

MUNICIPAL MODEL CRITICAL AREA ORDINANCE

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

A. Goals.

The goals of the **Town of [Municipality]** 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. [Municipality’s] Critical Area Program.

- (1) The Town adopted its Critical Area Program on **[Insert Date]**. The **[Municipality]** Critical Area Program consists of the **[Municipality]** Zoning Ordinance, the Official Critical Area map(s), and any other related provisions within the Town’s ordinances.
- (2) Notwithstanding any provision in this ordinance, or the lack of a provision in this ordinance, all of the requirements of Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 shall apply to, and be applied by, **[Town]** as minimum standards.
- (3) In the case of conflicting provisions, the stronger provision applies.

C. Responsibilities.

The Town’s Critical Area Program and all applicable provisions of this Ordinance shall be implemented and enforced by the Town **[Zoning Administrator]**.

- (1) The **[Zoning Administrator]** shall review a permit, license, or other authorization for a development or redevelopment activity in the Critical Area for compliance with this Critical Area Ordinance prior to issuance of that permit or license.
- (2) Should an infraction of the provisions contained in any law, regulation, or plan related to the Town’s Critical Area Program be brought to the attention of any

Town official, said official shall contact the [**Code Enforcement Officer**].

D. Critical Area Overlay District Map.

- (1) The Official Critical Area Overlay District Map is maintained as part of the Official Zoning Map for [**Municipality**]. 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]¹, 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 classifications, based on land uses and development in existence on December 1, 1985:
 - (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 or Mayor and Council**] in compliance with amendment provisions in this chapter (ordinance), the Maryland Critical Area Law, and COMAR Title 27.

E. Notification of project approval

The [**Municipality**] 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 Commission’s website.

¹ If the Municipality has updated their Critical Area Maps, the phrase in brackets shall be removed.

- (2) The **[Municipality]** may not process an application, which has been sent to the Commission for notification until it has received notice of receipt by the Commission or the close of the fifth business day, whichever comes first. Any action by the **[Municipality]** in violation of these procedures shall be void.

Part 2. Development Standards in the Critical Area.

A. General Requirements in all Critical Area Overlay Zones.

- (1) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in Parts 3-5 of this Ordinance.
- (3) Development and redevelopment shall be subject to the water-dependent facilities requirements of Part 6 of this Ordinance;
- (4) The Town shall maintain areas of public access to the shoreline, and, if possible, encourage the establishment of additional areas of shoreline access for public use, such as foot paths, scenic drives, and other public recreational facilities.
- (5) Development shall comply with the following complementary State statutes and regulations, including:
 - (a) For soil erosion and sediment control, management measures shall be consistent with the requirements of Environment Article, §§4-101—4-116, Annotated Code of Maryland, and COMAR 26.17.01;
 - (b) For stormwater runoff, stormwater management measures shall be consistent with the requirements of Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02;
 - (c) For shore erosion, shoreline stabilization measures shall be consistent with the requirements of Environment Article, Title 16, Annotated Code of Maryland, and COMAR 26.24.04; and
 - (d) Any other applicable State statute or regulation.
- (6) A development activity or facility may not be authorized in the Critical Area if, by its intrinsic nature, the activity or facility has the potential to cause an adverse effect on water quality, wildlife, or fish habitat or plant habitat, unless:

- (a) For an activity or facility such as nonmaritime heavy industry:
 - (i) It is located within an intensely developed area;
 - (ii) It fully complies with all requirements under Part 6 of this Ordinance of this chapter; and
 - (iii) The owner or operator of the activity or facility demonstrates to all applicable State and local agencies that there will be a net improvement in water quality to the adjacent body of water; or
- (b) For an activity or facility such as a sanitary landfill or a solid or hazardous waste collection or disposal facility:
 - (i) There is no environmentally acceptable alternative outside the Critical Area; and
 - (ii) The activity or facility is necessary in order to correct a water quality or wastewater management problem.
- (7) A transportation facility or a utility transmission facility or activity may not be authorized in the Critical Area, unless it is:
 - (a) A facility that serves a use identified under this Critical Area program;
 - (b) A linear regional or interstate transportation facility that must cross tidal waters; or
 - (c) A linear regional or interstate utility transmission facility that must cross tidal waters.
- (8) A permanent sludge handling, storage, or disposal activity or facility may not be authorized in the Critical Area, unless:
 - (a) The activity or facility is associated with a wastewater treatment facility; or
 - (b) In accordance with an approved nutrient management plan under Agriculture Article, Title 8, Subtitle 8, Annotated Code of Maryland, and COMAR 15.20.04 and COMAR 15.20.06 -- .08, sludge is applied on agricultural land that is not in the buffer.

- (9) Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
 - (a) Provide maximum erosion protection;
 - (b) Minimize negative impacts on wildlife, aquatic life and their habitats; and
 - (c) Maintain hydrologic processes and water quality.

- (10) Development activities that cross or affect a stream are prohibited unless there is no feasible alternative. 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.

- (11) Reasonable accommodations for the needs of disabled citizens.
 - (a) An applicant seeking relief from the Critical Area standards contained in this Ordinance 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 Ordinance 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 Ordinance 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 Ordinance 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 Board of Appeals² shall determine the nature and scope of any accommodation under this Ordinance 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 Ordinance. The Board 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 Board of Appeals 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 Ordinance. Appropriate bonds may be collected or liens placed in order to ensure [Municipality]'s ability to restore the property should the applicant fail to do so.
- (12) Non-Water Dependent Structures on Piers³
- (a) Except as provided in paragraphs (2) and (3) of this subsection and notwithstanding any other provisions of the law, **[Municipality]** 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.
 - (b) **[Municipality]** may issue a building permit or any other approval to

² 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.

³ This is an opt-in Section. A local jurisdiction may choose to adopt the commercial structures on piers language, the renewable energy structures on piers language, or both, or neither. Additionally, Part 2(A)(8) may be relocated to the Supplemental Use Standards as provided in Attachment A.

authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:

- (i) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
 - (ii) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;
 - (iii) Is located in:
 - (1) An Intensely Developed Area (IDA); or
 - (2) 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 Planning Commission and the Zoning Board after **[Date of NWD opt-in]**;
 - (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) **[Municipality]** 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 approved by the [**Municipality's**] Planning Commission and Zoning Board⁴ after [**Date of NWD opt-in**];
- (c) A building permit or other approval 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:

⁴ Or other local approving authority.

- 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.

B. Intensely Developed Areas.

All development in the Intensely Developed Area shall meet the following standards:

- (1) Intensely Developed Areas (IDA) include areas where residential, commercial, institutional, and/or industrial development uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features:
 - (a) Housing density equal to or greater than four dwelling units per acre;
 - (b) Industrial, institutional, or commercial uses are concentrated in the area; or
 - (c) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;
- (2) In addition, IDAs shall be located in an area of at least 20 adjacent acres unless it is the entirety of the upland area of the Town or it is consistent with Part 7;
- (3) Land use activities within the IDA will be managed in accordance with the land use policies of COMAR 27.01.02.03;
- (4) **[Town]** shall develop a strategy to reduce the impacts on water quality generated by existing development. This shall include an assessment of water quality and impacts to biological resources prompted by community redevelopment plans and programs and may further include a public education program, the implementation of urban best management practices, and the use of such techniques as urban forestry programs, street tree plantings, gardens, and open

land buffer plantings;

- (5) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
- (6) All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent 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.

C. Limited Development Areas.

- (1) Limited Development Areas (LDA) are those areas that are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. The quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:
 - (a) Housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
 - (b) Areas not dominated by agricultural, wetland, forest, barren land, open water, or open space;
 - (c) Areas meeting the conditions of Intensely Developed Area but compromising less than 20 acres; or
 - (d) Areas having public sewer or public water, or both.
- (2) Land use activities within the LDA will be managed in accordance with the land use policies of COMAR 27.01.02.04.
- (3) 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) The [Municipality] 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) Development on slopes 15 percent 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 Limited Development Areas.
- (5) Except as otherwise provided in this subsection, lot coverage is limited to 15% of a lot or parcel, or that portion of a lot or parcel, that is designated LDA.
- (a) If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
 - (b) If a parcel or lot greater than one-half acre and less than one 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 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 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 five hundred square feet (500 square feet), whichever is greater;
 - (iv) For a lot or parcel greater than one-half acre and less than one acre

in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (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 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 **[Municipality]** in lieu of performing the on-site mitigation.
- (f) For the purposes of calculating limitations on lot coverage, is as follows:
 - (i) When a site is mapped entirely as LDA, lot coverage is based on the entire site area; and
 - (ii) When a portion of a lot or parcel is mapped as LDA, lot coverage is based on the area of the LDA.
- (5) The alteration of forest and developed woodlands shall be restricted and mitigated as follows:

- (a) The total acreage in forest and developed woodlands within the **[Municipality]** in the Critical Area shall be maintained or preferably increased;
 - (b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
 - (c) If an applicant is authorized to clear more than 20 percent 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 entire areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared.
 - (d) An applicant may not clear more than 30 percent 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 3 times the areal extent of the forest or developed woodlands cleared.⁵
- (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. The applicant shall designate, subject to the approval of **[Municipality]**, a new forest area on a part of the site not forested.
 - (7) If the areal extent of the site limits the application of the reforestation standards in this section the applicant may be allowed to plant offsite or pay a fee in lieu of planting.
 - (8) The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by **[Municipality]** shall be posted to assure satisfactory replacement as required in (4) above and plant survival;
 - (9) A permit issued by the **[Municipality]** before forest or developed woodland is cleared. Forests and developed woodlands which have been cleared before obtaining a **[Municipal]** permit is a violation and shall be replanted at three times the areal extent of the cleared forest;

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

- (10) Clearing of forest or developed woodlands that exceed the maximum area allowed in (4) above shall be replanted at three times the areal extent of the cleared forest;
- (11) All forest, including afforested areas, shall be maintained through conservation easements, restricted covenants, or other protective instruments.
- (12) New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if such a use is permitted in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.⁶

D. Resource Conservation Areas.

- (1) RCAs are those areas characterized by nature dominated environments (wetlands, forests, abandoned fields) and resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features: (1) Density is less than one dwelling unit per 5 acres; or (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.
- (2) Land use activities within the RCA will be managed in accordance with the land use policies of COMAR 27.01.02.05.
- (3) Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in COMAR 27.01.02.04 and this Ordinance.
 - (a) For the purposes of calculating limitations on lot coverage, is as follows:
 - (i) When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and
 - (ii) When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.
- (4) Density
 - (a) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres.

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

A local jurisdiction may not authorize a variance to the maximum density of one dwelling unit per 20 acres. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, **[Municipality]**:

- (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 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 the **[Municipality]**, the Commission, and Maryland Department of the Environment.
- (b) One additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the Resource Conservation Area provided the 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

⁷ The provisions for an Accessory Dwelling Unit in the RCA are not a requirement of the Critical Area Law. These

- (5) 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.
- (6) RCA Uses⁸
 - (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.⁹
 - (b) Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.
 - (c) Additional industrial or commercial facilities may not be located in the RCA.
 - (d) Institutional facilities may not be located in the resource conservation area.
 - (e) A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.14.
 - (f) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the Town's growth allocation provisions or as listed below.¹⁰
 - (i) A home occupation as an accessory use on a residential property and as provided for in the Town's zoning ordinance;
 - (ii) A golf course developed in accordance with the official guidance

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 A local jurisdiction may propose additional RCA uses to add to this list, provided they are approved by the Commission.

⁹ Part 2(D)(5) may be relocated to the Supplemental Use Standards as provided in Attachment A.

¹⁰ 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.

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 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 children; or
 - (vii) A group home or assisted living facility with no more than eight residents.
- (g) Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the Town's growth allocation provisions.

Part 3. The 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 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, and 100 feet from a tributary stream.
 - (a) The 200-foot Buffer may be reduced if strict application of the 200-foot Buffer would preclude either subdivision at a density of one dwelling unit per 20 acres, or an intrafamily transfer subdivision.
 - (b) The reduced Buffer should be the minimum necessary to accommodate a dwelling and a sewage reserve area, as determined by the Planning Director, but no less than 100 feet.
- (3) The 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 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 Buffer.

[Municipality] may authorize disturbance to the 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.

- (2) A shoreline stabilization measure constructed in accordance with COMAR 26.24.02, a shoreline stabilization measure under COMAR 26.24.04, and this Ordinance.
- (3) A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance.
- (4) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
 - (a) The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% 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 [local program adoption date], where mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.
- (6) Associated with the placement of dredged material under COMAR 27.01.03.03D.

C. 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 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 chapter; 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 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 buffer is not fully forested or is not fully established in existing, naturally occurring woody or wetland vegetation, an applicant shall establish the buffer to the extent required in the following table¹¹:

Table 3.C.(5). Buffer establishment requirements.

Development Category	Lot Created Before [Insert Local Program Adoption Date]	Lot Created After [Insert Local Program Adoption Date]
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	

¹¹ A municipality may simply reference COMAR 27.01.09.01-1(C), rather than include this table.

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 Buffer.

An applicant for a development activity that includes disturbance to the Buffer shall mitigate for impacts to the 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 according to COMAR 27.01.09.01-2.
- (2) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
- (3) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then [**Municipality**] 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) For the removal of a dead tree, the affected area shall be stabilized with native groundcover or other native vegetation as necessary.
- (5) The removal of a diseased, dying, invasive, or hazardous tree shall be mitigated with one tree of at least ¾-inch caliper for each tree removed or the affected area shall be stabilized in native woody vegetation if a tree cannot be replanted due to space constraints.

- (6) The installation or cultivation of new lawn or turf in the Buffer is prohibited.
- (7) As applicable to a site, [**Municipality**] shall require that an area in the buffer that is temporarily disturbed by a development activity be restored to pre-disturbance conditions.

E. Buffer Planting Standards.

- (1) An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall apply the planting standards set forth in COMAR 27.01.09.01-2 and 01-4.
- (2) A variance to the planting and mitigation standards of this Ordinance is not permitted.

F. Required Submittal of Buffer Management Plans.

An applicant that is required to plant the 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 Buffer.

- (1) Any permit for a development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by [**Municipality**].
- (2) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by [**Municipality**].
- (3) [**Municipality**] 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 Buffer areas.
- (4) For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
 - (a) Completes the implementation of a Buffer Management Plan; or

- (b) Provides financial assurance to cover the costs for:
 - (i) Materials and installation; and
 - (ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- (5) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
- (6) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance. 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 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 the [Municipality]'s general fund;
- (2) Fee-in-lieu shall be assessed at \$1.50 per square foot of required Buffer mitigation;
- (3) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and
- (4) Fee-in-lieu monies shall be used for the following projects:
 - (a) To establish the Buffer on sites where planting is not a condition of development or redevelopment;

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

Part 4. Modified Buffer Area (MBA).¹²

A. Applicability.

The following provisions apply to areas designated and mapped by [Municipality] as Modified Buffer Areas (MBA) and shown on maps available to the public held by [Municipality]. 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 Buffer in a designated MBA unless the applicant can demonstrate that there is no feasible alternative and the [Local Approving Authority] finds that efforts have been made to minimize Buffer 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 Buffer.
- (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 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 Buffer. Redevelopment shall not be located closer to

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

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 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 **[Local Approving Authority]** 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 Buffer is permitted.
- (6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
- (7) Buffer Management Area (BMA) designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
- (8) No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- (9) Mitigation for development or redevelopment in the in the BMA approved under the provisions of this subsection shall be implemented as follows:

- (a) Natural vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the **[Local Approving Authority]**.
- (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 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 at a rate of \$1.50 per square foot:¹³
- (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 the **[Municipality]**'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.
- (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.

A. Identification.

- (1) An applicant for a development activity, redevelopment activity or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this Ordinance.
- (1) In addition to the Buffer, other Habitat Protection Areas include:
 - (a) Threatened and Endangered Species and Species in Need of Conservation;
 - (b) Plant and Wildlife Habitat Protection Areas; including:

¹³ A municipality may work with Commission staff to set a different fee-in-lieu rate for MBA mitigation. 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.

- (i) Colonial waterbird nesting sites;
 - (ii) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
 - (iii) Existing riparian forests;
 - (iv) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species;
 - (v) Other plant and wildlife habitats determined to be of local significance; and
 - (vi) Natural Heritage Areas; and
- (c) Anadromous Fish Propagation Waters
- (2) Maps identifying these specific Habitat Protection Areas are maintained by the Department of Natural Resources Wildlife and Heritage Division. The most recent updated inventory was completed on **[INSERT DATE]** and recommendations contained in **[INSERT REFERENCE TO THE REPORT]** are hereby incorporated into this Ordinance.

B. Standards.

- (1) An applicant for a development activity proposed for a site within the Critical Area that is in or near a Habitat Protection Area listed above; shall request review by the Department of Natural Resources Wildlife and Heritage Service (DNR WHS), and as necessary United States Fish and Wildlife Service (USFWS), for comment and technical advice. Based on the Department'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 Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall follow the requirements of COMAR 27.01.09.02 through 27.01.09.05, all recommendations from DNR WHS, and as necessary all recommendations from USFWS.
- (a) If potential 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 DNR WHS and USFWS shall be included on the site plan and shall be considered conditions of approval for the project.

Part 6. Water Dependent Facilities.

A. Applicability.

- (1) 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 Buffer.
- (2) The provisions of this chapter are not applicable to:
 - (a) A private pier that:
 - (i) Is installed or maintained by a riparian landowner; and
 - (ii) Is not part of a residential project that provides a community pier or other community boat-docking or storage facility under Regulation .07 of this chapter; or
 - (b) A nonwater-dependent project covered under COMAR 27.01.13.
- (3) The requirements of COMAR 27.01.02 apply to this chapter.

B. General Criteria.

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

- (1) In accordance with Natural Resources Article §8-1808.3, Annotated Code of Maryland, permitted development in the Buffer is limited to the minimum lot coverage necessary to accommodate each water dependent facility or activity.
- (2) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can

be shown:

- (a) That the facility or activity are water-dependent;
 - (b) That the facility or activity meets a recognized private right or public need;
 - (c) That adverse effects on water quality, fish, plant and wildlife habitat are first avoided, or if unavoidable, minimized;
 - (d) That, insofar as possible, a non-water-dependent project associated with the water-dependent facility or activity is located outside the Buffer;
 - (e) Impacts to fish, wildlife, or plant habitat are avoided, or if unavoidable, minimized; and
 - (f) Mitigation is provided at a minimum ratio of 1:1 based on the square footage of canopy coverage removed.
- (3) Except as otherwise authorized in this section, a water-dependent facility or activity is prohibited in the Buffer of the Resource Conservation Area.
- (3) The placement of dredged material in the Buffer or a portion of the Critical Area that has been designated as a habitat protection area is prohibited, except as necessary for:
- (a) A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:
 - (i) Backfill for a shoreline stabilization measure;
 - (ii) Use in a nonstructural shoreline stabilization measure, including a living shoreline;
 - (iii) Beach nourishment;
 - (iv) Restoration of an island;
 - (v) The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or
 - (vi) Any other approved beneficial use; or

- (b) Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988; and

C. General Requirements for the Location of Water-Dependent Facilities or Activities.

- (1) **[The Municipality]** shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. **[The Municipality]** shall work with appropriate State and federal agencies to develop a plan for the approval of an area suitable for the location of a new or expanded water-dependent facility or activity.
- (2) The following siting factors shall be considered when evaluating proposals for new or expanded water dependent facilities:
 - (a) The impact on the water body upon which the water-dependent facility or activity is proposed that would likely result from the approval of that location, including:
 - (i) Alteration of an existing water circulation pattern or salinity regime;
 - (ii) Adequacy of area flushing characteristics;
 - (iii) Necessity of, and proximity to, a dredging operation; and
 - (iv) Interference with the natural transport of sand;
 - (b) Disturbance to:
 - (i) An oyster harvest area, as defined in COMAR 08.02.04.11;
 - (ii) An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
 - (iii) A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
 - (iv) An oyster sanctuary, as established in COMAR 08.02.04.15A; and

- (v) Any other shellfish located in a shellfish area regulated by the Department of Natural Resources;
- (c) Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
- (d) The avoidance or, if unavoidable, the minimization of:
 - (i) Disturbance to:
 - A. A wetland;
 - B. Submerged aquatic vegetation;
 - C. A habitat of threatened or endangered species or species in need of conservation;
 - D. In accordance with COMAR 26.08.02.04-1, a water body identified by the Department of the Environment as a Tier II, high quality water body and its watershed; and
 - E. A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and .04 and COMAR 26.23.06.01; and
 - (ii) Adverse impact on water quality that would likely result from the facility or activity, such as nonpoint source runoff, sewage discharge, or other pollution related to vessel maintenance.

D. Industrial and port-related facilities.

New, expanded or redeveloped industrial or port-related facilities or activities and the replacement of these facilities or activities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas as described in this ordinance and are subject to the provisions set forth in that Chapter.¹⁴

E. Commercial Marinas and Other Water-Dependent Commercial Maritime Facilities and Activities.

- (1) In addition to meeting the requirements of Part 6.B and 6.C;
 - (a) A new or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an IDA or LDA;
 - (b) A redeveloped or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of a RCA; or

¹⁴ A local jurisdiction may also allow an approved use in accordance with the local Critical Area Program.

- (c) A new commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an RCA, only if it is publicly owned and meets all the requirements of Section G of this Part.
- (2) **[Municipality]** shall require that the operation of each commercial marina and each related commercial maritime facility or activity complies with:
 - (a) The requirements of COMAR 26.08.04.09 and, as applicable, COMAR 26.24.04.03; and
 - (b) The stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of the Department of the Environment.

F. Community Piers and Other Community Boat-Docking and Storage Facilities.

- (1) In addition to meeting the requirements of Part 6.B and 6.C, new or expanded community pier or other community boat-docking and storage facilities may be permitted in the Buffer if:
 - (a) The owner or operator of the pier or facility:
 - (i) Does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and
 - (ii) As applicable, complies with the requirements of COMAR 26.24.04.03;
 - (b) The pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
 - (c) The pier or facility is associated with a residential project approved by the Town for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;
 - (d) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the pier or facility; and
 - (e) If community piers are provided as part of a new residential project, private piers in the development are not allowed.

- (2) The number of slips authorized at a pier or facility shall be the lesser of (a) or (b) below:
- (a) One slip for each 50 feet of shoreline in a residential project in the Intensely Developed and Limited Development Areas, and one slip for each 300 feet of shoreline in a residential project in the Resource Conservation Area; or
 - (b) A density of slips to platted lots or dwellings within a residential project in the Critical Area according to the following schedule:

Table 6.F.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

G. Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities.

- (1) In addition to meeting the requirements of Part 6.B and 6.C, public beaches or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:
- (a) An Intensely Developed Area; or
 - (b) A Limited Development Area or a Resource Conservation Area provided that:
 - (i) Adequate sanitary facilities exist;
 - (ii) Sanitary and service facilities are, to the extent possible, located outside the Buffer;
 - (iii) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would likely result; and
 - (iv) Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.

- (2) Areas for public passive outdoor recreation, such as nature study, and hiking, hunting, and trapping, and for education, may be permitted in the Buffer within a Limited Development Area or a Resource Conservation Area if sanitary and service facilities for these uses are located outside of the Buffer.

H. Research-Associated and Education-Associated Water-Dependent Facilities or Activities.

In addition to meeting the requirements of Part 6.B and 6.C, a research-associated water-dependent facility or activity or of an education-associated water-dependent facility or activity may be permitted in the Buffer of an IDA, LDA, or RCA, if any associated nonwater-dependent project or activity is located outside the Buffer.

I. Aquaculture and Fishery Facilities and Activities: Water Quality Restoration.

The following types of aquaculture and fishery facilities and activities may be permitted in the Buffer of an IDA, LDA, or RCA:

- (1) A shore-based facility or activity necessary for a commercial aquaculture operation;
- (2) A commercial water-dependent fishery facility or activity, including a structure for crab shedding, a fish off-loading dock, and a shellfish culture operation; and
- (3) A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

Part 7. Growth Allocation.

A. Definition.

Consistent with” means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan: (i). Policies; (ii) Timing of the implementation of the plan, of development, and of rezoning; (iii). Development patterns; (iv). Land uses; and (v). Densities or intensities.¹⁵

B. Growth allocation acreage and deduction.

¹⁵ This definition may be moved to the Definitions section if the municipality desires to do so.

- (1) Growth allocation available to **[Municipality]** includes:
 - (a) An area equal to five (5) percent of the RCA acreage located within **[Municipality]** and;
 - (b) Growth allocation available to **[Municipality]** as provided for by **[County]**.
- (2) **[Municipality]**'s original growth allocation acreage is **[X]** acres. **[Municipality]**'s current growth allocation acreage remaining is **[X]** acres, as of **[date of adoption of this Ordinance]**.
- (3) A local jurisdiction shall deduct acreage from its growth allocation reserves in accordance with COMAR 27.01.02.06-4.

C. Purpose.

Growth Allocation is available for use in a Resource Conservation Area (RCA) or in a Limited Development Area (LDA) in the **[Municipality]** 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.

D. Process.

An applicant shall submit to **[Municipality]** 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 **[Local Approving Authority]** prior to submission to the Commission.¹⁶

E. Requirements.

When locating new Intensely Developed or Limited Development Areas, the following requirements apply:

- (1) A new Intensely Developed Area shall be at least 20 acres unless it is adjacent to existing IDA (or¹⁷).

¹⁶ Existing procedures may vary among jurisdictions and incorporate Counties into the approval process. Amend as necessary.

¹⁷ 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

- (2) An application for a new IDA or LDA shall be:
 - (a) In conformance with the requirements of COMAR Title 27 Subtitle 01; and
 - (b) Designated on the approved Critical Area map that is submitted as part of its application to the Commission for growth allocation approval.
- (3) As part of a growth allocation approved by the Commission, the following shall be enforced:
 - (a) A buffer management plan
 - (b) A habitat protection plan; and
 - (c) Other applicable conditions of approval as determined by the Commission at the time of project approval.

F. Standards.

When locating new Intensely Developed or Limited Development Areas the following standards shall apply:

- (1) A new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area.¹⁸
- (2) A new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area.¹⁹
- (3) A new Limited Development Area or Intensely Developed Area shall be located in a manner that minimizes impacts to Habitat Protection Area as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
- (4) A new Intensely Developed Areas shall only be located where they minimize their impacts to the defined land uses of the Resource Conservation Area (RCA);

less than 20 acres.

¹⁸ 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.

¹⁹ See footnote 18 above.

- (5) A new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters unless **[Municipality]** proposes and the Commission approves alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources; and
- (6) New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of **[Municipality]** for such areas, shall be so designated on the **[Municipality]** Critical Area Maps and shall constitute an amendment to this Ordinance subject to review and approval by the **[Municipality]** Planning Commission, the **[Town Commissioners or Mayor and Council]** and the Critical Area Commission as provided herein.

G. Additional Factors.

In reviewing map amendments or refinements involving the use of growth allocation, **[Municipality]** shall consider the following factors:

- (1) Consistency with **[Municipality'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 Limited Development Area, whether the development is:
 - (a) To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
 - (b) A completion of an existing subdivision;
 - (c) An expansion of an existing business; or
 - (d) To be clustered.
- (3) For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:
 - (a) To be served by a public wastewater system;
 - (b) Have an allowed average density of at least 3.5 units per acre as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland

- (c) If greater than 20 acres, to be located in a designated Priority Funding Area; and
 - (d) 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;
 - (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 **(Date of Program Approval) may be permitted**, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal ordinances.
- (2) If any existing use does not conform with the provisions of this Ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures in Part 9.²¹

B. Residential density on grandfathered lots.

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.

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

- (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 Ordinance.
 - (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 **(Date of Program Approval)**;
 - (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 Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.

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 types of development areas described in this chapter.
- (2) Nothing in this Section may be interpreted as altering any requirements of this Ordinance related to water-dependent facilities or Habitat Protection Areas.

Part 9. Variances.

A. Applicability.

[Municipality] has established provisions where, owing to special features of a site or other circumstances, implementation of this Ordinance or a literal enforcement of

provisions within this Ordinance would result in unwarranted hardship to an applicant; a Critical Area variance may be obtained.

- (1) In considering an application for a variance, **[Municipality]** 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 Ordinance.
- (2) Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

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 a variance shall include written findings based on competent and substantial evidence that the applicant has overcome the presumption established under Section A(1) above and that each of 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 Ordinance would result in unwarranted hardship;
- (2) A literal interpretation of the provisions of this Ordinance will deprive the applicant the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Ordinance;
- (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Critical Area Ordinance to other lands or structures in accordance with the provisions of this Critical Area Ordinance;
- (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant;
- (5) The request does not arise from any conforming or non-conforming condition on

any neighboring property;

- (6) The granting of a variance would not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area; and
- (7) The granting of the variance would be in harmony with the general spirit and intent of the State Critical Area law, the regulations in COMAR Title 27, Subtitle 01, and this Critical Area Ordinance.

D. Process.

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

- (1) After hearing an application for a Critical Area 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) **[Municipality]** or any other government agency; or
 - (c) Any other person deemed appropriate by **[Municipality]**.
- (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, **[Municipality]** shall consider that fact, and whether the application has met the requirements of Part E below.
- (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) **[Municipality]** 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

²²Or other local appeals authority.

activity until the local jurisdiction:

- (a) Issues a notice of violation; and
 - (b) Assesses an administrative or civil penalty for the violation.
- (2) The **[Municipality]** may not issue a permit, approval, variance, or special exception to legalize a violation of this Ordinance unless an applicant has:
- (a) Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article, §8-1808(c)(1), 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 Ordinance.
- (3) If the Board denies the requested after-the-fact variance, then the **[Municipality]** shall:
- (a) Order removal or relocation of any structure; and
 - (b) Order restoration of the affected resources.

F. Appeals.

- (1) 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 the Town for variances.
- (2) Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure.
- (3) Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Ordinance or any person with standing as described in Section B above.
- (4) The **[Town]** may not issue a permit, or any other type of authorization, until the applicable 30-day appeal period has expired.

G. Conditions and mitigation.

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

- (1) Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the **[Local Planning Authority]**, but not less than by planting on the site per square foot of the variance granted at no less than a three to one 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 ten (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.

Part 10. Lot Consolidation and Reconfiguration.

A. Applicability.

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

- (1) Those for which a Critical Area variance is sought or has been issued; and
- (2) Those located in the Resource Conservation Area 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 **[Municipality]**.

- (1) The **[Municipality]** 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) The **[Municipality]** 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, the **[Municipality]** shall send a copy of the decision or order and a copy of any approved development plan to the Commission within 10 business days.
- (3) The **[Municipality]** may not issue a permit or approval of any type on a property affected by the final written decision or order until after the expiration of the time within which the Commission may file an appeal or petition for judicial review.

Part 11. Local Development Projects

A. Applicability.

For all development in the Critical Area resulting from any action by the **[Municipality]** on local or privately owned lands, the **[Municipality]** shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

B. Procedures.

- (1) If the project meets the provisions of this Ordinance and is minor development, the **[Planning Department]** shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the Critical Area Commission per the requirements of COMAR 27.02.02.
- (2) If the project does not meet the provisions of this Ordinance, the **[Planning Department]** shall seek a conditional approval by the Critical Area Commission per the requirements of COMAR 27.02.06.
- (3) The **[Municipality]** shall submit information as required in the Critical Area Commission's *Local Project Submittal Instructions and Application Checklist*.

C. Notice and posting requirements for projects reviewed and approved by the Critical Area Commission.

Public notice is required for all development projects that qualify under COMAR 27.03.01.03. Public notice shall be the responsibility of the **[Municipality]** and evidence that those requirements have been met shall be included as part of the submittal to the

Critical Area Commission.

Part 12. Program Changes.

A. Program Changes.

The **[Municipality Commissioners/Mayor and Council]** may from time to time amend the Critical Area provisions of this Ordinance. 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 the **[Municipality's]** Critical Area.

- (1) 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.
- (2) 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. Comprehensive Review

The **[Municipality]** will review its entire Program and propose any necessary amendments to its entire Program, including this Ordinance, at least every six years in accordance with Natural Resources Article, §8-1809(g).

C. Zoning Map Amendments.

Except for Program amendments or Program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by **[Municipality Commissioners/Mayor and Council]** 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 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 Ordinance is proposed.

D. Adoption of a Program Amendment or Refinement.

If approved by the Critical Area Commission, [the Municipality] shall incorporate a program amendment or refinement into its adopted Critical Area Program, including any conditions of approval, within 120 days of receiving notice from the Chairman of the Commission.

Part 13. Enforcement.

A. Consistency.

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

B. Violations.

- (1) No person shall violate any provision of this Zoning Ordinance. Each violation that occurs and each calendar day that a violation continues shall be a separate offense subject to separate fines, orders, sanctions or other penalties.
- (2) Noncompliance with any permit or order issued by [Municipality] related to the Critical Area shall be a violation of this Ordinance 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) 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.

When the Town identifies a violation of this Ordinance, [Municipality] shall take enforcement action including:

- (1) Citing the violation;

- (2) Issuing abatement, restoration, and mitigation orders as necessary to:
 - (a) Stop unauthorized activity; and
 - (b) Restore and stabilize the site to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits;
- (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; and
- (4) Assessing an administrative fine or pursuing a civil penalty in accordance with Part 12.F below.

E. Restoration and Mitigation

- (1) A restoration or mitigation order shall specify the amount of appropriate restoration and mitigation as necessary to offset the adverse impacts to the Critical Area, resulting from the violation, consistent with all other requirements of this Ordinance.
- (2) For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000, the **[Town]** shall collect a bond or other financial security.
- (3) If restoration or mitigation involves planting, a bond shall be held for at least 2 years after the date the plantings were installed to ensure plant survival.
- (4) A property owner may request **[Town]** to schedule inspections as necessary to ensure compliance and the return of the bond or other financial security.

F. Right to Enter Property.

Except as otherwise authorized and in accordance with the procedures specified herein, the **[Municipality Commissioners/Council]** 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 **[Municipality]** has probable cause to believe that a violation of this Ordinance has occurred, is occurring, or will occur. **[Municipality]** shall make a reasonable effort to contact a property owner before obtaining access to or enter the property. If entry is denied, **[Municipality]** may seek an injunction to enter the property to pursue an enforcement action.

G. Administrative Civil Penalties.

In addition to any other penalty applicable under State or **[Municipality]** law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18, or the Critical Area provisions of this Ordinance 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 Ordinance 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, **[Municipality]** shall consider:
 - (a) The gravity of the violation;
 - (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 **[Municipality]** 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 **[Municipality]** with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for **[Municipality]** inspection to verify compliance. Fines and penalties for continuing violations continue to accrue as set forth herein until **[Municipality]** receives such written notice and verifies compliance by inspection or otherwise.

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

H. Cumulative Remedies.

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

I. Variances Pursuant to a Violation.

For any violation that requires a variance to this Ordinance, **[Municipality]** shall follow the after-the-fact variance provisions in Part 9.E.

J. Permits Pursuant to a Violation.

[Municipality] 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 **[Municipality]**, 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 **[Municipality]** regulations; and
- (4) Unless an extension of time is approved by **[Municipality]** 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 **[Municipality]** Board of Appeals may be filed by any person aggrieved by any order, requirement, decision or determination by **[Municipality]** in connection

with the administration and enforcement of this Ordinance.

- (1) An appeal is taken by filing a written notice of appeal with the Board of Appeals in accordance with the provisions in the [Municipality] Zoning Ordinance and accompanied by the appropriate filing fee.
- (2) An appeal must be filed within thirty (30) days after the date of the decision or order being appealed; and
- (3) An appeal stays all actions by [Municipality] seeking enforcement or compliance with the order or decisions being appealed, unless [Municipality] 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 [Municipality] shall not be stayed except by order of the Board of Appeals or a court up on application of the party seeking the stay.
- (4) Application for a variance pursuant to a violation constitutes a waiver of the right to appeal any order, requirement, decision or determination related to the violation and its final adjudication including the payment of any penalties and costs assessed.

L. Additional Enforcement Authorities.

- (1) The [Municipality] is authorized to pursue violations in Circuit Court or District Court in accordance with Natural Resources Article §8-1815(a)(2).
- (2) [Municipality] is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Ordinance, an administrative order, a permit, a decision, or other imposed condition. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent [Municipality] 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.