission will:

15 (A) Approve the proposed Program refinement or amendment and notify the local
 16 jurisdiction;

17 (B) Deny the proposed Program refinement or amendment;

18 (C) Approve the proposed Program refinement or amendment subject to one or more
 19 conditions; or

20 (D) Return the proposed Program refinement or amendment to the County with a list
 21 of changes to be made.

22 (m) Zoning Map Amendments. Except for Program amendments or Program refinements
 23 developed during a six- year comprehensive review, a zoning map amendment may only be
 24 granted by the District Council upon proof of a mistake in the existing zoning. This requirement
 25 does not apply to proposed changes to a zoning map that meet the following criteria:

26 (1) Are wholly consistent with the land classifications in the adopted Program; or

27 (2) Propose the use of growth allocation in accordance with the growth allocation
 28 provisions of this Subtitle.

29 (n) Special Exceptions and Variances in the Critical Area. The Zoning Ordinance
 30 (Subtitle 27) contains provisions regarding the uses allowed by Special Exception and the
 31 required findings for the approval of Variances.

1 **Sec. 5B-111. Enforcement**

2 (a) **Applicability.** The purpose of this chapter is to establish enforcement procedures to
 3 identify violations, assess civil penalties, and require abatement, restoration, and mitigation for
 4 violations to the Critical Area Program. The provisions of this Section are in accordance with the
 5 Critical Area Act and Criteria, and as set out in any other applicable ordinances and regulations,
 6 apply throughout the Critical Area and supersede any inconsistent law, regulation, ordinance or
 7 plan. In the case of conflicting provisions, the stricter provisions shall apply.

8 (b) **Implementing Agencies and Compliance Officials.** These provisions shall be
 9 implemented and enforced by the by the Director of DPW&T and/or the Director's authorized
 10 representative. The Director of DPW&T shall enforce, supervise and delegate enforcement of the
 11 provisions of this Subtitle through the staff of the DPW&T, and as appropriate, the Department
 12 of Environmental Resources. Should any infraction of provisions contained in this Subtitle, or
 13 under any law, Chapter or plan related to the County's Critical Area Program provisions or
 14 requirements, be brought to the attention of any official of the County, said official shall
 15 immediately contact the Director of DPW&T, or his/her designee, and when appropriate, in
 16 consultation with the County Attorney, to determine the proper remedial course of action.

17 (1) The Director or the Director's authorized representative shall enforce, and
 18 supervise and delegate enforcement responsibilities of this Subtitle through subordinate
 19 inspectors of the Department of Public Works and Transportation and the Department of
 20 Environmental Resources. Staff of M-NCPPC shall provide assistance as requested.

21 (2) The Director or the Director's authorized representative may notify the Critical
 22 Area Commission of any violation and inform the Commission of all actions taken to halt the
 23 violation, restore the property, and require appropriate mitigation. The Commission, at its
 24 discretion, may also pursue its own remedial action or assist the County as provided for in State
 25 law.

26 (c) **Right to enter property.** The Director or the Director's authorized representative,
 27 shall have the authority to enter upon, over, and through privately owned lands or waters, or any
 28 building, structure or premises during any reasonable work hour, in order to identify or verify a
 29 suspected violation, restrain a development activity, or issue a citation if the Director or the
 30 Director's designee has probable cause that a violation of this subtitle or the local Program has
 31 occurred, is occurring or will occur.

1 (1) A reasonable effort to contact a property owner before entering the property shall
 2 be made. If entry is denied, the Director or the Director’s designee may seek an injunction to
 3 enter the property to pursue an enforcement action.

4 (2) The assistance and cooperation of the police, fire, health department, the
 5 Department of Environmental Resources and any other applicable agencies shall be available, as
 6 required, to aid the Director in enforcing this Subtitle.

7 (d) **Violations.** No person shall violate any provision of this Subtitle. Each violation that
 8 occurs and each calendar day that a violation continues shall be a separate offense. Each person
 9 who violates a provision of this Subtitle shall be subject to separate administrative civil penalties,
 10 abatement and restoration orders, and mitigation for each offense. Civil penalties for continuing
 11 violations shall accrue without a requirement for an additional assessment, notice, or opportunity
 12 for hearing for each separate offense.

13 (e) **Required enforcement action.** If the Director or the Director’s authorized
 14 representative identifies a violation of this subtitle or any provision of the County’s Critical Area
 15 regulations, it shall take enforcement action including:

16 (1) Require the submission of an “as-built” plan that shows all the existing conditions
 17 of the site.

18 (2) Assess civil penalties as necessary to cover the costs associated with local
 19 authorities performing inspections, supervising or rendering assistance with identifying and
 20 citing the violation, issuing abatement and restoration orders, and reviewing mitigation plans and
 21 ensuring compliance with these plans;

22 (3) Issue abatement, restoration, and mitigation orders as necessary to:

23 (A) Stop unauthorized activity;

24 (B) Restore and stabilize the site, as appropriate, to its condition prior to the
 25 violation or to a condition that provides the same water quality and habitat benefits; and

26 (C) Require the implementation of mitigation measures, in addition to
 27 restoration activities, to offset the environmental damage and degradation or loss of
 28 environmental benefit resulting from the violation.

29 (f) **Responsible persons.** The following persons may each be held jointly or severally
 30 responsible for a violation: (1) persons who apply for or obtain any permit or approval, (2)
 31 contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6) any person who

1 has committed, assisted, or participated in the violation.

2 (g) **Civil penalties.** In addition to any other penalty applicable under State or County law,
 3 every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or the County's
 4 Critical Area Program, ordinance, or regulations shall be punishable by a civil penalty of at least
 5 \$500 up to and not more than \$10,000 per calendar day according to the fine schedule approved
 6 and submitted by the County Executive and adopted by County Council Resolution.

7 (1) Before imposing any civil penalty, the person(s) believed to have violated this
 8 Subtitle shall receive: (1) written notice of the alleged violation(s) including which, if any, are
 9 continuing violations, and (2) an opportunity to be heard. The amount of the civil penalty for
 10 each violation, including each continuing violation, shall be determined separately. For each
 11 continuing violation, the amount of the civil penalty shall be determined per day. In determining
 12 the amount of the civil penalty, the Director or the Director's authorized representative shall
 13 consider:

14 (A) The gravity of the violation;

15 (B) The presence or absence of good faith of the violator;

16 (C) Any willfulness or negligence involved in the violation including a history
 17 of prior violations;

18 (D) The environmental impact of the violation; and

19 (E) The cost of restoration of the resource affected by the violation and
 20 mitigation for damage to that resource, including the cost to the State or local authorities for
 21 performing, supervising, or rendering assistance to the restoration and mitigation.

22 (2) When a Chapter of this Subtitle establishes a different maximum amount for a
 23 civil penalty for any violation, the larger amount shall apply.

24 (3) Civil penalties for continuing violations shall accrue for each violation, every
 25 calendar day each violation continues, with no requirements for additional assessments, notice,
 26 or hearings. The total amount payable for continuing violations shall be the amount assessed per
 27 calendar day for each violation multiplied by the number of days that each violation has
 28 continued.

29 (4) The person responsible for any continuing violation shall promptly provide the
 30 Director or the Director's authorized representative with written notice of the date(s) the
 31 violation has been or will be brought into compliance and the date(s) for the County inspection to

1 verify compliance. Civil penalties for continuing violations continue to accrue as set forth herein
 2 until the County receives such written notice and verifies compliance by inspection or otherwise.

3 (5) Assessment and payment of civil penalties shall be in addition to and not in
 4 substitution for recovery by the County of all damages, costs, and other expenses caused by the
 5 violation, including the cost to correct any violation or repair, restore, or replace any County
 6 property.

7 (6) Payment of all civil penalties assessed shall be a condition precedent to the
 8 issuance of any permit or other approval required by this Subtitle.

9 (h) **Notice of violations and assessment of civil penalties.** Every notice of violation and
 10 assessment of civil penalty shall be in writing and shall include:

11 (1) A description of the facts supporting each alleged violation, including citation to
 12 the provisions of the County Code allegedly violated;

13 (2) Classification of each alleged violation as a continuing or non-continuing
 14 violation;

15 (3) Separate assessment of a civil penalty for each violation, and a separate daily
 16 assessment for each continuing violation;

17 (4) Notice of the right to request administrative review before the Director to evaluate
 18 the amount(s) of civil penalties; and

19 (5) Notice of the right to file an appeal to the County Board of Administrative
 20 Appeals.

21 (i) **Collection of civil penalties.** All civil penalties collected in accordance with these
 22 provisions shall be deposited in a dedicated “Critical Area Restoration Fund” and used
 23 exclusively to conduct or facilitate activities or projects that promote the goals of the Critical
 24 Area Program and to ensure its effective implementation within the jurisdiction. These activities
 25 may include, but are not limited to the following options:

26 (1) Design, construction, and operation of stormwater treatment practices;

27 (2) Retrofits of stormwater treatment practice to improve performance or increase the
 28 area from which runoff is being treated;

29 (3) Removal of structures, roads, paving, etc. that contribute to lot coverage;

30 (4) Planting and maintenance of riparian forests;

31 (5) Implementation of landscaping projects that include native trees, shrubs, and
 32 herbaceous plants and can be maintained and protected for water quality and habitat

1 enhancement;

2 (6) Restoration of degraded tidal or non-tidal wetlands that have been disturbed by
 3 previous authorized activities and may be accomplished by the removal of fill, restoration or
 4 original water circulation patterns, and marsh plantings;

5 (7) Installation of living shorelines in areas that are actively eroding; and

6 (8) Administration and enforcement of this Subtitle.

7 (j) **Administrative abatement, restoration, and mitigation orders.** The provisions of
 8 this Chapter apply to orders issued by the county inspectors to a person conducting or having
 9 conducted an unauthorized action. Orders shall be sent to the property owner by certified mail,
 10 return receipt requested, and simultaneously by first-class mail, postage prepaid, bearing a return
 11 address. Service shall be effective upon mailing. In addition, any other method of service
 12 reasonably calculated to provide actual notice, and any method that does provide actual notice,
 13 shall be sufficient, including service by personal delivery to a responsible person at any
 14 construction site or posting the order in a conspicuous place on any structure, sign, land, or
 15 equipment.

16 (1) The Director or the Director's authorized representative may issue an
 17 administrative abatement order to any person, compelling the person to perform the following:

18 (A) To correct, discontinue or abate any violation;

19 (B) To cease any activity being performed in violation of this Subtitle; and

20 (C) To apply for any permit, approval, special exception, or variance required by
 21 this Subtitle; however, the filing of an application will not negate or stay the requirement for
 22 abatement, restoration, or mitigation measures required by the Chief Code Compliance Officer.

23 (2) Director or the Director's authorized representative may issue a restoration order
 24 to any person compelling the person to perform the following:

25 (A) To remove any construction materials, equipment, and any structures or
 26 other construction work built or erected in violation of this Subtitle;

27 (B) To restore any property to its condition as it existed before any violation of
 28 this Subtitle;

29 (C) To perform any condition or obligation required by this Subtitle or by any
 30 permit, approval, special exception, variance, license, contract, deed, or other instrument
 31 required or executed pursuant to this Subtitle.

1 (3) The Director or the Director’s authorized representative shall issue a mitigation
 2 order to any person receiving notice of or issued a citation for conducting or having conducted an
 3 unauthorized action. Mitigation is required for all violations of the County’s Critical Area
 4 Program and shall be in addition to any required abatement or restoration activities. In evaluating
 5 the type and amount of mitigation, the Director or the Director’s authorized representative shall
 6 consider the severity of the impact on water resources and habitat and the length of time
 7 necessary to restore the resources to their condition prior to the violation, or if that is not possible
 8 to recreate or establish and permanently protect similar resources in another location. The
 9 mitigation order shall compel the person to perform the following:

10 (A) To implement appropriate water quality improvement or habitat
 11 enhancement measures that are sufficient to offset adverse impacts to the Critical Area resulting
 12 from the violation as follows:

13 (i) Mitigation is required at a three-to-one ratio for the area disturbed or
 14 the area of the development activity outside the 100-foot Buffer and expanded Buffer, and

15 (ii) Mitigation is required at a four-to-one ratio for the area disturbed or the
 16 area of the development activity within the 100-foot Buffer or expanded Buffer; and

17 (B) To prepare or to have a qualified professional prepare a mitigation plan that
 18 includes water quality improvement or habitat enhancement measures to offset adverse impacts
 19 to the Critical Area resulting from the violation as specified in Paragraph (a) above; or

20 (C) To pay a fee-in-lieu of mitigation that shall be deposited in the appropriate
 21 fee-in-lieu account and used exclusively to conduct or facilitate activities or projects that
 22 promote the goals of the Critical Area Program and to ensure its effective implementation within
 23 the jurisdiction.

24 (k) **Contents of administrative abatement, restoration, and mitigation orders.** The
 25 provisions of this Chapter apply to orders issued by the county inspectors to a person conducting
 26 or having conducted an unauthorized action. All orders shall include:

27 (1) A description of each violation, including citation to the applicable County
 28 ordinance, regulation, or other requirement allegedly violated;

29 (2) The time within which any required action is to occur, taking into account the
 30 specific action required to comply with the order and any existing or intervening harm or threat
 31 to the public health, safety, and welfare. Except for emergencies, which can require compliance

1 as soon as 24 hours or otherwise less than 30 days, there is a rebuttable presumption that
 2 compliance with the orders shall take place within 30 days from the date of the order; and

3 (3) Notice of the right to appeal the order to the County Board of Administrative
 4 Appeals and the period within which any such appeal must be filed.

5 (l) Bonding for restoration and mitigation orders. For abatement or restoration activities
 6 and mitigation activities that exceed 1,000 square feet or involve expenses exceeding \$1,000, the
 7 Department shall:

8 (1) Collect a bond or other financial security to ensure that the restoration or
 9 mitigation is properly completed;

10 (2) Hold the bond for at least two years if the restoration involves planting in order to
 11 ensure the survival of the plantings. The two years will run from the date the plantings are
 12 installed; and

13 (3) Schedule and perform an inspection of the property as necessary to ensure
 14 compliance and promptly release the bond or other financial security when compliance is
 15 confirmed.

16 (m) **Cumulative remedies.** The remedies available under this Subtitle are cumulative and
 17 not alternative or exclusive, and the decision to pursue one remedy does not preclude pursuit of
 18 others.

19 (n) **Injunctive relief.** The Director or the Director's authorized representative is
 20 authorized to institute injunctive or other appropriate actions or proceedings to bring about the
 21 discontinuance of any violation of this Subtitle, an administrative order, a permit, a decision, or
 22 other imposed condition.

23 (1) The pendency of an appeal to the Board of Administrative Appeals or subsequent
 24 judicial review shall not prevent the County from seeking injunctive relief to enforce an
 25 administrative order, permit, decisions, or other imposed condition, or to restrain a violation
 26 pending the outcome of the appeal or judicial review.

27 (2) In an action for injunctive relief to enforce an administrative order, the court may
 28 also impose a civil fine not less than \$500 but not exceeding \$10,000 for each day that an
 29 administrative order was violated, after considering:

30 (A) The willfulness for the violation;

31 (B) The harm to the environment or the community in which the violation

1 occurred;

2 (C) The proposed fine by the County, and

3 (D) The cost to the County of enforcing the administrative order.

4 (o) **Permits pursuant to a violation.** The County may not issue a permit, approval,
 5 variance, or special exception, unless the person seeking the permit has:

6 (1) Fully paid all administrative, civil, or criminal penalties as set forth in Section E.
 7 above;

8 (2) Prepared a restoration or mitigation plan, approved by the s authorized
 9 representative, to abate impacts to water quality or natural resources as a result of the violation;

10 (3) Performed the abatement measures in the approved plan in accordance with the
 11 local Critical Area regulations; and

12 (4) Unless an extension of time is approved by the Planning Director or Director's
 13 designee because of adverse planting conditions, within 90 days of the issuance of a permit,
 14 approval, variance, or special exception for the affected property, any additional mitigation
 15 required as a condition of approval for the permit, approval, variance, or special exception shall
 16 be completed.

17 (p) **Variances pursuant to a violation.** The Planning Board may accept an application for
 18 a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any
 19 provisions of an order, permit, plan, or regulation in accordance with the variance provisions of
 20 this subtitle or Subtitle 27. However, a final decision shall not be made by the Planning Board
 21 until all abatement, restoration, and mitigation measures have been provided on a conservation
 22 plan submitted for review that meets all the requirements of this Subtitle and as applicable other
 23 subtitles of the County Code; and

24 (1) Mitigation for violations in any Critical Area Buffer shall be shown according to
 25 the ratios shown in Section 5B-121, Table (h)(2) of this Subtitle; and

26 (2) Variances may not be granted by the Planning Board from the provisions of
 27 Subtitles 5B or 27 for property located within the Chesapeake Bay Critical Area Overlay Zones
 28 to legalize a violation of this subtitle, including an unpermitted structure or development activity,
 29 unless a notice of violation is issued, including assessment of a penalty for the violation.

30 Application for a variance under this paragraph constitutes a waiver of the right to appeal the
 31 terms of a notice of violation and its final adjudication, including the payment of any penalties

1 and costs assessed; and

2 (3) If there are provisions of the violation that require stabilization, the installation of
 3 erosion and sediment control devices, or the payment of a fine, a final decision shall not be made
 4 by the Planning Board on the variance request until all such corrective work has been completed
 5 and the fine paid. The applicant is responsible for providing information verifying the status of
 6 the violation prior to the Planning Board's decision regarding the variance request. The Director
 7 or the Director's authorized representative and the Planning Director or the Director's designee
 8 shall inspect the site prior to the decision regarding the variance request.

9 (q) **Non-issuance, non-renewal, suspension, or revocation of a permit.** The Director or
 10 the Director's authorized representative may decline to issue or renew, or may suspend or revoke
 11 any permit or license issued under the authority of, or required by this Subtitle. The Director
 12 will coordinate with the Department of Environmental Resources as needed to revoke building
 13 permits and with M-NCPPC to revoke conservation plan approvals as necessary.

14 (1) Such action may be taken on the following grounds:

15 (A) False, misleading, inaccurate, incomplete, or incorrect information given on
 16 any application; or

17 (B) Serious or repeated violations of this Subtitle, or any terms, conditions, or
 18 restrictions in the permit or license itself.

19 (2) The Director or the Director's authorized representative shall give written notice
 20 and opportunity to be heard before any non-issuance, non-renewal, suspension, or revocation and
 21 shall render a written decision on the matter, which shall be considered an administrative order
 22 and may be appealed to the Board of Administrative Appeals.

23 (r) **Enforcement costs.** In any action or proceeding in which the County substantially
 24 prevails, the County may recover all costs incurred to enforce the terms of this Subtitle,
 25 including counsel fees and litigation expenses.

26 (s) **Appeals.** An appeal to the Board of Administrative Appeals may be filed by any
 27 person aggrieved by any order, requirement, decision or determination by the Director or the
 28 Director's authorized representative in connection with the administration and enforcement of
 29 this Subtitle.

30 (1) An appeal is taken by filing a written notice of appeal with the Board of
 31 Administrative Appeals in accordance with the provisions in the County Zoning Ordinance and

1 in accordance with the Board of Appeals Rules of Procedure, accompanied by the appropriate
 2 filing fee. Appeals shall be made on form obtained from the Board of Appeals Secretary. A
 3 notice of appeal shall be considered filed with the Board of Administrative Appeals when
 4 delivered to the Board. The date and time of filing shall be entered on the appeal by the Board of
 5 Administrative Appeals staff:

6 (2) An appeal must be filed within 30 days after the date of the decision or order
 7 being appealed; and

8 (3) An appeal stays all actions by the Director or the Director's authorized
 9 representative seeking enforcement or compliance with the order or decisions being appealed,
 10 unless the Director or the Director's authorized representative certifies to the Board of
 11 Administrative Appeals that (because of facts stated in the certificate) in his/her opinion, such
 12 stay will cause imminent peril to life or property. In such a case, action by the Director or the
 13 Director's authorized representative shall not be stayed except by order of the Board of
 14 Administrative Appeals or a court up on application of the party seeking the stay.

15 (t) **Fine Schedule.** Fines for violations in the Critical Area shall be assessed as authorized
 16 by the fine schedule approved and submitted by the County Executive and adopted by County
 17 Council Resolution.

18 **Sec. 5B-112. Development in the Critical Area**

19 (a) **Description.** In Prince George's County, the Critical Area extends along the
 20 Patuxent, Potomac and Anacostia rivers encompassing approximately 15,728 acres, of which,
 21 approximately 9,994 acres are in uplands. This area includes the tidal waters, tidal wetlands and,
 22 in general, all land within one thousand (1,000) feet of the Mean High Tide Line (MHTL). The
 23 precise delineation of the Critical Area in the county was established by the creation of the
 24 Critical Area Overlay Zones, as adopted and approved by the District County Council on
 25 September 27, 1988.

26 (b) **General Policies.** In order to accommodate already existing land uses and growth
 27 within the county's Critical Area, while providing for the conservation of habitat and the
 28 protection of water quality, the county has identified and mapped three overlay zones within the
 29 Critical Area based on the following criteria. The three overlay zones and general provisions are
 30 as follows:

31 (1) Intensely Developed Overlay (I-D-O) – intense development should be directed

1 outside of the Critical Area. Future intense development activities, when proposed in the Critical
 2 Area, shall be directed towards the Intensely Developed Overlay areas.

3 (2) Limited Development Overlay (L-D-O) – low intensity development may be
 4 permitted in L-D-O areas, but shall be subject to strict regulation to prevent adverse impacts on
 5 habitat and water quality.

6 (3) Resource Conservation Overlay (R-C-O): development in the R-C-O shall be
 7 limited and chiefly designated for agriculture, forestry, fisheries and other resource utilization
 8 activities, as well as for habitat protection.

9 (c) **Complementary State Laws and Regulations.** When implementing this Critical Area
 10 Program, all of the following complementary existing State laws and regulations also
 11 apply:

12 (1) For soil erosion and sediment control (COMAR 26.17.01)

13 (A) In order to prevent soil erosion and sedimentation, a Soil Erosion and
 14 Sedimentation Control Plan shall be required whenever a development within the Critical Area
 15 will involve any clearing, grading, transporting, or other form of disturbance to land by the
 16 movement of earth. This plan shall be consistent with the requirements of the Natural Resources
 17 Article and Environment Article of the Annotated Code of Maryland and Subtitle 32. Sediment
 18 control practices shall be appropriately designed to reduce adverse water quality impacts.

19 (2) For stormwater runoff (COMAR 26.17.02)

20 (A) The County Code requires limitations on stormwater runoff such that
 21 applicants for development must ensure that downstream property, watercourses, channels or
 22 conduits do not receive stormwater runoff at a higher volume or rate than would have resulted
 23 from a 10-year storm were the land is in its predevelopment state.

24 (B) The County Code requires that applicants for development ensure that all
 25 stormwater storage facilities shall be designed with sufficient capacity to achieve water quality
 26 goals of this Chapter and to eliminate all runoff caused by the development in excess of that
 27 which would have come from the site if it were in its pre-development state.

28 (C) Stormwater management measures shall be consistent with the requirements
 29 of Environment Article 4-201 et seq., Annotated Code of Maryland.

30 (D) Development activities on individual lots within subdivisions recorded prior
 31 to adoption of the provisions in COMAR 26.17.02 shall provide stormwater quantity and quality

1 management unless:

2 (i) The project is an addition or modification to an existing single family
 3 dwelling;

4 (ii) The project involves disturbance that does not exceed 5,000 square
 5 feet; or

6 (iii) The project is otherwise regulated under other State laws that include
 7 provisions for managing stormwater runoff.

8 (d) **Development Standards Applicable to All Critical Area Overlay Zones**

9 (1) All plans shall be assessed for their impacts on water quality and other biological
 10 resources;

11 (2) Alterations in the plans shall be made to mitigate any negative impacts;

12 (3) Development and redevelopment shall be subject to the Habitat Protection Area
 13 requirements prescribed in those sections of this Subtitle;

14 (4) All roads, bridges, and utilities that must cross a Habitat Protection Area shall be
 15 located, designed, constructed, and maintained so as to provide maximum erosion protection and
 16 minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic
 17 processes and water quality. Roads, bridges, or utilities may not be located in any Habitat
 18 Protection Area unless no feasible alternative exists;

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

20 (A) Reduce increases in flood frequency and severity that are attributable to
 21 development;

22 (B) Retain natural woodlands and tree canopy so as to maintain stream water
 23 temperature within normal variation;

24 (C) Provide a natural substrate for stream beds; and

25 (D) Minimize adverse water quality and quantity impacts of stormwater.

26 (6) Ports and industries which use water for transportation and derive economic
 27 benefits from shore access shall be located near existing port facilities. Other sites for planned
 28 future port facility development must provide significant economic benefit to the State or County
 29 and be consistent with the provisions of the Water Dependent Facilities Section of this Subtitle
 30 and other State and Federal regulations.

31 (7) To the extent practicable, future development in the Critical Area shall use cluster

1 development and mixed-use zoning as a means to reduce impervious areas and to maximize
 2 areas of natural vegetation.

3 (8) When the cutting or clearing of trees in natural and developed woodlands is
 4 associated with current or planned development activities, the following is required and shall be
 5 shown on the proposed Conservation Plan:

6 (A) Replacement of forests and woodland through the establishment of
 7 developed woodlands, the use of urban forest programs, or similar practices. The extent of the
 8 replacement shall be shown on the Conservation Plan or any other development plan in the
 9 Critical Area.

10 (B) Minimization of the destruction of existing forest and woodland vegetation.

11 (C) Protection of existing forests and developed woodlands identified as Habitat
 12 Protection Areas by limiting or prohibiting development.

13 (9) In addition, applicants shall adhere to the following criteria for natural and
 14 developed woodlands:

15 (A) Grading permits shall be required before natural or developed woodland is
 16 cut or cleared; and

17 (B) All woodlands designated on a Conservation Plan shall be maintained, and
 18 to the extent practicable protected through conservation easements.

19 (10) To reduce the extent of impervious areas and maximize areas of natural
 20 vegetation, the use of the conservation subdivision provisions of Subtitle 24 shall be considered
 21 as the first option for development.

22 (11) Development may be allowed on soils having development constraints if the
 23 development includes mitigation measures that adequately address the identified constraints and
 24 that will not have significant adverse impacts on water quality or plant, fish or wildlife habitat.

25 **(e) Development Standards Regarding Lot Consolidation and Reconfiguration**

26 (1) Applicability. The provisions of this regulation shall apply to a consolidation or
 27 reconfiguration of:

28 (A) Any legal parcel of land, not being part of a recorded or approved
 29 subdivision, that was recorded as of December 1, 1985;

30 (B) Land that was subdivided into recorded legally buildable lots, where the
 31 subdivision received final approval before June 1, 1984;

1 (C) Land that was subdivided into recorded, legally buildable lots, where the
 2 subdivision received final approval after December 1, 1985, and before November 17, 1987.

3 (2) Purpose. Any consolidation or reconfiguration of any legal parcel of land or
 4 recorded legally buildable will meet the goals of the Critical Area Program, to the extent
 5 possible, and shall not increase or intensify development activities or human activities in the
 6 Buffer or any other Habitat Protection Area beyond what would have resulted from the existing
 7 lot configuration.

8 (3) Conservation Plan Required. An application for lot consolidation or
 9 reconfiguration in the Critical Area shall submit a Conservation Plan and, in addition to the
 10 requirements of Section 5B-114, contain the following information:

11 (A) The date of recordation of each legal parcel of land or legally buildable lot to
 12 be consolidated or reconfigured;

13 (B) A plan drawn to scale in accordance with this Subtitle;

14 (C) Information sufficient for the local jurisdiction to make the findings set forth
 15 in section;

16 (D) A plan that shows all existing and proposed lot or parcel boundaries; and

17 (E) A table that lists the number of all legal parcels of land or recorded legally
 18 buildable lot and the number of proposed lots or parcels or dwelling units to be derived.

19 (4) Standards. A lot consolidation or reconfiguration application shall meet the
 20 following standards:

21 (A) The lot consolidation or reconfiguration shall not increase or intensify
 22 development activities or human activities in the Buffer or any other Habitat Protection Area
 23 beyond what would have resulted from the existing lot configuration;

24 (B) The proposed consolidation or reconfiguration shall result in no greater
 25 number of lots, parcels, or dwelling units in the Critical Area than the existing configuration
 26 would allow;

27 (C) The proposed lot consolidation or reconfiguration shall result in no greater
 28 lot coverage than the existing configuration would allow;

29 (D) The proposed consolidation or reconfiguration shall not:

30 (i) Create an additional riparian lot or parcel, waterfront lot, or any other
 31 lot or parcel deeded with water access; or

1 (ii) Intensify or increase impacts associated with riparian access;

2 (5) In addition to the standards in (4) above, a proposed consolidation or
 3 reconfiguration shall not create:

4 (A) A lot or parcel or portion of a lot or parcel that will serve development
 5 activities outside the Critical Area; or

6 (B) An R-C-O lot or parcel that serves development activities in the L-D-O
 7 Zone;

8 (6) An application for proposed consolidation or reconfiguration shall identify all
 9 existing Habitat Protection Areas. If the proposed consolidation or reconfiguration impacts a
 10 Habitat Protection Area, then the proposal shall:

11 (A) Include protective measures and restoration measures that provide for the
 12 least possible adverse impact;

13 (B) Result in no greater impact to a Habitat Protection Area than the impact that
 14 would have resulted from the existing lot configuration; and

15 (C) Minimize adverse impacts to a Habitat Protection Area.

16 (7) The proposed consolidation or reconfiguration shall provide:

17 (A) Stormwater management for all proposed development activities; and

18 (B) Benefits to fish, wildlife, and plant habitat that are clearly identified.

19 (8) When approving a proposed lot consolidation or reconfiguration, the Planning
 20 Director or Director’s designee as appropriate, shall:

21 (A) Provide in writing a statement that the provisions of (4)-(7) above have been
 22 met.

23 (B) Send a copy of the final decision and a copy of the approved plan within 10
 24 business days by U.S. mail to the Commission’s business address.

25 (9) The Commission may file an appeal or a petition for judicial review within 30
 26 days of the date of the Commission’s receipt of the final decision or order. The time period
 27 during which the Commission may file an appeal or a petition for judicial review shall
 28 commence on the date of the Commission’s receipt of the final decision. A conservation plan
 29 that results from the approval of a lot consolidation or reconfiguration cannot be signed as
 30 approved until after the expiration of the Commission’s 30-day appeal period.

31 (f) **Reasonable accommodations for the needs of disabled citizens.** The Director,

1 Planning Director, the Director's designee and the Planning Board may make reasonable
 2 accommodations to avoid discrimination on the basis of a physical disability. Reasonable
 3 accommodations for the needs of disabled citizens may be permitted in accordance with the
 4 evidentiary requirements set forth in the following paragraphs.

5 (1) An applicant shall have the burden of demonstrating the following:

6 (A) The existence of a physical disability;

7 (B) Literal enforcement of the provisions of this Subtitle would result in
 8 discrimination by virtue of such disability;

9 (C) A reasonable accommodation would reduce or eliminate the discriminatory
 10 effect of the provisions of this Subtitle;

11 (D) The accommodation requested will not substantially impair the purpose,
 12 intent, or effect, of the provisions of this Subtitle as applied to the property;

13 (E) Environmental impacts associated with the accommodation are the minimum
 14 necessary to address the needs resulting from the particular disability of the applicant.

15 (2) The Planning Board shall determine the nature and scope of any accommodation
 16 under this section and may award different or other relief than requested after giving due regard
 17 to the purpose, intent, or effect of the applicable provisions of this Subtitle. The Board may also
 18 consider the size, location, and type of accommodation proposed and whether alternatives exist
 19 which accommodate the need with less adverse effect.

20 (3) The Planning Board may require, as a condition of approval, that upon
 21 termination of the need for accommodation, that the property be restored to comply with all
 22 applicable provisions of this Subtitle. Appropriate bonds may be collected or liens placed in
 23 order to ensure the County's ability to restore the property should the applicant fail to do so.

24 **Section 5B-113. Intensely Developed Overlay (I-D-O) Zones**

25 (a) **Regulations.** Additional regulations of the underlying zones, in addition to those
 26 contained herein, shall also apply in the I-D-O Zone.

27 (b) **Density.** The density may not exceed the density of the underlying zone.

28 (c) **Uses.** The uses allowed in the I-D-O Zone are the same as those allowed in the
 29 underlying zones in which the land is classified, except as otherwise specified in Subtitle 27-
 30 548.16.

31 (d) **General policies.** New or expanded development or redevelopment in the I-D-O Zone

1 shall take place in such a way as to:

2 (1) Improve the quality of runoff from developed areas that enters the Chesapeake
3 Bay or its tributary streams;

4 (2) Accommodate additional development of the type and intensity designated by the
5 County in this Program provided that water quality is not impaired;

6 (3) Minimize the expansion of I-D-O Zones into portions of the Critical Area
7 designated as Habitat Protection Areas and R-C-O Zones;

8 (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in the
9 Habitat Protection Area Chapters of this Subtitle, to the extent possible within I- D-O Zones; and

10 (5) Encourage the use of retrofitting measures to address existing stormwater
11 management quantity and quality problems.

12 (e) **Development standards.** The following development standards must be demonstrated
13 within the I-D-O Zone:

14 (1) For redevelopment plans, opportunities to reduce impacts on water quality
15 generated by existing development shall be analyzed;

16 (2) Urban (BMPs) for stormwater treatment shall be considered and, where
17 appropriate, implemented as part of all plans for development and redevelopment;

18 (3) Stormwater shall be addressed in accordance with the following provisions:

19 (A) Development or redevelopment projects shall use technologies as required
20 by applicable ordinances in order to minimize adverse impacts to water quality caused by
21 stormwater.

22 (B) In the case of redevelopment, if these technologies do not reduce pollutant
23 loadings measured by use of the keystone pollutant method by at least 10 percent below the level
24 of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for
25 compliance with this requirement is provided in the *Critical Area 10% Rule Guidance Manual –*
26 *Fall 2003* and as may be subsequently amended.

27 (C) In the case of new development, offsets shall be used if they reduce pollutant
28 loadings by at least 10 percent of the pre-development levels. Guidance for compliance with this
29 requirement is provided in the *Maryland Chesapeake and Atlantic Coastal Bays Critical Area*
30 *10% Rule Guidance – Fall 2003* and as may be subsequently amended.

31 (D) Offsets may be provided either on or off site, provided that water quality

1 benefits are equivalent, that the benefits are obtained within the same watershed, and that the
 2 benefits can be determined through the use of modeling, monitoring or other computation of
 3 mitigation measures. Guidance regarding offsets is provided in the *Maryland Chesapeake and*
 4 *Atlantic Coastal Bays Critical Area 10% Rule Guidance – Fall 2003.*

5 (4) There is no Critical Area lot coverage maximum in the I-D-O, however, where
 6 practicable, permeable areas shall be established in vegetation, and whenever possible,
 7 redevelopment shall reduce existing levels of pollution.

8 (5) Areas of public access to the shoreline, such as foot paths, scenic drives and other
 9 public recreational facilities, should be maintained and, if possible, encouraged to be established
 10 within the I-D-O.

11 **Section 5B-114. Limited Development Overlay (L-D-O) Zones.**

12 (a) **Regulations.** Additional regulations of the underlying zones, in addition to those
 13 contained herein, shall also apply in the L-D-O Zones.

14 (b) **Density.** The density may not exceed the density of the underlying zone.

15 (c) **Uses.** The uses allowed in the L-D-O Zone are the same as those allowed in the
 16 underlying zones in which the land is classified, except as otherwise specified in Subtitle 27-
 17 548.16.

18 (d) **General policies.** New or expanded development or redevelopment in the L-D-O
 19 Zone shall take place in such a way as to:

20 (1) Maintain, or, if possible, improve the quality of runoff and groundwater entering
 21 the Chesapeake Bay and its tributaries;

22 (2) Maintain, to the extent practicable, existing areas of natural habitat; and

23 (3) Accommodate additional low or moderate intensity development if:

24 (A) This development conforms to the water quality and habitat protection
 25 criteria contained herein; and

26 (B) The overall intensity of development within the L-D-O Zone is not increased
 27 beyond the level established in a particular area so as to change its prevailing character as
 28 identified by density and land use currently established in the area.

29 (e) **Development standards.** An applicant for a development activity shall meet all of the
 30 following standards of environmental protection in the L-D-O Zone:

31 (1) All development sites that are within the designated network of the Countywide

1 Green Infrastructure Plan shall incorporate a wildlife corridor system that connects the largest
2 undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide
3 continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor
4 system may include Habitat Protection Areas identified in this Subtitle. The wildlife corridors
5 shall be included and identified on the Conservation Plan. The maintenance of the wildlife
6 corridors shall be ensured by the establishment of conservation easements.

7 (2) For the cutting or clearing of trees in natural or developed woodland areas in
8 current, planned or future activities in the L-D-O Zone, the following shall be addressed:

9 (A) Development activities shall be designed and implemented to minimize the
10 destruction of woodland vegetation;

11 (B) Provisions for protection for natural and developed woodlands identified
12 shall be provided;

13 (C) The total acreage of natural and developed woodlands shall be maintained or
14 preferably increased to the fullest extent practicable; and

15 (D) Mitigation for woodland impacts shall be within the Critical Area.

16 (3) For the alteration of natural and developed woodlands in the L-D-O Zone, the
17 following requirements shall apply:

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

20 (B) No more than 20 percent of any natural or developed woodland may be
21 removed from forest use, except as provided in paragraph (4) below. The remaining 80 percent
22 shall be maintained through conservation easements; and

23 (C) Developed woodlands shall be preserved and/or restored to the greatest
24 extent practicable.

25 (4) For replacement of natural and developed woodlands, if more than 20 percent is
26 to be removed from forest use, an applicant may clear or develop not more than 30 percent of the
27 total forest area provided that the afforested area shall consist of 1.5 times the total surface
28 acreage of the disturbed forest or developed woodland area, or both.

29 (5) Clearing in excess of 30 percent of a natural or developed woodland is prohibited
30 without a variance.

31 (6) In addition, applicants shall adhere to the following criteria for forest and

1 woodland development:

2 (A) At time of permit issuance, the permittee shall post a bond with DPW&T in
 3 an amount equivalent to the cost of completion of the planting requirements for the L-D-O Zone;

4 (B) Woodland which have been cleared before obtaining a grading permit or that
 5 exceed the maximum area allowed in subsection (3) above shall be replanted at the rate specified
 6 in subsection 5B-109(j)(3)(A);

7 (C) If the areal extent of the site limits the application of the reforestation
 8 standards in this section, alternative provisions or reforestation guidelines may be permitted in
 9 accordance with Section 5B-119 Woodland Protection and Planting of this Subtitle. Alternative
 10 provisions must conserve, enhance, or increase the natural and developed woodland resources of
 11 the Critical Area. Alternative provisions may include fees-in-lieu provisions or use of an off-site
 12 conservation bank if the provisions are adequate to ensure the restoration or establishment of the
 13 required woodland area;

14 (D) If less than 15% natural or developed woodland exists on the proposed
 15 development site, the site shall be planted to provide a natural or developed woodland cover of at
 16 least fifteen percent (15%);

17 (E) All forests designated on a Conservation Plan shall be maintained to the
 18 extent practicable, through conservation easements;

19 (F) The applicant shall designate, subject to the approval of the County, a new
 20 forest area on a part of the site not forested; and

21 (G) All forests designated on a Conservation Plan shall be maintained, and to the
 22 extent practicable protected through conservation easements.

23 (7) Applicants shall adhere to the following standards for development on steep
 24 slopes. Development on slopes 15 percent or greater, as measured before development, shall be
 25 prohibited unless the project is the only effective way to maintain or improve the stability of the
 26 slope and is consistent with the policies and standards for L-D-O Zones set forth above and with
 27 the provisions below.

28 (A) Consistent with an approved Forest Management Plan, if applicable;

29 (B) Consistent with an approved Surface Mining Permit, if applicable; and

30 (C) Consistent with an approved Soil Conservation and Water Quality Plan, if
 31 applicable.

1 (8) Critical Area lot coverage shall be limited to 15 percent of the site or as permitted
 2 by 27-548.17(c).

3 (9) Conservation plans and associated development plans may propose modifications
 4 in road standards on a case-by-case basis to reduce potential impacts to the site, reduce total lot
 5 coverage in the Critical Area, and limit impacts to Critical Area resources, where the reduced
 6 standards do not significantly affect safety.

7 **Section 5B-115. Resource Conservation Overlay (R-C-O) Zones.**

8 (a) Regulations. Additional regulations of the underlying zones, in addition to those
 9 contained herein, shall also apply in the R-C-O Zones.

10 (b) Density. The density shall not exceed one dwelling unit per twenty (20) acres of gross
 11 tract area, except as otherwise specified in 5B-113(f).

12 (c) Uses. The uses allowed in the R-C-O Zone are the same as those allowed in the
 13 underlying zones in which the land is classified, except as otherwise specified in Subtitle 27-
 14 548.16

15 (d) General Policies. New or expanded development or redevelopment in R-C-O Zones
 16 shall take place in such a way as to:

17 (1) Conserve, protect and enhance the overall ecological values of the Critical Area,
 18 its biological productivity and its diversity;

19 (2) Provide adequate breeding, feeding and wintering habitats for those wildlife
 20 populations that require the Chesapeake Bay, their tributaries or coastal habitats in order to
 21 sustain populations of those species;

22 (3) Conserve the land and water resource base that is necessary to maintain and
 23 support land uses such as agriculture, forestry, fisheries activities and aquaculture; and

24 (4) Conserve the existing developed woodlands and forests for the water quality
 25 benefits that they provide.

26 (5) Ensure that the overall acreage of forest and woodland within the R-C-O does not
 27 decrease.

28 (e) Development standards. An applicant for a development activity shall meet all of the
 29 following standards of environmental protection in the R-C-O Zone:

30 (1) Land use management practices shall be consistent with the policies, standards
 31 and criteria for Section 5B-102 Agriculture, Section 5B-119 Woodland Protection and Planting

1 and Section 5B-120 Habitat Protection of this Subtitle.

2 (2) Agricultural and conservation easements shall be promoted in the R-C-O zone.

3 (3) All development sites that are within the designated network of the Countywide
4 Green Infrastructure Plan shall incorporate a wildlife corridor system that connects the largest
5 undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide
6 continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor
7 system may include Habitat Protection Areas identified in this Subtitle. The wildlife corridors
8 shall be included and identified on the Conservation Plan. The maintenance of the wildlife
9 corridors shall be ensured by the establishment of conservation easements.

10 (4) For the cutting or clearing of trees in natural or developed woodland areas in
11 current, planned or future activities in the R-C-O Zone, the following shall be addressed:

12 (A) Development activities shall be designed and implemented to minimize the
13 destruction of woodland vegetation;

14 (B) Provisions for protection for natural and developed woodlands identified
15 shall be provided;

16 (C) The total acreage of natural and developed woodlands shall be maintained or
17 preferably increased to the fullest extent practicable; and

18 (D) Mitigation for woodland impacts shall be within the Critical Area.

19 (5) For the alteration of natural and developed woodlands in the R-C-O, the following
20 requirements shall apply:

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

23 (B) No more than 20 percent of any natural or developed woodland may be
24 removed from forest use, except as provided in paragraph (4) below. The remaining 80 percent
25 shall be maintained through conservation easements; and

26 (C) Developed woodlands shall be preserved and/or restored to the greatest
27 extent practicable.

28 (6) For replacement of natural and developed woodlands, if more than 20 percent is
29 to be removed from forest use, an applicant may clear or develop not more than 30 percent of the
30 total forest area provided that the afforested area shall consist of 1.5 times the total surface
31 acreage of the disturbed forest or developed woodland area, or both.

1 (7) Clearing in excess of 30 percent of a natural or developed woodland is prohibited
2 without a variance.

3 (8) In addition, applicants shall adhere to the following criteria for forest and
4 woodland development:

5 (A) At time of permit issuance, the permittee shall post a bond with DPW&T in
6 an amount equivalent to the cost of completion of the planting requirements for the R-C-O Zone.

7 (B) Forests which have been cleared before obtaining a grading permit or that
8 exceed the maximum area allowed in subsection (7) above shall be replanted at three times the
9 areal extent of the cleared forest;

10 (C) If the areal extent of the site limits the application of the reforestation
11 standards in this section, alternative provisions or reforestation guidelines may be permitted in
12 accordance with Section 5B-119 Woodland Protection and Planting of this Subtitle. Alternative
13 provisions must conserve, enhance, or increase the natural and developed woodland resources of
14 the Critical Area. Alternative provisions may include fees-in-lieu provisions or use of an off-site
15 conservation bank if the provisions are adequate to ensure the restoration or establishment of the
16 required woodland area;

17 (D) If less than 15% natural or developed woodland exists on the proposed
18 development site, the site shall be planted to provide a natural or developed woodland cover of at
19 least fifteen percent (15%);

20 (E) All forests designated on a Conservation Plan shall be maintained to the
21 extent practicable, through conservation easements;

22 (F) The applicant shall designate, subject to the approval of the County, a new
23 forest area on a part of the site not forested; and

24 (G) All forests designated on a Conservation Plan shall be maintained, and to the
25 extent practicable protected through conservation easements.

26 (9) Applicants shall adhere to the following standards for development on steep
27 slopes. Development on slopes 15 percent or greater, as measured before development, shall be
28 prohibited unless the project is the only effective way to maintain or improve the stability of the
29 slope and is consistent with the policies and standards for R-C-O Zones set forth above and with
30 the provisions below.

31 (A) Consistent with an approved Forest Management Plan, if applicable;

1 (B) Consistent with an approve Surface Mining Permit, if applicable; and

2 (C) Consistent with an approved Soil Conservation and Water Quality Plan, if
 3 applicable.

4 (10) Critical Area lot coverage shall be limited to 15 percent of the site.

5 (11) Conservation plans and associated development plans may propose modifications
 6 in road standards on a case-by-case basis to reduce potential impacts to the site, reduce total lot
 7 coverage in the Critical Area, and limit impacts to Critical Area resources, where the reduced
 8 standards do not significantly affect safety.

9 (f) **Calculation of 1-in-20 acre density of development.** In calculating the 1-in-20 acre
 10 density of development that is permitted on a parcel located within the R-C-O zone:

11 (1) Each dwelling unit shall be counted;

12 (2) The area of any private wetlands located on the property may be included under
 13 the following conditions:

14 (A) The density of development on the upland portion of the parcel may not
 15 exceed one dwelling unit per eight acres; and

16 (B) The area of private wetlands shall be determined by an approved wetland
 17 study.

18 **Sec. 5B-116. Submittal Requirements and Permit Issuance**

19 (a) **Conservation Plan Required.** Prior to the approval of any subdivision, site plan, the
 20 issuance of any grading permit or the issuance of building permits for any property within the
 21 Critical Area, a Conservation Plan must be approved unless the proposed project qualifies for a
 22 Staff Level Review per paragraph (b) below. A Conservation Plan is a site plan and is necessary
 23 in addition to standard requirements of the Prince George’s County Code for development or
 24 redevelopment if the land falls within the Critical Area. The Conservation Plan must include a
 25 buffer management plan for properties that contain a Critical Area buffer.

26 (b) **Staff Level Review.** The Director or the Director’s designee may conduct a review
 27 and approve grading or building permit applications without a Conservation Plan if the area of
 28 disturbance is less than five-hundred (500) square feet, provided the criteria of items (1) thought
 29 (7) below can be met.

30 (1) Disturbance will not occur in the Buffer; and

31 (2) Vegetation will not be removed as a result of the proposed activity; and

- 1 (3) Steep or severe slopes will not be disturbed; and
- 2 (4) Habitat Protection Areas will not be affected; and
- 3 (5) Tidal or non-tidal wetlands will not be affected; and
- 4 (6) Existing property is in conformance with the requirements of the Zoning
- 5 Ordinance and the proposed changes will retain this conformance; and
- 6 (7) A preliminary plan of subdivision is not required; and
- 7 (8) A Conservation Plan has not been approved for the subject property.

8 (c) **Requirements for Staff Level Review.** The review shall be conducted within 30 days
 9 of receipt of a complete application. A complete application includes a completed application
 10 form; a description of how the criteria in Section 5B-116 (b) have been met; the appropriate fee,
 11 if any; and a dimensioned plan showing the information required on the Staff Level Review plan
 12 checklist contained in the Environmental Technical Manual. In addition, information deemed
 13 necessary by the Planning Director or the Director’s designee to show compliance with this
 14 Subtitle and the Zoning Ordinance may be required.

15 (d) **Requirements for a Conservation Plan.** A conservation plan is required when the
 16 criteria above in Section 5B-116 (b) cannot be met for the activity proposed.

17 (1) The applicant shall submit to the Planning Department a completed application
 18 form, 23 folded prints of a dimensioned conservation plan prepared in accordance with the
 19 conservation plan checklist contained in the Environmental Technical Manual, and the
 20 appropriate fee. If the conservation plan has been prepared by a Property Line Surveyor, the
 21 horizontal location of all right-of-way lines, as shown on the plan, shall be certified by either a
 22 Professional Land Surveyor or a Professional Engineer. The plan shall be prepared at a scale of
 23 1 inch = 50 feet or 1 inch = 30 feet. The conservation plan shall be referred to the Subdivision
 24 and Development Review Committee for review and comment. In addition, information deemed
 25 necessary by the Planning Director or the Director’s designee to show compliance with this
 26 Subtitle and the County Code may be required.

27 (2) Planting agreement. When planting is proposed to meet the requirements of this
 28 Subtitle, a signed planting agreement shall be included on the plan.

29 (3) When a Conservation Plan is required, the property shall be posted with signs on-
 30 site for 30 days prior to the public hearing for plans approved by the Planning Board and for 30
 31 days prior to the signature of the plan by the Planning Director or the Director’s designee for

1 reviews conducted by the Planning Director or the Director's designee. Posting of properties
 2 shall follow the provisions of Section 27-125.01 with regard to the number of signs required,
 3 submittal of affidavit and all other applicable provisions.

4 (e) **Planning Director Review.** A conservation plan may be approved by the Planning
 5 Director or the Director's designee, if no variances to any provision of this Subtitle or the Zoning
 6 Ordinance are needed; the Conservation Plan is not associated with a subdivision application;
 7 and no request for a hearing by the Planning Board has been received.

8 (f) **Planning Board Review.** A conservation plan shall be reviewed and approved by the
 9 Planning Board if the criteria for a Staff Level Review or Planning Director Review cannot be
 10 met.

11 (g) **Plan Validity Period.** Once approved, a conservation plan is valid for three years.
 12 Staff Level Review approvals are also valid for three years. A valid approval is required in order
 13 to obtain permits. An extension of the approval may be granted by the original approval
 14 authority for a maximum of one year from the original expiration date.

15 (h) **Minor and Major Revisions to Conservation Plans.** A copy of the approved
 16 conservation plan, with proposed revisions indicated, shall be submitted to M-NCPPC. Staff of
 17 the M-NCPPC and DPW&T shall review the proposed changes and make recommendations to
 18 the Planning Director or the Director's designee. If the Planning Director or the Director's
 19 designee determines that the proposed revisions are not minor, the proposal will either have to be
 20 changed or submitted as a Major Revision.

21 (1) **Minor Revisions.** Minor Revisions are those activities which do not result in a
 22 substantial change to the approved Conservation Plan. The following are Minor Revisions:

23 (A) **Revision of a landscape plan where equal mitigation is provided.**

24 (B) **Revision of an area of disturbance where the change is less than five**
 25 hundred (500) square feet provided that:

26 (i) **The new disturbance will not create the need for an engineered erosion**
 27 and sediment control plan.

28 (ii) **Disturbance will not occur in the Buffer.**

29 (iii) **No forest areas protected by the approved plan will be cleared as a**
 30 result of the proposed activity.

31 (iv) **No steep slopes will be altered.**

1 (v) No Habitat Protection Areas will be affected.

2 (vi) No tidal or non-tidal wetlands or wetland buffers will be affected.

3 (vii) Revisions to the site design (e.g. materials or structure location)
 4 provided that the existing property is in conformance with the requirements of the Zoning
 5 Ordinance and the proposed change will retain this conformance.

6 (viii) Revisions to the site design (e.g. materials or structure location) where
 7 the revision does not result in the lot coverage exceeding the maximum permitted for the site.

8 (ix) Other revisions that the Planning Director or the Director’s designee
 9 determines to be minor.

10 (2) Major Revisions. A Major Revision will be treated as a wholly new Conservation
 11 Plan. The Plan will require review by the Subdivision Review Committee and approval by the
 12 Planning Board or the Planning Director or the Director’s designee, as appropriate.

13 (i) **Building and Grading Permits.**

14 (1) Applications for grading and building permits require a copy of all applicable
 15 plans, including but not limited to, an approved conservation plan, an approved planting plan
 16 (and agreement), and/or an approved buffer management plan. Prior to final approval of the
 17 grading or building permit plan, whichever comes first, the liber and folio of the Conservation
 18 Agreement shall be placed on the grading or building permit plan.

19 (2) Applications for grading and building permits shall also include a copy of an
 20 executed and recorded Conservation Agreement using the standard template that commits the
 21 existing and future property owners to the requirements and limitations of the approved plans. A
 22 copy of the template can be found in the Environmental Technical Manual.

23 (3) Once the Conservation Plan or Staff Level Review Plan has been approved, a pre-
 24 construction meeting must be held before a permit is issued. In addition, all applicable fees-in-
 25 lieu must be paid and a bond posted that includes the cost of implementing all required planting
 26 on the site or as mitigation off-site prior to permit issuance. No clearing of vegetation or grading
 27 shall occur until a permit has been issued. If grading or clearing occurs prior to the issuance of a
 28 permit, woodlands shall be replanted at the required rate for a violation for the full extent of the
 29 area of disturbance.

30 (A) It is the applicant’s responsibility to arrange a preconstruction meeting
 31 through the Department of Public Works and Transportation. The applicant shall submit copies

1 of the approved Conservation Plan or Staff Level Review Plan to the grading inspector, building
 2 inspector and developer at the preconstruction meeting.

3 (B) The purpose of the on-site meeting is to assure that the site is developed in
 4 accordance with the approved Conservation Plan or Staff Level Review Plan. All sediment
 5 controls must be properly installed and limits of disturbance must be clearly delineated. Trees or
 6 other vegetation to be retained within the limits of disturbance must clearly be marked with
 7 surveyor's tape. Marking of individual trees shall be done with surveyor's tape. All protective
 8 devices shall be in place prior to the commencement of construction.

9 (j) **Critical Area Planting Agreement and Bond.** A Critical Area planting agreement
 10 consists of a signed agreement with a planting plan and, when required, a bond.

11 (1) A planting agreement is a required component of a Staff Level Review or a
 12 Conservation Plan to meet afforestation and reforestation standards and buffer establishment
 13 standards contained in this Subtitle. The Planting Agreement and, when required, a bond, must
 14 be approved and posted prior to issuance of a permit in the Critical Area.

15 (2) The Planting Agreement is based on the amount of required afforestation,
 16 reforestation, or Buffer establishment and shall meet the standards below. In the case of a
 17 Planting Plan to meet the requirements of Section 5B-121, additional detail may be required.

18 (A) A plan that shows the limit of disturbance, the total number and size of trees
 19 removed, if applicable, and the arrangement of the proposed planting;

20 (B) A landscape schedule showing the proposed species type, the quantity of
 21 plants, the size of plants, and the stock type that is proposed for installation that meets the
 22 planting credit standards contained in Section 5B-121, Tables (g)(2), (g)(3), and (g)(4);

23 (C) A maintenance plan that meets the requirements of Section 5B-121(l) (1) C
 24 and D;

25 (D) A signature of the responsible party;

26 (E) A signature that confirms the review and approval of the plan by the
 27 applicable agency depending on whether Staff Level Review or a Conservation Plan is required.

28 (3) Implementation of the planting agreement shall be required within two planting
 29 seasons. An extension of the planting agreement for one planting season may be obtained upon
 30 written request with accompanying justification demonstrating hardship or special conditions
 31 that prevented completion of the original planting agreement.

1 (4) Certificates of occupancy will not be issued without satisfactory implementation
2 of the planting agreement or payment of a bond in the amount of the estimated cost of the
3 required planting if a bond has not already been posted.

4 (5) Permittees are required to notify DPW&T when the planting required by the
5 planting agreement is complete and to request an inspection to verify implementation of the
6 planting agreement.

7 (6) Execution of a planting bond is required for all non-residential applications and
8 for all other applications when total cumulative quantities of required mitigation on a parcel or
9 lot exceed 5,000 square feet.

10 (A) If implementation of the planting agreement on projects with less than 5,000
11 square feet of mitigation is not satisfactorily completed, a bond shall be required prior to
12 issuance of a certificate of occupancy.

13 (B) Bond amounts are based upon the estimated base cost for planting, which
14 shall be calculated using the schedule of fees, fines and penalties adopted by the County Council.
15 The bond required for any reforestation or afforestation shall be the dollar figure resulting from
16 the formula.

17 (C) Bonds posted to secure a temporary certificate of occupancy shall be 100
18 percent of the estimated base cost for planting trees.

19 (D) In the event the applicant breaches the Critical Area planting agreement, the
20 applicant shall forfeit any bonds. The bonds shall be used by the county to restore the property.
21 If no bond was required or if the bonds are insufficient to pay the costs of restoration, a lien shall
22 be placed against the property for all monies due and owing to the county for performing
23 necessary planting, maintenance, replacement of dead or dying plantings, and other costs and
24 expenses.

25 (E) The length of time a bond shall be held is according to the required survival
26 rates based on stocking type contained in Section 5B-121, Table (g)(4).

27 (k) Fees-in-Lieu. In the event reforestation or Buffer mitigation cannot be completely
28 accommodated on-site as demonstrated on a Conservation Plan or Staff Level Review, the
29 Department of Public Works and Transportation may collect a fee-in-lieu prior to the issuance of
30 any permit. Fees are paid at the Department of Public Works and Transportation and made
31 payable to Prince George's County. The fee-in-lieu for reforestation and fee-in-lieu for Buffer

1 mitigation shall be held in separate restricted accounts.

2 (1) Fees-In-Lieu of Woodland and Developed Woodland Mitigation. If the planting
 3 requirements set forth in Section 5B-114(e), Section 5B-115(e), Section 5B-119 and Section 5B-
 4 121 for mitigation outside the Buffer cannot be met, a fee-in-lieu of mitigation in accordance
 5 with the following standards shall be collected prior to permit issuance:

6 (A) Fee-in-lieu monies shall be collected and held in a separate account;

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

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

10 (D) Fee-in-lieu monies shall be used to support reforestation with the following
 11 order of preference:

12 (i) To reforest within the same watershed within the Critical Area;

13 (ii) To reforest within the Critical Area;

14 (iii) When all options for reforestation in the Critical Area are exhausted,
 15 consideration may be given to sites selected outside the Critical Area. In order for sites outside
 16 the Critical Area to be considered acceptable for reforestation, one of the following scenarios
 17 must be present:

18 (aa) There is an ecological connection to the Critical Area.

19 (bb) There is a significant resource that merits protection.

20 (cc) There is a habitat area of special significance that is afforded no
 21 protection outside the Critical Area (i.e. Forest Interior Dwelling Bird habitat).

22 (2) Fees-In-Lieu of Buffer Mitigation. If the planting requirements set forth in this
 23 Subtitle cannot be met, DPW&T shall collect a fee-in-lieu of mitigation in accordance with the
 24 following standards and Section 5B-119(d):

25 (A) Fee-in-lieu monies shall be collected and held in a separate account;

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

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

30 (D) Fee-in-lieu monies shall be used as follows:

31 (i) To establish the Buffer on sites where planting is not a condition of

1 development or redevelopment;

2 (ii) For water quality and habitat enhancement projects as described in an
 3 agreement between DPW&T, M-NCPPC and the Commission.

4 **(l) Conservation Plan Review Fee.**

5 The fee schedule for DPW&T review fees approved and submitted by the County
 6 Executive and adopted by County Council Resolution. Planning Department review fees are
 7 contained in a fee schedule approved by the Planning Board.

8 **Sec. 5B-117. Subdivision.**

9 **(a) Subdivision Regulations and Procedures are found in Subtitle 24.**

10 (1) Where the property proposed to be subdivided is located within the Chesapeake
 11 Bay Critical Area Overlay Zone, a Conservation Plan prepared in accordance with this subtitle
 12 shall be submitted for review by the Subdivision Review Committee and approval by the
 13 Planning Board or Planning Director or the Director's designee, prior to, or concurrent with, a
 14 preliminary plan of subdivision. Prior to its approval, the Planning Board, Planning Director, or
 15 the Director's designee shall find that the Conservation Plan is consistent with this subtitle and
 16 Subtitle 24 and that it contains provisions sufficient to minimize adverse impacts on the
 17 environment.

18 (2) Intra-family transfers are not allowed in the Critical Area. Intra-family transfers
 19 may be allowed outside the Critical Area for properties that are partially within the Critical Area,
 20 provided that the transfer must occur outside the Critical Area. A conservation plan shall be
 21 prepared to ensure that the property retains conformance with this subtitle and Subtitles 24 and
 22 27.

23 **Sec. 5B-118. Water-Dependent Facilities.**

24 (a) Identification. Water dependent facilities include, but are not limited to, ports, the
 25 intake and outfall structures of power plants, water-use industries, and marinas and other boat
 26 docking structures, public beaches and other public water-oriented recreation areas, and fisheries
 27 activities. Excluded from this regulation are individual private piers installed or maintained by
 28 riparian landowners, and which are not part of a subdivision that provides community piers.

29 (b) General Policies. The policies of the County with regard to water-dependent facilities
 30 shall be to limit development activities in the Buffer to those that are water-dependent and
 31 provide by design and location criteria that these activities will have minimal individual and

1 cumulative impacts on water quality and fish, wildlife and plant habitat in the Critical Area.

2 (c) **Standards.** The following standards shall apply to new or expanded development
3 activities associated with water-dependent facilities:

4 (1) New or expanded development activities may be permitted in the Buffer in the
5 I- D-O and L-D-O provided that it can be shown:

6 (A) That the use meets the definition of a water-dependent facility;

7 (B) That the project meets a recognized private right or public need;

8 (C) That adverse effects on water quality, fish, plant and wildlife habitat are
9 minimized;

10 (D) That, insofar as possible, non-water-dependent structures or operations
11 associated with water-dependent projects or activities are located outside the buffer;

12 (E) That the facilities are consistent with an approved Conservation Plan or Staff
13 Level Review Plan as set forth herein;

14 (F) That the proposal conforms to all applicable Master and Sector plans, and

15 (G) Lot coverage in the Buffer does not exceed the minimum amount necessary
16 for water-dependent facilities, regardless of the critical area classification or the size of the parcel
17 or lot, except:

18 (2) for a variance granted in accordance with this Subtitle; or

19 (3) as provided in a waterfront revitalization area or a waterfront industrial area.

20 (d) **Implementation.** Applicants for new or expanded water-dependent facilities in I-D-O
21 Zones or L-D-O Zones shall set out in the application how the above requirements are met.

22 (e) **Evaluating plans for new and expanded water-dependent facilities.** The following
23 factors shall be considered when evaluating proposals for new or expanded water dependent
24 facilities:

25 (1) That the activities will not significantly alter existing water circulation patterns or
26 salinity regimes;

27 (2) That the water body upon which these activities are proposed has adequate
28 flushing characteristics in the area;

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

31 (4) That adverse impacts to water quality that may occur as a result of these activities,
32 such as non-point source run-off, sewage discharge from land activities or vessels, or from boat

1 cleaning and maintenance operations, is minimized;

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

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

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

10 (A) Backfill for permitted shore erosion protection measures;

11 (B) Use in approved vegetated shore erosion projects;

12 (C) Placement on previously approved channel maintenance spoil disposal areas;

13 and

14 (D) Beach nourishment.

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

16 (9) That disturbance will be avoided to historic areas of waterfowl staging and
17 concentration or other Habitat Protection Areas identified in the Habitat Protection Area section
18 of this Subtitle.

19 (f) **Availability of information.** The information necessary for evaluating the above
20 factors, if not available locally, shall be obtained from appropriate State and Federal agencies.

21 (g) **Marinas and other commercial maritime facilities.** New, expanded or redeveloped
22 marinas may be permitted in the Buffer within I-D-O Zones and L-D-O Zones subject to the
23 requirements set forth in this section. New marinas or related maritime facilities may not be
24 permitted in the Buffer within R-C-O Zones except as provided in this section. Expansion of
25 existing marinas may be permitted within R-C-O Zones provided that it is sufficiently
26 demonstrated that the expansion will not adversely affect water quality, and that it will result in
27 an overall net improvement in water quality at or leaving the site of the marina. New and
28 existing marinas shall meet the sanitary requirements of the Department of the Environment as
29 required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge
30 of bottom wash waters into tidal waters.

31 (h) **Community piers.** New or expanded community marinas and other non-commercial

1 boat-docking and storage facilities may be permitted in the Buffer subject to the requirements in
2 Zoning Ordinance provided that:

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

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

7 (3) The facilities are associated with a residential development approved by the
8 County for the Critical Area and consistent with all State requirements and Program
9 requirements for the Critical Area;

10 (4) Disturbance to the Buffer is the minimum necessary to provide a single point of
11 access to the facilities; and

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

14 (i) **Number of slips or piers permitted.** The number of slips or piers permitted at the
15 facility shall be the lesser of (1) or (2) below:

16 (1) One slip for each 50 feet of shoreline in the subdivision in the Intensely
17 Developed and L-D-O Zones and one slip for each 300 feet of shoreline in the subdivision in the
18 R-C-O Zone; or

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

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

21 (j) **Public beaches and other public recreation or education areas.** Public beaches or
22 other public water-oriented recreation or education areas including, but not limited to, publicly
23 owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in
24 I-D-O Zones. These facilities may be permitted within the Buffer in L-D-O Zones and R-C-O

1 Zones provided that:

2 (1) Adequate sanitary facilities exist;

3 (2) Service facilities are, to the extent possible, located outside the Buffer;

4 (3) Permeable surfaces are used to the extent practicable, if no degradation of
 5 groundwater would result;

6 (4) Disturbance to natural vegetation is minimized; and

7 (5) Areas for possible recreation, such as nature study, and hunting and trapping, and
 8 for education, may be permitted in the Buffer within R-C-O Zones if service facilities for these
 9 uses are located outside of the Buffer.

10 (k) **Research areas.** Water-dependent research facilities or activities operated by State,
 11 Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-
 12 water-dependent structures or facilities associated with these projects are, to the extent possible,
 13 located outside of the Buffer.

14 (l) **Fisheries activities.** Lands and water areas with high aquaculture potential will be
 15 identified by the County in cooperation with the State when applications for new or expanded
 16 fisheries or aquaculture facilities in these areas are submitted to the County. These areas are
 17 encouraged for that use and if so used, should be protected from degradation by other types of
 18 land and water use or by adjacent land and water uses. Commercial water-dependent fisheries
 19 including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture
 20 operations and shore-based facilities necessary for aquaculture operations and fisheries activities
 21 may be permitted in the Buffer in I-D-O Zones, L-D-O Zones and R-C-O Zones.

22 **Sec. 5B-119. Woodland Protection and Planting.**

23 (a) **General Policies.** The following policies for woodland protection recognize the value
 24 of forested land for its water quality benefits and for habitat protection while accommodating the
 25 utilization of forest resources where appropriate:

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

27 (2) Conserve forests and developed woodlands and provide for expansion of forested
 28 areas;

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

31 (4) Recognize that woodlands are a protective land use and should be managed in

1 such a manner so that maximum values for wildlife, water quality, timber, recreation, and other
2 resources can be maintained, even when they are mutually exclusive.

3 **(b) Policies for the Protection of Riparian and Woodland Habitat.** The following
4 policies apply to the protection of riparian habitat:

5 (1) Vegetation shall be maintained in its natural condition along all streams to
6 provide wildlife corridors and it shall be established where it does not currently exist.

7 (2) A minimum 100-foot Buffer shall extend landward from the mean high water line
8 of tidal water, and the edge of tributary streams and tidal wetlands. This area is to be conserved
9 for wildlife protection.

10 (3) Wooded non-tidal wetlands should be left in a natural state for wildlife and water
11 quality protection.

12 (4) Woodland areas utilized as breeding areas by forest interior dwelling birds and
13 other wildlife species shall be conserved.

14 (5) Existing riparian woodlands and/or which are documented breeding areas shall be
15 conserved.

16 **(c) Process.** If a woodland is to be developed or to be harvested, a site-specific field
17 investigation shall be conducted to determine if important sensitive species are present and to
18 make sure that appropriate protection measures are incorporated into the development plan or
19 Forest Management Plan. When development activities are proposed within riparian woodlands
20 or woodland areas utilized as breeding areas by forest interior dwelling birds (FIDS), the Critical
21 Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling*
22 *Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently
23 amended, shall be used as a guide. In addition, the Department of Natural Resources will make
24 specific recommendations based on an evaluation of the site and the proposed development or
25 forest management. The following development standards shall apply:

26 (1) Minimize disturbance during the May-August breeding season (i.e., from off-road
27 vehicles, intensive use or logging).

28 (2) Focus all development or disturbance on the periphery of woodlands (i.e. roads,
29 utility line corridors, structures).

30 (3) Retain the contiguous cover of branches and foliage formed by the crowns of
31 adjacent trees and shrubs underneath the canopy which serve as bird nesting and feeding habitat.

1 (4) Retain standing dead trees (e.g. snag trees) and mature seed trees which serve as
 2 bird nesting and feeding habitat.

3 (5) Discourage creation of small clearings and disproportionate expansion of edge
 4 habitat.

5 (6) Encourage re-establishment of native forests and woodlands; and

6 (7) Adopt harvest techniques to maintain or improve habitat.

7 (8) The replacement or establishment of forest or developed woodlands should ensure
 8 a diversified plant community and should include canopy trees, understory trees, shrubs and
 9 herbaceous plants.

10 (9) Native species should be used for all reforestation and afforestation.

11 (d) **Fees-In-Lieu of Woodland and Developed Woodland Mitigation.** If the planting
 12 requirements set forth in Section 5B-114(e), Section 5B-115(e), Section 5B-119 and Section 5B-
 13 121. cannot be met, a fee-in-lieu of mitigation shall be collected in accordance with the
 14 following standards:

15 (1) Fee-in-lieu monies shall be collected and held in a separate account;

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

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

19 (4) Fee-in-lieu monies shall be used to support reforestation in accordance with
 20 Section 5B-114(k).

21 (e) **Enforcement.** Unauthorized clearing, cutting, or removal of vegetation; unauthorized
 22 clearing in the Critical Area, cutting or removal of vegetation in the Buffer; and clearing, cutting
 23 or removal of vegetation in excess of the area permitted to be cleared by this Subtitle are
 24 considered a civil violation of this Subtitle and shall result in fines as set forth in Section 5B-111
 25 of this Subtitle and mandatory planting. The Director of Public Works and Transportation, or the
 26 Director's designee, shall have the authority to issue a citation.

27 (1) Unauthorized clearing of natural or developed woodland, and clearing, cutting, or
 28 removal of vegetation outside the Critical Area Buffer, including exceeding the maximum area
 29 of clearing allowed through an approved Conservation Plan as described in Section 5B-119, shall
 30 be replanted at three times the total area of clearing (3:1).

31 (2) Unauthorized clearing of natural or developed woodland, and clearing, cutting, or

1 removal of vegetation within the Critical Area Buffer or other Habitat Protection Areas,
 2 including exceeding the maximum area of clearing allowed through an approved Conservation
 3 Plan as described in Section 5B-121, shall be replanted at four times the total area of clearing
 4 (4:1).

5 (3) When trees or vegetative cover cannot be fully replaced on-site because of
 6 existing vegetation, existing development, or the size of the parcel, then a fee-in-lieu of planting
 7 may be collected. Fees shall be assessed at \$1.50 per square foot of required mitigation.

8 (4) Fines collected from enforcement actions in the Critical Area shall be maintained
 9 in a separate account to be used for reforestation or other habitat enhancing efforts.

10 (f) **Commercial Timber Harvesting.**

11 (1) Commercial harvesting of trees is permitted in the Critical Area with the
 12 exception of areas within the Buffer and in Habitat Protection Areas.

13 (A) A Forest Management Plan is required for all commercial harvests
 14 regardless of size of the area to be cut. The Plan shall be prepared by a registered professional
 15 forester and approved using the process outlined in the Woodland and Wildlife Habitat
 16 Conservation Ordinance (Subtitle 25 of the County Code). The plan shall address mitigation
 17 through management techniques including scheduling; size and intensity of harvesting; and
 18 reforestation and stabilization.

19 (B) Commercial harvesting practices shall be conducted to protect and conserve
 20 the Buffer and Habitat Protection Areas.

21 **Sec. 5B-120. Habitat Protection.**

22 (a) **Description.** Habitat Protection Areas in the Critical Area are designated for
 23 protection and include the following six habitats:

24 (1) The Critical Area Buffer;

25 (2) Habitat of Threatened and Endangered Species and Species in Need of
 26 Conservation;

27 (3) Plant and Wildlife Habitat Protection Areas;

28 (4) Nontidal Wetlands;

29 (5) Anadromous Fish Propagation Waters;

30 (6) Natural Heritage Areas; and

31 (7) Colonial water bird nesting areas, aquatic areas of historic waterfowl

1 concentration, and forest areas with breeding populations of forest interior dwelling species.

2 (b) **Identification.** At the time of submittal of a development application, the applicant
 3 shall identify habitat protection areas as described in Section 5B-116.

4 (c) **Protection Measures.** Protection measures for habitat areas within specific sites are
 5 developed and enforced through an approved conservation plan.

6 **Sec. 5B-121. The Critical Area Buffer.**

7 (a) **Identification of the Critical Area Buffer.** The Buffer shall be identified, and the
 8 applicable standards applied, on all lands on which a development activity or a change in land
 9 use is proposed when the lands are adjacent to tidal waters, tributary streams, and tidal wetlands.
 10 The applicant shall be responsible for ensuring that the Buffer is accurately identified and
 11 delineated on all submittals for review.

12 (1) **In any Prince George's County Critical Area Overlay Zone the Buffer is**
 13 composed of the primary and secondary buffers as defined below:

14 (A) **A Primary Buffer is an area one hundred (100) feet from: the mean high**
 15 water line of tidal waters; the edge of the bank of tributary streams; and the landward extent of
 16 tidal wetlands for each feature measured separately.

17 (B) **In the R-C-O, the Primary Buffer shall be two hundred (200) feet as**
 18 described in section (d) below and shall be measured in the same manner as described above.

19 (C) **The Secondary Buffer includes areas contiguous to the Primary Buffer that**
 20 are essential for the Buffer to perform all of its integral functions, including:

21 (i) **A steep slope at a rate of four feet for every one percent of slope or the**
 22 entire steep slope to the top of the slope, whichever is greater;

23 (ii) **A nontidal wetland to the upland boundary of the nontidal wetland;**

24 (iii) **The 100-foot buffer that is associated with a Nontidal Wetland of**
 25 Special State Concern as stated in COMAR § 26. 23. 06.01;

26 (iv) **The 100-year floodplain;**

27 (v) **For an area of hydric soils or highly erodible soils, the lesser of:**

28 (aa) **The landward edge of the hydric soils or highly erodible soils; or**

29 (bb) **Three hundred feet where the 300 foot expansion area includes**
 30 the minimum 100-foot Primary Buffer and is measured from the features as described in (A)
 31 above.

32 (b) **Critical Area Buffer Function:**

1 (1) Provide for the removal or reduction of sediments, nutrients, and potentially
 2 harmful or toxic substances in runoff entering the Bay and its tributaries.

3 (2) Minimize the adverse effects of human activities on wetlands, shoreline, stream
 4 banks, tidal waters, and aquatic resources.

5 (3) Maintain an area of transitional habitat between aquatic and upland communities.

6 (4) Maintain the natural environment of streams.

7 (5) Protect riparian wildlife habitat.

8 (c) **Critical Area Buffer Delineation.** An applicant for a development activity or a
 9 change in land use shall delineate on all plans the primary and secondary buffers as defined in (a)
 10 above.

11 (d) **Buffer Establishment for New Subdivisions and Changes in the Proposed Use in**
 12 **the R-C-O.** Applications for a subdivision or for a proposed change in the use of the subject
 13 property requiring conservation plan approval shall include:

14 (1) On land located within the R-C-O, plans shall show the delineation of:

15 (A) Primary and Secondary Buffers in accordance with section (a) above; or

16 (B) A Primary Buffer of at least 200 feet from a tidal waterway or tidal
 17 wetlands; and a Primary Buffer of at least 100-feet from a tributary stream.

18 (2) The provisions of subsection (1) above do not apply if the application involves the
 19 use of growth allocation.

20 (e) **Permitted Activities.** New development is permitted in the Buffer associated with a
 21 water-dependent activity as noted in Section 27-548.16 or for shore erosion control measures as
 22 described in Section 5B-124. All other uses and structures are prohibited within the Buffer,
 23 except where an appropriate variance has been requested and approved by the Planning Board.

24 (f) **Buffer Establishment in Vegetation.** Except for the in-kind replacement of a
 25 principal structure, those applications listed in Subsection (1) below that occur outside the Buffer
 26 and that are located on a riparian lot or parcel that includes Critical Area Buffers to tidal waters,
 27 tidal wetlands, or tributary streams, an applicant shall establish the Buffer in vegetation and
 28 provide a Buffer Management Plan in accordance with this section.

29 (1) The provisions of this section apply to:

30 (A) A new subdivision or a new lot;

31 (B) A lot or parcel that is converted from one land use to another; or

(C) Development on a lot or a parcel created before January 1, 2010.

<u>Development Category</u>	<u>Buffer Establishment Required</u>
<u>New Development on a Vacant Lot</u>	<u>←Fully Establish the Buffer→</u>
<u>New Subdivision or New Lot</u>	<u>←Fully Establish the Buffer→</u>
<u>New Lot With An Existing Dwelling Unit</u>	<u>←Buffer Establishment is Based on Total Lot Coverage→</u>
<u>Conversion of a Land Use on a Parcel or Lot to Another Land Use</u>	<u>←Fully Establish the Buffer→</u>
<u>Addition or Accessory Structure</u>	<u>←Increase the Buffer Vegetation Based on Net Increase in Lot Coverage→</u>
<u>Substantial Alteration</u>	<u>←Increase the Buffer Vegetation Based on Total Lot Coverage→</u>

Table (f)(2) Required Area of Buffer Establishment

(2) If the Buffer is not fully forested at the time of application, the area of the Buffer required to be established through planting shall be in accordance with the Table (f)(2).

(3) Per Table (f)(2) where the Buffer is to be increased using total lot coverage proposed, the minimum amount of planting in the Buffer shall be equal to the amount of Critical Area lot coverage proposed.

(4) Where the Buffer is to be increased using the net increase in lot coverage proposed, the minimum amount of additional planting in the Buffer shall be equal to the amount of the net increase Critical Area lot coverage proposed.

(5) Applicants for development as set forth in Subsection (1) above shall obtain approval from the Planning Director or the Director’s designee of a Buffer Management Plan that meets the following standards:

(A) The Plan shall be developed in accordance with the planting standards set forth in section (g) below;

(B) For new subdivisions the Plan shall include the installation of signs delineating the upland boundary of the Buffer at a ratio of at least one sign per lot or per 200 feet of shoreline, whichever is applicable; and

1 (C) The financial assurance required in section (j) below may not be released
 2 until the entire area of the Buffer contains at least 300 viable native woody stems per acre.

3 (6) For Buffer establishment that exceeds one acre, the Buffer Management Plan may
 4 allow natural regeneration up to 50% of the area required for establishment if:

5 (A) The entirety of the natural regeneration area is within 50 feet of a mature
 6 forest that contains a seed bank of native species adequate for natural regeneration;

7 (B) The Plan includes a supplemental planting plan for implementation if
 8 necessary; and

9 (C) The financial assurance period is at least seven years.

10 (g) **Mitigation and planting standards.** A Buffer Management Plan shall meet the
 11 following planting and mitigation standards:

12 (1) As appropriate to the site, the Plan shall:

13 (A) Prohibit the creation of new lawn or turf areas onsite in the Buffer;

14 (B) Use native species;

15 (C) Require the stabilization of the ground with mulch or non-invasive ground
 16 cover or both;

17 (D) Ensure the survival of all nursery stock for at least two years;

18 (E) Ensure the survival of flexible stock in accordance with Table (g)(4) –
 19 Flexible Stocking Standards; and

20 (F) Locate all mitigation in the Buffer in a manner that provides optimum
 21 habitat and water quality benefits.

22 (2) Credits for planting shall be based on the type and size of the vegetation and the
 23 maximum composition as set forth in the table below:

24 **Table (g)(2) Nursery Stock Credits**

<u>Vegetation Type</u> <u>(Species)</u>	<u>Minimum</u> <u>Size</u>	<u>Credit</u> <u>(Square</u> <u>Feet)</u>	<u>Maximum</u> <u>Compositio</u> <u>n</u>
<u>Canopy Tree</u>	<u>2” caliper and 8’ high</u>	<u>200</u>	
<u>Canopy Tree</u>	<u>1” caliper and 6’ high</u>	<u>100</u>	
<u>Understory Tree</u>	<u>1” caliper and 6’ high</u>	<u>75</u>	
<u>Large Shrub</u>	<u>1 gallon and 4 feet high</u>	<u>50</u>	<u>30%</u>

<u>Small Shrub</u>	<u>1 gallon and 18" high</u>	<u>25</u>	<u>20%</u>
<u>Herbaceous perennials</u>	<u>1 quart</u>	<u>2</u>	<u>20%</u>
<u>* —</u>			
<u>Planting Cluster 1 *</u>	<u>1 Canopy Tree plus 3 Large Shrubs or 6 Small Shrubs of sizes listed above</u>	<u>300</u>	
<u>Planting Cluster 2 *</u>	<u>2 Understory Trees plus 3 Large Shrubs or 6 Small Shrubs of sizes listed above</u>	<u>350</u>	

* These options are only available for Buffer mitigation of less than 1 acre.

(3) The Plan may allow the combination of the planting and mitigation standards found in Table (g)(2) - Nursery Stock Credits in paragraph (2) and Table (g)(3) - Flexible Stocking Table in paragraph (4) in accordance with the Combination Planting Table below:

Table (g)(3) Combination Planting Standards

<u>Requirement</u>	<u>Amount</u>	<u>Options</u>
<u>Establishment</u>	<u>Less than ¼ acre</u>	<u>Nursery stock according to Table (2) for the entire area</u>
	<u>Greater than ¼ acre ≤ 1 acre</u>	<u>At least 50% of the area in nursery stock according to Table (2), the remainder according to Table (4)</u>
	<u>Greater than 1 acre to ≤ 5 acres</u>	<u>At least 25% of the area in nursery stock according to Table (2), the remainder according to Table (4)</u>
	<u>Greater than 5 acres</u>	<u>At least 10% of the area in nursery stock according to Table (2), the remainder according to Table (4)</u>
<u>Mitigation</u>	<u>Less than 1 acre</u>	<u>Nursery stock according to Table (2) for the entire area</u>

	<u>1 Acre or greater</u>	<u>At least 50% of area in nursery stock according to Table (2), the remainder according to Table (4)</u>
--	--------------------------	---

(4) Plant stocking for establishment and mitigation that uses the combination planting table above shall stock the remainder using only types of planting stock in accordance with the Flexible Stocking Table below:

Table (g)(4) Flexible Stocking Standards

Stock Size (Trees Only)	Number per Acre	Required Survival Rate	Required Survival Prior to Release of Financial Assurance
Bare-root seedling or whip	700	50% 350 per acre	5 years
½” to 1” Container grown trees	450	75% 337 per acre	2 years
Greater than 1” container grown trees	350	90% 315 per acre	2 years

(h) Calculating Required Mitigation for Authorized Disturbance Or Clearing. Buffer mitigation shall be based on the area of the Buffer that is disturbed or developed and the ecosystem function lost and shall be calculated as follows:

(1) Mitigation for individual trees removed without disturbance to other vegetation is based on the diameter of the tree at 4.5 feet above the ground surface and is required at a rate of 100 square feet for every one inch of diameter if the tree is greater than two-inches in diameter.

(2) Mitigation for any clearing of other vegetation, including trees and woody vegetation less than two inches in diameter, and for development activity within the Buffer is based on the square footage disturbed and is required at the ratios set forth in the table below:

Table (h)(2). Mitigation Ratios for Authorized Development Activities

<u>Activity</u>	<u>Mitigation Ratio</u>
<u>Shore erosion control</u>	<u>1:1</u>
<u>Riparian water access</u>	<u>2:1</u>

<u>Development or redevelopment of water-dependent facilities</u>	<u>2:1</u>
<u>Variance</u>	<u>3:1</u>

1 (3) Mitigation for clearing or development activity affecting woodlands or developed
2 woodlands within the Buffer is based on the number of trees removed plus the area disturbed for
3 the development activity, and is the sum of the mitigation specified in standards (1) and (2)
4 above. Based on the development activity that is proposed, these ratios may be cumulative.
5 Mitigation ratios for a violation in the Critical Area are provided in Section 5B-119(e) and may
6 also be cumulative.

7 (4) Mitigation for the removal of dead, diseased, or dying trees is based on each tree
8 removed and is required at one tree for each tree removed.

9 (5) Mitigation for the removal of invasive species is based on the area disturbed and
10 is required at a one-to-one ratio.

11 (i) **Locating Buffer mitigation.** Mitigation plantings shall be located on-site within the
12 Buffer, unless this is not feasible due to site constraints. The following alternatives may be used
13 in the following order of priority:

14 (1) On-site and adjacent to the Buffer;

15 (2) On-site and elsewhere within the Critical Area;

16 (3) Off-site in the Critical Area and in the same watershed;

17 (4) Off-site in the Critical Area; or

18 (6) Payment of a fee-in-lieu of mitigation as described in Section 5B-119(n) of this

19 Subtitle.

20 (j) **Required Submittal of Buffer Management Plans.** When the Buffer is required to
21 be established or mitigation is required for disturbance to the Buffer, a Buffer Management Plan
22 is required. A Buffer Management Plan may be a Simplified Plan or a Standard Plan as
23 described in section (k) and (l) below. Both the Simplified Plan and Standard Plan must be
24 approved by the Planning Director or the Director’s designee in accordance with the standards
25 described in sections (k) and (l) below with the approval of either a conservation plan or staff
26 level review as appropriate.

27 (1) A Buffer Management Plan is required when the Buffer must be established per
28 Sections (f) and (g) of this Division. The Plan must be submitted with all other application

1 materials and clearly specify the area to be planted and state if the applicant is:

2 (A) Fully establishing the Buffer;

3 (B) Partially establishing an area of the Buffer equal to the net increase in lot
 4 coverage, or

5 (C) Partially establishing an area of the Buffer equal to the total lot coverage.

6 (2) A Buffer Management Plan shall also be required for any disturbance to the
 7 Buffer that results from the approval or issuance of the following including mitigation for a
 8 violation:

9 (A) A variance;

10 (B) A subdivision;

11 (C) A site plan;

12 (D) A shore erosion control permit as required under COMAR 26.24.01;

13 (E) A building permit;

14 (F) A grading permit; or

15 (G) A special exception.

16 (k) Simplified Buffer Management Plan.

17 (1) The Planning Director or the Director's designee may approve a Simplified
 18 Buffer Management Plan for the following activities:

19 (A) To provide an access path to a private pier or to the shoreline that is no wider
 20 than three feet;

21 (B) To cut a tree that is in imminent danger of falling and causing damage to a
 22 dwelling or other structure.

23 (C) To cut a tree which is in danger of falling and causing blockage to a stream;

24 (D) To cut a tree which may accelerate shoreline erosion;

25 (E) To perform a horticultural practice to maintain the health of an individual
 26 tree;

27 (F) To manually remove invasive or noxious vegetation; and

28 (G) To establish up to 500 square feet of vegetation in the Buffer if required for
 29 development activities located outside the Buffer per Section (f) above.

30 (2) An application for a Simplified Buffer Management Plan includes the following
 31 minimum information:

1 (A) For activities in subsection (1)(a) through (1)(f):

2 (i) A brief statement describing the activity, how it will be accomplished
 3 (i.e. chainsaw, hand removal, etc.), and the anticipated date of the work;

4 (ii) Proposed mitigation;

5 (iii) Proposed mitigation planting date; and

6 (iv) Signature of the responsible party.

7 (B) For establishment of up to 1,000 square feet of vegetation in the Buffer a
 8 plan showing the proposed species type, the quantity of plants, the size of plants, and the stock
 9 type that is proposed for installation.

10 (1) **Standard Buffer Management Plan.** A Standard Buffer Management Plan is
 11 required for development activities described in Section (j) above that exceed the limitations for
 12 Simplified Buffer Management Plans. The requirements for a standard Buffer Management Plan
 13 may be shown on a conservation plan or on a separate plan if a conservation plan is not required.
 14 Standard Buffer Management Plans are approved by the Planning Director or the Director's
 15 designee.

16 (1) A Standard Buffer Management Plan must include all of the following
 17 information:

18 (A) A plan that shows the limit of disturbance, the total number and size of trees
 19 removed, if applicable, and the arrangement of the proposed planting;

20 (B) A landscape schedule showing the proposed species type, the quantity of
 21 plants, the size of plants, and the stock type that is proposed for installation;

22 (C) For planting requirements that do not exceed 5,000 square feet:

23 (i) The anticipated planting date;

24 (ii) A maintenance plan that includes:

25 (aa) Practices to control invasive species and pests and minimize
 26 herbivory;

27 (bb) The signature of a responsible party;

28 (cc) Provisions for monitoring and reinforcement planting if survival
 29 rates fall below those required in this Subtitle;

30 (dd) A signature that confirms the review and approval of the
 31 maintenance plan by the Planning Director or the Director's designee.

1 (ee) A statement that grants permission to DPW&T and M-NCPPC to
 2 enter the property to inspect the plantings at appropriate times.

3 (D) For planting requirements that exceeds 5,000 square feet:

4 (i) The anticipated planting date, which for establishment shall be prior to
 5 issuance of any permit;

6 (ii) A maintenance plan that includes:

7 (aa) Provisions necessary to ensure the survival of the planting;

8 (bb) Practices to control invasive species and pests and minimize
 9 herbivory;

10 (cc) The signature of a responsible party;

11 (dd) Provisions for monitoring and reinforcement planting if survival
 12 rates fall below those required in 5B-119(g); and

13 (ee) A signature that confirms the review and approval of the
 14 maintenance plan by the Planning Director or the Director’s designee.

15 (ff) A statement that grants permission to DPW&T and M-NCPPC to
 16 enter the property to inspect the plantings at appropriate times.

17 (iii) A long-term protection plan that includes:

18 (aa) Deed restrictions, plat notes, easements, or other agreements
 19 required by the County to ensure the protection of Buffer vegetation in accordance with the
 20 provisions of this section;

21 (bb) The signature of the property owner or developer;

22 (cc) Evidence of financial assurance accepted by the local jurisdiction
 23 before final approval of a subdivision or site plan that covers the planting and survivability
 24 requirement;

25 (dd) Provisions for monitoring and reinforcement planting if survival
 26 rates fall below those required in this Chapter; and

27 (ee) A signature that confirms the review and approval of the
 28 maintenance plan by the Planning Director or the Director’s designee.

29 (2) Upon Subdivision Approval.

30 (A) Prior to final plat recordation, an applicant shall:

31 (i) Post permanent signs delineating the upland boundary of the Buffer at

1 a ratio of at least one sign per lot or per 200 linear feet of shoreline, whichever is applicable;

2 (ii) Provide evidence that the signs have been installed; and

3 (iii) Each sign required under paragraph (A) of this subsection shall:

4 (aa) Be at least 11 inches in width and 15 inches in height;

5 (bb) Be placed at a height of 4.5 feet, but not attached to a tree; and

6 (cc) Clearly state “Critical Area Buffer – No clearing or disturbance
 7 permitted”.

8 (B) The final plat shall delineate a conservation easement for the Buffer.

9 (m) **Prohibitions.**

10 (1) The Planning Board may not grant a variance to the planting and mitigation
 11 standards described in this subtitle.

12 (2) DER may not issue a final use and occupancy permit to an applicant for a permit
 13 listed under subsection (j)(2) unless the applicant:

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

15 (B) Provides financial assurance to cover the costs for:

16 (i) Materials and installation; and

17 (ii) Long-term survivability in accordance with the requirements of
 18 subsection (l)(1)(D) above.

19 (n) **Fees-In-Lieu of Buffer Mitigation.** If the planting requirements set forth in sections
 20 (f), (g)(2) through (4) and (h) of this chapter cannot be met, DPW&T shall collect a fee-in-lieu of
 21 mitigation in accordance with the following standards and Section 5B-119(d):

22 (1) Fee-in-lieu monies shall be collected and held in a separate account;

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

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

27 (4) Fee-in-lieu monies shall be used as follows:

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

30 (B) For water quality and habitat enhancement projects as described in an
 31 agreement between DPW&T, M-NCPPC and the Commission.

1 (o) **Shore Erosion Control Projects.** Shore erosion control measures are permitted
 2 activities within the Buffer in accordance with the following requirements:

3 (1) An applicant for a shore erosion control project that affects the Buffer in any way,
 4 including, but not limited to access, vegetation removal and pruning, or backfilling shall submit a
 5 Buffer Management Plan in accordance with the requirements of this chapter; and

6 (2) Comply fully with all of the policies and criteria for a shore erosion control
 7 project stated in COMAR 27.01.04 and COMAR 26.24.06.01.

8 (p) **Agriculture in the Buffer.** Agricultural activities within the Buffer are subject to the
 9 limitations and standards of 5B-102.

10 **Sec. 5B-122. Non-tidal Wetlands.**

11 (a) **Identification.** Nontidal wetlands shall be delineated in the field according to the
 12 Federal Manual. The applicant shall be responsible for ensuring that nontidal wetlands are
 13 accurately identified and delineated on all plan submittals.

14 (b) **Functions of nontidal wetlands:**

15 (1) Removal or reduction of sediments, nutrients, and potentially harmful or toxic
 16 substances in runoff entering the Bay and its tributaries;

17 (2)Control, infiltration, and absorption of floodwaters associated with extreme high tides and
 18 storm events;

19 (2) Minimize the adverse effects of human activities on waterways and aquatic
 20 resources;

21 (3) Maintain an area of transitional habitat between aquatic and upland communities;

22 (4) Maintain the natural environment of streams;

23 (5) Provide wildlife habitat for wetland species.

24 (c) **Standards for non-tidal wetland protection.** In addition to the standards set forth in this
 25 Subtitle for protection of the Buffer and expansion of the Buffer for nontidal wetlands,
 26 development activity affecting nontidal wetlands shall comply with the following standards:

27 (1) New development activity is prohibited in nontidal wetlands unless the
 28 development activity is water dependent and requires access to a nontidal wetland as a central
 29 element of its basic function, or is not water dependent, and has no practicable alternative;

30 (2) A 25-foot buffer shall be established around all nontidal wetlands. A 100-foot-
 31 wide buffer shall be established around all wetlands of special state concern. Development

1 activities or other activities that may disturb the wetlands or the wildlife contained therein, shall
 2 be prohibited unless it can be shown that these activities will not adversely affect the wetland.

3 This requirement is not intended to restrict the grazing of livestock in these wetlands;

4 (3) The hydrologic regime and water quality of identified nontidal wetlands shall be
 5 protected by providing that development activities or other land disturbances in the drainage area
 6 of the wetlands shall minimize alterations to the surface or subsurface flow of water into and
 7 from the wetlands and not cause impairment of the water quality or the plant and wildlife and
 8 habitat value of the wetland;

9 (4) New development activity will first avoid and then minimize adverse impacts to
 10 the nontidal wetland based on consideration of existing topography, vegetation, fish and wildlife
 11 resources, and hydrological conditions;

12 (5) New development activity affecting nontidal wetlands must be designed so that it
 13 does not cause or contribute to a degradation of ground waters or surface waters; and

14 (6) Development activity permitted in accordance with these standards must be
 15 consistent with any comprehensive watershed management plan developed or approved by the
 16 Department under Environment Article, §5-908, Annotated Code of Maryland.

17 (d) **Review process.** Applicants for approval of development projects that involve
 18 disturbance or alteration to nontidal wetlands or the 25-foot buffer shall require a variance and
 19 shall demonstrate:

20 (1) That proposed impacts are unavoidable;

21 (2) That alternative proposals were evaluated; and

22 (3) That mitigation measures will be provided. Mitigation measures shall provide
 23 water quality benefits and plant and wildlife habitat equivalent to those of the wetland destroyed
 24 or altered and shall be accomplished, to the extent possible, on site or near the affected wetland.

25 **Sec. 5B-123. Other Habitat Protection Areas.**

26 (a) Habitat Protection Area Functions:

27 (1) Protect threatened and endangered species, those species in need of conservation
 28 and their habitats, which occur in the Critical Area;

29 (2) Conserve wildlife habitat in the Critical Area;

30 (3) Protect those wildlife habitats that tend to be least abundant or which may become
 31 so in the future if current land-use trends continue;

1 (4) Protect those wildlife habitat types which are required to support the continued
 2 present of various species;

3 (5) Protect those wildlife habitat types and plant communities which are determined
 4 by the County to be of local significance; and

5 (6) Protect Natural Heritage Areas.

6 **(b) Habitat Protection Areas Identified.**

7 (1) An applicant shall request review by the Department of Natural Resources
 8 Wildlife and Heritage Service (DNR-WHS) to identify the habitats listed below and provide
 9 copy of the review as evidence with the Conservation Plan, including;

10 (A) Threatened or endangered species or species in need of conservation,

11 (B) Colonial water bird nesting sites;

12 (C) Historic waterfowl staging and concentration areas in tidal waters, tributary
 13 streams or tidal and non-tidal wetlands;

14 (D) Existing riparian forests (example: relatively mature forests of at least 300
 15 feet in width which occur adjacent to streams, wetlands, or the bay shoreline and which are
 16 documented breeding areas);

17 (E) Forest areas utilized as breeding areas by forest interior dwelling birds and
 18 other wildlife species);

19 (F) Other areas which may, in the future, be identified by the State and Federal
 20 agencies as important plant and wildlife habitat areas;

21 (G) Other plant and wildlife habitats determined to be of local significance; and

22 (H) Natural Heritage Areas which have been designated based on consultation
 23 with the (DNR WHS).

24 (2) If any habitats are identified on a project site, the applicant shall be responsible
 25 for including measures on the Conservation Plan that protects and conserves the species and
 26 habitats identified as recommended by DNR WHS adequate to provide for long-term
 27 conservation and can be implemented on the specific site. The M-NCPPC, in consultation with
 28 appropriate State and/or Federal agencies and in consultation with local agencies will verify that
 29 the ecological and areal requirements of the species of habitat are adequate for protection.

30 **(c) Standards.** The following standards shall apply to the Conservation Plan for the
 31 habitats listed above:

1 (1) Any development or significant land use change of property which may contain
2 plant or wildlife habitat areas listed above will require a site specific survey. The survey shall be
3 submitted along with design plans and a written description of the measures the property owner
4 proposes to take to protect the habitats identified.

5 (2) The site survey will be based on an evaluation zone created around each known
6 site of a rare, threatened or endangered species in which new development activities or other
7 disturbances shall be prohibited unless it can be shown that the activities will not have or cause
8 adverse impacts on the species.

9 (A) In the case of bird and mammal species, this evaluation zone shall be a two
10 thousand (2,000) foot radius.

11 (B) In the case of other wildlife species, this evaluation zone shall be a two
12 hundred (200) foot radius.

13 (C) In the case of fish species, this evaluation zone shall include all contiguous
14 waters within two thousand (2,000) feet and the specified buffers.

15 (D) In the case of plant species, this evaluation zone shall be a two hundred
16 (200) foot radius.

17 (E) In the case of Natural Heritage Areas, this evaluation zone shall be set by
18 boundary of the Natural Heritage Area.

19 (3) For development activities in L-D-O and R-C-O, Conservation Plans shall
20 establish wildlife corridors to be used to connect areas left in forest cover with any large forest
21 tracts which are located outside of the area of the property being developed or subdivided. The
22 area left in forest cover (at least 70 percent of the tract in L-D-Os or R-C-Os as required by this
23 Subtitle) shall be adjacent to larger forest, not left as an isolated island of trees. Planting
24 required as a mitigation measure shall also be adjacent to other habitat.

25 (4) New water-dependent facilities shall be located to prevent disturbance to sites of
26 significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.
27 The following restrictions apply to Water Dependent Facilities:

28 (A) Unless unavoidable, as determined by the Planning Board, new water
29 dependent facilities shall not be placed within or adjacent to waterfowl conservation areas.

30 (B) If a new facility must be placed, its use shall be limited to the extent
31 practicable during the period from November through March to avoid waterfowl disturbance.

1 (5) Protection measures, including a buffer area, shall be established where
2 appropriate, for other plant and wildlife habitat sites identified in this Subtitle.

3 (6) Forested areas required to support wildlife species identified as threatened and
4 endangered, or in need of conservation, shall be protected and conserved by developing
5 management programs which have as their objective, conserving the wildlife that inhabit or use
6 the areas. Development activities, or the clearing or cutting of trees which might occur in the
7 areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and
8 their habitat. Management measures may include incorporating appropriate wildlife protection
9 elements into Timber Harvest Plans, Forest Management Plans, cluster zoning or other site
10 design criteria which provide for the conservation of wildlife habitat. Measures may also include
11 Soil Conservation Plans which have wildlife habitat protection provisions appropriate to the
12 areas defined above, and incentive programs which use the acquisition of easements and other
13 similar techniques.

14 (7) The following specific standards also apply:

15 (A) Bald Eagle Protection Standards. A three-zone protection area of one-quarter
16 (1/4) mile (1,320') in radius around each Bald Eagle nest shall be established and the
17 Conservation Plan shall include the following recommended protection measures:

18 (i) Zone 1 shall include the area extending from the nest out to a radius of
19 three hundred-thirty (330) feet from the nest. In this zone, timber cutting, land clearing and
20 development activities are prohibited. Hiking, fishing and agricultural activities may be
21 permitted from June 16 to December 14. These activities and human activities in general should
22 not be permitted in this zone from December 15 to June 15.

23 (ii) Zone 2 extends from the outer limit of Zone 1 to a radius of six
24 hundred-sixty (660) feet from the nest. In this zone, major habitat changes should be avoided,
25 including clear-cutting, land clearing and development activity. Hunting, hiking, fishing and
26 agricultural activities may be permitted from June 16 to December 14. These activities and
27 human activity in general should not be permitted in this zone from December 15 to June 15.
28 Agricultural activities may be permitted if Department of Natural Resources data indicate that
29 the nesting eagles are tolerant of these activities. From August 16 to November 14, selective
30 thinning and maintenance of timber stands and building and road maintenance may be permitted.

31 (iii) Zone 3 extends from the outer limit of Zone 2 to a radius of one

1 thousand three hundred-twenty (1,320) feet from the nest. Timber cutting, land clearing and
 2 development activities should be restricted from December 15 to June 15. Other activities in this
 3 zone that are within sight of the eagles on the nest may need to be restricted during this time
 4 period in accordance with the Department of Natural Resources' recommendations.

5 (iv) If a Bald Eagle nest has not been used for three successive nesting
 6 seasons, any protective regulations applied to the specific site may be removed after verification
 7 by the Department of Natural Resources that the nest has been abandoned.

8 (B) Forest Interior Dwelling Species Protection Standards. When proposing
 9 development activities within riparian forests or forest areas utilized as breeding areas by forest
 10 interior dwelling birds, applicants shall follow the guidance found in the Critical Area
 11 Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds*
 12 in the Chesapeake Bay Critical Area, dated June 2000, and as may be subsequently amended. In
 13 addition, the Department of Natural Resources may make specific recommendations based on an
 14 evaluation of the site and the proposed development.

15 (i) The following (BMPs) (BMPs) shall apply to Forests with Interior
 16 Dwelling Bird Species:

17 (aa) Minimize disturbance during the May-August breeding season
 18 (i.e., from off-road vehicles, intensive public use, or logging).

19 (bb) Focus the development or disturbance on the periphery of the
 20 area (i.e. roads, utility line corridors, structures).

21 (cc) Retain the contiguous cover of branches and foliage formed by
 22 the crowns of adjacent trees and shrubs underneath the canopy (e.g. understory vegetation).

23 (dd) Retain standing dead trees (e.g. snag trees) which serve as bird
 24 nesting and feeding habitat.

25 (ee) Discourage creation of small clearings and disproportionate
 26 expansion of forest edge habitat.

27 (ff) If a forest area is temporarily cleared, it shall be allowed to return
 28 to native forest vegetation.

29 (gg) Timber harvesting techniques to maintain or improve habitat for
 30 forest interior dwelling bird species shall be used.

31 (C) Colonial Water Bird Nesting Sites Protection Standards. Buffer areas for
 32 colonial water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such

1 birds are found to exist in the Critical Area) so that these sites are protected from the adverse
 2 impacts of development activities and from disturbance during the breeding season. In
 3 designated colonial waterbird nesting sites, the following guidelines shall apply:

4 (i) A large enough buffer shall be maintained so that a person walking the
 5 perimeter will not cause disturbance. This buffer shall be a minimum of 200 feet.

6 (ii) Access to the buffer shall be prohibited during the nest building and
 7 incubation periods, from February through April.

8 (iii) During February through April, noise shall be minimized in areas
 9 adjacent to the buffer. Use of chain saws and large grading machinery such as bulldozers shall
 10 be prohibited. The use of agricultural equipment may be exempted.

11 (D) Natural Heritage Area Protection Standards. Natural Heritage Areas shall be
 12 protected from alterations due to development activities or cutting or clearing so that the
 13 structure and species composition of the areas are maintained.

14 (i) The following areas within the Critical Area of the County are
 15 officially identified and designated as Natural Heritage Areas:

16 (aa) Patuxent Marshes

17 (bb) Magruder's Landing

18 (ii) Development activities or cutting and clearing in Natural Heritage
 19 Areas shall be prohibited unless an analysis is performed and measures proposed to mitigate any
 20 adverse impacts of the proposed activities. The analysis and mitigation measures shall be
 21 prepared by qualified professionals (e.g. ornithologists, zoologists, environmental engineers and
 22 planners) at the expense of the applicant and shall address the expected effects on the natural
 23 environment within the Natural Heritage Area.

24 (iii) The analysis shall be submitted to M-NCPPC which will then submit it
 25 to the State Department of Natural Resources for review and comment. Upon receiving said
 26 comment and, if appropriate, upon seeking the advice of expert consultants, M-NCPPC shall find
 27 against or in favor of the activities or may make suggestions for changing the analysis and ask
 28 the applicant to resubmit the analysis. The initial review between M-NCPPC and State
 29 Department of Natural Resources should be completed within sixty (60) days from submission.

30 (E) Anadromous Fish Propagation Waters. Within anadromous fish propagation
 31 watersheds, the following measures are required:

1 (i) The installation or introduction of concrete riprap or other artificial
 2 surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that
 3 water quality and fisheries habitat can be improved.

4 (ii) Channelization or other physical alterations which may change the
 5 course or circulation of a stream and thereby interfere with the movement of fish, shall be
 6 prohibited.

7 (iii) Each development activity that occurs within a watershed draining to
 8 anadromous fish propagation waters shall fulfill the following objectives:

9 (aa) Minimize development activities or land disturbances within the
 10 watershed;

11 (bb) Maintain, or if practicable, improve water quality in affected
 12 streams or other water bodies;

13 (cc) Minimize to the extent possible the discharge of sediments into
 14 affected streams or other water bodies;

15 (dd) Maintain, or if practicable, increase the natural or native
 16 vegetation of the watershed and tree canopy over the streams;

17 (iv) Each development activity shall ensure coordination and compliance
 18 with complementary State laws and regulations:

19 (aa) Prohibit the construction or placement of dams or other
 20 structures that would interfere with or prevent the movement of spawning fish or larval forms in
 21 streams or other designated water bodies. If practical, existing structures shall be removed; and

22 (bb) Ensure that the construction, repair or maintenance activities
 23 associated with bridges, or other stream crossing or with utilities and roads, which involve
 24 disturbance within the buffer or which occur in-stream, as described in COMAR
 25 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

26 (d) **Habitat Protection Plans.** If impacts are proposed to any of the habitat protection
 27 areas identified in Section 5B-123, a Habitat Protection Plan shall be developed and
 28 implemented as part of the approved Conservation Plan. The following process shall be used to
 29 address the ecological requirements of the species or habitat:

30 (1) A management program and area of designation shall be shown on the
 31 Conservation Plan.

1 (2) The Environmental Planning Section of M-NCPPC, in consultation with
2 appropriate state and/or federal agencies and in consultation with other county agencies, shall
3 verify that the ecological and areal requirements are adequate for protection of the species in
4 question.

5 (3) Revisions to the Habitat Protection Plan may be required to reflect the comments
6 of the reviewing agencies.

7 (4) Management programs and areal designation of Habitat Protection Areas shall be
8 incorporated into pending or future Conservation Plans and shall be in conformance with the
9 requirements for preservation and mitigation as described in the plan. The provisions of the
10 Habitat Protection Plan shall be reflected on the Conservation Agreement.

11 **Section 5B-124. Shore Erosion Protection.**

12 (a) Purpose. The alteration of the natural landscape and the use of structural devices to
13 protect the shoreline from erosion can result in a significant disturbance to the aquatic
14 environment and increase erosion downstream. This section for limits the use of structural
15 erosion control devices to only those areas where major erosion problems exist and where living
16 shorelines or nonstructural erosion control measures are not practical or effective. In general,
17 improvements to protect a person's property against erosion shall consist of nonstructural
18 measures that preserve the natural environment, such as marsh creation, maintenance of buffer
19 zones, and the establishment of natural barriers to prevent intrusion on fragile, vegetated
20 shorelines are encouraged. The criteria set forth in this section are not intended to apply to those
21 structures necessarily associated with Water-dependent Facilities as discussed in Section 5B-118.

22 (b) Permits and Approvals Required. A grading permit or building permit is required for
23 all shoreline erosion control activities. An approved Conservation Plan is required prior to the
24 issuance of any permit. M-NCPPC, DPW&T and, as necessary, DER shall sign off on all
25 permits associated with shore erosion protection projects.

26 (c) Standards for erosion protection. Each application for shore erosion protection shall
27 meet the following standards:

28 (1) Structural control measures shall only be used in areas where appreciable erosion
29 has occurred and where non-structural measures would not be practical or effective in controlling
30 erosion as mapped by the Maryland Department of the Environment or otherwise approved by
31 the Maryland Department of the Environment through the waiver process.

1 (2) Where structural erosion control is required, the measure that best provides for
 2 conservation of plant, fish, and wildlife habitat and that is practical and effective shall be used.

3 (3) Living shorelines and non-structural measures shall be utilized in areas of erosion
 4 where they would be a practical and effective method of erosion control.

5 (4) Structural erosion measures shall not be permitted in areas where no significant
 6 erosion occurs.

7 (5) If significant alterations in the characteristics of a shoreline occur, the measure
 8 that best fits the change may be used for sites in that area.

9 (d) **Shoreline changes.** Storms and other natural events may change current shoreline
 10 erosion patterns. As a result, an individual may use the Maryland Department of the
 11 Environment (MDE) waiver process to request the use of a structural erosion control device in an
 12 area that is not currently designated for structural controls. An MDE waiver request shall be
 13 submitted to the Director and must be accompanied by documentation that identifies the specific
 14 location of the site to be protected and describes the event or events that led to the change in the
 15 erosion pattern. Notification of such a request shall be sent to MDE and M-NCPPC for review
 16 and comment prior to approval.

17 (e) **Process.** When reviewing a conservation plan for structural erosion control devices,
 18 the application shall be referred to the Soil Conservation District for field verification of the need
 19 for structural erosion control as well as for recommendations on proposed erosion control
 20 mechanisms.

21 (1) Any application for the installation of an erosion control device must, at a
 22 minimum, include the following information:

23 (A) Photographs of the erosion problem;

24 (B) The specific location of the site indicated on a 7 ½ Minute USGS
 25 Topographic Quadrangle Map;

26 (C) Soil type and erodibility;

27 (D) A copy of the proposed Conservation Plan; and

28 (E) The proposed and existing land use.

29 (2) Applications must include either a copy of the application for authorization from
 30 the Maryland Department of the Environment and the U.S. Army Corps of Engineers or an
 31 approved authorization. An approved authorization does not prohibit the Director from denying

1 or modifying the application to the County prior to permit approval.

2 (f) **Mitigation.** Most shore erosion control projects involve disturbance to the shoreline
3 and the Buffer. Mitigation shall be provided for disturbance in accordance with the provisions of
4 Section 5B-119. Shore erosion control projects that are installed completely from the water and
5 involve only offshore measures, such as breakwaters, may not require mitigation if the applicant
6 demonstrates that the construction does not affect the Buffer.

7 SECTION 4. BE IT FURTHER ENACTED that the provisions of this Act are hereby
8 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
9 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
10 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
11 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
12 Act, since the same would have been enacted without the incorporation in this Act of any such
13 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

14 SECTION 5. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
15 calendar days after it becomes law.

Adopted this 26th day of October, 2010.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.