

SUBTITLE 1. GENERAL PROVISIONS

§ 33-2-101. DEFINITIONS.

(a) *In general.*

- (1) In this title the following words have the meanings indicated.
- (2) In this title a word that is not defined in this section shall be defined as under the following sources:

(i) COMAR, title 27.01.01;

(ii) § 32-4-101 of the Code; or

(iii) If not defined in the above sources, the most recent edition of Webster's Third New International Dictionary of the English Language, unabridged.

(b) *Agriculture.*

(1) "Agriculture" means all methods of producing, processing, storing, and managing livestock, crops, vegetation, and soil.

(2) "Agriculture" includes the related activities of:

(i) Tilling, fertilizing, controlling pests, harvesting, and marketing; and

(ii) Feeding, housing, maintaining, and handling of by-products of, animals including cattle, dairy cows, sheep, goats, hogs, horses, and poultry.

(c) *Aquaculture.*

(1) "Aquaculture" means the farming or culturing, or both, of finfish, shellfish, other aquatic animals, or aquatic plants, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies.

(2) "Aquaculture" includes:

(i) The hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals;

(ii) The maintenance and construction of necessary equipment, buildings, and growing areas; and

(iii) Cultivation methods, including:

1. Seed or larvae development;
2. The use of grow-out facilities, fish pens, shellfish rafts, racks and longlines, or seaweed floats; and
3. The culture of clams and oysters on tidelands and subtidal areas.

(3) "Aquaculture" does not include related activities such as wholesale and retail sales, processing, and the use of product storage facilities.

(d) *Best management practices*. "Best management practices" means a conservation practice or system of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment.

(e) *Boathouse*. "Boathouse" means a structure with a roof, cover, or similar device placed over open water to protect a boat or other vessel.

(f) *Buffer*. "Buffer" means a naturally vegetated area or a vegetated area established or managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made disturbances.

(g) *Chesapeake Bay Critical Area Criteria*. "Chesapeake Bay Critical Area Criteria" means regulations adopted by the Chesapeake Bay Critical Area Commission.

(h) *Chesapeake Bay Critical Area Farm*. "Chesapeake Bay Critical Area farm" means all land in the Chesapeake Bay Critical Area that is agriculturally assessed by the State Department of Assessments and Taxation.

(i) *Chesapeake Bay Critical Area Law*. "Chesapeake Bay Critical Area Law" means Title 8, Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland.

(j) *Clearcutting*. "Clearcutting" means removing an entire stand of trees in one cutting with subsequent afforestation obtained:

- (1) By natural seeding from adjacent tree stands;
- (2) From trees that were cut;
- (3) From advanced regeneration or stump sprouts; or
- (4) From planting of seeds or seedlings by a person.

(k) *Cluster development.* “Cluster development”, notwithstanding the defined term “cluster subdivision” under § 32-4-101 of the Code, means a residential development in which dwelling units are concentrated in a selected area of the development tract to provide natural habitat, forest preservation, or other permanent open space uses on the remainder of the land.

(l) *Commercial harvesting.*

(1) “Commercial harvesting” means an operation for economic gain that alters the composition or profile of a forest.

(2) “Commercial harvesting” includes a cutting operation done by a person for economic gain.

(m) *Community pier.*

(1) “Community pier” means a noncommercial boat docking or mooring facility that is owned by and operated for the benefit of residents of a platted riparian subdivision or a condominium, an apartment complex, or other multiple-family dwelling unit.

(2) “Community pier” does not include a private pier maintained by a riparian landowner or a non-profit organization.

(n) *Conservation easement.* “Conservation easement” means a nonpossessory interest in land that, to conserve natural resources for future use, restricts the manner in which a person may develop the land.

(o) *Dredging.* “Dredging” means the removal or displacement of soil, sand, gravel, shells, or other material from state tidal wetlands or private tidal wetlands.

(p) *Filling.*

(1) “Filling” means displacing tidal water by depositing soil, sand, gravel, shells, other materials, pilings, piers, boathouses, deadweights, or riprap in a wetland.

(2) “Filling” includes:

(i) The artificial altering of a tidal water level by a physical structure or drainage ditch or another method;

(ii) Implementing a storm drainage project in which matter flows directly into tidal waters of this state; or

(iii) Changing the soil surface or the elevation of the preexisting surface or ground water level of an area by placing soil, sand, gravel, shells, rock, or other material in the area.

(q) *Finding*. “Finding” means a written statement and supporting record, made by the Director of Environmental Protection and Sustainability or the Director’s designee in conjunction with project approval, indicating that a project is consistent with the goals of the Chesapeake Bay Critical Area Criteria under COMAR 27.01.10.01O.

(r) *Fishery activity*. “Fishery activity” means:

(1) The construction and operation of a commercial water-dependent fishery facility, including:

(i) A structure for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, amphibians, or reptiles; or

(ii) A storage facility, crab shedding facility, off-loading dock, related fuel facility, or shore-based facility necessary for an aquaculture operation;

(2) Wholesale and retail sales;

(3) The fabrication of fishing and shellfishing equipment; or

(4) Shellfish culture operations.

(s) *Forest*. “Forest” includes a land area at least one acre in size that supports:

(1) At least 100 trees per acre, with at least 50% of those trees having at least a two-inch diameter at the height of 4.5 feet above the ground; or

(2) Mature trees that provide a contiguous canopy over unimproved land.

(t) *Highly erodible soil*. “Highly erodible soil” means those soils susceptible to runoff and erosion as determined by a steep slope and erodible soils evaluation.

(u) *Intensely developed area*. “Intensely developed area” means an overlay area delineated on the official Chesapeake Bay Critical Area map of the county in accordance with COMAR 27.01.02.03.

(v) *Limited development area*. “Limited development area” means an overlay area delineated on the official Chesapeake Bay Critical Area map of the county in accordance with COMAR 27.01.02.04.

(w) *Local protection program*. “Local protection program” means the program for the Chesapeake Bay Critical Area in the county prepared and approved under § 8-1809 of the Natural Resources Article of the Annotated Code of Maryland.

(x) *Marina.*

(1) "Marina" means a facility on tidal waters for the mooring, berthing, storing, or securing of watercraft.

(2) "Marina" does not include a community pier or another noncommercial boat docking and storage facility.

(y) *Mean high-water line.* "Mean high-water line" means the average level of high tide at a specified location.

(z) *Nonwater-dependent facility or activity.* "Nonwater-dependent structure, facility, or activity" means a structure, facility, or activity that, because of its intrinsic nature, does not need to be located:

(1) In or over tidal wetlands; or

(2) At or near the shoreline within the buffer.

(aa) *Offset.* "Offset" means a structure, action, or fee that compensates for an undesirable impact of a land use.

(bb) *Overburden.* "Overburden" means strata or material in its natural state before removal by surface mining that:

(1) Overlies a mineral deposit; or

(2) Lies in between mineral deposits.

(cc) *Pier.* "Pier" means a fixed or floating wharf, dock, walkway, or other similar water-dependent structure constructed or placed on or over tidal wetlands to gain access to the navigable waters of this state.

(dd) *Private harvesting.* "Private harvesting" means cutting and removing trees for personal, noncommercial use.

(ee) *Private tidal wetland.*

(1) "Private tidal wetland" means land that:

(i) Is not state wetlands;

(ii) Borders on or lies beneath tidal waters;

(iii) Is subject to regular or periodic tidal action; and

(iv) Supports aquatic growth.

(2) "Private tidal wetland" includes:

(i) Tidal wetlands transferred by the state by a valid grant, lease, license, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred; or

(ii) Tidal waters that are:

1. Created by the excavation of upland; and
2. Not conveyed to the state.

(ff) *Project approval.*

(1) "Project approval" means the approval of development in the Chesapeake Bay Critical Area by:

- (i) The Director of Environmental Protection and Sustainability or the Director's designee;
- (ii) A hearing officer;
- (iii) The zoning commissioner; or
- (iv) On appeal, the Board of Appeals.

(2) "Project approval" includes:

- (i) The approval of a subdivision plan, plat, and site plan; and
- (ii) The granting of a variance or special exception.

(3) "Project approval" does not include approval of development by a state or local government agency.

(gg) *Public water-oriented recreation.* "Public water-oriented recreation" means a shore-dependent recreation facility or activity that is provided by a public agency and available to the general public.

(hh) *Reclamation.* "Reclamation" means the reasonable rehabilitation of disturbed land for:

- (1) A useful purpose; and
- (2) The protection of the natural resources of an adjacent area, including a water body.

(ii) *Redevelopment*. “Redevelopment” means the process of developing land that previously has been developed.

(jj) *Reforestation*. “Reforestation” means the establishment of a forest through artificial reproduction or natural regeneration.

(kk) *Regular or periodic tidal action*. “Regular or periodic tidal action” means the rise and fall of the sea that is:

- (1) Caused by the gravitational attraction of the sun and the moon; and
- (2) Not influenced by wind or other circumstances.

(ll) *Resource Conservation Area*. “Resource Conservation Area” means an area that:

- (1) Is characterized by:
 - (i) A nature-dominated environment, including wetlands, forests, or abandoned fields; or
 - (ii) Resource-utilization activity, including agriculture, forestry, fishery activity, or aquaculture; and
- (2) Meets the requirements specified under COMAR 27.01.02.05.

(mm) *Selection*. “Selection” means the removal of individual scattered trees from uneven-aged stands by frequent and periodic cutting operations.

(nn) *Shore erosion protection works or measures*. “Shore erosion protection works or measures” means structures or measures constructed or installed to prevent or minimize shore erosion.

(oo) *Significantly eroding area*. “Significantly eroding area” means an area that erodes at least 2 feet per year.

(pp) *Spoil pile*. “Spoil pile” means overburden and rejected material that is piled or deposited during surface mining.

(qq) *State tidal wetland*.

- (1) “State tidal wetland” means land that is:
 - (i) Under the navigable waters of this state below the mean high-water line; and
 - (ii) Subject to regular or periodic tidal action.

(2) "State tidal wetland" does not include wetlands under paragraph (1) of this subsection that have been transferred by the state by valid grant, lease, license, or grant confirmed by Article 5 of the Maryland Declaration of Rights to the extent of the interest transferred.

(rr) *Thinning*. "Thinning" means a forest practice, which may include harvesting, used to accelerate the growth of quality trees.

(ss) *Tidal wetland boundary map*. "Tidal wetland boundary map" means a map or aerial photograph on a scale of one inch equals 200 feet adopted by the State Department of Natural Resources that delineates the landward boundary of tidal wetlands.

(tt) *Transportation facility*.

(1) "Transportation facility" means anything that is built, installed, or established to provide a means of transport from one place to another.

(2) "Transportation facility" includes a trucking facility, an airport, or a railway station.

(3) "Transportation facility" does not include a marina, motorway, railway, or water-dependent facility.

(uu) *Upland*. "Upland" means any area that is not a tidal wetland or nontidal wetland.

(vv) *Utility transmission facility*.

(1) "Utility transmission facility" means a fixed structure that conveys or distributes resources or waste.

(2) "Utility transmission facility" includes electric lines, water conduits, and sewer lines.

(ww) *Wash plant*. "Wash plant" means a facility in which sand and gravel is washed during processing.

(xx) *Water-dependent structure, facility, or activity*. "Water-dependent structure, facility, or activity" means a structure, facility, or activity that, because of its intrinsic nature, must be located:

(1) In or over a tidal wetland; or

(2) At or near the shoreline in the buffer.

(1988 Code, § 26-438) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-102. FINDINGS.

The County Council finds and declares that:

(1) The Maryland General Assembly has:

(i) Recognized that the Chesapeake Bay and its tributaries are “natural resources of great significance to the state and the nation”; and

(ii) Enacted the Chesapeake Bay Critical Area law to protect the endangered Chesapeake Bay by establishing a resource protection program in the Chesapeake Bay Critical Area;

(2) The goals of the program are to monitor and control development in the Chesapeake Bay Critical Area to:

(i) Minimize adverse effects on water quality that result from pollutants that are discharged from a structure or conveyance and run off from the surrounding land; and

(ii) Conserve fish, wildlife, and plant habitats; and

(3) To implement the program, the state has adopted the Chesapeake Bay Critical Area criteria that establish detailed regulation to be adopted and enforced in the portion of the county determined to be the Chesapeake Bay Critical Area.

(1988 Code, § 26-436) (Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-103. PURPOSE.

This title is adopted to assist in complying with the purposes and requirements of the Chesapeake Bay Critical Area law and the Chesapeake Bay Critical Area criteria, by:

(1) Fostering more environmentally sensitive development activity along and near the shoreline areas of the Chesapeake Bay and its tributaries to minimize adverse impacts to water quality and natural habitats;

(2) Generally minimizing adverse impacts on water quality;

(3) Conserving fish, wildlife, and plant habitats;

(4) Accommodating growth in an environmentally sensitive manner to minimize adverse environmental impacts; and

(5) Establishing land use policies for the Chesapeake Bay Critical Area that accommodate growth and address the fact that, even if pollution is controlled, the number and activity of persons in the Chesapeake Bay Critical Area may create adverse environmental effects.

(1988 Code, §§ 14-256, 26-437) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-104. APPLICABILITY.

(a) *Land use activity.* Except as provided in subsection (b) of this section, this title applies to land use and development activity in the Chesapeake Bay Critical Area.

(b) *Exception.* This title does not apply to the subdivision of land in the Chesapeake Bay Critical Area that is exempt from development regulations under § 32-4-105 of the Code.

(c) *Conflict of laws.* In a conflict between this title and other county regulations, including the development regulations under Article 32, Title 4 of the Code, the requirements of this title shall prevail. (1988 Code, §§ 14-256, 26-440, 26-441) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-105. OFFICIAL CHESAPEAKE BAY CRITICAL AREA MAP.

(a) *In general.*

(1) The Director of Environmental Protection and Sustainability shall maintain the official map of the county Chesapeake Bay Critical Area.

(2) The official map of the county Chesapeake Bay Critical Area:

(i) Is at a scale of one inch equals 600 feet;

(ii) Shows the boundary of the county Chesapeake Bay Critical Area;

(iii) Shows the boundary of the intensely developed areas and the limited development areas;

and

(iv) Shows, for information purposes only, the resource conservation area, as enacted by the official county zoning map under § 100.2 of the Baltimore County Zoning Regulations and shown by the RC-20 and RC-50 zones on the official county zoning map.

(b) *Incorporation by reference.* The official map of the county Chesapeake Bay Critical Area is incorporated by reference.

(c) *Conflict of laws.*

(1) Except as provided in paragraph (2) of this subsection, in a conflict between the Chesapeake Bay Critical Area boundary shown on the official map of the county Chesapeake Bay Critical Area and the tidal wetland boundary map, the boundary on the tidal wetland boundary map shall prevail.

(2) The Chesapeake Bay Critical Area boundary on the official map of the County Chesapeake Bay Critical Area shall prevail if the boundary is expanded beyond the initial planning area determined under § 8-1807(a)(2) of the Natural Resources Article of the Annotated Code of Maryland. (1988 Code, § 26-439) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 2. GENERAL REQUIREMENTS

§ 33-2-201. PERMITS.

Before the Department of Permits, Approvals and Inspections issues a building permit, grading permit, or use and occupancy permit in the Chesapeake Bay Critical Area, the Director of Environmental Protection and Sustainability or the Director's designee shall determine, and certify to the Director of Permits, Approvals and Inspections, that the development complies with this title. (1988 Code, § 26-458) (Bill No. 18, 1990, § 2; Bill No 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011)

§ 33-2-202. PLAN REQUIREMENTS.

(a) *In general.* In addition to the plan requirements for concept plans and development plans under Article 32, Title 4, Subtitle 2 of the Code, the Department of Environmental Protection and Sustainability may require additional information from an applicant to evaluate whether a project complies with the Chesapeake Bay Critical Area law, the Chesapeake Bay Critical Area criteria, and this title.

(b) *Project approval.* The Director of Environmental Protection and Sustainability may grant project approval after making written findings that the project is consistent with the purposes stated under § 33-2-103 of this title and the Chesapeake Bay Critical Area criteria. (1988 Code, § 26-442) (Bill No 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-203. DEVELOPMENT - PLATS AND PROTECTIVE COVENANTS.*(a) Required protective covenants.*

(1) A person who submits a plat to the county under Article 32, Title 4 of the Code shall also submit an irrevocable offer of dedication to the county of all habitat protection areas, buffers, wetlands, forests and developed woodlands, afforestation and reforestation areas, wildlife corridors, and floodplains.

(2) (i) Subject to subparagraph (ii) of this paragraph, the applicant shall determine the scope of the offer.

(ii) The scope of the offer:

1. May be in fee or an easement to protect the areas; and
2. Shall be at least a grant of a right-of-access to the county to:

A. Inspect and maintain the protected area; and

B. Provide for the abatement and correction of water pollution, erosion, and sedimentation of stream channels, shorelines, tidal wetlands and nontidal wetlands, or floodplains.

(3) The grant shall be in a form approved by the Office of Law.

(b) Retention or conveyance of protected area.

(1) An applicant who retains any of the protected areas listed in subsection (a) of this section or conveys these areas to a homeowner's association or similar entity shall submit a declaration of protective covenants to the Office of Law for approval.

(2) The declaration shall:

- (i) Be in a form approved by the Office of Law; and
- (ii) Include the management requirements for these areas listed in § 33-2-204 of this subtitle.

(3) The protective covenants shall:

- (i) Be recorded in the county land records;
- (ii) Run with the land; and
- (iii) Continue in perpetuity.

(c) *Plat requirements.* In addition to the plat requirements under Article 32, Title 4, Subtitle 2 of the Code, a plat prepared for recording of the Chesapeake Bay Critical Area clearly shall:

(1) Show by metes and bounds the extent of a protected area under subsection (a) of this section on the property;

(2) Label the protected areas, collectively, as a:

(i) Chesapeake Bay Critical Area easement if the areas are to be retained or conveyed to a homeowner's association or similar entity; or

(ii) Chesapeake Bay Critical Area reservation if the areas are to be dedicated to the county in fee;

(3) Include a note, referencing any protected area, that states:

“There shall be no clearing, grading, construction or disturbance of vegetation in the critical area easement (or reservation) except as permitted by the county Department of Environmental Protection and Sustainability”; and

(4) Include a note, referencing a protective covenant governing a protected area, that states:

“Any critical area easement (or reservation) shown hereon is subject to protective covenants which may be found in the land records of the county and which restrict disturbance and use of these areas”.

(d) *Protective covenants - Public right-of-access not implied.* A dedication to the county of a Chesapeake Bay Critical Area easement or reservation may not be construed to convey automatically to the general public the right-of-access to the area.

(1988 Code, § 26-443) (Bill No. 18, 1990, § 2; Bill No 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-204. MANAGEMENT REQUIREMENTS.

(a) *Management required.* A habitat protection area, buffer, wetland, forest, developed woodland, afforestation area, reforestation area, wildlife corridor, floodplain, stream, stream channel, or shoreline in a Chesapeake Bay Critical Area easement or reservation shall be managed, including specific limitations on the alteration of the natural condition of these resources, to enhance and maximize the unique value of these resources.

(b) *Prohibited.* Within the boundary of a Chesapeake Bay Critical Area resources easement or reservation that contains the Chesapeake Bay Critical Area resources listed in subsection (a) of this section, a person may not:

- (1) Disturb existing vegetation, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying, or grazing;
- (2) Disturb soil by grading, stripping topsoil, plowing, cultivating, or other practices;
- (3) Conduct filling, dumping, diking, ditching, or draining;
- (4) Construct or install structural shore erosion protection measures, except:
 - (i) As provided under COMAR 27.01.04 and § 33-2-607 of this title; and
 - (ii) Only as authorized by the Department of Environmental Protection and Sustainability;
- (5) Place new impervious surfaces;
- (6) Place structures of any size;
- (7) Store, use, or apply pesticides, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service;
- (8) House, graze, or otherwise maintain animals;
- (9) Store or operate motorized vehicles, except for maintenance and emergency use approved by the Department of Environmental Protection and Sustainability; or
- (10) Store materials.

(c) *Building setbacks.*

- (1) The primary structure on a parcel or lot shall be set back from the outer edge of a Chesapeake Bay Critical Area easement or reservation that contains Chesapeake Bay Critical Area resources listed in subsection (a) of this section at a minimum distance of:
 - (i) 35 feet for a residential dwelling; and
 - (ii) 25 feet for a commercial or industrial structure.
- (2) The setback area may include private or public land or both.
- (3) Accessory structures, including roads or driveways, storm drainage, stormwater management devices and practices, utilities, recreational facilities, or patios, are allowed in the setback area.

(d) *Regulations; public service companies.* The Director of Environmental Protection and Sustainability, in accordance with Article 3, Title 7 of the code, may adopt regulations that are consistent with this title to address issues relating to the maintenance and modification of existing facilities owned and operated by a public service company.

(1988 Code, § 26-444) (Bill No. 18, 1990, § 2; Bill No 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-205. VARIANCES.

(a) *In general.* Notwithstanding § 32-4-231(a)(4) of the Code, the Director of Environmental Protection and Sustainability may grant a variance from the requirements of this title, in accordance with the Chesapeake Bay Critical Area criteria concerning variances under COMAR 27.01.11 and notice requirements under COMAR 27.03.01, if a proposed development is:

- (1) Exempted from review and approval under § 32-4-106 of the Code; or
- (2) Granted a hearing waiver under § 32-4-107(b) of the Code.

(b) *Notice.* Notice of an applicant's variance proposal shall be published once in a newspaper of general circulation in the county 15 days before variance approval.

(c) *Conditions of approval.* The Director of Environmental Protection and Sustainability may require conditions for variance approval, including site design conditions or mitigation, to minimize adverse impacts on water quality or fish, wildlife, or plant habitat.

(d) *Appeals.* A person aggrieved or feeling aggrieved by a decision of the Director of Environmental Protection and Sustainability made under subsection (a) of this section may appeal the decision de novo to the Board of Appeals.

(e) *Regulations.* The Director of Environmental Protection and Sustainability, in accordance with Article 3, Title 7 of the Code, may adopt regulations for the preparation and review of proposed development projects and other activities in the Chesapeake Bay Critical Area that are consistent with the Chesapeake Bay Critical Area law and Chesapeake Bay Critical Area criteria.

(1988 Code, § 26-445) (Bill No. 222, 1992, § 1; Bill No. 120-93, 1993, §§ 1, 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-206. OTHER LAND USES.

All other land uses allowed in the Chesapeake Bay Critical Area, including grandfathered uses allowed under § 103.5 of the Baltimore County Zoning Regulations, shall, to the greatest extent practicable, comply with the standards under this title, except that:

- (1) The vegetated buffers specified in § 33-2-401 of this title shall remain undisturbed;
- (2) Vegetative cover shall be established and maintained on permeable areas;
- (3) Destruction of forest and developed woodland vegetation shall be minimized; and

(4) Subtitles 3 and 5 and §§ 33-2-401 through 33-2-404 and § 33-2-604 of this title shall apply in their entirety.

(1988 Code, § 14-257) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-207. CLUSTER DEVELOPMENT.

To minimize impervious surfaces and destruction of forest and woodland vegetation, cluster development, unless it is demonstrably infeasible or inappropriate for the site, is the preferred method for designing residential development in the Chesapeake Bay Critical Area.

(1988 Code, § 26-446) (Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-208. DESIGN REQUIREMENTS.

(a) *Purpose.* The design standards and requirements established under this title are intended to assure that the preparation and review of proposed development in the Chesapeake Bay Critical Area is in compliance with the requirements under the Chesapeake Bay Critical Area criteria.

(b) *Applicability.* Subject to § 33-2-104 of this title, development shall:

- (1) Meet the requirements of this article;
- (2) Meet the standards and requirements under Article 32, Title 4 of the Code; and
- (3) Conform to the policy and intent of the Code.

(1988 Code, § 26-445) (Bill No. 222, 1992, § 1; Bill No. 120-93, 1993, §§ 1, 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-209. SURFACE MINING.

(a) *Siting of surface mining.*

(1) Surface mining operations in the Chesapeake Bay Critical Area shall be sited to minimize pollution from sedimentation and siltation, chemical and petrochemical use and spillage, noise and the storage or disposal of wastes, dusts and spoils.

(2) The operation shall be conducted to allow the rapid reclamation of the site, including the wash ponds, when the operation has terminated.

(b) *Requirements for operations.* Surface mining operations, including access roads, accessory or related improvements, equipment and storage areas:

(1) Shall comply with the wetland, buffer, and habitat protection requirements in Subtitles 3, 4, and 5 of this title;

(2) May not be authorized if the surface mining activity would prevent the use of the site for agricultural or forestry purposes for more than 25 years;

(3) Shall, upon completion of the surface mining operation, return the property to a condition capable of sustaining agricultural or forest use or to another use allowed by the Chesapeake by Critical Area land use classification in which the operation occurs; and

(4) Shall incorporate a multipurpose berm or buffer to protect neighboring residential properties from pollutants.

(c) *Self-containment.* Wash plants including ponds, spoil piles and associated equipment must be hydrologically self-contained, unless it can be conclusively proven to the Department of Environmental Protection and Sustainability that there will be no risk of water quality degradation. (1988 Code, § 14-265) (Bill No. 10-96, § 1, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 3. WETLANDS PROTECTION

§ 33-2-301. ESTABLISHMENT.

An area has wetland vegetation if hydrophytic vegetation comprises a community where indicators of hydric soils and wetland hydrology also occur. (1988 Code, § 26-438) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-302. PROHIBITED ACTS.

Except as provided in § 33-2-303 and §§ 33-2-604 through 33-2-607 of this title, dredging, filling, clearing, or construction are prohibited in nontidal wetlands or tidal wetlands. (1988 Code, § 26-447) (Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-303. NONTIDAL WETLAND PROTECTION.

(a) *Buffer.* A minimum 25 foot buffer shall be established and remain undisturbed around all nontidal wetlands to prevent development or other activity from adversely affecting the wetlands or the wildlife contained in the wetlands.

(b) *Water discharge.*

(1) Alterations to the surface or subsurface flow of water into and from nontidal wetlands shall be minimized to protect the hydrologic processes and water quality of the nontidal wetlands.

(2) Minimizing alterations to water flow under paragraph (1) of this subsection may include:

(i) Maximizing the infiltration of water throughout the site, rather than concentrating flows into direct discharge points; or

(ii) Decentralizing the discharge points if the use of these discharge points cannot be avoided for stormwater management.

(c) *Development activities - Prohibited.* Development activity, including redevelopment activity, the construction of a structure, parking area, or other impervious surface, mining and the use of related facilities, and the installation of a septic system, is prohibited in nontidal wetlands or nontidal wetlands buffers.

(d) *Improvements - Limitations.*

(1) Except as provided in paragraph (2) of this subsection, improvements, including roads, trails, bridges, storm drainage, stormwater management devices and practices, and utilities, are prohibited in nontidal wetlands or nontidal wetlands buffers.

(2) Improvements in nontidal wetlands or nontidal wetlands buffers may be allowed if the Director of Environmental Protection and Sustainability approves an alternatives analysis submitted by an applicant that clearly demonstrates that:

(i) No physically feasible alternative exists; and

(ii) The improvements are located, designed, constructed, and maintained to:

1. Provide maximum erosion protection;
2. Minimize adverse effects on wildlife, aquatic life, and the respective habitats; and
3. Maintain hydrologic processes and water quality.

(3) The impacted area shall be restored following any disturbance.

(e) *Mitigation.* Activities or uses that are allowed under the approval of an alternatives analysis, a variance, or a variation of standards, shall only occur in conjunction with mitigation measures that:

(1) Provide water quality benefits and plant and wildlife habitat equivalent to the level before the nontidal wetland was affected or destroyed; and

(2) Shall be accomplished, to the maximum extent possible, on or near the affected nontidal wetlands.

(1988 Code, § 26-448) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 4. BUFFERS

§ 33-2-401. ESTABLISHED.

(a) *Minimum boundary.*

(1) In this subsection, “stream order” means a classification system of streams based on stream hierarchy. The smaller the stream, the lower its numerical classification. A first order stream does not have tributaries and normally originates from springs, seeps, or both. At the confluence of two first order streams, a second order stream begins. A third order stream begins at the confluence of two second order streams and so on.

(2) Except as provided in §§ 33-2-405 and 33-2-406 of this subtitle and Subtitle 7 of this title, and subject to subsection (b) of this section, a minimum buffer shall be established and remain undisturbed:

(i) 100 feet landward from the mean high-water line of tidal waters or tidal wetlands;

(ii) 100 feet from the centerline of a first order stream or second order stream;

(iii) 100 feet from the stream bank of the active channel (bank-full flow) of a stream higher than second order;

(iv) 25 feet from the outer nontidal wetland boundary; and

(v) 25 feet from the riverine floodplain reservation or easement boundary.

(b) *Expansion.*

(1) (i) The buffer shall be expanded beyond the minimum buffer to include contiguous, sensitive areas, including steep slopes, hydric soils, or highly erodible soils, since development or disturbance of these areas may adversely affect streams, wetlands, or other aquatic environments.

(ii) The buffer expansion under this paragraph shall be executed in conjunction with a steep slope and erodible soils evaluation, using the evaluation procedures and criteria under § 33-3-111(c) of this article.

(2) (i) Subject to subparagraph (ii) of this paragraph, the buffer shall be expanded to 300 feet landward from the mean high-water line of tidal waters, tidal wetlands, and streams for new residential developments exceeding five dwelling units in a limited development area or a resource conservation area.

(ii) The buffer may be reduced to the greater of the minimum buffer under subsection (a) of this section or to the expanded buffer under paragraph (1) of this subsection if:

1. The 300-foot area does not contain contiguous forest habitat that drains into tidal wetlands, tidal waters, or a stream;

2. The 300-foot area does not provide breeding habitat for species of forest interior dwelling bird; and

3. The Director of Environmental Protection and Sustainability determines that greater water quality or habitat benefits can be achieved through other site specific measures.

(1988 Code, §§ 14-261, 26-438, 26-449) (Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 108-05, § 2, 10-30-2005; Bill No. 122-10, § 13, 1-16-2011)

Editor's note:

The amendments enacted under § 2 of Bill 108-05 are effective retroactive to July 1, 2004.

§ 33-2-402. REQUIREMENTS.

(a) *Natural vegetation to remain undisturbed.* Except as provided in subsection (b) of this section, the natural vegetation occurring in a buffer shall remain undisturbed.

(b) *Establishing new vegetation authorized.* Vegetation shall be planted in the buffer where necessary to protect, stabilize, or enhance the shoreline.

(c) *Development activity prohibited; exception.*

(1) Except as provided in paragraph (2) of this subsection, development activity, including redevelopment activity, the construction of a structure, parking area, or other impervious surface, mining and the use of related facilities, and the installation of a septic system, is prohibited in the buffer.

(2) Development activity that is necessarily associated with a water-dependent structure or activity or shore erosion protection works may be allowed in the buffer if approved under § 417 of the Baltimore County Zoning Regulations and §§ 33-2-604 through 33-2-607 of this title.

(d) *Improvements.*

(1) Except as provided in paragraph (2) of this subsection, improvements, including roads, bridges, trails, storm drainage, stormwater management devices and practices, and utilities, are prohibited in the buffer.

(2) Improvements in the buffer may be allowed if the Director of Environmental Protection and Sustainability approves an alternatives analysis submitted by an applicant that clearly demonstrates that:

(i) No physically feasible alternative exists; and

(ii) The improvements are located, designed, constructed, and maintained to:

1. Provide maximum erosion protection;
2. Minimize adverse effects on wildlife, aquatic life, and the respective habitats; and
3. Maintain hydrologic processes and water quality.

(3) The impacted area shall be restored following any disturbance.

(e) *Cessation of agriculture in buffer.*

(1) If the agricultural use of land in the buffer area ceases and the land is proposed to be converted to other uses not governed by § 33-2-406 of this subtitle, then the other buffer requirements under this title shall be implemented.

(2) Implementation of buffer requirements under this subsection shall include management measures establishing forest vegetation to minimize adverse impacts to water quality and improve wildlife habitat.

(f) *Prohibited.* Between March 1 and June 15 of each year, a person may not engage in:

(1) Construction, repair, or maintenance activity associated with bridges, other stream crossings, utilities, or roads, that involve disturbance in the buffer or instream in anadromous fish propagation waters; or

(2) Other instream construction activity determined by the Director of Environmental Protection and Sustainability to have the potential to adversely impact anadromous fish propagation.

(g) *Mitigation.* The Department of Environmental Protection and Sustainability may require onsite or offsite mitigation to offset impacts to a buffer, or to the plant and wildlife habitats or species contained in a buffer, that are the result of development activity.

(1988 Code, §§ 14-261, 26-449) (Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-403. BUFFER MANAGEMENT AREAS.

(a) *Authorized.* The Director of Environmental Protection and Sustainability may designate as a buffer management area an area of the buffer where an existing pattern of residential, commercial, industrial, or institutional development prevents the buffer from fulfilling the water quality and habitat protection functions under COMAR 27.01.09.

(b) *Regulations.*

(1) In designating buffer management areas, the Director shall adopt regulations governing development and redevelopment in these areas.

(2) The regulations may require onsite or offsite mitigation or alternative measures to fulfill water quality and habitat protection functions.

(1988 Code, § 26-449) (Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-404. BUFFER MITIGATION FUND.

(a) *Establishment.*

(1) There is a Buffer Mitigation Fund.

(2) The fund shall consist of:

(i) Subject to paragraph (3) of this subsection, monetary compensation paid under this subtitle by an applicant who demonstrates to the Department of Environmental Protection and Sustainability that requirements for buffer mitigation cannot be met;

(ii) Other monies that may be appropriated to the fund by the County Council; and

(iii) Interest accrued to the fund.

(3) (i) The Department of Environmental Protection and Sustainability may accept monetary compensation only if it determines that buffer mitigation requirements cannot be reasonably accomplished onsite or offsite.

(ii) Monetary compensation may not be a substitute for buffer mitigation that can be reasonably accomplished.

(4) Monetary compensation paid by an applicant under this section shall be paid before the approval of a project plan, a grading permit, or a building permit, as determined by the Department of Environmental Protection and Sustainability.

(b) *Use of fund.*

(1) The buffer mitigation fund may be used to implement:

- (i) Water quality protection or restoration measures;
- (ii) Habitat protection or restoration measures; or
- (iii) Capital projects administered under the county's waterway improvement program.

(2) Monies credited and interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not revert to the general fund under any other provision of law.

(1988 Code, § 26-449) (Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-405. TREE OR VEGETATION CLEARING.

(a) *Prohibited.* Except as provided in subsection (b) of this section, the cutting or clearing of trees is prohibited in the buffer.

(b) *Exceptions.*

(1) (i) Subject to subparagraph (ii) of this paragraph, commercial harvesting of trees by selection may be allowed to within 50 feet of:

- 1. The landward edge of the mean high-water line of tidal waters and streams; or
- 2. The edge of tidal wetlands.

(ii) Harvesting under this paragraph may not occur:

- 1. In a habitat protection area; and

2. Unless the harvesting is conducted in conformance with a buffer management plan that is:

A. Prepared by a licensed forester; and

B. Approved by the Department of Environmental Protection and Sustainability and the forestry programs of the State Department of Natural Resources.

(iii) The buffer management plan is required for all commercial harvests in the buffer, regardless of the size of the area to be harvested, and:

1. Shall avoid disturbance to nontidal wetlands and associated buffers, stream banks, and shorelines;

2. Shall prohibit clearcutting in the buffer;

3. Shall require the disturbed or harvested area to be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife and reestablishes the wildlife corridor function of the buffer; and

4. May not create logging roads and skid trails in the buffer.

(2) The cutting of trees or removal of natural vegetation may be allowed in the buffer, if:

(i) Necessary to:

1. Provide access to private piers; or

2. Install or construct shore erosion protection works or a water-dependent facility; and

(ii) All necessary county, state, or federal permits have been obtained.

(3) Individual trees in the buffer may be privately harvested, if:

(i) The private harvesting does not impair water quality, existing habitat value, or other functions of the buffer as specified under COMAR 27.01.09.01B; and

(ii) Each tree harvested is replaced on an equal basis.

(4) An individual tree in the buffer may be removed if the tree is in danger of falling and:

(i) Causing damage to dwellings or other structures; or

(ii) Blocking streams or causing accelerated shore erosion.

(5) Horticultural practices may be used to maintain the health of individual trees.

(6) (i) Other cutting techniques may be used in the buffer if necessary to preserve the forest from:

1. Extensive pest or disease infestation; or
2. The threat of fire.

(ii) Cutting under this paragraph shall only occur with the advice and guidance of the Department of Environmental Protection and Sustainability and the State Departments of Agriculture and Natural Resources.

(1988 Code, §§ 14-262, 26-450) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 50-93, 1993, § 2, 7-10-1993; Bill No. 20-00, § 1, 3-24-2000; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 41, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-406. AGRICULTURE.

(a) *Authorized.* Subject to subsections (b) and (c) of this section and except as provided in subsection (d) of this section, agricultural uses and activities are allowed in the buffer.

(b) *Zoning applicable.* Agricultural uses and activities are subject to the restrictions in the Baltimore County Zoning Regulations.

(c) *Filter strip; best management practices.*

(1) Agricultural uses and activities are only allowed in the buffer if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the further inland of the mean high-water line of tidal waters or streams, or the edge of tidal wetlands, is established.

(2) The filter strip shall be:

(i) Composed of trees with a dense ground cover or a thick sod of grass;

(ii) Managed to provide water quality benefits and habitat protection consistent with the Chesapeake Bay Critical Area criteria; and

(iii) For slopes greater than 6%, expanded by a distance of four feet horizontally for every 1% of slope.

(3) (i) The filter strip shall be maintained at least until the landowner is implementing, under an approved soil conservation and water quality plan, a program of best management practices for the specific purpose of improving water quality and protecting plant and wildlife habitat.

(ii) The portion of the soil conservation and water quality plan being implemented shall achieve the water quality and habitat protection objectives of the filter strip.

(iii) Best management practices shall include a requirement for the implementation of a grassland and manure management program.

(d) *Prohibited.*

(1) (i) Except as provided in subparagraph (ii) of this paragraph, clearing of existing natural vegetation in the buffer is prohibited.

(ii) Noxious weeds, including Johnson grass, thistle, and multiflora rose, that occur in the filter strip may be controlled by means authorized by the Director of Environmental Protection and Sustainability.

(2) Agricultural activities may not be established or expanded by:

(i) The diking, draining, or filling of nontidal wetlands; or

(ii) Intrusion into the buffer, unless:

1. No existing natural vegetation in the buffer is proposed to be cleared; and

2. The county Soil Conservation District, with the advice of the Department of Environmental Protection and Sustainability and the State Department of Natural Resources, certifies that the:

A. Mitigation measures accompanying the expansion are sufficient to accomplish the objectives of COMAR 27.01.09; and

B. Expansion is in accordance with an approved soil conservation and water quality plan; or

(iii) Clearing forest or woodland on highly erodible soils.

(3) Livestock feeding or grazing is prohibited within 50 feet of the mean high-water line of tidal waters, tidal wetlands, or streams.

(4) Agricultural activities, including livestock grazing, may not disturb the stability of stream banks or tidal shorelines.

(e) *Soil conservation and water quality plan.* A Chesapeake Bay Critical Area farm shall have and implement an approved soil conservation and water quality plan that incorporates best management practices, including control of nutrients, animal wastes, pesticides, and sediment runoff, to:

- (1) Protect the productivity of the land base;
 - (2) Preserve or enhance water quality; and
 - (3) Conserve fish, wildlife, and plant habitat.
- (1988 Code, § 14-263) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 5. HABITAT PROTECTION AREAS

§ 33-2-501. DISTURBANCE PROHIBITED; EXCEPTIONS.

(a) *Prohibited.* Except as provided in subsection (b) of this section, development activities or other land disturbances, including commercial tree harvesting and agricultural activities, are prohibited in a habitat protection area.

(b) *Exceptions.*

(1) Subject to paragraphs (2), (3), and (4) of this subsection, development activities or other land disturbances are allowed in a habitat protection area if:

(i) The Director of Environmental Protection and Sustainability certifies that:

1. The location of and restrictions placed on the activities will provide for the continuity of wildlife habitat; and

2. The activities avoid adverse effects to the functioning of the area or to the species dependent on it; or

(ii) An alternatives analysis submitted by the applicant and approved by the Director of Environmental Protection and Sustainability clearly demonstrates that no other physically feasible alternative exists for the location of a road, trail, bridge, or utility.

(2) Development activity or other land disturbances may not alter the structure and species composition of natural heritage areas.

(3) The Director of Environmental Protection and Sustainability shall request and consider comment from the State Department of Natural Resources before providing certification under paragraph (1)(i) of this subsection.

(4) If the Director of Environmental Protection and Sustainability approves an alternatives analysis under paragraph (1)(ii) of this subsection, the road, trail, bridge, or utility shall be located, designed, constructed, and maintained to:

- (i) Provide maximum erosion protection;
- (ii) Minimize adverse effects on wildlife, aquatic life, and the respective habitats; and
- (iii) Maintain hydrologic processes and water quality.

(c) *Restoration; mitigation.*

(1) The impacted area shall be restored following any disturbance allowed under subsection (b)(1)(ii) of this section.

(2) The Department of Environmental Protection and Sustainability may require onsite or offsite mitigation to offset impacts to a habitat protection area, or the plant and wildlife habitats or species contained in the area, resulting from development activity.

(1988 Code, §§ 14-259, 26-451) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 50-93, 1993, § 2, 7-10-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-502. DESIGNATION OF NEW WETLANDS OR PROTECTED SPECIES.

(a) *Protective measures.* If the Secretary of Natural Resources designates by regulation new endangered species, threatened species, or species in need of conservation, the county shall adopt, in accordance with Article 3, Title 7 of the Code, protective measures for these species within 12 months after the Secretary's designation.

(b) *Hearing.* If additional nontidal wetlands, plant and wildlife habitat, or endangered species, threatened species, or species in need of conservation are identified for protection, the Director of Environmental Protection and Sustainability shall hold public hearings, as appropriate, to consider comments on proposed protection measures for the appropriate habitat protection areas.

(1988 Code, §§ 14-259, 26-451) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 50-93, 1993, § 2, 7-10-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 6. DEVELOPMENT

§ 33-2-601. OVERLAY AREAS.

(a) *Purpose.*

(1) Overlay areas are established to implement the requirements in the Chesapeake Bay Critical Area criteria relating to development in intensely developed areas, limited development areas, and resource conservation areas.

(2) The purpose of overlay area requirements under § 33-2-601 through § 33-2-603 of this subtitle is to:

(i) Foster more sensitive development in the Chesapeake Bay Critical Area to improve and minimize adverse effects to the natural plant, fish, and wildlife habitat and water quality in the Chesapeake Bay Critical Area;

(ii) Provide for orderly development and accommodate growth in the Chesapeake Bay Critical Area; and

(iii) Encourage the clustering of land uses in the Chesapeake Bay Critical Area.

(b) *General requirements.*

(1) An overlay area may not be superimposed on another overlay area.

(2) New development or redevelopment in the Chesapeake Bay Critical Area shall conform with the:

(i) Baltimore County Zoning Regulations; and

(ii) Development regulations under Article 32, Title 4 of the Code. (1988 Code, § 26-440) (Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-602. INTENSELY DEVELOPED AREAS.

(a) *Application.* This section applies to new development and redevelopment in intensely developed areas in the Chesapeake Bay Critical Area.

(b) *Development in intensely developed areas.*

(1) (i) Subject to subparagraphs (ii), (iii), and (iv) of this paragraph, new development and redevelopment shall use best management practices, or other technologies, that reduce pollutant loading by 10% of the on-site level before the development or redevelopment.

(ii) If using best management practices for the development or redevelopment cannot achieve the 10% pollutant loading reduction either onsite or offsite, quantifiable offsets may be approved, if:

1. The benefits are obtained in the same watershed; and
2. The water quality benefits are equivalent to a 10% pollutant loading reduction.

(iii) 1. The Department of Environmental Protection and Sustainability may accept monetary compensation as an offset only if it is determined that the 10% pollution reduction requirement cannot be reasonably accomplished onsite or offsite.

2. Monetary compensation may not be used to avoid 10% pollutant loading reduction.

3. Monetary compensation shall be paid before the approval of a project plan, a grading permit, or a building permit, as determined by the Department of Environmental Protection and Sustainability.

(iv) The methodology to determine the 10% reduction in pollutant loadings and acceptable offsets shall conform to the standards and procedures under the most recent guidance documents published by the Chesapeake Bay Critical Area Commission.

(2) Vegetation shall be established in permeable areas, if practicable, through landscaping and buffer planting.

(3) If possible, areas of public access to the shoreline shall be included in development and redevelopment plans.

(4) Development activity shall be designed and implemented to minimize the clearing of forest and developed woodland as:

(i) Delineated on the January, 1986 county forest and developed woodlands aerial photographs; or

(ii) Identified through a site inspection by the Department of Environmental Protection and Resource Management.

(c) *Intensely Developed Areas Offset Fund.*

(1) There is an Intensely Developed Areas Offset Fund under the Department of Environmental Protection and Sustainability.

(2) The Fund shall consist of:

(i) Monetary compensation paid under subsection (b)(1) of this section by an applicant who demonstrates to the Department of Environmental Protection and Sustainability that the applicant cannot meet the 10% pollutant loading reduction requirement;

(ii) Other monies that may be appropriated to the fund by the County Council; and

(iii) Interest accrued to the Fund.

(3) The Offset Fund may be used to implement:

(i) Water quality protection or restoration projects; or

(ii) Capital projects administered under the county's waterway improvement program.

(4) Monies credited and interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not revert to the general fund under any other provision of law.

(1988 Code, § 26-452) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-603. LIMITED DEVELOPMENT AREAS AND RESOURCE CONSERVATION AREA.

(a) *Application.* This section applies to development in limited development areas and resource conservation areas in the Chesapeake Bay Critical Area.

(b) *General requirements.*

(1) All development activity that crosses or affects a stream shall be designed to:

(i) Reduce increases in flood frequency and severity that are attributable to the development;

(ii) Retain tree canopy to maintain stream water temperature within normal variation;

(iii) Provide a natural substrate for streambeds; and

(iv) Minimize adverse water quality and quantity impacts from stormwater.

(2) Development plans shall incorporate a wildlife corridor system that connects the largest, most undeveloped or vegetated tracts of land within and adjacent to the site to provide a continuity of existing on-site and off-site plant and wildlife habitats.

(3) (i) The sum of all man-made impervious areas may not exceed 15% of the lot, parcel, or property proposed to be developed, except that:

1. If a one-half acre or less lot or parcel existed on or before December 1, 1985, man-made impervious surfaces may not exceed 25% of the lot or parcel;

2. If a lot or parcel greater than one-half acre and less than one acre existed on or before December 1, 1985, man-made impervious surfaces may not exceed 15% of the lot or parcel; or

3. A. If a one acre or less individual lot is part of a subdivision approved after December 1, 1985, man-made impervious surfaces of the lot may not exceed 25% of the lot; and

B. The total of the impervious surfaces over the entire subdivision may not exceed 15%.

(ii) This paragraph does not apply to a trailer park that was in residential use on or before December 1, 1985.

(iii) The Director of Environmental Protection and Sustainability may allow a property owner to exceed the impervious surface limits under items (i)1. and 2. of this paragraph if:

1. New impervious surfaces on the property have been minimized;

2. A. For a one-half acre or less lot or parcel, total impervious surfaces do not exceed impervious surface limits in item (i)1. of this paragraph by more than the greater of 25% or 500 square feet; or

B. For a lot or parcel greater than one-half acre and less than one acre, total impervious surfaces do not exceed the greater of the impervious surface limits in item (i)2. of this paragraph or 5,445 square feet;

3. Water quality impacts associated with runoff from the new impervious surfaces have been minimized through site design considerations or use of best management practices approved by the Department of Environmental Protection and Sustainability to improve water quality; and

4. The property owner:

A. Performs onsite mitigation as required by the Department of Environmental Protection and Sustainability to offset potential adverse water quality impacts from the new impervious surfaces; or

B. Pays monetary compensation into the county Water Quality Mitigation Fund instead of performing the onsite mitigation.

(iv) 1. The amount of the monetary compensation authorized under item (iii)4.B. of this subsection shall be established in accordance with § 3-1-202 of the Code.

2. Monetary compensation shall be paid before the approval of a project plan, a grading permit, or a building permit, as determined by the Department of Environmental Protection and Sustainability.

(v) 1. Notwithstanding any other provision of the Code, the Director of Environmental Protection and Sustainability may grant a variance from this paragraph in accordance with the Chesapeake Bay Critical Area criteria concerning:

A. Variances as part of local program development under COMAR 27.01.11; and

B. Notification of project applications under COMAR 27.03.01.

2. Notice of an applicant's variance proposal shall be published once in a newspaper of general circulation in the county 15 days before the variance may be approved.

3. The Director of Environmental Protection and Sustainability may require conditions for variance approval, including site design conditions or mitigation, to minimize adverse impacts on water quality and fish, wildlife, or plant habitat.

4. A person aggrieved or feeling aggrieved by a decision of the Director of Environmental Protection and Sustainability made under this subparagraph may appeal the decision de novo to the Board of Appeals.

(4) A reduction in the road standards as established in the county standard specifications and details for construction may be allowed to reduce impacts from new development sites on Chesapeake Bay Critical Area resources, if the reduced standards do not significantly reduce safety.

(5) The stormwater management system shall be designed to:

(i) Prevent the development from causing downstream property, watercourses, channels, or conduits to receive stormwater runoff at a higher rate than would have resulted from a 10-year frequency storm if the land had remained in its predevelopment state;

(ii) Maximize the infiltration of water throughout the site, rather than concentrating flows into single discharge points;

(iii) Decentralize storm drain discharge points to simulate the predevelopment hydrologic regime; and

(iv) Ensure that sufficient storage capacity exists to:

1. Achieve water quality goals under the Chesapeake Bay Critical Area criteria; and

2. Eliminate all runoff caused by the development in excess of the amount that would have come from the site if the land had remained in its predevelopment state.

(6) If an alternatives analysis submitted by the applicant clearly demonstrates that any or all of the requirements under paragraph (5) of this subsection are infeasible due to site limitations, the Director of Environmental Protection and Sustainability may allow the implementation of alternative stormwater management measures, if equal or greater water quality benefits are achieved.

(c) *Forests or developed woodland requirements.*

(1) (i) A priority forest retention area as designated in the county Forest Protection and Establishment Manual shall be retained and protected to the extent possible.

(ii) 1. At a minimum, forests and developed woodlands containing nontidal wetlands, nontidal wetland buffers, buffers, or habitat protection areas shall be retained and protected in accordance with Subtitles 3, 4, and 5 of this title.

2. An applicant shall consider the recommendations of the State Department of Natural Resources when proposing to clear forests containing nontidal wetlands, nontidal wetland buffers, buffers, or habitat protection areas.

(2) (i) All clearing, or establishment through reforestation or afforestation, of a forest or developed woodland, as delineated on the January 1986 county forest and developed woodlands aerial photographs or identified through a site inspection by the Department of Environmental Protection and Sustainability, shall be done in accordance with a forest protection and establishment plan approved by the Department of Environmental Protection and Resource Sustainability.

(ii) A forest protection and establishment plan shall be prepared by a licensed forester, a registered landscape architect, or a qualified professional who meets the requirements under COMAR 08.19.06.01.

(3) (i) 1. Except as provided in sub-subparagraph 3. of this subparagraph, no more than 20% of the sum of all forest and developed woodland may be cleared.

2. Except as provided in sub-subparagraph 3. of this subparagraph, every acre of forest and developed woodland cleared under this subparagraph shall be replaced by one acre of reforestation or afforestation.

3. An additional 10% of the forest or developed woodland may be cleared if every acre of forest or developed woodland cleared is replaced by one and one-half acres of reforestation or afforestation.

(ii) 1. If the configuration of the site precludes onsite replacement under subparagraph (i) of this paragraph, the applicant shall:

A. Secure an offsite area suitable for afforestation; and

B. Afforest the offsite area in compliance with subparagraph (i) of this paragraph.

2. If an appropriate offsite area cannot be located or secured, the county will allow the applicant to pay monetary compensation into the county forest protection and establishment fund instead of afforesting an offsite area.

(iii) 1. An applicant shall afforest to achieve 15% forest cover on a development site according to an approved forest protection and establishment plan, if:

A. No forest or developed woodland exists on the site; or

B. The site contains less than 15% forest cover.

2. If the configuration of the site precludes onsite replacement, the applicant shall secure an offsite area suitable for afforestation.

3. If an appropriate offsite area cannot be located or secured, the county will allow the applicant to pay monetary compensation into the county forest protection and establishment fund instead of afforesting an offsite area.

(iv) 1. Forest or developed woodland cleared shall be replaced in the Chesapeake Bay Critical Area to the extent possible.

2. All required afforestation and reforestation shall be directed to a priority forest retention area designated in the county Forest Protection and Establishment Manual to the extent possible.

(v) 1. A developer shall agree to:

A. Remove forest or developed woodland, reforest, or afforest according to an approved forest protection and establishment plan; or

B. Pay monetary compensation into the county Forest Protection and Establishment Fund.

2. The applicant shall pay required monetary compensation before the approval of a project plan, a grading permit, or a building permit, as determined by the Department of Environmental Protection and Sustainability.

3. A. If afforestation or reforestation is required, the applicant shall post a security in accordance with § 32-4-312 of the Code.

B. The security shall be posted before the approval of a project plan, a grading permit, or a building permit, as determined by the Department of Environmental Protection and Sustainability.

(vi) A person shall afforest or reforest an area under this title within the greater of one year or two growing seasons following approval of a project plan, a grading permit, or a building permit, as determined by the Department of Environmental Protection and Sustainability.

(d) Forest Protection and Establishment Fund.

(1) There is a Forest Protection and Establishment Fund in the Department of Environmental Protection and Sustainability.

(2) The Fund shall consist of:

(i) Monetary compensation paid under subsection (c) of this section by an applicant who demonstrates to the Department of Environmental Protection and Sustainability that the applicant cannot meet the afforestation and reforestation requirements;

(ii) Other monies appropriated to the fund by the County Council; and

(iii) Interest accrued to the Fund.

(3) (i) Subject to subparagraph (ii) of this paragraph, the Forest Protection and Establishment Fund may be used only for:

1. Reforestation and afforestation, including site preparation, planting, and maintenance; and

2. Implementing capital projects administered under the county's waterway improvement program.

(ii) Monetary compensation paid to the fund under paragraph (2)(i) of this subsection may be used only for forest replacement.

(4) Monies credited and interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not revert to the general fund under any other provision of law.

(1988 Code, § 26-453) (Bill No. 74, 1991, § 1; Bill No. 222, 1992, § 1; Bill No. 120-93, 1993, § 1; Bill No. 8-96, § 4, 3-23-1996; Bill No. 170-96, § 1, 2-1-1997; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-604. WATER-DEPENDANT ACTIVITY, FACILITY, OR STRUCTURE.

(a) *Scope.* This section applies to activity and structures that include water-dependent activity or structures associated with industrial, maritime, recreational, educational, or fishery activity.

(b) *Buffer requirements.* Siting, development, redevelopment, and expansion of water-dependent facilities in the buffer:

(1) Shall strictly conform to the criteria under the county water-dependent facilities manual;

(2) May be allowed in an intensely developed area or a limited development area if:

(i) Adverse effects to water quality, wintering and migrating waterfowl habitat, or fish, plant, and wildlife habitat are minimized;

(ii) Accessory structures are located outside the buffer; and

(iii) The activity meets a recognized private right or public need; and

(3) Are prohibited in a resource conservation area, except that community piers, public beaches, public water-oriented recreation or education areas, public boat launching, public docking facilities, or fishing piers may be allowed if:

(i) Adequate sanitary facilities exist;

(ii) Service facilities other than pumps, lifts, and other similar facilities are located outside the buffer;

(iii) Permeable surfaces are used only if no groundwater degradation would result; and

(iv) Disturbance to natural vegetation is minimized.

(c) *Marina requirements.*

(1) A marina shall:

(i) Meet the sewage disposal sanitary requirements of the State Department of the Environment under COMAR 26.04.02; and

(ii) Minimize discharge of bottom-wash waters into tidal waters.

(2) New or expanded community marinas and other noncommercial boat docking and storage facilities may be allowed in an intensely developed area or a limited development area if:

(i) The facility does not offer food, fuel, or other goods and services for sale;

(ii) The facility is:

1. Community established and owned; and

2. Operated for the benefit of the residents of a platted and recorded riparian subdivision;

(iii) The disturbance to the buffer is the minimum necessary to provide a single point of access to the facility; and

(iv) The number of slips and piers is the lesser of:

1. A. One for each 50 feet of shoreline in the subdivision in an intensely developed area or a limited development area; and

B. One for each 300 feet of shoreline in the subdivision in a resource conservation area; or

2. For a subdivision with:

A. Up to 15 platted lots or dwellings, one for each lot;

B. 16 to 40 platted lots or dwellings, the greater of 15 or a number equal to 75% of the platted lots or dwellings;

C. 41 to 100 platted lots or dwellings, the greater of 30 or a number equal to 50% of the platted lots or dwellings;

D. 101 to 300 platted lots or dwellings, the greater of 50 or a number equal to 25% of the platted lots or dwellings; or

E. Over 300 platted lots or dwellings, the greater of 75 or a number equal to 15% of the platted lots or dwellings.

(3) If community piers or slips are provided as part of the new development, private piers in the development are prohibited.

(d) *Other applicable law.* In addition to this section, all new or expanded water-dependent facilities are subject to the requirements under:

(1) § 417 of the Baltimore County Zoning Regulations; and

(2) The County Water-Dependent Facilities Manual.
(1988 Code, § 26-454) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-605. STRUCTURES ON PRIVATE AND NONMARINA COMMERCIAL PROPERTY.

(a) *Scope.* This section applies to the construction, maintenance, repair, and expansion of fixed and floating piers, auxiliary structures, mooring piles, osprey poles, boat hoists and lifts, boathouses and nonwater-dependent structures on private residential waterfront property and nonmarina commercial property.

(b) *In general.*

(1) (i) Subject to paragraph (2) of this subsection, only one pier, six moorings piles, two osprey poles, four boat hoists or lifts, and four boat slips are allowed per property.

(ii) New or expanded construction on nonmarina commercial property exceeding the limits under this paragraph are subject to the requirements for water-dependent facilities under § 33-2-604 of this subtitle.

(2) Piers, mooring piles, osprey poles, finger piers, boat hoists or lifts, decks, walkways, or other auxiliary structures are prohibited if the Director of Environmental Protection and Sustainability determines that the structure will:

(i) Adversely impact:

1. Shallow water habitat;
2. Submerged aquatic vegetation;
3. Vegetated nontidal wetlands or tidal wetlands;
4. Shellfish habitat;
5. Water quality; or

6. Habitat protection areas that contain endangered species, threatened species, species in need of conservation, anadromous fish propagation waters, colonial waterbird nesting habitat, or habitats of local significance;

(ii) Obstruct the ebb and flow of the tide;

(iii) Obstruct navigational channels or otherwise impede navigation;

(iv) Extend to within 100 feet of a ski course approved by the Department of Natural Resources; or

(v) Extend channelward of the lesser of the following:

1. 100 feet of the mean high-water line;
2. A distance 25 % of the width of the waterway; or
3. The minus three-foot contour.

(3) Except as provided in § 33-2-606 of this subtitle, other nonwater-dependent facilities and activities may not be constructed or installed in or over tidal wetlands.

(c) *Boathouses.*

(1) A boathouse or other similar temporary or permanent roof, cover, or raised deck, or associated support structures, may not be constructed or installed in or over tidal wetlands.

(2) Routine repair and maintenance of an existing boathouse is allowed if:

(i) There is no increase in width, length, height, or channelward encroachment of the structure; and

(ii) No enclosure of the structure occurs.

(d) *Piers.*

(1) (i) Except as provided in subparagraph (ii) of this paragraph, piers may be constructed in and over tidal wetlands and nontidal wetlands if the wetlands are not adversely impacted.

(ii) Unless no open water alternative exists, piers may not be constructed in and over tidal wetlands or nontidal wetlands that:

1. Are vegetated; or
2. Support a population of submerged aquatic vegetation.

(2) Piers shall be attached to uplands above the mean high-water line to minimize:

- (i) Shading of vegetated wetlands; and
- (ii) Disturbance to fish and wildlife habitat.

(3) (i) The width of the main section of a pier may not exceed 6 feet.

(ii) Piers shall be constructed a minimum of 3 feet above the top of the substrate of the wetlands, regardless of pier width.

(4) Heavy equipment used in pier construction shall be placed on mats or other suitable material to minimize damage to the wetlands.

(5) (i) A maximum of two 3-foot wide finger piers not exceeding 50% of the proposed slip length may be constructed on the landward side of the end of a private pier.

(ii) Finger piers may not be constructed on the channelward side of the end of a private pier.

(6) Petroleum dispensing apparatus may not be placed or stored on fixed or floating piers.

(e) *Mooring piles.* Mooring piles may not be installed in tidal wetlands and nontidal wetlands for boat mooring unless sufficient water depth allows mooring without:

- (1) Alteration to the wetlands; or
- (2) Disturbance to submerged aquatic vegetation or habitat protection areas.

(f) *Auxiliary platforms.*

(1) The total area of all fixed and floating auxiliary platforms, including "T's" and "L's" and step down platforms, may not exceed 200 square feet.

(2) Step down platforms and steps:

- (i) May not, collectively, exceed 60 square feet; and
- (ii) Shall be constructed on the landward side of the "T" or "L" head.

(3) Step down platforms and steps may not be constructed within the landward 50% of the main pier section.

(4) Fixed or floating auxiliary platforms may not be constructed over vegetated tidal wetlands or nontidal wetlands.

(5) Petroleum dispensing apparatus may not be placed or stored on a fixed or floating auxiliary platform.

(g) *Project approval.*

(1) The Department of Environmental Protection and Sustainability may require project approval conditions to minimize the adverse environmental impacts listed under items (b)(2)(i) and (ii) of this section.

(2) The Department of Environmental Protection and Sustainability may issue a letter of permission instead of a permit for the routine repair, replacement, and maintenance of an existing pier and auxiliary structure if, before work begins, the Department of Environmental Protection and Sustainability conducts a preliminary site inspection to verify the existing conditions and:

- (i) Replacement does not expand or extend preexisting construction; and
- (ii) Replacement does not relocate any portion of preexisting construction.

(h) *Other applicable law; conflict of law.*

(1) Structures subject to this section are also subject to the requirements of § 417 of the Baltimore County Zoning Regulations.

(2) In a conflict between this section and § 417 of the Baltimore County Zoning Regulations, the more restrictive provision shall prevail.

(i) *Construction of section.* This section may not be construed to authorize:

(1) Dredging or filling of tidal wetlands or nontidal wetlands, other than the installation of pilings;

(2) The installation or construction of shore erosion protection works; or

(3) The creation of a presumption that subsequent dredging or filling of tidal wetlands or nontidal wetlands will be authorized by the county or a state or federal agency.

(1988 Code, § 26-455) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-606. STRUCTURES ON PIER.

(a) *“Pier” defined.* In this section, “pier” includes a bulkhead, breakwater, piling, or similar structure.

(b) *Scope.* This section applies to the construction, installation, maintenance, repair, and expansion of structures on piers located in or over tidal wetlands.

(c) *Prohibited.* Except as provided in subsection (d) of this section, a person may not construct or install a dwelling unit, commercial building, sanitary facility, gazebo, shed, other storage building, roof, deck, or other temporary or permanent nonwater-dependent structure on a fixed or floating pier or auxiliary platform.

(d) *Exceptions.*

(1) A person may construct or install the structures listed in subsection (c) of this section on a fixed or floating pier or auxiliary platform if the pier:

- (i) Existed on December 1, 1985; and
- (ii) Is located in an intensely developed area.

(2) A temporary placement of a structure on a pier to facilitate construction of a bridge may be allowed if the Director of Environmental Protection and Sustainability determines that:

- (i) There are no upland alternatives; and
- (ii) All environmental impacts have been avoided or minimized.

(e) *Maintenance.* Routine maintenance and repair of an existing structure on a pier is allowed if:

- (1) There is no increase in the width, length, or height of the structure; and
- (2) No enclosure of the structure occurs.

(f) *Requirements.* All projects involving the construction, installation, maintenance, repair, or operation of a structure on a pier:

- (1) May not have a long term adverse effect on the water quality of adjoining waters;
- (2) Shall improve the water quality of existing stormwater runoff from the project site into adjoining waters; and
- (3) May not allow a sewer line or other utility line extended for the pier to adversely affect the water quality of adjoining waters.

(g) *Petroleum.* Notwithstanding § 33-2-604 of this subtitle, a structure less than 100 square feet in area and with permanent vertical walls may be constructed on a pier at a commercial marina in an area that facilitates dispensing petroleum.

(h) *Other law applicable.* Structures subject to this section are also subject to the requirements of § 417 of the Baltimore County Zoning Regulations. (1988 Code, § 26-456) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-607. SHORE EROSION PROTECTION MEASURES.

(a) *Scope.*

(1) This section applies to the construction and installation of shore erosion protection measures located above or below the mean high-water line.

(2) This section does not apply to structures constructed or installed under § 33-2-604 of this subtitle.

(b) *Structural shore erosion protection measures.*

(1) Except as provided in paragraph (2) of this subsection, structural shore erosion protection measures may not be constructed or installed.

(2) Structural shore erosion protection measures may be constructed or installed in:

(i) A significantly eroding area; or

(ii) Other areas where nonstructural shore erosion protection measures cannot practically and effectively reduce or prevent shore erosion.

(c) *Nonstructural shore erosion protection measures.* Nonstructural shore erosion protection measures shall be used in all other areas where shore erosion is to be controlled.

(d) *Requirements.*

(1) In areas where structural shore erosion protection measures are allowed, the measure that shall be used is the measure that:

(i) Best provides for the protection of plant, fish, and wildlife habitat; and

(ii) Practically and effectively reduces or prevents shore erosion.

(2) (i) 1. Individual trees may be removed from the buffer to allow construction access or installation of shore erosion protection measures.

2. Each tree cut under this subparagraph shall be replaced in the buffer on an equal basis.

(ii) 1. Disturbance to other naturally vegetated areas in the buffer shall be minimized.

2. Stabilization or revegetation of disturbed vegetated areas may be required when construction of the shore erosion protection measures is complete.

(3) Structural shore erosion protection measures may not be constructed or installed if the measures will adversely impact:

(i) Shallow water habitat;

(ii) Submerged aquatic vegetation;

(iii) Shellfish habitat;

(iv) Water quality;

(v) Anadromous fish propagation waters; or

(vi) Endangered species, threatened species, or species in need of conservation.

(e) *Project approval.* The Director of Environmental Protection and Sustainability may require project approval conditions to minimize adverse environmental impacts associated with the construction and installation of structural shore erosion protection measures.

(f) *Other applicable law.* Structures subject to this section are also subject to the requirements of § 417 of the Baltimore County Zoning Regulations. (1988 Code, § 26-457) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 7. FORESTS

§ 33-2-701. FORESTRY.

(a) *In general.* Forestry and the cutting or clearing of forest or developed woodland, including the clearing of trees in the buffer, are subject to §§ 33-2-405 and 33-2-603(c) and (d) of this title.

(b) *Minimal clearing.* The cutting or clearing of forest and developed woodland for which a forest management plan is not required is subject to § 33-2-603(c) and (d) of this title. (1988 Code, §§ 14-260, 14-264) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-2-702. SEDIMENT CONTROL PLAN.

(a) *Required for certain timber harvests.* A Sediment Control Plan under § 33-5-104 of this article is required for all tree harvesting, including harvesting on agricultural land, that would disturb more than 5,000 square feet of surface area in one year.

(b) *Forest management plan.* If the Sediment Control Plan affects a total of more than one acre of forest or developed woodland, the plan shall be accompanied by a Forest Management Plan approved by the Department of Environmental Protection and Sustainability, the forestry programs of the State Department of Natural Resources, and the County Forest Conservancy District Board.

(c) *Approval.* A Sediment Control Plan shall be submitted and approved under § 33-5-104 of this article.

(1988 Code, § 14-264) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

SUBTITLE 8. NAVIGABLE WATERS**§ 33-2-801. WORK IN NAVIGABLE WATERS BELOW TIDE.**

(a) *Permit required.* A person may not drive a pile, erect a platform, or conduct filling, construction, repairs, alterations, removals, dredging, demolitions, or other work of any kind in the navigable waters of the county below mean tide without a written permit from the County Building Engineer and approval of the Director of Environmental Protection and Sustainability or the Director's designee.

(b) *Penalty.* A person who violates this section is guilty of a misdemeanor.
(1988 Code, § 14-1) (Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-802. WATERWAY IMPROVEMENT FUND - SPUR DREDGING.

(a) *Loans authorized.* A residential property owner abutting a channel adjacent to a main channel or harbor whose property has been included in a waterway improvement district by the county may apply for an interest-free loan to dredge the adjacent channel or spur.

(b) *General terms.*

(1) The property owner shall certify the cost of the dredging to the Director of Budget and Finance.

(2) The assessment under subsection (c) of this section shall constitute a lien on the property until the loan is repaid.

(c) *Repayment.*

(1) (i) On application, the county may provide for the repayment of a loan under this section in up to 10 annual installments.

(ii) Installment payments are not allowed unless under an agreement between the property owners and the county before performance of the work.

(2) The Director of Budget and Finance may add one-tenth of a spur dredging assessment with no interest to the tax bill for the property for each of the next succeeding 10 years.

(3) The Director of Budget and Finance shall collect the assessment in the same manner and at the same time as state and county taxes are collected.

(4) The property owner may accelerate the payments without penalty or discount.

(5) If the property owner sells or conveys the property, the total charges then due shall be paid in full.

(1988 Code, § 14-258) (Bill No. 10-96, § 2, 3-23-1996; Bill No. 49-96, § 6, 7-1-1996; Bill No. 94-02, § 2, 7-1-2004)

SUBTITLE 9. ENFORCEMENT; REMEDIES

§ 33-2-901. ENFORCEMENT.

(a) *In general.* For the proper implementation and enforcement of this title, the Director of Environmental Protection and Sustainability may:

(1) Adopt and amend appropriate regulations in accordance with Article 3, Title 7 of the Code, that are consistent with this title; and

(2) Enforce the regulations and this title in accordance with the procedures under this section.

(b) *Correction notice.* The Director may enforce the provisions of this title in accordance with Article 3, Title 6 of the Code.

(c) *Revocation or suspension of approval or permit.* The county may revoke or suspend any approval or permit issued by the county after written notice to the permittee for the following reasons:

(1) Any violation of the conditions of the permit or approved plans;

(2) Construction, grading, timber harvesting, tree cutting, clearing, or grubbing that is not in accordance with the approved plans;

(3) Noncompliance with a correction notice or stop-work order;

(4) Changes in site characteristics upon which plan approvals and permit issuance were based;
or

(5) Any violation of this title or any regulations adopted under this title.

(d) Public notice of violations.

(1) In this subsection, "significant violation" means a violation that:

(i) Remains uncorrected 45 days after notification of noncompliance;

(ii) Is part of a pattern of noncompliance over a 12-month period; or

(iii) Involves a failure to accurately report noncompliance.

(2) The Director shall annually publish in the largest daily newspaper published in the county a list of persons who commit a significant violation of this title during the previous 12 months.

(3) The notice under this subsection also shall summarize any enforcement actions taken against the person who commits a significant violation during the 12-month period.

(1988 Code, § 26-459) (Bill No. 50, 1993, § 2, 7-10-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 3, 8-24-2006; Bill No. 122-10, § 13, 1-16-2011)

§ 33-2-902. CIVIL PENALTIES.

In assessing an appropriate civil penalty under this title, the Director shall give due consideration to:

(1) The size of the business of the person charged;

(2) The gravity of the violation;

(3) The good faith of the person charged; and

(4) The person's history of previous violations.

(1988 Code, §§ 14-266, 26-460) (Bill No. 172, 1989, § 2; Bill No. 106, 1990, § 1; Bill No. 61-95, § 1, 6-30-1995; Bill No. 8-96, § 4, 3-23-1996; Bill No. 49-96, § 15, 7-1-1996; Bill No. 51-99, § 1, 8-26-1999; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 3, 8-24-2006)

§ 33-2-903. INJUNCTION.

A person whose approval is required under this title may seek an injunction against a person who violates this title.

(Bill No. 82-06, § 4, 8-24-2006)

§ 33-2-904. CRIMINAL PENALTIES.

(a) *In general.* A person who violates this title, or a regulation, order, or permit condition adopted or issued under this title, is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$1,000 or both.

(b) *Separate offenses.* Each day a violation occurs is a separate offense.

(1988 Code, §§ 14-266, 26-462) (Bill No. 172, 1989, § 2; Bill No. 106, 1990, § 1; Bill No. 61-95, § 1, 6-30-1995; Bill No. 8-96, § 4, 3-23-1996; Bill No. 51-99, § 1, 8-26-1999; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 3, 8-24-2006)

§ 33-2-905. LIABILITY FOR EXPENSES CAUSED BY VIOLATION.

A person who violates this title, or a regulation adopted under this title, is liable for any costs incurred by the county as a result of the violation.

(1988 Code, § 26-463) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 2, 8-24-2006)

§ 33-2-906. ADDITIONAL REMEDIES.

(a) *In general.*

(1) The county may prosecute a civil action for appropriate legal relief, including damages and equitable relief, in addition to any other remedies available to the county as a result of a violation of this title, or regulations adopted or orders of the Director issued under this title.

(2) A remedy for a violation of this title may not be deemed exclusive, unless as a matter of law.

(b) *Administration of damages.* Damages recovered under this section shall be used for:

(1) Correction of the violation; or

(2) Administration of the Chesapeake Bay Critical Area Local Protection Program.

(1988 Code, § 26-464) (Bill No. 8-96, § 4, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 2, 8-24-2006)

