

**AMENDMENTS TO ARTICLE 8-1.02 to 8-1.07 & 8-1.09
ENVIRONMENTAL REQUIREMENTS
(Includes Critical Area Map Amendments)**

Public Hearing Draft

October 16, 2009

**The Public Forum will be held 7 PM, November 3, 2009
Planning Commission Hearing Room, Courthouse Square Bldg.
205 Main Street, Prince Frederick**

Amendments proposed by Dept. of Planning & Zoning staff shown in red.

Amendments proposed by Critical Area Commission staff shown in blue.

Additions shown in **bold underline**.

Deletions shown in ~~strikethrough~~.

**ARTICLE 8
ENVIRONMENTAL REQUIREMENTS**

Case # 09-8-1-1. Amendments to Section 8-1.02.A.2.b & c (Current Z.O.: Art. 8-page 3)

- b. **Certain** ~~The following~~ new development activities or facilities, or the expansion of **certain** existing facilities, **because of their intrinsic nature, or** because of their potential for adversely affecting habitat and water quality, 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. These include:

- i. Solid or hazardous waste collection or disposal facilities;
or
 - ii. Sanitary landfills.
- c. Existing, permitted facilities of the type noted in 2(a) and (b) of this sub-section shall be subject to the standards and requirements of the Maryland Department of the Environment.**

Case # 09-8-1-2. Section 8-1.02.B.1 (New Section)

Purpose of Amendment: Reference added to County procedures for Ordinance and Map amendments (#1).

B. Critical Area Text and Map Amendments

- 1. The requirements of Section 1-6.01 of the Zoning Ordinance shall be met.**

Case # 09-8-1-3. Section 8-1.02.B.2-7 (Addition to New Section)

Purpose of Amendment: These are the revised State requirements for Ordinance and Map amendments.

- 2. The Critical Area District provisions of the Zoning Ordinance and the Critical Area maps shall be comprehensively reviewed at least every six years.**
- 3. An amendment to the LDA, LDA-3, RCA, or IDA boundaries may be granted only upon proof of a mistake in the zoning existing at the time of adoption of the Critical Area law in 1985 (Critical Area Law, Section 8-1809(h)) or by the use of Growth Allocation as per Section 8-1.06.**
- 4. For Critical Area Program Refinements (pertains to Section 8-1 of the Zoning Ordinance, Critical Area Maps and other County regulations and programs that are pertinent to the Critical Area Program). The County shall not adopt the refinements until the Chairman of the Critical Area Commission has approved them.**
- 5. For Critical Area Program Amendments (pertains to Section 8-1 of the Zoning Ordinance, Critical Area Maps and other County regulations and programs that are pertinent to the Critical Area Program), a panel of the Critical Area Commission will hold a public hearing in the County. The panel will then make a recommendation to the full Critical Area Commission. The County shall not adopt the amendments until the Critical Area Commission has**

approved them.

6. When the County submits a request for review and approval of changes to any element of the County's Critical Area Program including, but not limited to, the Zoning Ordinance, subdivision regulations, or Critical Area Maps, the request shall include all relevant information necessary for the Chairman of the Critical Area Commission, and as appropriate, the Critical Area Commission, to evaluate the changes. The Chairman, and as appropriate, the Critical Area Commission, shall determine if the requests for program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all criteria of the Critical Area Commission.
7. In accordance with the determination of consistency as outlined in Section 7 above, the Chairman of the Critical Area Commission, or as appropriate, the Critical Area Commission shall:
 - a. Approve the proposed program refinement or amendment and notify the County;
 - b. Deny the proposed program refinement or amendment;
 - c. Approve the proposed program refinement or amendment subject to one or more conditions; or
 - d. Return the proposed program refinement or amendment to the County with a list of changes to be made.

Case # 09-8-1-4. Section 8-1.02.C (New Section)

Purpose of Amendment: To meet the notification requirements required by the Critical Area Commission.

C. Public and Critical Area Commission Notification

1. Public Notification

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

2. Critical Area Commission Notification

- a. Significant Actions in the Critical Area require Critical Area Commission staff review. Any activity listed in Table 8-1.1 and indicated with a "Y", is considered a Significant Action.
- b. Minor Actions in the Critical Area do not require Critical Area Commission staff review. Any activity listed in Table 8-1.1 and indicated by either an "N" or "NA" is considered a minor action.
- c. Significant actions in the Critical Area by the County require Critical Area Commission staff review and a "Consistency Report" from the County.
- d. For activities that require notification, notification consists of copies of preliminary site plans and subdivisions, grading and building permit applications for activities that are not a site plan or subdivision and complete variance applications. If comments are not received from the Critical Area Commission within 30 days of notification to the Commission, the County shall proceed with the review and potential approval of these projects. The County will also submit copies of final Site Plans and Subdivision to the Critical Area Commission. No permits shall be issued until at least 30 days after the approval of final site plans, subdivisions and variances.

Table 8-1.1

Require Notification to the Critical Area Commission (Yes/No/Not Applicable)			
Type of Application	IDA	LDA	RCA
Disturbance to Habitat Protection Areas*	Y	Y	Y
Physical disturbance to Buffer**	Y	Y	Y
Variance from Critical Area Regulations*	Y	Y	Y
Less than 5,000 sf disturbance	N	N	N
Between 5,000 and 15,000 sf of disturbance	N	N	Y
Greater than 15,000 sf of disturbance*	Y	Y	Y
Subdivision of three lots or fewer*	N	N	Y
Subdivision of four to ten lots*	N	Y	Y
Subdivision of greater than ten lots*	Y	Y	Y
Use of growth allocation	NA	Y	Y
Intrafamily transfer*	NA	NA	Y
Rezoning that occurs wholly or partially within the Critical Area*	Y	Y	Y
Special exception or conditional use for industrial, commercial, institutional, non-residential or multi-family*	N	Y	Y
Substantial alteration to applications previously submitted to the Critical Area Commission	Y	Y	Y
Lot consolidation or reconfiguration	Y	Y	Y
<p>* For columns in these rows indicated with a “Y”, final subdivision plats, final site plans, final decisions or orders shall be submitted to the Critical Area Commission.</p> <p>**Shore erosion control measures and private piers that do not involve disturbance to the Buffer and are permitted by MDE do not require Commission notification.</p> <p>e.</p> <p><u>Reporting on the Critical Area Fees in Lieu Fund. Each year by April 1, the County shall report to the Critical Area Commission regarding its Critical Area Fees-in-lieu Fund over the course of the previous calendar year, including: the number of projects for which a fee was collected and the amount of the fee per project, the total square footage of Buffer impact that generated a portion of the fee, a short description of each planting project including the amount spent on each project, the square footage area of Buffer replanted, and the account balance as of December 31 of the preceeding year.</u></p>			

Case # 09-8-1-5. Section 8-1.02.D. (New Section)

Purpose of Amendment: To meet the Critical Area Commission requirement for a delay in issuing Critical Area permits after a variance is approved. The delay allows the Critical Area Commission time to challenge any decisions by the Board of Appeals.

D. Delay of Critical Area Permits for Approved Variances

1. **Permits for activities that require a Critical Area variance shall not be issued until at least 30 days after the variance approval by the Board of Appeals.**

Case # 09-8-1-6. Section 8-1.03.F.2.f (Current Z.O.: Art. 8-page 5)

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- f. To meet the 10 percent offset reduction requirement, priority shall be given to planting pervious areas with native vegetation. Examples of acceptable offsets include but are not limited to:

Case # 09-8-1-7. Section 8-1.03.F.7.b & c (Current Z.O.: Art. 8-page 6)

Purpose of Amendment: Clarification.

7. When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, the following are required **and require approval from the Department of Planning and Zoning:**
 - a. Establishment of planting plans for the enhancement of forest and developed woodland resources such as street tree plantings, gardens, landscaping, open land Buffer plantings;
 - b. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and**
 - c. Protection shall be provided for existing forests and developed woodlands located in Habitat Protection Areas (Section 8-1.08) and as prescribed in a Habitat Protection Plans.**

Section 8-1.04.G.1.e & f (Current Z.O.: Art. 8-page 8)

Case # 09-8-1-8. Purpose of Amendment to Section 8-1.04.G.1.e: Development on 15% slopes in the Critical Area requires a variance. Inside and outside of the Critical Area slopes greater than 25% are platted as conservation areas. Platting the 15% slopes in the Critical Area as conservation area will educate purchasers of the property of the restrictions on 15% slopes.

Case # 09-8-1-9. Purpose of amendment to Section 8-1.04.G.1.f: To meet the new Critical Area Law concerning "lot coverage."

Case # 09-8-1-10. Purpose of amendment to Section 8-1.04.G.1.i: Clarify that criteria does not apply to any portion of the lot outside of the Critical Area.

- e. Development on slopes greater than **or equal to** 15 percent, 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 in Section 8-1.04 of this Ordinance. **For new subdivisions, slopes greater than or equal to 15 percent shall be platted as "steep slope conservation areas" unless a variance has been granted to disturb these slopes.**
- f. ~~To reduce stormwater runoff, impervious areas shall be limited based on lot/parcel size as shown in Table 8-1.1. The Department of Public Works shall determine the percent imperviousness for pPavers and stone shall be considered impervious unless certified by a Registered Engineer that they have been designed to be installed and maintained as a pervious surface. Asphalt, concrete, oyster shell, and CR-6 shall be considered to be 100 percent impervious. Decks, walkways and driveways will be considered to be impervious unless engineered to be otherwise. Construction plans and/or documentation shall be submitted for review by the Department of Planning and Zoning and/or Department of Public Works.~~
 - f. **To reduce stormwater runoff, lot coverage shall be limited as described below:**
 - i. **In general, lot coverage is limited to 15% of a lot or parcel.**
 - ii. **If a parcel or lot existed on or before December 1, 1985 in the Chesapeake Bay Critical Area and is one-half acre or less in size, then the lot coverage is limited to 25% of the lot or parcel.**

- iii. For lots of one acre or less in size, as part of a subdivisions approved after December 1, 1985 the adoption of this amendment (/ /), the impervious surface lot coverage shall be limited to 15% of the entire parcel being subdivided. The impervious surface lot coverage on each lot may be increased to 25 exceed 15% as long as the impervious surface lot coverage over the entire parcel land area being subdivided does not exceed 15%.
- iv. For lots created after December 1, 1985 and prior to (/ /) under the Critical Area Program, the recorded impervious surface limits will be as specified on the record plat if so specified. For future development the lot coverage limits will be equal to the impervious surface limits recorded for the subdivision and for each lots in the subdivision. If impervious surface limits were not recorded for the subdivision the lot coverage requirements given in Section i above apply.
- v. For lots created after December 1, 1985 under the Critical Area Program and before the adoption of this amendment (/ /), gravel or blue chip driveways will be considered pervious. For Lots created after December 1, 1985 or properly permitted in accordance with this ordinance and impervious surface policies in effect prior to July 1, 2008 may be considered "legally non-conforming" for purposes of lot coverage requirements.
- vi. Lot coverage limits do not apply to a manufactured home community that was in residential use on or before December 1, 1985 in the Critical Area.
- vii. A walkway or stairway through the Buffer that provides direct access to a pier is not included in lot coverage calculations.
- viii There is no allowable, by right, percentage of lot coverage within the 100-Foot Buffer. Exceptions include projects defined as water-dependent facilities, projects in a Special Buffer Management Area, and variances granted by the Board of Appeals.

ix. ~~Impervious surface lot coverage~~ Addition or alteration of any impervious surface lot coverage beyond authorized existing impervious areas including but not limited to paving of sidewalks, paving of driveways, construction of sheds, decks, etc. requires either a grading exemption, grading permit, or building permit.

x. For grandfathered lots of record that pre-date the Critical Area Program, a local government may allow a property owner to exceed the lot coverage limits outlined above and comply with the lot coverage limits set forth in the table below if the following requirements are met:

(1) Lot coverage associated with new development activities has been minimized;

(2) Water quality impacts associated with runoff from development activities that contribute to lot coverage have been minimized; and

(3) The property owner performs on-site mitigation or pays a fee-in-lieu of mitigation as required by the local jurisdiction to offset potential adverse water quality impacts.

Table 8-1.1 Impervious Surface Lot Coverage Limitations	
Lot/Parcel Size (in square feet)	Impervious Surface Lot Coverage Limit
0 – 8,000	25% of <u>lot</u> /parcel plus 500 square feet*
8,001 – 21,780	31.25% of <u>lot</u> /parcel*
21,781 – 36,300	5,445 square feet*
Greater than or equal to 36,301	15% of <u>lot</u> /parcel

* (i) the property owner shall perform mitigation as per Section 8-1.04.G.3. for the square feet of added **Impervious Surface Lot Coverage** above 15 percent of the parcel or shall use Best Management Practices approved by the Department of Public Works to offset potential adverse water quality impacts from the new impervious surfaces, or

* (ii) if paragraph (i) is not feasible, the property owner may pay a fee-in-lieu of performing the on-site mitigation equal to ~~\$0.80~~ **\$1.20** multiplied by the area in square feet of the new **Impervious Surface Lot Coverage** that exceeds 15 percent of the parcel. All fees-in-lieu collected under this Section will be placed in the Critical Area fees-in-lieu fund to support projects that improve water quality.

xi. Grandfathering Provisions

(1) The lot coverage provisions do not apply to development projects for which a building permit was issued before July 1, 2008 as long as construction is initiated and an inspection is performed by July 1, 2009. Impervious surface limits existing at the time of permit approval due apply to these permitted projects.

(2) Projects that are under design may be exempted from the strict application of the lot coverage provisions if: An application for a building permit or grading permit is filed by October 1, 2008, and the permit is issued by January 1, 2010; or if an initial application for development is filed by October 1, 2008, and the development plan is approved by July 1, 2010. In addition, projects under design must meet the following requirements: There must be a detailed lot coverage plan, drawn to scale, showing the amounts of impervious surface area, partially pervious surface area, and developed pervious surface area for the project, the lot coverage plan must be approved by the local government and maintained in the local jurisdiction's files, and the development plan must remain valid in accordance with local procedures, except that a moratorium or an adequate public facilities ordinance cannot terminate the validity of an approved development plan for purposes of lot coverage.

(3) Development plans and lot coverage plans may be modified with appropriate permits; however, the amounts of impervious surface, partially pervious, and developed pervious areas cannot be increased beyond set limits. Reductions in these areas are permitted.

(4) Projects, including new subdivisions, for which an initial application for development is filed by October 1, 2008 and approval is obtained by July 1, 2010, but for which there is no approved lot coverage plan, will be required to comply with all of the lot coverage provisions.

- g. Modifications in road standards to reduce potential impacts to the site and Critical Area resources will be allowed where the reduced standards do not affect safety.
- h. To reduce the extent of impervious areas and maximize areas of natural vegetation, cluster development shall be encouraged as the preferred development method.
- i. If less than 15 percent forest cover is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent **of the lot area within the Critical Area.**

Case # 09-8-1-11. Section 8-1.04.G.2.b (Current Z.O.: Art. 8-pg. 9)

Purpose of amendment to Section 8-1.04.G.2: Correction.

- 2. For the maintenance of forest and developed woodland in the Limited Development Area, the following standards apply:
 - a. The recommendations, when provided, of the Maryland Department of Natural Resources shall be followed;
 - b. Development activities shall be designed and implemented to minimize destruction of **forest and developed** woodland vegetation; and a Developed Woodland Management Plan (DWMP) shall be submitted to the Department of Planning and Zoning. The Department of Planning and Zoning may, at its discretion, send the DWMP to the Maryland Department of Natural Resources for review and comment. The DWMP shall include methods for:

(7/22/97)

3. For the cutting or clearing of ~~trees~~ natural vegetation in forests and developed woodland areas within the Limited Development Area, a permit is required and the following criteria apply:
 - a. If no more than 6,000 square feet or 20 percent (whichever is greater) of ~~a forested area or developed woodland~~ natural vegetation is cleared, replacement on an equal area basis (1:1) is required. The remaining natural vegetation shall be designated on the permit to remain in natural vegetation in perpetuity.
 - b. If more than 6,000 square feet and more than 20 percent, but less than 30 percent, of ~~a forested area or developed woodland~~ natural vegetation is cleared, replacement required for the amount of clearing is one-and-a-half times the area of the entire clearing (1 ½: 1). The remaining natural vegetation shall be designated on the permit to remain in natural vegetation in perpetuity.
 - c. Clearing of forest or developed woodland in excess of 30% is prohibited. If Board of Appeals approval is obtained and more than 6,000 square feet and more than 30 percent of ~~forest or developed woodland~~ natural vegetation is cleared, replacement on a three-to-one (3:1) basis is required. The remaining natural vegetation shall be designated on the permit to remain in natural vegetation in perpetuity.
 - d. No person shall cut or clear ~~trees~~ natural vegetation, or cause ~~trees~~ natural vegetation to be cut or cleared before a permit for such cutting or clearing has been issued by the Department of Planning and Zoning; or in excess of the amount permitted in a permit issued by the Department of Planning and Zoning.
 - e. Clearing or alteration of vegetation inconsistent with this Section or unauthorized clearing or alteration of vegetation prior to having obtained the required permit shall be subject to fines and mitigation as described in Section 8-1.09.
 - f. The area of vegetation planted to mitigate these requirements shall be designed to replicate a natural forest and shall be comprised for each 400 square feet of ~~a~~ large canopy trees (coverage equaling 400 square feet per tree), and a mixture of two understory trees and/or mixed three shrubs (coverage equaling 200-400 square feet per tree) or as approved by the Department of Planning and Zoning. Guidance on allowed trees and shrubs species and

coverages is given as described in the document entitled, "Calvert County ~~Critical Area~~ Native Plant List Trees", which has been adopted by the Board of County Commissioners and is available from the Department of Planning and Zoning.

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Section 8-1.04.G.4 & 6 (Current Z.O.: Art. 8-pg. 10 & 11)

Case # 09-8-1-13. Purpose of amendment to Section 8-1.04.G.4.a: Provides for bonding for required afforestation.

Case # 09-8-1-14. Purpose of amendment to Section 8-1.04.G.4.b-d: Provides for administration fee to pay for bonding administration and field visits. No additional upfront costs to citizens, but administration fee is not returned with the bond. Also provides authority for the County to plant the site when the required planting is not accomplished.

Case # 09-8-1-15. Purpose of amendment to Section 8-1.04.G.6: Provides for the use of Critical Area Fees-in-lieu Fund for control and eradication of invasive species.

4. Bonding
 - a. A person required to conduct replanting as part of a mitigation plan or afforestation requirement shall post a bond or other financial security to insure compliance with the mitigation plan.
 - b. Requirements
 - i. Financial security shall be furnished in the form of a surety bond, an irrevocable letter of credit, cash bond, certificate of guarantee, or other surety as authorized from time to time by the Board of County Commissioners and approved by the Office of the County Attorney. The surety shall:
 - (a) Name the Board of County Commissioners as obligee;
 - (b) Assure that the mitigation replanting is conducted in accordance with the approved mitigation plan;

- (c) Be in an amount equal to ~~4.25~~ **1.0** times the cost as **estimated approved** by the Department of Planning and Zoning of performing the mitigation **plus 0.25 times the same cost as an administrative review and inspection fee, as set by the County Commissioners, to cover the costs of inspections and handling of the bond. This fee will be submitted with the bond and will not be reimbursed, but placed in the Critical Area Fees-in-lieu fund;**
- (d) Remain in force until all requirements of the mitigation plan have been fulfilled to the satisfaction of the Department of Planning and Zoning.

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- c. Forfeiture of Surety.
 - i. The surety shall be subject to forfeiture if the principal fails to comply with the mitigation plan.
 - ii. Before forfeiture of the surety, the Board of County Commission shall notify the principal and the issuer, by certified mail, of the failure of the principal to comply with the mitigation plan and shall give the principal 30 days to come into compliance.
 - iii. If the principal fails to come into compliance within the 30-day period, the surety shall be forfeited **and the County and its agents shall be allowed access to the property to accomplish the previously bonded planting.**
- d. Release of Surety.
 - i. Bonds will be held for ~~one~~ **two** years from the planting ~~season (March 15-May 15 and September 15-November 30) following or concurrent with the planting.~~
 - ii. If, after the time period described in paragraph 'i' above, the survival of the plantings associated with the mitigation plan ~~is less than the standards of the mitigation plan, the surety shall be reduced by a percentage equal to the percentage of plantings that have survived and that portion of the surety shall be released.~~ **meets or exceeds the standards of the mitigation plan, the amount of the surety shall be released minus the administration fee.**

5. Grading permits or grading exemptions shall be required before forest or developed woodland is cleared or graded.
6. If there is not sufficient area on the site to plant the required reforested area, the Department of Planning and Zoning shall collect fees-in-lieu from the owner. The amount of the fees-in-lieu shall be established by the Board of County Commissioners. The fees-in-lieu shall be used for urban forestry, invasive species eradication and control, or to plant native woody vegetation trees in the following types of areas:

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Section 8-1.05.H.1 & 2 (Current Z.O.: Art. 8-pg. 16)

Case # 09-8-1-16. Purpose of amendment to Section 8-1.05.H.1.c: To assure that this provision only applies to parcels of land that can create 6 lots or more. Changes to the definition of 'major subdivision' required this change.

Case # 09-8-1-17. Purpose of amendment to Section 8-1.05.H.2: To make this provision more consistent with state law as density in the Critical Area is determined only after removing the tidal wetlands.

H. Intrafamily Transfers

1. Bona fide intrafamily transfer lots may be created only from parcels of land that:
 - a. Were of record on March 1, 1986;
 - b. Are seven acres or more and less than 60 acres in size; and
 - c. ~~Are not part of a major subdivision.~~ Do not have the potential to create six lots or more including the intrafamily transfer lots.
2. A parcel of land may only be subdivided into the number of lots indicated in this subsection by means of a bona fide intrafamily transfer:
 - a. After subtracting out the tidal wetlands, a A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.
 - b. After subtracting out the tidal wetlands, a A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into three lots. Two of the lots shall be intrafamily transfer lots and shall be recorded as such. The lots may be created at different times.

Case # 09-8-1-18. Section 8-1.06.B (Current Z.O.: Art. 8-pg. 18)

Purpose of Amendment to Section 8-1.06.B.12: Meets the Critical Area Commission requirements relative to growth allocation, requires minimization of impacts to habitat protection areas.

- B. When locating new Intensely Developed or Limited Development Areas, the Board of County Commissioners shall use the following ~~guidelines~~ **standards**:
1. **New Locate new** Intensely Developed Areas ~~should be located~~ in Limited Development Areas or adjacent to **an** existing Intensely Developed Areas and within growth areas defined by the Comprehensive Plan. New IDA's must be at least 20 acres in size unless:
 - a. They are contiguous to an existing IDA or LDA; or
 - b. Grandfathered commercial, industrial or institutional uses existed as of the date of local Critical Area Program approval (December 13, 1988). The amount of growth allocation deducted shall be the equivalent to the area of the entire parcel or parcels subject to the growth allocation request.
 2. **New Locate new** Limited Development Areas ~~should be located~~ adjacent to **an** existing Limited Development Areas or Intensely Development Areas;
 3. Except as provided in Paragraph ~~'5'~~ **'6'** of this Section, no more than half of the expansion ~~allocated~~ in the **Critical Area Commission** ~~Criteria required by the Critical Area Commission~~ may be located in Resource Conservation Areas;
 4. New Intensely Developed or Limited Development Areas to be located in the Resource Conservation Area shall conform to all criteria of the Critical Area regulations of the Annotated Code of Maryland Natural Resources Article 8-1808.1(c), as amended from time to time, for such areas.
- 5. Locate a new Limited Development Area or an Intensely Developed Area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09 and in Section 8-1.08 of the Zoning Ordinance and in an area and manner that optimizes benefits to water quality;**
- ~~5.~~ **6.** If the Board of County Commissioners is unable to designate a portion of the growth allocation in Paragraph '1' and '2' of this Section within or adjacent to existing Intensely Developed or

Limited Development Areas as demonstrated in the Calvert County Critical Area Program approved by the Critical Area Commission, or in any amended Critical Area Program approved by the Critical Area Commission, then that portion of the allocated expansion which cannot be so located may be located in the Resource Conservation Areas in addition to the expansion allocated in Paragraph (3) of this Section. Proof of this situation must be demonstrated to and approved by the Critical Areas Commission, or in any Critical Area Program amendment approved by the Critical Area Commission. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

- ~~6.~~ **7.** ~~New Locate a A new~~ Intensely Developed Areas ~~or Limited~~ **7.** ~~Development Area in a manner that should be located where they it will~~ minimizes ~~their~~ impacts to the defined land uses of the Resource Conservation Areas;
- ~~7.~~ **8.** ~~New Locate a new~~ Intensely Developed Areas ~~and or~~ Limited Development Areas in ~~the a~~ Resource Conservation Area ~~should be located~~ at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
- ~~8.~~ **9.** Growth allocation shall only be used for commercial or industrial projects except where a mistake in the original designation of residential land can be demonstrated.
- ~~9.~~ **10.** Only projects where the applicant can demonstrate that a measurable public benefit will be realized from the project shall be approved for use of the five percent growth allocation. This provision does not apply to properties where there was a mistake in the original designation of a property.
- ~~10.~~ **11.** All projects submitted during the calendar year will be reviewed and allocated by the Board of County Commissioners upon the recommendation of the Planning Commission.
- ~~11.~~ **12.** In approving the use of the growth allocation, priority shall be given to:
 - a. projects within the Solomons Town Center
 - b. projects outside the Solomons Town Center in which:
 - i. the building envelope is located at least 300 feet from the landward edge of tidal waters, tidal wetlands or tributary streams, and
 - ii. the undeveloped remainder is contiguous and retains its natural features, and

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- iii. **the undeveloped remainder** is restricted from future development through covenants or other restrictive instruments, and
- iv. Development activities shall be designed and implemented to minimize destruction of woodland vegetation.

~~42.~~ 13. No growth allocation is allowed that adversely affects Habitat Protection Areas.

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14. When the County submits a request for Growth Allocation approval to the Critical Area Commission, the request shall state how the local jurisdiction has applied the guidelines standards of this Section. The Critical Area Commission shall ensure that the guidelines set forth in this Section have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all criteria of the Critical Area Commission. In addition, the project shall meet all growth allocation submittal requirements outlined in Critical Area Criteria 27.01.02.05-1.

Case # 09-8-1-19. Section 8-1.07.A (Current Z.O.: Art. 8-pg. 20)

Purpose of amendment to Section 8-1.07.A: Relative to grandfathering, the one-year abandonment period applies specifically in the Critical Area.

(a) 8-1.07 Grandfathering

- A. After Critical Area Program approval (December 13, 1988), the continuation, of any use legally in existence on the date of Critical Area Program approval is permitted. **In the Critical Area, if** the use has been abandoned for more than one year, then it is no longer grandfathered. If any existing use does not conform with the provisions of the County Critical Area Program, its intensification or expansion may be permitted only in accordance with the procedures outlined in this Ordinance (See Section 2-6.01 and Section ~~11-1.04~~ **11-1.01**).

Section 8-1.09 (Current Z.O.: Art. 8-page 34)

Case # 09-8-1-30. Purpose of amendment to Section 8-1.09.A.1: Meets the new Critical Area Law concerning violations. In addition, shrubs are also allowed to be planted, so “native woody vegetation” is more correct.

(b) 8-1.09 Fines and Penalties

- A. In addition to the fines and penalties provided for in Section 1-7 of this Zoning Ordinance, the following shall apply to violations of Section 8-1:
1. Any person in violation of Section 8-1 shall pay a fine not to exceed ~~\$1,000~~ **\$10,000** for each violation and shall be required to replant ~~these native woody vegetation~~ to replace ~~these vegetation~~ that ~~have~~ **has** been removed as prescribed in paragraph ‘B’ of this Section.
 2. A surety bond shall be posted for any replanting that is done in order to correct a violation. See Section 8-1.04.G.4, which describes the bonding process.
 - 3. A contractor, property owner or any other person who committed, assisted, authorized or participated in a violation may be held liable.**

4. Each calendar day that a violation continues is a separate offense and a fine may accrue at \$10,000 per day that the violation continues.
5. Payment of all penalties and guarantee of restoration will be required prior to issuance of any permit, approval, variance, or special exception.
6. The County shall consider the environmental impact, and costs of site restoration and local government inspections in determining a penalty.
7. There is a three-year statute of limitations to take enforcement action for any violation occurring after the adoption of this regulation.
8. The County has the right to enter a property if a violation is reasonably suspected, and if entry is refused, may seek a court injunction.
9. Prosecution of violators may include jail time up to 90days.
10. The Critical Area Commission Chair and the County may seek enforcement in the courts.

- B. Replanting to correct a violation shall be calculated at the rate of four square feet to one square foot (4:1) of the area cleared, graded, or cut in violation of the provisions of this Article. A mitigation plan shall be approved by the Department of Planning and Zoning and shall include, ~~canopy trees at a rate equal to one tree per 400 square feet and understory trees and/or shrubs at a rate equal to one per 200 square feet as described in the document entitled, "Calvert County Critical Area Native Trees", adopted by the Board of County Commissioners and available from the Department of Planning and Zoning.~~ for each 400 square feet, a large canopy tree and a mixture of understory trees and/or shrubs also equaling 400 square feet in coverage as indicated in the document entitled, "Calvert County Native Plant List", which has been adopted by the Board of County Commissioners and is available from the Department of Planning and Zoning. As much of the required mitigation as possible, as determined by the Department of Planning and Zoning, should be accomplished onsite. Any remaining square footage of mitigation can be accomplished by paying into the Critical Area Reforestation Fund at a rate approved by the Board of County Commissioners.