

CHAPTER 99

CHARLESTOWN CRITICAL AREA

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Part 1. Implementation of the Critical Area Program Purpose and Goals

A. Goals.

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

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

B. Charlestown's Critical Area Program.

The Charlestown Critical Area Program consists of the Charlestown Zoning Chapter (Chapter 99), and the Official Critical Area map(s). Related provisions may be found in the Charlestown Subdivision Regulations (Chapter 150). The Charlestown Critical Area Program was originally adopted on May 24, 1988.

C. Applicability.

The Zoning Administrator shall review a permit or license for a development or redevelopment activity in the Critical Area for compliance with this Critical Area Chapter prior to issuance of that permit or license.

D. Critical Area Overlay District Map.

- (1) The Official Critical Area Overlay District Map is maintained as part of the Official Zoning Map for Charlestown. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:
 - (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetland maps, and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and
 - (b) All land and water areas within 1,000 feet beyond the landward

boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.

- (2) Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:
 - (a) Intensely Developed Area (IDA).
 - (b) Limited Development Area (LDA).
 - (c) Resource Conservation Area (RCA).
- (3) The Critical Area Overlay District Map may be amended by the Town Commissioners in compliance with amendment provisions in this chapter, the Maryland Critical Area Law, and COMAR Title 27.

E. Notification of project approval

Charlestown shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment.

- (1) The application shall be accompanied by a completed “Project Notification Application” form downloaded from the Critical Area Commission’s website or available at the Charlestown Town Hall.
- (2) The Town of Charlestown may not process an application, which has been sent to the Critical Area Commission for notification until it has received notice of receipt by the Commission.
- (3) Any action by Charlestown in violation of these procedures shall be void.

**Summary of Notification Requirements
Critical Area Commission
(COMAR 27.03.01)**

Requires Notification to the Critical Area Commission			
	Yes/No		
<u>Type of Application</u>	<u>IDA</u>	<u>LDA</u>	<u>RCA</u>
1. Disturbance to a Habitat Protection Area	Y	Y	Y
2. Physical disturbance to the 100-foot Buffer or expanded Buffer (see Note 1)	Y	Y	Y
3. Variance from Critical Area provisions	Y	Y	Y
4. Development resulting in less than 5,000 square feet of disturbance	N	N	N
5. Development resulting in between 5,000 and 15,000 square feet of disturbance	N	N	Y
6. Development resulting in greater than 15,000 square feet of disturbance	Y	Y	Y
7. Subdivision of 3 lots or fewer	N	N	Y
8. Subdivision of 4 to 10 lots	N	Y	Y
9. Subdivision of greater than 10 lots	Y	Y	Y
10. Subdivision affecting growth allocation	N/A	Y	Y
11. Intrafamily transfer	N/A	N/A	Y
12. Rezoning that would occur wholly or partially within the Critical Area	Y	Y	Y
13. Special exception or conditional use for industrial commercial, institutional, non-residential or multi-family	N	Y	Y
14. Substantial alteration to applications previously submitted to the Critical Area Commission	Y	Y	Y
Note 1: Shore erosion control measures and private piers that do not involve disturbance to the 100-foot Buffer or expanded Buffer and are not permitted by MDE do not require Commission notification.			

Part 2. Development Standards in the Critical Area.

A. General Requirements in all Critical Area Overlay Zones.

- (1) New solid or hazardous waste collection or disposal facilities, or sanitary landfills or rubble fills, including transfer stations, may not be permitted in the Critical Area unless no environmentally preferable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem. Existing permitted facilities shall be subject to the standards and requirements of the Department of the Environment.¹
- (2) Development and redevelopment shall be subject to the Habitat Protection Area (HPA) requirements prescribed in this chapter.
- (3) Development and redevelopment shall be subject to the water-dependent facilities requirements of this chapter;
- (4) Utility transmission facilities
 - (a) Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:
 - (i) The facilities are located in IDAs; and
 - (ii) Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
 - (b) These provisions do not include power plants.
- (5) Roads, bridges, and utilities are prohibited in a HPA unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
 - (a) Provide maximum erosion protection;

¹ Part 2(A)(1) may be relocated to the Supplemental Use Standards as provided in Attachment 1.

- (b) Minimize negative impacts on wildlife, aquatic life and their habitats; and
 - (c) Maintain hydrologic processes and water quality.
- (6) All development activities that must cross or affect streams shall be designed to:
 - (a) Reduce increases in flood frequency and severity that are attributable to development;
 - (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
 - (c) Provide a natural substrate for stream beds; and
 - (d) Minimize adverse water quality and quantity impacts of stormwater.
- (7) Reasonable accommodations for the needs of disabled citizens.
 - (a) An applicant seeking relief from the Critical Area standards contained in this Chapter in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating by a preponderance of evidence the following:
 - (i) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
 - (ii) Literal enforcement of the provisions of this Chapter would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;
 - (iii) A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this Chapter or restore the disabled resident's or user's reasonable use or enjoyment of the property;
 - (iv) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Chapter as applied to the property; and
 - (v) The accommodation would be environmentally neutral with no

greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.

- (b) The Town Administrator² shall determine the nature and scope of any accommodation under this Chapter and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Chapter. The Board of Appeals may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
- (c) The Town Administrator may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this Chapter. Appropriate bonds may be collected or liens placed in order to ensure Charlestown's ability to restore the property should the applicant fail to do so.

B. Intensely Developed Areas (IDA).

- (1) The following uses may only be permitted in the IDA only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:³
 - (a) Nonmaritime heavy industry;
 - (b) Permanent sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100-foot Buffer or expanded Buffer.

² This decision may be made by a Planning Commission, Town Manager, Zoning Administrator, Planning Director, or other person or body and is not required to be done by the Board of Appeals.

³ Part 2(B)(1) may be relocated to the Supplemental Use Standards as provided in Attachment 1.

- (2) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation.
 - (a) Individual trees removed shall be replaced at a 1:1 ratio.
- (3) All development and redevelopment activities disturbing 250 square feet or more shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent (10%) below the level of pollution on the site prior to development or redevelopment as provided in *Critical Area 10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.
 - (a) The Critical Area Commission's Environmental Site Design (ESD) Spreadsheet is available to calculate the 10% pollutant reduction;
 - (b) The 10% pollutant reduction requirement may be met through plantings or through mitigation. The reduction of one pound of phosphorus may be achieved through the planting of ½ acre, which equates to 200 trees, or a combination of trees and shrubs as per COMAR 27.01.02.09.L and Part 3.E.
- (4) New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of IDAs that have been designated as Modified Buffer Areas.⁴

C. Limited Development Areas (LDA).

- (1) If a wildlife corridor system is identified by the Department of Natural Resources on or near the site the following practices are required:
 - (a) The applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site;
 - (b) Charlestown shall require and approve a conservation easement, restrictive covenant, or similar instrument to ensure maintenance of the wildlife corridor;
 - (c) The wildlife corridor shall be preserved by a public or private group.

⁴ Part 2(B)(4) may be relocated to the Supplemental Use Standards as provided in Attachment 1.

- (2) Development on slopes 15 percent (15%) or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for LDAs.
- (3) Except as otherwise provided in this subsection, lot coverage is limited to 15 percent (15%) of a lot or parcel, or any portions of a lot or parcel, that are designated LDA.
 - (a) If a parcel or lot of one-half (1/2) acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five percent (25%) of the parcel or lot.
 - (b) If a parcel or lot greater than one-half (1/2) acre and less than one (1) acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
 - (c) If an individual lot one (1) acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
 - (d) Lot coverage limits provided in §(a) and §(b) above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
 - (i) The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008, may be considered legally nonconforming for the purposes of lot coverage requirements.
 - (ii) Lot coverage associated with new development activities on the property have been minimized;
 - (iii) For a lot or parcel one-half (1/2) acre or less in size, total lot coverage does not exceed the lot coverage limits in §(a) by more than twenty-five percent (25%) or 500 square feet, whichever is greater;
 - (iv) For a lot or parcel greater than one-half (1/2) acre and less than one (1) acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or 5,445 square feet, whichever is greater;

- (v) The following table summarizes the limits set forth in §(i) through §(iv) above:

Table C.(3)(d). Lot Coverage Limits.

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

- (e) If the Planning Commission or its designee makes the findings set forth in §(d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
- (i) Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
 - (ii) Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two (2) times the area of the development activity.
 - (iii) If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to Charlestown in lieu of performing the on-site mitigation.
- (4) The alteration of forest and developed woodlands shall be restricted and mitigated as follows:
- (a) The total acreage in forest and developed woodlands within Charlestown Critical Area shall be maintained or preferably increased;
 - (b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
 - (c) If an applicant is authorized to clear more than 20 percent (20%) of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the areal extent of the forest or developed woodlands cleared, including the first 20 percent (20%) of the forest or developed woodlands cleared.

- (d) An applicant may not clear more than 30 percent (30%) of a forest or developed woodlands on a lot or parcel, unless the Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of three (3) times the areal extent of the forest or developed woodlands cleared.⁵
- (5) The following are required for forest or developed woodland clearing as required in (4) above:
 - (a) The applicant shall ensure that any plantings that die within (24) months of installation shall be replaced. A performance bond in an amount determined by Charlestown shall be posted to assure satisfactory replacement as required in (4) above and plant survival;
 - (b) A permit issued by Charlestown before forest or developed woodland is cleared. Forests and developed woodlands which have been cleared before obtaining a Charlestown permit is a violation and shall be replanted at three (3) times the areal extent of the cleared forest;
 - (c) Clearing of forest or developed woodlands that exceed the maximum area allowed in (4) above shall be replanted at three (3) times the areal extent of the cleared forest;
 - (d) If the areal extent of the site limits the application of the afforestation or reforestation standards in this section the applicant may be allowed to plant offsite or pay a fee-in-lieu of planting.
- (6) If no forest exists on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent (15%). The applicant shall designate, subject to the approval of Charlestown, a new forest area on a part of the site not forested.
- (7) All forest, including afforested areas, shall be maintained through conservation easements, restricted covenants, or other protective instruments.
- (8) New, expanded or redeveloped industrial facilities may only be permitted in LDA if such a use is permitted in the underlying zoning district and provided such

⁵ A local jurisdiction may propose alternative clearing provisions for small grandfathered lots, provided they are approved by the Commission.

facilities meet all requirements for development in the LDA.⁶

D. Resource Conservation Areas (RCA).

- (1) Nothing in this Section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members provided that no such conveyance and will result in a density greater than one dwelling unit per 20 acres.
- (2) Land use management practices shall be consistent with the policies and criteria for the HPA provisions of this Chapter.
- (3) Development activity within the RCAs shall be consistent with the requirements and standards for LDAs as specified in this Chapter.
- (4) Density
 - (a) Land within the RCA may be developed for residential uses at a density not to exceed one (1) dwelling unit per 20 acres. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the RCA, Charlestown:
 - (i) Shall count each dwelling unit;
 - (ii) May permit the area of any private wetlands located on the property to be included under the following conditions:
 - (A) The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight (8) acres; and
 - (B) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by Charlestown, the Critical Area Commission, and Maryland Department of the Environment.
 - (b) One (1) additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the RCA provided the

⁶ Part 2(C)(8) may be relocated to the Supplemental Use Standards as provided in Attachment 1.

additional dwelling unit is served by the same sewage disposal system as the primary dwelling unit and:

- (i) Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed areas; or
 - (ii) Is located within the primary dwelling unit and does not increase the amount of lot coverage already attributed to the primary dwelling unit.
- (c) An additional dwelling unit meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling unit; and
 - (d) The provisions of this section may not be construed to authorize the granting of a variance, unless the variance is granted in accordance with the variance provisions contained herein.⁷

(5) RCA Uses

- (a) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the 1-per-20 acre density, shall be allowed in RCAs.⁸
- (b) Expansion of existing industrial facilities and use in the RCA shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in Part 8 and may require growth allocation.
- (c) New commercial, industrial, and institutional uses shall not be permitted in RCAs, except as provided for in the Charlestown growth allocation provisions or as listed below.⁹ Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by Charlestown's growth allocation provisions.

⁷ The provisions for an Accessory Dwelling Unit in the RCA are not a requirement of the Critical Area Law. These provisions are opt-in only. Sections (b)-(d) of (4) Density may be relocated to the Supplemental Use Standards as provided in Attachment A.

⁸ Part 2(D)(5) may be relocated to the Supplemental Use Standards as provided in Attachment 1.

⁹ The local jurisdiction may propose additional RCA uses for consideration by the Commission. The list of RCA uses may be relocated into Supplement Use Standards as provided in Attachment A.

- (i) A home occupation as an accessory use on a residential property and as provided for in Charlestown's Zoning Ordinance (Chapter 99);
- (ii) A golf course developed in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;
- (iii) A cemetery that is an accessory use to an existing church; provided lot coverage are limited to 15 percent (15%) of the site or 20,000 square feet, whichever is less;
- (iv) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility;
- (v) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc;
- (vi) A day care facility in a dwelling where the operators live on the premises and there are no more than eight (8) children;
- (vii) A group home or assisted living facility with no more than eight (8) residents.
- (viii) Other similar uses determined by Charlestown and approved by the Critical Area Commission to be similar to those listed above.

Part 3. The 100-foot Buffer and Expanded Buffer.

A. Applicability & Delineation.

An applicant for a development activity or a change in land use shall apply all of the required standards as described below. The 100-foot Buffer shall be delineated in the field and shall be shown on all applications as follows:

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

- (a) The mean high water line of a tidal water;
 - (b) The edge of each bank of a tributary stream; and
 - (c) The upland boundary of a tidal wetland.
- (2) Applications for a subdivision or development activity on land located within the RCA requiring site plan approval after July 1, 2008, shall include a minimum Buffer of at least 200 feet from a tidal waterway or tidal wetlands. In the following instances, the 200-foot Buffer does not apply and the Buffer shall be delineated in accordance with A(1) and A(3):
 - (a) The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans), by July 1, 2010; or
 - (b) The application involves the use of growth allocation.
- (3) The 100-foot Buffer shall be expanded beyond 100 feet as described in §A(1) above, and beyond 200 feet as described in §A(2) above, to include the following contiguous land features:
 - (a) A steep slope at a rate of four feet for every one percent (1%) of slope or the entire steep slope to the top of the slope, whichever is greater;
 - (b) A nontidal wetland to the upland boundary of the nontidal wetland;
 - (c) The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
 - (d) For an area of hydric soils or highly erodible soils, the lesser of:
 - (i) The landward edge of the hydric or highly erodible soils; or
 - (ii) Three hundred feet where the expansion area includes the minimum 100-foot Buffer.

B. Development activities in the 100-foot Buffer and Expanded Buffer.

Charlestown may authorize disturbance to the 100-foot Buffer or expanded Buffer for the following activities, provided mitigation is performed in accordance with Section D of this Part and an approved Buffer Management Plan is submitted as required per Section F of this Part:

- (1) A new development or redevelopment activity associated with a water-dependent facility as described in Part 6 of this Chapter.
- (2) A shore erosion control activity constructed in accordance with COMAR 26.24.02, a shore erosion control measure under COMAR 26.24.04, and this Chapter.
- (3) A development or redevelopment activity approved in accordance with the variance provisions of this Chapter.
- (4) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010, where:
 - (a) The 100-foot Buffer is expanded for highly erodible soil on a slope less than 15 percent (15%) or is expanded for a hydric soil and the expanded Buffer occupies at least 75 percent (15%) of the lot or parcel;
 - (b) The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- (5) A septic system on a lot created before May 24, 1988, where mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.
- (6) To install a fence on a property located in the Buffer, provided the fence does not include footers more than one foot in width.

C. 100-foot Buffer and expanded Buffer Establishment.

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

- (a) A development or redevelopment activity that occurs on a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream if that development or redevelopment activity is located outside the buffer; and
 - (b) The approval of a subdivision that includes a 100-foot Buffer or expanded Buffer to tidal waters, a tidal wetland, or a tributary stream.
- (2) If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:
 - (a) In accordance with local land recordation requirements, shall record an approved Buffer Management Plan under Part F of this Section; and
 - (b) If authorized by the local jurisdiction, may delay implementation of the Buffer Management Plan until the use of the lot is converted to a nonagricultural purpose.
- (3) The requirements of this regulation are not applicable to an in-kind replacement of a structure.
- (4) A local jurisdiction shall require an applicant to establish the 100-foot Buffer or expanded Buffer in vegetation in accordance with the table below and Part E of this chapter and to provide a Buffer Management Plan under Part F of this chapter when an applicant applies for:
 - (a) Approval of a subdivision;
 - (b) Conversion from one land use to another land use on a lot or a parcel; or
 - (c) Development on a lot or a parcel created before January 1, 2010.
- (5) When the 100-foot Buffer or expanded Buffer is not fully forested or is not fully established in existing, naturally occurring woody or wetland vegetation, an applicant shall establish the 100-foot Buffer or expanded Buffer to the extent required in the following table:¹⁰

¹⁰ A municipality may simply reference COMAR 27.01.09.01-1(C), rather than include this table.

Table 3.C.(5). 100-foot Buffer or expanded Buffer establishment requirements.

Development Category	Lot Created Before May 24, 1988	Lot Created After May 24, 1988
Development on a vacant lot	Establish the Buffer based on total square footage of lot coverage outside the Buffer	Fully establish the Buffer
Subdivision	Fully establish the buffer	
New lot with an existing dwelling unit	Establish the Buffer based on total square footage of lot coverage outside the Buffer	
Conversion of a land use on a parcel or lot to another land use	Fully establish the Buffer	
Addition, accessory structure, or redevelopment	Establish the Buffer based on net square footage increase in lot coverage outside the Buffer	
Substantial alteration	Establish the Buffer based on total square footage of lot coverage outside the Buffer	

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

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

D. Mitigation for impacts to the 100-foot Buffer or expanded Buffer.

An applicant for a development activity that includes disturbance to the 100-foot Buffer or expanded Buffer shall mitigate for impacts to the 100-foot Buffer or expanded Buffer and shall provide a Buffer Management Plan in accordance with the standards set forth in this Part.

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

Table 3.D.1 Buffer Mitigation Ratios

Activity	Mitigation Ratio	
	Permanent Disturbance	Temporary Disturbance
Septic on a lot created before local program approval if located in existing grass or if clearing is not required	Not Applicable	0
Septic system in a forest or developed woodland on a lot created before local program approval if clearing is required	1:1	Not applicable
Shore Erosion Control ¹¹	1:1	1:1
Riparian Water Access	2:1	1:1
Water-dependent Facility	2:1	1:1
Variance	3:1	1:1

- (2) All unauthorized development activities in the 100-foot Buffer or expanded Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the 100-foot Buffer or expanded Buffer.
- (3) Planting for mitigation shall be planted onsite within the 100-foot Buffer or expanded Buffer. If mitigation planting cannot be located within the 100-foot Buffer or expanded Buffer, then Charlestown may permit planting in the following order of priority:
 - (a) On-site and adjacent to the Buffer; and
 - (b) On-site elsewhere in the Critical Area.
- (4) The installation or cultivation of new lawn or turf in the 100-foot Buffer or expanded Buffer is prohibited.

E. Buffer Planting Standards.

- (1) An applicant that is required to plant within the 100-foot Buffer or expanded Buffer to meet establishment or mitigation requirements shall apply the planting standards set forth in the table below.

¹¹ See footnote on Part 21 Shore Erosion Protection regarding mitigation.

Table 3.E.1 Landscape Stock Credit

Vegetation Type	Minimum Size Eligible for Credit	Maximum Credit Allowed (Square Feet)	Maximum Percentage of Landscape Stock Credit
Canopy Tree	2-inch caliper	200	Not Applicable
Canopy Tree	¾-inch caliper	100	Not applicable
Understory Tree	¾-inch caliper	75	Not applicable
Large Shrub	3 feet high	50	30%
Small Shrub	18 inches high	25	20%
Herbaceous perennial	1 quart or based on the area covered by plugs or seed mix	2	10%
Planting Cluster A (For less than ½ acre of planting)	1 canopy tree; and 3 large shrubs or 6 small shrubs of size listed above	300	Not applicable
Planting Cluster B (For less than ½ acre of planting)	2 understory trees; and 3 large shrubs or 6 small shrubs of size listed above	350	Not applicable

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

F. Required Submittal of Buffer Management Plans.

An applicant that is required to plant the 100-foot Buffer or expanded Buffer to meet establishment or mitigation requirements shall submit a Buffer Management Plan in accordance with COMAR 27.01.09.01-3. The provisions of this Part do not apply to maintaining an existing grass lawn or an existing garden in the 100-foot Buffer or expanded Buffer.

- (1) Any permit for a development activity that requires 100-foot Buffer or expanded Buffer establishment or 100-foot Buffer or expanded Buffer mitigation will not be issued until a Buffer Management Plan is approved by Charlestown.
- (2) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by Charlestown.
- (3) Charlestown may not approve a Buffer Management Plan unless:

- (a) The plan clearly indicates that all planting standards under Part E of this chapter will be met; and
 - (b) Appropriate measures are in place for the long-term protection and maintenance of all 100-foot Buffer or expanded Buffer areas.
- (4) For a Buffer Management Plan that is the result of an authorized disturbance to the 100-foot Buffer or expanded Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
 - (a) Completes the implementation of a Buffer Management Plan; or
 - (b) Provides financial assurance to cover the costs for:
 - (i) Materials and installation; and
 - (ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- (5) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the 100-foot Buffer or expanded Buffer.
- (6) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Chapter. A permit for development activity will not be issued for a property that has the violation.
- (7) An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
- (8) Buffer Management Plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

G. Fee-In-Lieu of 100-foot Buffer and expanded Buffer Mitigation.

A fee-in-lieu of mitigation will be collected if the planting requirements of Part D above cannot be fully met onsite, in accordance with the following standards:

- (1) Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to Charlestown's general fund;

- (2) Fee-in-lieu shall be assessed at \$1.50 per square foot of required 100-foot Buffer or expanded Buffer mitigation;
- (3) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20 percent (20%) of the fees collected; and
- (4) Fee-in-lieu monies shall be used for the following projects:
 - (a) To establish the 100-foot Buffer or expanded Buffer on sites where planting is not a condition of development or redevelopment;
 - (b) For water quality and habitat enhancement projects as described in an agreement between Charlestown and the Critical Area Commission.

Part 4. Modified 100-foot Buffer and expanded Buffer Area (MBA).¹²

A. Applicability.

The following provisions apply to areas designated and mapped by Charlestown as Modified Buffer Areas (MBA) and shown on maps available to the public held by Charlestown. All MBA maps and provisions must be approved by the Critical Area Commission.

B. Development and Redevelopment Standards.

New development or redevelopment activities, including structures, roads, parking areas, other impervious surfaces, and septic systems will not be permitted in the 100-foot Buffer or expanded Buffer in a designated MBA unless the applicant can demonstrate that there is no feasible alternative and the Charlestown Planning Commission finds that efforts have been made to minimize 100-foot Buffer/expanded impacts and the development shall comply with the following standards:

- (1) Development and redevelopment activities have been located as far as possible from mean high tide, the landward boundary of tidal wetlands, or the edge of each bank of tributary streams.
- (2) Variances to other local setback requirements have been considered before additional intrusion into the 100-foot Buffer or expanded Buffer.

¹² A municipality may work with Commission staff to create alternative MBA standards that address a local jurisdiction's needs, such as coastal resiliency.

- (3) Commercial, industrial, institutional, recreational and multi-family residential development and redevelopment shall meet the following standards:
- (a) New development, including accessory structures, shall minimize the extent of intrusion into the 100-foot Buffer or expanded Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the minimum required setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.
 - (b) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the 100-foot Buffer or expanded Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. A new structure may be constructed on the footprint of an existing structure.
- (4) Single-family residential development and redevelopment shall meet the following standards:
- (a) New development or redevelopment shall minimize the shoreward extent of intrusion into the 100-foot Buffer or expanded Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
 - (b) Existing principal or accessory structures may be replaced in the same footprint.
 - (c) New accessory structures may be located closer to the water than the setback if the **Charlestown Planning Commission** has determined there are no other locations for the structures. The area of new accessory structures shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total in the Buffer.
- (5) Variances to other local setback requirements shall be considered before additional intrusion into the 100-foot Buffer or expanded Buffer is permitted.

- (6) Development and redevelopment may not impact any HPA other than the 100-foot Buffer or expanded Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (7) Modified Buffer Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the 100-foot Buffer or to create additional buildable land for new development or redevelopment.
- (8) No natural vegetation may be removed in the 100-foot Buffer or expanded Buffer except that required by the proposed construction.
- (9) Mitigation for development or redevelopment in the in the MBA approved under the provisions of this subsection shall be implemented as follows:
 - (a) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer or expanded Buffer shall be planted on site in the Buffer or at another location approved by the Charlestown Planning Commission.
 - (b) Applicants who cannot fully comply with the planting requirement in (a) above, may offset the mitigation requirement by removing an equivalent area of existing lot coverage in the 100-foot Buffer or expanded Buffer.
 - (c) Applicants who cannot comply with either the planting or offset requirements in (a) or (b) above shall pay into a fee-in-lieu program as follows:¹³
 - (i) Applicants shall submit to the Code Enforcement Officer or Charlestown Planning Commission two (2) cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer or expanded Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a one year guarantee.
 - (ii) The Charlestown Planning Commission or code enforcement officer shall determine the amount of the fee-in-lieu based on the

¹³ A municipality may work with Commission staff to choose a fee-in-lieu rate for MBA mitigation, rather than use this method. The Town must be able to demonstrate that the set rate can cover the cost of stock, planting, staking, mulching and a one year guarantee.

average of the two estimates.

- (d) Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of Charlestown's Critical Area Program. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported in the jurisdiction's quarterly reports.
- (e) Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the County.

Part 5. Other Habitat Protection Areas (HPA).

A. Identification.

An applicant for a development activity, redevelopment activity or change in land use in the Critical Area shall coordinate with the Department of Natural Resources (DNR) and identify all applicable HPAs and follow the standards contained in this Part. HPAs includes:

- (1) Threatened or endangered species or sensitive species in need of conservation;
- (2) Colonial waterbird nesting sites;
- (3) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
- (4) Existing riparian forests;
- (5) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species;
- (6) Other plant and wildlife habitats determined to be of local significance;
- (7) Natural Heritage Areas; and
- (8) Anadromous fish propagation waters.

B. Standards.

- (1) An applicant for a development activity proposed for a site within the Critical Area that is in or near a HPA listed above; shall request review by the Department of Natural Resources, and as necessary United States Fish and Wildlife Service, for comment and technical advice. Based on the Department of Natural Resource's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.
- (2) If the presence of any HPA is confirmed by the Department of Natural Resources, the applicant shall follow all recommendations from Department of Natural Resources, and as necessary United States Fish Wildlife Service.
 - (a) If potential Forest Interior Dwelling Species (FIDS) habitat is identified, the proposed development shall conform to the Critical Area Commission's FIDS Guidance Manual, dated June 2000 and as updated.
 - (b) If potential anadromous fish propagation waters are identified, the proposed development shall conform to the policies and criteria listed in COMAR 27.01.09.05.
- (3) The specific protection and conservation measures recommended by the Department of Natural Resources and the United States Fish and Wildlife Service shall be included on the site plan and shall be considered conditions of approval for the project.

Part 6. Water-Dependent Facilities.

A. Applicability.

The provisions of this chapter apply to those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the 100-foot Buffer or expanded Buffer. An activity is water-dependent if it cannot exist outside the 100-foot Buffer or expanded Buffer and is dependent on the water by reason of the intrinsic nature of its operation.

B. Identification.

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

C. Standards.

The following standards shall apply to new or expanded development activities associated with water-dependent facilities:

- (1) New or expanded development activities may be permitted in the 100-foot Buffer or expanded Buffer in the IDAs and LDAs provided that it can be shown:
 - (a) That they are water-dependent;
 - (b) That the project meets a recognized private right or public need;
 - (c) That adverse effects on water quality, fish, plant, and wildlife habitat are minimized;
 - (d) That, insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the 100-foot Buffer or expanded Buffer; and
 - (e) That the facilities are consistent with an approved local plan as set forth below.
- (2) New or expanded development activities may not be permitted in those portions of the 100-foot Buffer or expanded Buffer which occur in RCAs. Applicants for water-dependent facilities in a RCA, other than those specifically permitted herein, must apply for a portion of the Municipality's growth allocation as set forth in this Chapter.

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

The Charlestown Planning Commission shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The Charlestown

Planning Commission shall work with appropriate State and federal agencies to ensure compliance with applicable regulations. The following factors shall be considered when evaluating proposals for new or expanded water-dependent facilities:

- (1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
- (2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;
- (3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
- (4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;
- (5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
- (6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area, generally;
- (7) That dredged spoil will not be placed within the 100-foot Buffer or expanded Buffer or elsewhere in that portion of the Critical Area which has been designated as a HPA except as necessary for:
 - (a) Backfill for permitted shore erosion protection measures;
 - (b) Use in approved vegetated shore erosion projects;
 - (c) Placement on previously approved channel maintenance spoil disposal areas; and
 - (d) Beach nourishment.
- (8) That interference with the natural transport of sand will be minimized; and
- (9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other HPAs identified in the HPA, Section 5, of this Chapter.

E. Industrial and port-related facilities.¹⁴

New, expanded, or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of IDAs that have been designated as MBAs as described in this Chapter and are subject to the provisions set forth in that Chapter.

F. Marinas and other commercial maritime facilities.

New, expanded or redeveloped marinas may be permitted in the 100-foot Buffer or expanded Buffer within IDAs and LDAs subject to the requirements set forth in this Chapter. New marinas or related maritime facilities may not be permitted in the 100-foot Buffer or expanded Buffer within RCAs except as provided in this Chapter. Expansion of existing marinas may be permitted by the Municipality within RCAs provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina. New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.

G. Community piers.

New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the 100-foot Buffer or expanded Buffer subject to the requirements in this Chapter provided that:

- (1) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
- (2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
- (3) The facilities are associated with a residential development approved by the Municipality for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;
- (4) Disturbance to the 100-foot Buffer or expanded Buffer is the minimum necessary

¹⁴ Sections E through K of this Part may be relocated to the Supplemental Use Standards as provided in Attachment A.

to provide a single point of access to the facilities; and

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

H. Number of slips or piers permitted.

The number of slips or piers permitted at the facility shall be the lesser of (1) or (2) below:

- (1) One (1) slip for each 50 feet of shoreline in the subdivision in the IDAs and LDAs and one slip for each 300 feet of shoreline in the subdivision in the RCA; or
- (2) A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Table H (2). Number of slips permitted.

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

I. Public beaches and other public water-oriented recreation or education areas.

Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the 100-foot Buffer or expanded Buffer in IDAs. These facilities may be permitted within the 100-foot Buffer or expanded Buffer in LDAs and RCAs provided that:

- (1) Adequate sanitary facilities exist;
- (2) Service facilities are, to the extent possible, located outside the 100-foot Buffer or expanded Buffer;
- (3) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
- (4) Disturbance to natural vegetation is minimized; and
- (5) Areas for possible recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the 100-foot Buffer or expanded Buffer within RCAs if service facilities for these uses are located outside of the 100-foot Buffer or expanded Buffer.

J. Research areas.

Water-dependent research facilities or activities operated by State, federal, or local agencies or educational institutions may be permitted in the 100-foot Buffer or expanded Buffer, if non-water-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the 100-foot Buffer or expanded Buffer.

K. Fisheries activities.

Lands and water areas with high aquacultural potential will be identified by the Municipality in cooperation with the State when applications for new or expanded fisheries or aquaculture facilities in these areas are submitted to the Municipality. These areas are encouraged for that use and if so used, should be protected from degradation by other types of land and water use or by adjacent land and water uses. Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities may be permitted in the 100-foot Buffer or expanded Buffer in IDAs, LDAs and RCAs.

Part 7. Growth Allocation.

A. Growth allocation acreage and deduction.

- (1) Growth allocation available to Charlestown is provided for by Cecil County.

- (2) A local jurisdiction shall deduct acreage from its growth allocation reserves in accordance with COMAR 27.01.02.06-4.

B. Purpose.

Growth allocation is available for use in a RCA or in a LDA in the Charlestown Critical Area Overlay District. The purpose is to authorize a change in the Critical Area classification to develop at a higher density or use than the current classification allows.

C. Process.

An applicant shall submit to Charlestown a complete application for growth allocation that complies with the submittal and environmental report requirements of COMAR 27.01.02.06-1—.06-2. A growth allocation request shall be approved by the Cecil County Council, prior to submission to the Critical Area Commission.¹⁵

D. Requirements.

When locating new IDAs or LDAs, the following requirements apply:

- (1) A new IDA shall be at least 20 acres.¹⁶
- (2) No more than one-half (1/2) of the Charlestown's growth allocation may be located in RCAs except as provided in Subsection (3) below.
- (3) If Charlestown is unable to utilize a portion of its growth allocation as set out in Subsection (2) above, then that portion of the growth allocation which cannot be so located may be located in the RCAs if the growth allocation is consistent with Municipality's adopted comprehensive plan, as per Natural Resource Article 8-808.1.

E. Standards.

When locating new IDAs or LDAs the following standards shall apply:

¹⁵ Existing procedures may vary among jurisdictions and incorporate Counties into the approval process. Amend as necessary.

¹⁶ A new IDA may be less than 20 acres if, as part of a local program, the Commission has approved an alternative standard for designation of an IDA; and the area is part of a growth allocation approved by the Commission. Examples include provisions that allow for grandfathered industrial or commercial uses located on a parcel that is less than 20 acres.

- (1) A new IDA shall only be located in a LDA or adjacent to an existing IDA.¹⁷
- (2) A new LDA shall only be located adjacent to an existing LDA or an IDA.¹⁸
- (3) A new LDA or IDA shall be located in a manner that minimizes impacts to HPA as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
- (4) A new IDAs shall only be located where they minimize their impacts to the defined land uses of the RCA;
- (5) A new IDA or a LDA in a RCA shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;¹⁹
- (6) New Intensely Developed or LDAs to be located in RCAs shall conform to all criteria of Charlestown for such areas, shall be so designated on the Charlestown Critical Area Maps and shall constitute an amendment to this Chapter subject to review and approval by the Charlestown Planning Commission, the Town Commissioners and the Critical Area Commission as provided herein.

F. Additional Factors.

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

- (1) Consistency with Charlestown's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan.
- (2) For a map amendment or refinement involving a new LDA, whether the development is:
 - (a) To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
 - (b) A completion of an existing subdivision;

¹⁷ A local jurisdiction may propose an alternative adjacency standard if the alternative standard is consistent with the local jurisdiction's comprehensive plan and approved by the Commission.

¹⁸ See footnote 21 above.

¹⁹ A local jurisdiction may propose, and the Commission must approve, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources than a 300-foot setback.

- (c) An expansion of an existing business; or
 - (d) To be clustered.
- (3) For a map amendment or refinement involving a new IDA, whether the development is:
 - (a) To be served by a public wastewater system;
 - (b) If greater than 20 acres, to be located in a designated Priority Funding Area (PFA) and
 - (c) To have a demonstrable economic benefit.
- (4) The use of existing public infrastructure, where practical;
- (5) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
- (6) Impacts on a Priority Preservation Area (PPA);
- (7) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
- (8) Environmental impacts associated with location in a Coastal Hazard Area or an increased risk of severe flooding attributable to the proposed development.

Part 8. Grandfathering.²⁰

A. Continuation of existing uses.

- (1) The continuation, but not necessarily the intensification or expansion, of any use in existence on May 24, 1988 may be permitted, unless the use has been abandoned for more than one (1) year or is otherwise restricted by existing

²⁰ A local municipality may work with Commission staff to develop grandfathering provisions to address those development projects that have not received final local approval prior to the adoption of the updated Critical Area maps.

municipal ordinances.

- (2) If any existing use does not conform with the provisions of this Chapter, its intensification or expansion may be permitted only in accordance with the variance procedures in Part 9.²¹

B. Residential density on grandfathered lots.

- (1) Except as otherwise provided, the following types of land are permitted to be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this Chapter.
 - (a) Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members;
 - (b) A legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985;
 - (c) Land that received a building permit subsequent to December 1, 1985, but prior to May 24, 1988;
 - (d) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984, and December 1, 1985; and
 - (e) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985, and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Chapter or the area of the land has been counted against the growth allocation permitted under this Chapter.

C. Implementation.

- (1) For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three (3) types of development areas described in this Chapter.

²¹ Reference should be provided to any existing non-conforming use expansion criteria that are specified elsewhere in the local jurisdiction's Zoning Ordinance.

- (2) Nothing in this Section may be interpreted as altering any requirements of this Chapter related to water-dependent facilities or HPAs.

Part 9. Variances.

A. Applicability.

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

- (1) In considering an application for a variance, Charlestown shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of this Chapter.
- (2) Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

B. Standing.

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

C. Standards.

The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the land or structure involved, a literal enforcement of provisions and requirements of this Critical Area Chapter would result in unwarranted hardship;
- (2) A literal interpretation of the provisions of this Chapter will deprive the applicant the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Chapter;

- (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Critical Area Chapter to other lands or structures within the Critical Area;
- (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed;
- (5) The request does not arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property; and
- (6) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area; and
- (7) The granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and this Critical Area Chapter.

D. Process.

Applications for a variance will be made in writing to the Charlestown Board of Appeals²² with a copy provided to the Critical Area Commission. Charlestown shall follow its established procedures for advertising and notification of affected landowners.

- (1) After hearing an application for a Charlestown Critical Area Program variance, the Board of Appeals shall make written findings reflecting analysis of each standard. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
 - (a) The applicant;
 - (b) Charlestown or any other government agency; or
 - (c) Any other person deemed appropriate by Charlestown.
- (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, Charlestown shall consider that fact, and whether the application has met the requirements of Part E below.

²² Or other local appeals authority.

- (3) The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (A) above.
- (4) Charlestown shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

E. After-the-Fact Requests

- (1) A local jurisdiction may not accept an application of a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity until the local jurisdiction:
 - (a) Issues a notice of violation; and
 - (b) Assesses an administrative or civil penalty for the violation.
- (2) The Town of Charlestown may not approve an after-the-fact variance unless an applicant has:
 - (a) Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article, §8-1808(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;
 - (b) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and
 - (c) Performed the abatement measures in the approved plan in accordance with the local Critical Area Program.
- (3) If the Board of Appeals denies the requested after-the-fact variance, then Charlestown shall:
 - (a) Order removal or relocation of any structure; and
 - (b) Order restoration of the affected resources.

F. Appeals.

Appeals from decision concerning the granting or denial of a variance under these

regulations shall be taken in accordance with all applicable laws and procedures of Charlestown for variances. Variance decisions by the Charlestown Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Chapter.

G. Conditions and mitigation.

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

- (1) Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the Charlestown Board of Appeals, but not less than by planting on the site per square foot of the variance granted at no less than a 3:1 basis.
- (2) New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

H. Commission notification.

Within 10 working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission. Charlestown may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed.

Part 10. Lot Consolidation and Reconfiguration.

A. Applicability.

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

- (1) Those for which a Critical Area variance is sought or has been issued; and
- (2) Those located in the RCA and are less than 20 acres in size.

B. Procedure.

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the required information required in COMAR 27.01.02.08.E to the Charlestown.

- (1) Charlestown may not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with COMAR 27.01.02.08.F.
- (2) Charlestown shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
 - (a) After a final written decision or order is issued, Charlestown shall send a copy of the decision or order and a copy of any approved development plan within 10 business days by U.S. mail to the Critical Area Commission's business address.

Part 11. Amendments.

A. Amendments.

The Charlestown Commissioners may from time to time amend the Critical Area provisions of this Chapter, and will review its entire Program and propose any necessary amendments to its entire Program, including this Ordinance, at least every six years. The anniversary of the date that the Program became effective shall be used to determine when the review shall be completed. Changes may include, but are not limited to amendments, revisions, and modifications to these zoning regulations, Critical Area Maps, implementation procedures, and local policies that affect Charlestown's Critical Area. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in § 8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law § 8-1809(i) and § 8-1809(d), respectively.

B. Zoning map amendments.

Except for program amendments or program refinements developed during a six (6)-year comprehensive review, a zoning map amendment may only be granted by Charlestown Commissioners upon proof of a mistake in the existing zoning. This requirement does not

apply to proposed changes to a zoning map that meet the following criteria:

- (1) Are wholly consistent with the Critical Area land classifications as shown on the adopted Critical Area Overlay Map; or
- (2) The use of growth allocation in accordance with the growth allocation provisions of this Chapter is proposed.

C. Process.

- (1) When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the Charlestown Commissioners.
- (2) Charlestown Commissioners shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in Charlestown.
- (3) After the Charlestown Commissioners approve an amendment, they shall forward their decision and applicable resolutions along with the amendment request to the Critical Area Commission for final approval.

Part 12. Enforcement.

A. Consistency.

The Critical Area provisions of this Chapter, in accordance with the Critical Area Act and Criteria supersede any inconsistent law, Chapter or plan of Charlestown. In the case of conflicting provisions, the stricter provisions apply.

B. Violations.

- (1) No person shall violate any provision of this Chapter. Each violation that occurs and each calendar day that a violation continues shall be a separate offense.
- (2) Each person who violates a provision of this Chapter shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.
- (3) Non-compliance with any permit or order issued by Charlestown related to the

Critical Area shall be a violation of this Chapter and shall be enforced as provided herein.

C. Responsible persons.

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

D. Required enforcement action.

In the case of violations of this Chapter, Charlestown shall take enforcement action including:

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

E. Right to enter property.

Except as otherwise authorized and in accordance with the procedures specified herein, the Charlestown Commissioners or their designee may obtain access to and enter a property in order to identify or verify a suspected violation, restrain a development activity, or issue a citation if Charlestown has probable cause to believe that a violation of this Chapter has occurred, is occurring, or will occur. Charlestown shall make a reasonable effort to contact a property owner before obtaining access to or enter the property. If entry is denied, Charlestown may seek an injunction to enter the property to

pursue an enforcement action.

F. Administrative civil penalties.

In addition to any other penalty applicable under State or Town of Charlestown law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or the Critical Area provisions of this Chapter shall be punishable by a civil penalty of up to \$10,000 per calendar day.

- (1) Before imposing any civil penalty, the person(s) believed to have violated this Chapter shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, Charlestown shall consider:
 - (a) The gravity of the situation.
 - (b) The presence or absence of good faith of the violator;
 - (c) Any willfulness or negligence involved in the violation including a history of prior violations;
 - (d) The environmental impact of the violation; and
 - (e) The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to Charlestown for performing, supervising, or rendering assistance to the restoration and mitigation.
- (2) Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
- (3) The person responsible for any continuing violation shall promptly provide the Charlestown with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Charlestown inspection to verify compliance. Administrative civil penalties for continuing violations continue to

accrue as set forth herein until Charlestown receives such written notice and verifies compliance by inspection or otherwise.

- (4) Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by Charlestown of all damages, costs, and other expenses caused by the violation.
- (5) Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Chapter.

G. Cumulative remedies.

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

H. Injunctive relief.

Charlestown is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Chapter, an administrative order, a permit, a decision, or other imposed condition.

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

I. Variances pursuant to a violation.

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

J. Permits pursuant to a violation.

Charlestown may not issue any permit, approval, variance, or special exception, unless the person seeking the permit has:

- (1) Fully paid all administrative, civil, or criminal penalties as set forth in Section F. above;
- (2) Prepared a restoration or mitigation plan, approved by Charlestown, to abate impacts to water quality or natural resources as a result of the violation;
- (3) Performed the abatement measures in the approved plan in accordance with the Charlestown regulations; and
- (4) Unless an extension of time is approved by Charlestown because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

K. Appeals.

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

- (1) An appeal is taken by filing a written notice of appeal with the Board of Appeals in accordance with the provisions in the Charlestown Zoning Ordinance (Chapter 175) and accompanied by the appropriate filing fee.
- (2) An appeal must be filed within 30 days after the date of the decision or order being appealed; and
- (3) An appeal stays all actions by Charlestown seeking enforcement or compliance with the order or decisions being appealed, unless Charlestown certifies to the Board of Appeals that (because of facts stated in the certificate) such stay will cause imminent peril to life or property. In such a case, action by Charlestown shall not be stayed except by order of the Board of Appeals or a court up on application of the party seeking the stay.

Part 13. Definitions

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

- (1) "Abatement" means the act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.
- (2) "Accessory structure" means a structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to a principal structure, or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.
- (3) "Addition" means a newly constructed area that increases the size of a structure.
- (4) "Afforestation" means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.
- (5) "Agriculture" means 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) "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.
- (7) "Anadromous fish propagation waters" means those streams that are tributary to the Chesapeake Bay and Atlantic Coastal Bays in which the spawning of anadromous species of fish (e.g., rockfish, striped bass, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are identified by the Department of Natural Resources.
- (8) "Aquaculture" means: (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 harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.

- (9) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics and sediment.
- (10) Agricultural BMPs include, but are 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.
- (11) "Buffer" means an area that based on conditions at the time of development is immediately landward from mean high water of tidal waterways, the edge of bank of a tributary stream, or the edge of a tidal wetland; and the area exists in, or is established in, natural vegetation and managed to protect aquatic, wetlands, shoreline, and a stream, tidal wetland, tidal waters or terrestrial environments from manmade disturbance. The Buffer includes an area of at least 100 feet even if that area was previously disturbed by human activity or is currently developed and also includes any expansion for contiguous sensitive areas, such as a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.
- (12) "Buffer Management Plan" includes a major Buffer Management Plan, a minor Buffer Management Plan, and a simplified Buffer Management Plan.
- (13) "Canopy tree" means a tree that when mature commonly reaches a height of at least 35 feet.
- (14) "Cluster development" means a residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.
- (15) "Coastal Hazard Area" An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open **coast** and any other area subject to high velocity wave action from storms or seismic sources. The **coastal** high hazard area is identified as Zone V on Flood Insurance Rate Maps (FIRMs)
- (16) "Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.
- (17) "COMAR" means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.

- (18) "Community piers" means boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.
- (19) "Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.
- (20) "Conservation easement" means a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.
- (21) "Consolidation" means a combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. An application for consolidation may include a subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot line adjustment.
- (22) "Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
- (a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide as indicated on State wetland maps;
 - (b) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;
 - (c) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and
 - (d) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.
- (23) "Critical Area Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (24) "Density" means the number of dwelling units per acre within a defined and measurable area.

- (25) "Developed woodlands" means an area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial or recreational development.
- (26) "Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.
- (27) "Disturbance" means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintaining an existing grass lawn.
- (28) "Dwelling unit" means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.
- (29) "Endangered species" means any species of fish, wildlife, or plants that have been designated as endangered by regulation by the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, 16 U.S.C. §et seq., as amended.
- (30) "Establishment" means the planting or regeneration of native vegetation throughout the 100-foot Buffer or expanded Buffer.
- (31) "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the Charlestown.
- (32) "Fisheries activities" means commercial water-dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations.
- (33) "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre with at least 50 percent (50%) of those trees having two (2)-inch

or greater diameter at 4.5 feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.

- (34) “Fully established” means the 100-foot Buffer or expanded Buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.
- (35) “Grandfathered parcel” or “Grandfathered lot” means a parcel of land that was created or a lot created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.
- (36) “Growth allocation” means the number of acres of land in the Critical Area that the Charlestown may use, or the County may allocate to municipal jurisdictions to use, to create new IDAs and new LDA. The growth allocation acreage is five percent (5%) of the total RCA acreage in Charlestown at the time the Critical Area Commission approved Charlestown’s original Critical Area Program, not including tidal wetlands, plus additional acres included from the Municipality’s calculated amount [five percent (5%)] of RCA that existed when the Critical Area Commission approved the Cecil County’s original Critical Area Program [that the Municipality may request and the County may allocate].
- (37) “Habitat Protection Plan (HPP)” means a plan that provides for the protection and conservation of the species and habitats identified as HPAs in the Critical Area. The HPA shall be specific to the site or area where the species or its habitat is located and shall address all aspects of a proposed development activity that may affect the continued presence of the species. These include, but are not limited to, cutting, clearing, alterations of natural hydrology, and increases in lot coverage. In developing the HPA, an applicant shall coordinate with the Department of Natural Resources to ensure that the HPA is adequate to provide for long-term conservation and can be effectively implemented on the specific site.
- (38) "Highly erodible soils" means those soils with a slope greater than 15 percent (15%); or those soils with a K value greater than .35 and with slopes greater than 5 percent (5%).
- (39) "Historic waterfowl staging and concentration area" means an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are historic in the sense that their location is common knowledge and because these areas have been used regularly during recent times.
- (40) "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of

plants on those soils.

- (41) “In-kind replacement” means the replacement of a structure with another structure that is smaller than or identical to the original structure in footprint area, width, length, and use.
- (42) “Intensely Developed Area (IDA)” means an area of at least 20 acres or the entire upland portion of the Critical Area within a municipal corporation, whichever is less, where residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include an area with a housing density of at least four (4) dwelling units per acre and/or an area with public water and sewer systems with a housing density of more than three (3) dwelling units per acre.
- (43) "Land clearing" means any activity that removes the vegetative ground cover.
- (44) “Limited Development Area (LDA)” means an area: with a housing density ranging from one (1) dwelling unit per five (5) acres up to four (4) dwelling units per acre; with a public water or sewer system; that is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space; or that is less than 20 acres and otherwise qualifies as an IDA under the definition in this Chapter.
- (45) “Local significance” means development of a minor scale, which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Program of the Charlestown; and is not considered to be major development as defined in this Chapter.
- (46) “Lot coverage” means the percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with a paver, walkway gravel, stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade material. Lot coverage includes the ground area covered or occupied by a stairway or impermeable deck, but does not include: a fence or wall that is less than one foot in width that has not been constructed with a footer; a walkway in the 100-foot Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; a wood mulch pathway; or a deck with gaps to allow water to pass freely.
- (47) "Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.
- (48) “Major development” means development of a scale that may cause State-wide, regional,

or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts to the Critical Area of a local jurisdiction. This development includes, but is not limited to, airports, power plants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.

- (49) "Mean High Water Line" (MHWL) means the average level of high tides at a given location.
- (50) "Mitigation" means an action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity.
- (51) "Modified Buffer Area (MBA)" means an area officially mapped by the Charlestown and approved by the Critical Area Commission as a MBA, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional, or recreational development prevents the 100-foot Buffer or expanded Buffer from fulfilling its water quality and habitat functions, and where development in accordance with specific MBA provisions can be permitted in the 100-foot Buffer or expanded Buffer without a variance.
- (52) "Native plant" means a species that is indigenous to the physiographic area in Maryland where the planting is proposed.
- (53) "Natural Heritage Area" means any community of plants or animals which are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Department of Natural Resources.
- (54) "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.
- (55) "Natural vegetation" means those plant communities that develop in the absence of human activity.
- (56) "New development" means that for purposes of implementing specific provisions of this Chapter, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in IDA) or lot coverage (LDA and RCA) of less than 15 percent (15%) as of December 1, 1985.
- (57) "Nontidal wetlands" means those areas regulated under Subtitle 26 of the Environment

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

- (58) “Person” means an individual, partnership, corporation, contractor, property owner, or any other person or entity.
- (59) "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.
- (60) “Pier” means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. Pier does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.
- (61) “Plant habitat” means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
- (62) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.
- (63) “Principal structure” means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.
- (64) “Property owner” means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.
- (65) "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.
- (66) “Reconfiguration” means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. An application for reconfiguration may include a subdivision, a lot line adjustment, a boundary line adjustment, a replatting request, or a revision of acreage to increase density.
- (67) “Redevelopment" means the process of developing land which is or has been developed. For purposes of implementing specific provisions of this Chapter, redevelopment (as

opposed to new development) means a development activity that takes place on property with pre-development imperviousness (in IDA) or lot coverage (in LDA and RCA) of 15 percent (15%) or greater.

- (68) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.
- (69) "Resource Conservation Area (RCA)" means an area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource Conservation Areas include areas with a housing density of less than one (1) dwelling per five (5) acres.
- (70) "Restoration" means the act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.
- (71) "Road"
 - (a) "Road" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body.
 - (b) "Road" does not include a drive aisle or driveway.
- (72) "Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland.
- (73) "Steep slopes" means slopes of 15 percent (15%) or greater incline.
- (74) "Structure" means building or construction materials, or a combination of those materials that are purposely assembled or joined together on or over land or water. Structure includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating. For the purposes of development in the Critical Area, a fence is not considered a structure, provided the fence does not include footers, more than one foot in width.
- (75) "Substantial Alteration" means a repair, reconstruction, replacement, or improvement of

a principal structure, with a proposed total footprint that is at least 50 percent greater than that of the structure that is the subject of the application.

- (76) "Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local Ordinance procedures approved by the Critical Area Commission.
- (77) "Unwarranted hardship" means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested."
- (78) "Upland boundary" means the landward edge of a tidal wetland or nontidal wetland.
- (79) "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.
- (80) "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the 100-foot Buffer or expanded Buffer. An activity is water-dependent if it cannot exist outside the 100-foot Buffer or expanded Buffer and is dependent on the water by reason of the intrinsic nature of its operation. Such activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.
- (81) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.
- (82) "Waterfowl" means birds that frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.
- (83) "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passage for wildlife.
- (84) "Wildlife habitat" means those plant communities and physiographic features that provide food, water, cover, and nesting areas, as well as foraging and feeding conditions necessary to maintain populations of animals in the Critical Area.

Attachment 1: Supplemental Uses.

Permitted uses in the Critical Area shall be limited to those uses allowed by the underlying zoning classification as modified by the supplemental use standards in Part 4.				
Item	Use Description	IDA	LDA	RCA
1.00	RESIDENTIAL			
1.10	Accessory Dwelling Unit	P	P	PC
2.00	INSTITUTIONAL			
2.10	Existing institutional uses	P	P	PC
2.20	New institutional uses	P	P	NP
2.30	Cemetery	P	P	PC
2.40	Group Home	P	P	PC
2.50	Day Care	P	P	PC
3.00	COMMERCIAL			
3.10	Existing commercial uses	P	P	PC
3.20	New commercial uses	P	P	NP
3.30	Home occupation	P	P	PC
3.40	Bed and breakfast facility	P	P	PC
3.5	Gun clubs and skeet ranges	P	P	PC
4.00	MARITIME/WATER-DEPENDENT			
4.10	Expansion of existing commercial marinas	P	P	PC
4.20	New marina, commercial	P	P	NP
4.30	Community piers and noncommercial boat docking and storage	P	P	PC
4.40	Public beaches and public water-oriented recreational and educational areas	P	P	PC
4.50	Research Areas	P	P	PC
4.60	Fisheries activities	P	P	P
4.70	Structures on Piers	PC	NP	NP
4.80	Private pier	P	P	P
5.00	RECREATION			
5.10	Golf course	P	P	PC
6.00	INDUSTRIAL			
6.10	Existing industrial uses	P	P	PC
6.20	New industrial uses	P	PC	NP
6.30	Non-maritime heavy industry	P	NP	NP
7.00	TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES			
7.10	Utility transmission facilities	PC	PC	PC
8.00	PUBLIC/QUASI-PUBLIC			
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	PC
8.30	Sludge Facilities	PC	PC	PC

Supplemental Use Standards

The following supplemental use standards apply to the permitted uses listed in the table above and shall apply when the permitted use is allowed in the underlying zoning district.

Accessory Dwelling Unit (1.10)²³

- (1) If a permitted use in the underlying zoning district, one additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the RCA provided the additional dwelling unit is served by the same sewage disposal system as the primary dwelling unit and:
 - (a) Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed areas; or
 - (b) Is located within the primary dwelling unit and does not increase the amount of lot coverage already attributed to the primary dwelling unit.
- (2) An additional dwelling unit meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling unit; and
- (3) The provisions of this section may not be construed to authorize the granting of a variance, unless the variance is granted in accordance with the variance provisions contained herein.

Existing institutional uses (2.10)

- (1) Existing institutional facilities, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in RCAs.
- (2) Expansion of existing institutional facilities and uses in the RCA shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in Part 8 and may require growth allocation.

New institutional uses (2.20)

- (1) New institutional facilities and uses, except those specifically listed shall not be permitted in RCAs.
- (2) Certain institutional uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in the Charlestown Zoning Ordinance. These institutional uses are limited to:
 - (a) A cemetery that is an accessory use to an existing church; provided manmade lot coverage is limited to 15 percent (15%) of the site or 20,000

²³ This is an opt-in section.

square feet, whichever is less;

- (b) A day care facility in a dwelling where the operators live on the premises and there are no more than eight (8) children;
- (c) A group home or assisted living facility with no more than eight (8) residents; and

Existing commercial uses (3.10)

- (1) Existing commercial facilities and uses, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in RCAs.
- (2) Expansion of existing commercial facilities and uses in the RCA shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in Part 8 and may require growth allocation.

New commercial uses (3.20)

- (1) New commercial uses, except those specifically listed, shall not be permitted in RCAs.
- (2) Certain commercial uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in the Charlestown Zoning Ordinance. These commercial uses are limited to:
 - (a) A home occupation as an accessory use on a residential property and as provided for in Charlestown's Zoning Ordinance;
 - (b) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc;
 - (c) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility; and
 - (d) Other uses determined by the Municipality and approved by the Critical Area Commission to be similar to those listed above.

Expansion of existing commercial marinas (4.10)

- (1) Expansion of existing commercial marinas may be permitted within RCAs provided:
 - (a) Water quality impacts are quantified and appropriate Best Management Practices that address impacts are provided;
 - (b) That it will result in an overall net improvement in water quality at or

leaving the site of the marina;

- (c) The marina meets the sanitary requirements of the Department of the Environment; and
 - (d) Expansion is permitted under the nonconforming use provisions of this Chapter.
- (2) Expansion of existing commercial marinas may be permitted in the 100-foot Buffer or expanded Buffer in the IDAs and LDAs provided that the applicant demonstrates:
- (a) The project meets a recognized private right or public need;
 - (b) Adverse effects on water quality and fish, plant, and wildlife habitat are minimized;
 - (c) Insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the 100-foot Buffer or expanded Buffer; and
 - (d) Expansion is permitted under the nonconforming use provisions of this Chapter.

New marina, commercial (4.20)

- (1) New commercial marinas shall not be permitted in RCAs.
- (2) New commercial marinas may be permitted in LDAs and IDAs if allowed in the underlying zoning, provided:
 - (a) New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.
 - (b) New marinas meet the sanitary requirements of the Department of the Environment.
 - (c) New marinas may be permitted in the 100-foot Buffer or expanded Buffer in the IDAs and LDAs provided that it can be shown:
 - (i) The project meets a recognized private right or public need;
 - (ii) Adverse effects on water quality, fish, plant and wildlife habitat are minimized; and
 - (iii) Insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the 100-foot Buffer or expanded Buffer.

Community piers and noncommercial boat docking and storage (4.30)

- (1) New or expanded community marinas and other non-commercial boat-docking and storage facilities may be permitted in the 100-foot Buffer or expanded Buffer subject to the requirements in this Chapter provided that:
 - (a) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
 - (b) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
 - (c) The facilities are associated with a residential development approved by [Charlestown] for the Critical Area and consistent with all State requirements and the requirements of this Chapter applicable to the Critical Area;
 - (d) Disturbance to the 100-foot Buffer or expanded Buffer is the minimum necessary to provide a single point of access to the facilities; and
 - (e) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.
- (2) Number of slips or piers permitted.

The number of slips or piers permitted at the facility shall be the lesser of §a or §b below:

- (a) One slip for each 50 feet of shoreline in the subdivision in the IDAs and LDAs and one slip for each 300 feet of shoreline in the subdivision in the RCA; or
- (b) A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Number of Slips Permitted

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

Public beaches and public water-oriented recreational and educational areas (4.40)

- (1) Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the 100-foot Buffer or expanded Buffer in IDAs.
- (2) These facilities may be permitted within the 100-foot Buffer or expanded Buffer in LDAs and RCAs provided that:
 - (a) Adequate sanitary facilities exist;
 - (b) Service facilities are, to the extent possible, located outside the 100-foot Buffer or expanded Buffer;
 - (c) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
 - (d) Disturbance to natural vegetation is minimized; and
 - (e) Areas for possible recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the 100-foot Buffer or expanded Buffer within RCAs if service facilities for these uses are located outside of the 100-foot Buffer or expanded Buffer.

Research areas (4.50)

- (1) Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the 100-foot Buffer or expanded Buffer, if non-water-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the 100-foot Buffer or expanded Buffer.

Fisheries activities (4.60)

- (1) Commercial water-dependent fisheries including, but not limited to structures for crab shedding, fish off-loading docks, shellfish culture operations and shore-based facilities necessary for aquaculture operations and fisheries activities may be permitted in the 100-foot Buffer or expanded Buffer in IDAs, LDAs and RCAs.

Non-Water Dependent Structures on Piers (4.70)²⁴

- (1) Except as provided in paragraphs (2) and (3) of this subsection and notwithstanding any other provisions of the law, Charlestown may not issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area.
- (2) **[Charlestown]** may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:
 - (a) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
 - (b) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;
 - (c) Is located in:
 - (i) An IDA and the project is authorized under a program amendment to Charlestown's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Charlestown's zoning, subdivision and other ordinances so as to be consistent with, or more restrictive than, the requirements required under this paragraph; or
 - (ii) An area that has been excluded from a local Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
 - (d) Is approved by the Board of Appeals²⁵ after the Charlestown program amendment under Subparagraph ((c)(i) of this paragraph, if applicable, has been approved;

²⁴ This is an opt-in section. In 2013, MDE updated its regulations regarding structures on piers. The new language provided here reflects those changes. The previous regulations were completely repealed; therefore, a local jurisdiction must either adopt this updated language or remove any language related to structures on piers from their ordinance. Any language reflective of MDE's repealed regulations is obsolete. This does not apply to language related to repair or replacement of existing boathouses; that is under separate MDE regulations.

²⁵ This decision may be made by a Planning Commission, Zoning Administrator, Planning Director, or other person or body and is not required to be done by the Board of Appeals.

- (e) Allows or enhances public access to State wetlands;
 - (f) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;
 - (g) Has a height of up to 18 feet unless the project is located at a marina; and
 - (h) Is up to 1,000 square feet in total area; or
 - (i) Is located on a pier that was in existence on or before December 31, 2012;
 - (ii) Satisfies all of the requirements under Section (2)(a)-(g) of this paragraph; and
 - (iii) If applicable, has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total area.
- (3) Charlestown may issue a building permit or other approval to authorize a non-water-dependent project for a small scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:
- (a) Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article;
 - (b) Is located in:
 - (i) The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under a program amendment to the Charlestown's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Charlestown's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or
 - (ii) An area that has been excluded from the Charlestown's Critical Area Program that has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
 - (d) Is approved by Charlestown's Board of Appeals²⁶ after the Charlestown's amendment in accordance with Subparagraph (3)(b)(i), if applicable, has been approved;
 - (d) A building permit or other approval issued under the requirements above

²⁶ This decision may be made by a Planning Commission, Zoning Administrator, Planning Director, or other person or body and is not required to be done by the Board of Appeals.

in paragraph (3) may include the installation or placement of:

- (i) A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than:
 - (A) four (4) feet above or 18 inches below the deck of the pier;
or
 - (B) one (1) foot beyond the length or width of the pier;
- (ii) A solar energy system attached to a piling if there is only one solar panel per boat slip;
- (iii) A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;
- (iv) A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:
 - (A) Extend beyond the length, width, or channelward encroachment of the pier;
 - (B) Deleteriously alter longshore drift; or
 - (C) Cause significant individual or cumulative thermal impacts to aquatic resources; or
- (v) A wind energy system attached to a pier if there is only one wind energy system per pier for which:
 - (A) The height from the deck of the pier to the blade extended at its highest point is up to 12 feet;
 - (B) The rotor diameter of the wind turbine is up to four (4) feet;
and
 - (C) The setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

Golf course (5.10)

- (1) A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc., may be permitted in RCAs provided:

- (a) Such use is permitted in the underlying zoning; and
- (b) Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

Existing industrial uses (6.10)

- (1) Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in RCAs.
- (2) Expansion of existing industrial facilities and use in the RCA shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in Part 8 and may require growth allocation.

New industrial uses (6.20)

- (1) New industrial uses shall not be permitted in RCAs.
- (2) New, expanded or redeveloped industrial facilities may only be permitted in LDA if such a use is permitted in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.
- (3) New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of IDAs that have been designated as MBAs.

Non-maritime heavy industry (6.3)

- (1) Non-maritime heavy industry may be permitted if:
 - (a) The site is located in an IDA; and
 - (b) The activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

Utility transmission facilities (7.10)

- (1) Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:
 - (a) The facilities are located in IDAs; and
 - (b) Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in

water quality to the adjacent body of water.

- (2) These provisions do not include power plants.

Sanitary landfill; rubble fill (8.10)

- (1) Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.
- (2) Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

Solid or hazardous waste collection or disposal facilities (8.20)

- (1) Solid or hazardous waste collection or disposal facilities, including transfer stations may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.
- (2) Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

Sludge facilities (8.40)

- (1) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities may be permitted in the Critical Area provided:
 - (a) The facility or activity is located in an IDAs; and
 - (b) Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
 - (c) Agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.