

WATER DEPENDENT FACILITIES

The following draft sections will be added to the Chesapeake Bay Critical Area Overlay District currently found in § 340-27 of the Zoning Code. § 340-28 addresses the requirements of COMAR 27.01.03.00 Water Dependent Facilities. Water dependent facilities are defined as:

A. Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 27.01.09.

B. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.

C. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision which provides community piers

[§ 340-28. Water Dependent Facilities.

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

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

C. **General policies.** The policies of the Town with regard to water-dependent facilities shall be to limit development activities in the Buffer to those that are water-dependent and provide by design and location criteria that these activities will have minimal individual and cumulative impacts on water quality and fish, wildlife, and plant habitat in the Critical Area.

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

(1) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:

(a) That they are water-dependent;

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

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

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

(e) That the facilities are consistent with an approved local plan as set forth below.

(2) New or expanded development activities may not be permitted in those portions of the Buffer which occur in Resource Conservation Areas. Applicants for water-dependent facilities in a Resource Conservation Area, other than those specifically permitted herein, must apply for a portion of the Town's growth allocation as set forth in this Chapter.

E. Evaluating plans for new and expanded water-dependent facilities. The Town shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The Town shall work with appropriate State and federal agencies to ensure compliance with applicable regulations. The following factors shall be considered when evaluating proposals for new or expanded water dependent facilities:

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

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

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

(4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;

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

- (6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area, generally;**
 - (7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:
 - (a) Backfill for permitted shore erosion protection measures;**
 - (b) Use in approved vegetated shore erosion projects;**
 - (c) Placement on previously approved channel maintenance spoil disposal areas; and**
 - (d) Beach nourishment.****
 - (8) That interference with the natural transport of sand will be minimized; and**
 - (9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in this article.**
- F. Industrial and port-related facilities. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas and are subject to the provisions set forth in this article.**
- G. Marinas and other commercial maritime facilities. New, expanded or redeveloped marinas may be permitted subject to the requirements set forth below:**
- (1) New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas.**
 - (2) New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except, expansion of existing marinas may be permitted within Resource Conservation Areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina.**
 - (3) New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.**

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

- (1) These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;**
- (2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;**
- (3) The facilities are associated with a residential development approved by the Town for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;**
- (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and**
- (5) If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.**

I. Number of slips or piers permitted in community piers. The number of slips or piers permitted at the facility shall be the lesser of (1) or (2) below:

- (1) One slip for each 50 feet of shoreline in the subdivision in the Intensely Developed and Limited Development Areas and one slip for each 300 feet of shoreline in the subdivision in the Resource Conservation Area; or**
- (2) A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:**

Table 19.I(2) Number of Slips Permitted

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

J. Public beaches and other public recreation or education areas. Public beaches or other public water-oriented recreation or education areas including, but not limited to,

publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed Areas. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:

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

K. Research areas. Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water-dependent structures or facilities associated with these project are, to the extent possible, located outside of the Buffer.

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

NOTE: § 340-29 addresses the requirements of COMAR 27.01.13.00. A “Nonwater-dependent project” includes:

- (1) A dwelling unit on a pier;**
- (2) A restaurant, a shop, an office, or any other commercial building or use on a pier;**
- (3) A temporary or permanent roof or covering on a pier;**
- (4) A pier used to support a nonwater-dependent use; and**

(5) A small-scale renewable energy system on a pier, including:

(a) A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;

(b) A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and

(c) A wind energy system and its wind turbine, tower, base, or other necessary equipment.

C. “Nonwater-dependent project” does not include:

(1) A fuel pump or other fuel-dispensing equipment on a pier;

(2) A sanitary sewage pump or other wastewater removal equipment on a pier; or

(3) An office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.

The “St. Michaels Critical Area Program” as referred to in B(3) and C(2) is not a separate document but is incorporated into Chapter 340, the Zoning Chapter. Subject to discussion with the Critical Area Commission staff, it appears that the Zoning Code will need to include “Nonwater-dependent structures on piers” as a listed permitted use with conditions as outlined herein if the Town wants to allow these types of uses and projects. Otherwise they will not be permitted.

§ 340-29. Nonwater-dependent structures on piers.

A. Except as provided in paragraphs B and C of this subsection and notwithstanding any other provisions of the law, the Town may not issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area.

B. The Town may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:

(1) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;

(2) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;

- (3) Is located in an Intensely Developed Area (IDA) and the project is authorized under a program amendment to Town's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Town's zoning, subdivision and other ordinances so as to be consistent with, or more restrictive than, the requirements required under this paragraph; or**
- (4) Is approved by the Planning Commission or the Board of Zoning Appeals after the Town program amendment under Subparagraph B(3) above, if applicable, has been approved;**
- (5) Allows or enhances public access to State wetlands;**
- (6) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;**
- (7) Has a height of up to eighteen (18) feet unless the project is located at a marina; and**
- (8) Is up to 1,000 square feet in total area; or**
 - [i] Is located on a pier that was in existence on or before December 31, 2012;**
 - [ii] Satisfies all of the requirements under Section B (1)-(7) of this paragraph; and**
 - [iii] If applicable, has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total area.**

C. The Town may issue a building permit or other approval to authorize a non-water dependent project for a small scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:

- (1) Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article;**
- (2) Is located in Critical Area and the project is authorized under a program amendment to the Town's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Town's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or**
- (3) Is approved by the Town's Planning Commission or Board of Zoning Appeals after the Town's amendment in accordance with Subparagraph B(3) above, if applicable, has been approved;**

(d) A building permit or other approval issued under the requirements in Subparagraph C above may include the installation or placement of:

- [i] A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than four (4) feet above or 18 inches below the deck of the pier; or one (1) foot beyond the length or width of the pier;**
- [ii] A solar energy system attached to a piling if there is only one solar panel per boat slip;**
- [iii] A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;**
- [iv] A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not: 1) extend beyond the length, width, or channelward encroachment of the pier; 2) deleteriously alter longshore drift; or 3) cause significant individual or cumulative thermal impacts to aquatic resources; or**
- [v] A wind energy system attached to a pier if there is only one wind energy system per pier for which: 1) the height from the deck of the pier to the blade extended at its highest point is up to 12 feet; 2) the rotor diameter of the wind turbine is up to four (4) feet; and 3) the setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its hig**