Article IV. Chesapeake Bay Critical Area Overlay District.

§ 340-14. Implementation of Critical Area Regulation.

~~A. The St. Michaels Critical Area Regulations. The St. Michaels Critical Area Regulations consist of the St. Michaels Critical Area Regulations text and the Official Critical Area Map(s). Related provisions may be found in Chapter 290 (Subdivision of Land), Chapter 340 (Zoning) and Chapter 110 (Site Plan Review) of the Code of the Town of St. Michaels.~~

[A. The Town of St. Michaels adopted its Critical Area Program on May 4, 1994. Subsequently the Town's Critical Area Program was incorporated into and is made part of St. Michaels Chapter 340 (Zoning) and the Official Critical Area Map(s). Related provisions may be found in Chapter 290 (Subdivision of Land), and Chapter 110 (Site Plan Review) of the Code of the Town of St. Michaels.]

B. Regulated activities and applicability. Any applicant for a permit or license to pursue activities within the Critical Area, including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or subsurface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the Town's duly appointed local approving authority after review to determine compliance with the St. Michaels Critical Area Regulations.

C. Critical Area Overlay District Map.

(1) The Official Critical Area Overlay District Map is maintained in force as part of the Official Zoning Map for St. Michaels. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:

(a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetland maps, and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and

(b) All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.

(2) Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:

(a) Intensely Developed Area (IDA).

(b) Limited Development Area (LDA).

(c) Resource Conservation Area (RCA).

(3) The Critical Area Overlay District Map may be amended by the Town Commissioners **[as providing in § *]** and in compliance with amendment provisions in this chapter, the Maryland Critical Area Law, and COMAR Title 27.

E. General requirements.

(1) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this chapter. **See § *.

(2) Reasonable accommodations for the needs of disabled citizens; see **§ 340-78.

[(3)New solid or hazardous waste collection or disposal facilities, or sanitary landfills or rubble fills, including transfer stations, may not be permitted in the Critical Area unless no environmentally preferable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem. Existing permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

(4) Development and redevelopment shall be subject to the water-dependent facilities requirements of this Ordinance.

(5) Utility transmission facilities. Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:

(a) The facilities are located in Intensely Developed Areas; and

(b) Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

(c) These provisions do not include power plants.

(6) Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized, the design, construction and maintenance shall:

(a) Provide maximum erosion protection;

(b) Minimize negative impacts on wildlife, aquatic life and their habitats; and

(c) Maintain hydrologic processes and water quality.

(7) All development activities that must cross or affect streams shall be designed to:

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

(b) Retain tree canopy so as to maintain stream water temperature within normal variation;

(c) Provide a natural substrate for stream beds; and

(d) Minimize adverse water quality and quantity impacts of stormwater.]

F. Activities not permitted. Certain new development activities or facilities, or the expansion of certain existing facilities, because of their intrinsic nature or because of their potential for adversely affecting habitat and water quality; may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem. These include:

(a) Solid or hazardous waste collection or disposal facilities, including transfer stations; or

(b) Sanitary landfills.

G. Continuation of existing permitted facilities. Existing, permitted facilities of the type noted in paragraph F. above shall be subject to the standards and requirements of the Department of the Environment, under COMAR Title 26.]

§ 340-15. Intensely Developed Areas (IDA).

[A. Mapping Standards.

(1) Areas where residential, commercial, institutional, and/or industrial developed uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features:

(a) Housing density equal to or greater than four dwelling units per acre;

(b) Industrial, institutional or commercial uses are concentrated in the area; or

(c) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;

(2) In addition, these features shall be concentrated in an area of at least 20 adjacent acres or that entire upland portion of the Critical Area within the boundary of a St. Michaels unless:

(a) The Commission has approved an alternative standard for designation of an intensely developed area; and

(b) The area is part of a growth allocation approved by the Commission.

B. Activities authorized only in IDA. The following uses may be permitted in the IDA only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:

(1) Non-maritime heavy industry;

(2) Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.

C. General policies. The Critical Area article contained in this Chapter hereby incorporates the following policies for Intensely Developed Areas. New or expanded development or redevelopment shall take place in such a way as to:

(1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;

(2) Accommodate additional development of the type and intensity designated by the Town in this article provided that water quality is not impaired;

(3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas under this Program;

(4) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat Protection Area Chapters of this ordinance, to the extent possible within Intensely Developed Areas; and

(5) Encourage the use of retrofitting measures to address existing stormwater management problems.]

D. Development standards. For all development activities in the Intensely Developed Areas (IDA), the applicant shall ~~prepare an environmental assessment and~~ identify any environmental or natural feature described below and meet all of the following standards:

NOTE: The requirement for an environmental assessment seems unnecessary. Does the Town require EIA?

(1) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation;

(2) All roads, bridges, and utilities are prohibited in a Habitat Protection Area, unless no feasible alternative exists. If a road, bridge, or utility is authorized, the design, construction and maintenance shall:

(a) Provide maximum erosion protection;

(b) Minimize negative impact on wildlife, aquatic life and their habitats; and

(c) Maintain hydrologic process and water quality.

(3) All development activities that must cross or affect streams shall be designed to:

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

(b) Retain tree canopy so as to maintain stream water temperature within normal variation;

(c) Provide a natural substrate for stream beds; and

(d) Minimize adverse water quality and quantity impacts of stormwater.

~~(4) All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10% below the level of pollution on the site prior to development or redevelopment as provided in Critical Area 10% Rule Guidance Manual – Fall 2003, and as may be subsequently amended.~~

[(4)Stormwater shall be addressed in accordance with the following provisions:

(a) All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to development or redevelopment as provided in Critical Area 10% Rule Guidance Manual – Fall 2003 and as may be subsequently amended.

(b) Stormwater management to meet 10% requirements shall be provided onsite to the maximum extent practicable.

(c) Where the 10% requirement cannot be met onsite, the following options are available:

[I] Fee-in-lieu for 10% requirements may be provided at $35,000 per pound of phosphorus removed.

[II] Other offsets as described in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance –Fall 2003 and as may be subsequently amended. Offsets must remove a phosphorus load equal to or greater than the remaining 10% requirement.

(d) The Town shall track and report annually to the Critical Area Commission all stormwater fees-in-lieu collected and expended, as well as any authorized stormwater offsets.

(5) Areas of public access to the shoreline, such as footpaths, scenic drives and other public recreational facilities, should be maintained and, if possible, increased within Intensely Developed Areas.

(6) Ports and industries that use water for transportation and derive economic benefits from shore access shall be located near existing port facilities. The Town may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or Town and is consistent with the provisions of the Water Dependent Facilities section of this Chapter and other State and Federal regulations.

(7) To the extent practicable, future development in the Critical Area shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.

(8) When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, the following shall be required:

(a) Participation in programs established by the Town for the enhancement of forest and developed woodland resources, such as programs for urban forestry that involve street tree plantings, gardens, landscaping, and open land buffer plantings;

(b) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and

(c) Development activities shall address the protection of existing forests and developed woodlands identified as Habitat Protection Areas in this Chapter.]

§ 340-16. Administrative Enforcement.

[A. Regulated activities and applicability. The Zoning Inspector shall review a permit or license for a development or redevelopment activity in the Critical Area for compliance with this Chapter prior to issuance of that permit or license.

B. Town, County and State Development Projects.

(1) Applicability. For all development in the Critical Area resulting from any Town, County or State agency, the Town shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

(2) Procedures. The sponsoring agency of any development project within the St. Michaels' Critical Area shall work with the Zoning Inspector to identify the appropriate procedures for determining compliance with this article.

(a) If the project meets the provisions of this article and is locally significant, the Zoning Inspector shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the Critical Area Commission per the requirements of COMAR 27.02.02.

(b) If the project does not meet the provisions of this article, the Zoning Inspector shall seek a conditional approval by the Critical Area Commission per the requirements of COMAR 27.02.06.

(c) The Town shall submit information as required in the Critical Area Commission's Local Project Submittal Instructions and Application Checklist.

(3) New major development by a Town, State or County agency shall, to the extent practical be located outside the Critical Area. If the siting of the development in the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area, the Zoning Inspector shall request approval from the Critical Area Commission per the Commission's Local Project Submittal Instructions and Application Checklist and provide the following information:

(a) Findings and supporting documentation showing the extent to which the project or development is consistent with the provisions and requirements of this article; and

(b) An evaluation of the effects of the project on the Town's Critical Area.

(4) Notice requirements for projects reviewed and approved by the Critical Area Commission. Public notice is required for all development projects that qualify

under COMAR 27.03.01.03. Public notice shall be the responsibility of the Town, State or County agency proposing the project and the agency shall as part of its submittal to the Critical Area Commission, provide evidence that:

(a) Public notice was published for one business day in a newspaper of general circulation in the geographic area where the proposed development would occur, including the following information;

(I) The identity of the sponsoring Town, State or County agency;

[II] A description of the proposed development;

[III] The street address of the affected land and a statement that its location is in the Critical Area; and

[IV]The name and contact information of the person within the sponsoring Town, State or County agency designated to receive public comment, including a fax number and email address, and the deadline for receipt of public comment.

(b) At least fourteen (14) days were provided for public comment; and

(c) The property proposed for development was posted in accordance with the provisions for posting in Section (7).

(5) In addition to the public notice required in Section 4(a), the County may provide for public notice by electronic posting on its website, on the website of a newspaper of general circulation in the geographic area where the proposed development would occur, or by notification to a neighborhood association or residents of a particular geographic area.

(6) Evidence of public notice to be submitted to the Commission shall include the following documentation:

(a) The name of the newspaper and the date on which the notice was published;

(b) A copy of the public notice as it was published in the newspaper; and

(c) A copy of each written comment received in response to the public notice.

(7) Posting requirements for projects reviewed and approved by the Critical Area Commission. For projects that qualify for public notice, the sponsoring agency shall ensure that a sign is posted on the property. Posting shall meet the following requirements:

(a) Shall consist of at least one sign that is a minimum of 30 inches by 40 inches in size;

(2) The sign clearly:

(a) Identifies the sponsoring agency;

(b) Describes the proposed development;

(c) Provides the street address of the affected land and states that it is located in the Critical Area; and

(d) States the name and contact information of the person within the sponsoring agency designated to receive public comment, including a fax number and email address, and the deadline for receipt of public comment.

(e) On a date not later than the date on which the notice is published in the newspaper, the sign shall be posted in a conspicuous location on the development site and remain there until after the critical Area Commission has voted on the development; and

(f) For development that extends more than 1,000 linear feet in road frontage, at least one sign shall be posted at each end of the affected land on which the development is proposed.

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

(1) The application shall be accompanied by a completed "Project Notification Application" form downloaded from the Commission's website.

(2) The Town may not process an application that has been sent to the Commission for notification until it has received notice of receipt by the Commission.

(3) Any action by the Town in violation of these procedures shall be void.

D. Responsible agencies. All applicable provisions of this Chapter shall be implemented and enforced by the Zoning Inspector.

(1) Should an infraction of the provisions contained in any law, regulation, or plan related to this Chapter be brought to the attention of any Town official said official shall contact the Zoning Inspector.

E. Consistency. The Critical Area provisions of this Chapter, in accordance with the Critical Area Act and Criteria supersede any inconsistent Law, Chapter or Plan of the

St. Michaels Code. In the case of conflicting provisions, the stricter provisions shall apply.

F. Violations.

(1) No person shall violate any provision of this article. Each violation that occurs and each calendar day that a violation continues shall be a separate offense.

(2) Each person who violates a provision of this article shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.

(3) Non-compliance with any permit or order issued by the Town related to the Critical Area shall be a violation of this article and shall be enforced as provided herein.

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

H. Required enforcement action. In the case of violations of this article, the Town shall take enforcement action including:

(1) Assess administrative civil penalties as necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, reviewing mitigation plans, and ensuring compliance with these plans;

(2) Issue abatement, restoration, and mitigation orders as necessary to:

(a) Stop unauthorized activity;

(b) Restore and stabilize the site to its condition prior to the violation, or to a condition that provides the same water quality and habitat benefits; and

(c) Require the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation.

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

access to or entering the property. If entry is denied, the Town may seek an injunction to enter the property to pursue an enforcement action.

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

(1) Before imposing any civil penalty, the person(s) believed to have violated this Chapter shall receive: 1) written notice of the alleged violation(s), including which, if any, are continuing violations; and 2) an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, the Town shall consider:

(a) The gravity of the violation;

(b) The presence or absence of good faith of the violator;

(c) Any willfulness or negligence involved in the violation including a history of prior violations;

(d) The environmental impact of the violation; and

(e) The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to the Town for performing, supervising, or rendering assistance to the restoration and mitigation.

(2) Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.

(3) The person responsible for any continuing violation shall promptly provide the Town with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Town inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until the Town receives such written notice and verifies compliance by inspection or otherwise.

(4) Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for payment to the Town for all damages, costs, and other expenses caused by the violation.

(5) Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Chapter.

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

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

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

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

J. Permits pursuant to a violation. The Town may not issue any permit, approval, variance, or special exception, unless the person seeking the permit has:

(1) Fully paid all administrative, civil, or criminal penalties as set forth in Section I. above;

(2) Prepared a restoration or mitigation plan, approved by the Town, to abate impacts to water quality or natural resources due to the violation;

(3) Performed the abatement measures in the approved plan in accordance with the Town regulations; and

(4) Unless an extension of time is approved by the Town because of adverse planting conditions, within ninety (90) days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

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

(1) An appeal is made by filing a written notice of appeal with the Board of Zoning Appeals in accordance with the provisions in the § * and accompanied by the appropriate filing fee.

(2) An appeal must be filed within thirty (30) days after the date of the decision or order being appealed; and

(3) An appeal stays all actions by the Town seeking enforcement or compliance with the order or decisions being appealed, unless the Zoning Inspector certifies to the Board of Zoning Appeals that (because of facts stated in the certificate) such stay will cause imminent peril to life or property. In such a case, action by the Town shall not be stayed except by order of the Board of Zoning Appeals or a Court, upon application of the party seeking the stay.]

§ 340-17. Limited Development Areas (LDA).

[A. Mapping Standards.

(1) Limited Development Areas are those areas that are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. The quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:

(a) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre;

(b) Areas not dominated by agricultural, wetland, forest, barren land, open water, or open space;

(c) Areas meeting the conditions of Intensely Developed Area but comprising less than 20 acres;

(d) Areas having public sewer or public water, or both.

B. General policies. St. Michael's hereby incorporates the following policies for Limited Development Areas. New or expanded development or redevelopment shall take place in such a way as to:

(1) Maintain, or, if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;

(2) Maintain, to the extent practicable, existing areas of natural habitat; and

(3) Accommodate additional low or moderate intensity development if:

(a) This development conforms to the water quality and habitat protection criteria in Section C. below; and

(b) The overall intensity of development within the Limited Development Area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.]

C. Development standards. For all development activities in the Limited Development Areas, the applicant shall ~~prepare an environmental assessment and~~ identify any environmental or natural feature described below, and shall meet all of the following standards:

(1) Development and redevelopment shall be subject to the water-dependent facilities requirements of this chapter;

(2) Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge, or utility is authorized, the design, construction and maintenance shall:

(a) Provide maximum erosion protection;

(b) Minimize negative impacts on wildlife, aquatic life and their habitats; and

(c) Maintain hydrologic processes and water quality. (See Chapter 154 of the Town Code.)

NOTE: Why reference the Chapter 154 Sediment and Erosion Control?

(3) All development activities that must cross or affect streams shall be designed to:

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

(b) Retain tree canopy so as to maintain stream water temperature within normal variation;

(c) Provide a natural substrate for stream beds; and

(d) Minimize adverse water quality and quantity impacts of stormwater.

(4) If there is a wildlife corridor system identified by the Wildlife Heritage Service on or near the site which can be enhanced by additional plantings, the applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with off-site habitats. The wildlife corridor system may include Habitat Protection Areas identified in this chapter. St. Michaels shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town Attorney through which the corridor is preserved by public or private groups, including homeowners' associations, nature trusts and other organizations, if present.

(5) Development on slopes 15% or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.

(6) Except as otherwise provided in this subsection, for stormwater runoff, lot coverage is limited to 15% of a lot or parcel or any portions of a lot or parcel that are designated Limited Development Area.

(a) If a parcel or lot of 1/2 acre or less in size existed on or before December 1, 1985, then lot coverage is limited to 25% of the parcel or lot.

(b) If a parcel or lot greater than 1/2 acre and less than one (1) acre in size existed on or before December 1, 1985, then lot coverage is limited to 15% of the parcel or lot.

(c) If an individual lot one (1) acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed 15% of the individual lot; however the total lot coverage for the entire subdivision may not exceed 15%.

(d) Lot coverage limits provided in Subsection A(6)(a) and (b) above may be exceeded upon findings by the Planning Commission or its designee that the following conditions exist:

[1] The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008, may be considered legally nonconforming for the purposes of lot coverage requirements.

[2] Lot coverage associated with new development activities on the property have been minimized;

[3] For a lot or parcel 1/2 acre or less in size, total lot coverage does not exceed the lot coverage limits in Subsection A(6)(a) by more than 25% or five hundred (500) square feet, whichever is greater;

[4] For a lot or parcel greater than 1/2 acre and less than one (1) acre in size, total lot coverage does not exceed the lot coverage limits in Subsection A(6)(b) or 5,445 square feet, whichever is greater;

[5] The following table summarizes the limits set forth in Subsection A(6)(d)[1] through [4] above:

Table 340-27.3A(6)(d)[5]

Lot/Parcel Size (square feet)	Lot Coverage Limit
0 – 8,000	25% of parcel plus 500 square feet
8,001 – 21,780	31.25% of parcel
21,780 – 36,300	5,445 square feet
36,301or more	15% of parcel

(e) If the Planning Commission or its designee makes the findings set forth in Subsection A(6)(d) above and authorizes an applicant to use the lot coverage limits set forth in that subsection, the applicant shall:

[1] Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and

[2] Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.

[3] If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to St. Michaels in lieu of performing the on-site mitigation. The amount of the fee shall be $1.50 per square foot of the required mitigation.

(7) The alteration of forest and developed woodlands shall be restricted and shall be mitigated as follows:

(a) The total acreage in forest and developed woodlands within St. Michaels in the Critical Area shall be maintained or preferably increased.

(b) All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis.

(c) If an applicant is authorized to clear more than 20% of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the areal extent of the forest or developed woodlands cleared, including the first 20% of the forest or developed woodlands cleared.

(d) An applicant may not clear more than 30% of a forest or developed woodlands on a lot or parcel unless the Board of **[Zoning]** Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of three (3) times the areal extent of the forest or developed woodlands cleared.

(e) If an applicant is authorized to clear any percentage of forest or developed woodlands associated with a subdivision or site plan approval, the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by St. Michaels.

(8) The following are required for forest or developed woodlands clearing as required in Subsection A(7) above:

(a) The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by St. Michaels shall be posted to assure satisfactory replacement as required in Subsection A(7) above and plant survival.

(b) A permit issued by St. Michaels before forest or developed woodlands is cleared. Clearing forests and developed woodlands before obtaining a St. Michaels permit is a violation; any forests and developed woodlands cleared before obtaining a St. Michaels permit shall be replanted at three (3) times the areal extent of the cleared forest or developed woodlands.

(c) Clearing of forest or developed woodlands that exceed the maximum area allowed in Subsection A(7) above shall be replanted at three (3) times the areal extent of the cleared forest or developed woodlands.

(d) If the areal extent of the site limits the application of the reforestation standards in this section, the applicant may be allowed to plant off site at the required ratio or pay a fee in lieu of planting at a rate of $1.50 per square foot.

(9) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodlands cover of at least 15%.

NOTE: How accomplished?

(a) The applicant shall designate, subject to the approval of the Town of St. Michaels, a new forest area on a part of the site not forested; and

(b) The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the St. Michaels Town Attorney.

§ 340-18. Resource Conservation Areas (RCA).

A. Development standards. For all development activities and resource utilization in the Resource Conservation Areas, the applicant shall ~~prepare an environmental assessment and~~ meet all of the following standards:

(1) Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area provisions of this chapter.

(2) Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per twenty (20) acres.

(3) Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in this chapter.

(4) Nothing in this section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members, provided that no such conveyance will result in a density greater than one (1) dwelling unit per twenty (20) acres.

§ 340-19. Land use and density.

A. Permitted uses. Permitted uses in the Critical Area shall be limited to those uses allowed by the underlying zoning classification as set out in **[§ **]** ~~Table 4.1 and further identified as 340 Attachment 5 and 340 Attachment 6 (Notes to Table of General Land Uses)~~ **[which may include the following:**

(1) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the 1-per-20 acre density, shall be allowed in RCAs.

(2) Expansion of existing industrial facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in § * and may require growth allocation.

(3) Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the Town's growth allocation provisions. New commercial, industrial, and institutional uses shall not be permitted

in Resource Conservation Areas, except as provided for in the Town's growth allocation provisions or as listed below:

(a) An occupation as an accessory use on a residential property and as provided for in this Chapter;

(b) A golf course developed in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.;

(c) A cemetery that is an accessory use to an existing church, provided lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;

(d) A bed and breakfast facility located in an existing residential structure, and where meals are prepared only for guests staying at the facility;

(e) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children cared for at one time;

(g) A group home or assisted living facility with no more than eight residents.]

B. Maximum permitted density.

(1) The maximum permitted density in the St. Michaels Critical Area shall be as shown in Table 340-*.5B(1).

(2) Table 340-*.5B(1).

Table 340-*B(1)
Maximum Residential Density (dwelling units per acre)
Land Use Management Designation

IDA	LDA	RCA
Density permitted by underlying zoning	Density permitted by underlying zoning	One (1) dwelling unit per twenty (20) acres

(3) Calculation of one-in-twenty-acre density of development. In calculating the one-in-twenty-acre density of development that is permitted on a parcel located within the Resource Conservation Area, St. Michaels:

(a) Shall count each dwelling unit.

(b) May permit the area of any private wetlands located on the property to be included under the following conditions:

[1] The density of development on the upland portion of the parcel may not exceed one (1) dwelling unit per eight (8) acres; and

[2] The area of private wetlands shall be estimated on the basis of vegetative information as designated on the state wetlands maps or by private survey approved by St. Michaels, the Critical Area Commission, and the Maryland Department of the Environment.

NOTE: Growth allocation moved to Floating Zone section.

[(4)One additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the Resource Conservation Area, provided the additional dwelling unit is served by the same sewage disposal system as the primary dwelling unit and:

(a) Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed area; or

(b) Is located within the primary dwelling unit and does not increase the amount of lot coverage already attributed to the primary dwelling unit.

(3) An additional dwelling unit meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling unit; and

(4) The provisions of this section may not be construed to authorize the granting of a variance, unless the variance is granted in accordance with the variance provisions contained herein.]

~~27.6. Growth allocation.~~

~~A. Description. [Amended 1-28-2015 by Ord. No. 457]~~

~~(1) "Growth allocation" means the number of acres of land in the Chesapeake Bay Critical Area that the Town may use to create new Intensely Developed and new Limited Development Areas. The area of Town within the Critical Area comprises about 458 acres or 64.5%. Within the Critical Area, 276 acres of land were classified as IDA and 66 acres were classified as LDA. One hundred sixteen acres were classified as RCA. The purpose of growth allocation is to permit expansion and/or intensification of the originally mapped land use management districts. This is accomplished through the conversion of an existing district (RCA or LDA) to a more intense district (LDA or IDA). However, the expansion and/or intensification is subject to an overall acreage limitation and to the guidelines, application requirements, process, and deduction methodology outlined below.~~

(2) The State Critical Area Law permits the County to allocate 5% of its RCA for use for future growth as either IDA or LDA. Of this 5%, 245 acres were given to the Town of St. Michaels. As of January 23, 2013, 206.44 acres remain for conversion.

B. Guidelines. Growth allocation is a finite resource and must be managed to address the most meritorious current needs of the Town and conserved to meet the future needs of the Town. Growth allocation (GA) shall only be permitted on sites or portions of sites which have been approved as amendments to the St. Michaels' Critical Area program by the Town Commissioners and the Critical Area Commission. When locating new Intensely Developed or Limited Development Areas, the Town shall apply the following guidelines:

(1) Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area.

(2) Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area.

(3) New Intensely Developed Areas (IDA) shall be at least 20 acres in size unless:

(a) They are contiguous to an existing IDA or LDA; or

(b) They are a grandfathered commercial or industrial use which existed as of the date of the original Town program approval. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.

(4) Locate a new Limited Development Area or an Intensely Developed Area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality.

(5) A new Intensely Developed Area should be located where it will minimize impacts to the defined land uses of the Resource Conservation Area (§ 340-27.4).

(6) Locate a new Intensely Developed Area or a Limited Development Area, served by Town water and sewer, in the Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters. All applicants not proposing a three-hundred-foot Buffer setback shall propose alternatives to the three-hundred-foot setback Buffer that demonstrates benefits to increased water quality and wildlife habitat on the site.

(7) For growth allocation areas proposed in the RCA, on private well and septic, a three-hundred-foot naturally vegetated setback Buffer shall be required.

(8) New Intensely Developed or Limited Development Areas shall conform to the Town program for such areas, shall be so designated on the Town Zoning Map and shall

constitute an amendment to the Town program subject to review and approval by the Town Planning Commission, the Town Commissioners, and the Critical Area Commission.

(9) In addition to meeting the minimum requirements of the Critical Area regulations, the project design shall enhance the habitat value or improve water quality in the area. For example, afforestation may exceed the fifteen-percent requirement, or best management practices for stormwater management may be installed on portions of the site to remain in agricultural use.

(10) For residential development, a community pier shall be strongly encouraged rather than individual private piers. See Table 4.1, Table of General Land Uses, and 340 Attachment 6, Notes to Table of General Land Uses.

(11) Open space requirements shall be met as specified in this chapter, subdivision regulations and/or through the process of concept plan review. Naturally vegetated Buffer is strongly encouraged.

C. Application.

(1) It is the intent of the Town of St. Michaels to award growth allocation based on specific projects.

(a) Therefore an application for growth allocation shall include the following submissions:

[1] The subdivision history of parcels designated as RCA. The date of December 1, 1985, is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis;

[2] Concept plans as defined in this chapter;

[3] Appropriate environmental reports;

[4] A schedule of project development. If the development is to be in sections or phases, the request shall include the schedule on which the project sections or phases will be developed; and

[5] Such other information and documentation as the Planning Commission or the Town Commissioners may require.

(b) Ten copies of the application for growth allocation and all required submissions shall be submitted to the Town Commissioners.

(2) Multiple applications:

(a) With the approval of the Town Commissioners, an applicant may withdraw an application for the award of growth allocation; however, such withdrawal shall not relieve the applicant from the duty to pay the fees and costs incurred by the Town to the time of such withdrawal. Within twelve (12) months after the withdrawal of an application for the award of growth allocation, no subsequent application shall be filed with the Town by an applicant, or accepted by the Town for processing for the award of growth allocation, involving some or all of the same land which is the subject of such withdrawn application, except that the Town Commissioners may, in their sole discretion, upon such conditions as they deem in the best interest of the Town, by resolution, specify that the said time limitation shall not apply to a particular subsequent application and allow the filing and processing of such subsequent application. Under no circumstances shall there be more than one application for growth allocation relating to some or all of the same land being actively processed by the Town or on appeal at the same time.

(b) An application for the award of growth allocation shall not be filed with the Town by an applicant, or accepted for filing by the Town, if that application is for the same land which is in whole or in part the subject of a previously filed application that is a pending application for the award of growth allocation filed with the Town, except that the Town Commissioners may, in their sole discretion, upon such conditions as they deem in the best interest of the Town, by resolution, permit the filing of an application for the award of growth allocation for the same land which is in whole or in part the subject of a previously filed application that is pending if the applicant agrees to stay the previously filed pending application until a final decision is rendered on the subsequent application.

[1] If the subsequently filed application for growth allocation is granted, the previously filed application that was stayed shall be automatically deemed withdrawn.

[2] If the subsequently filed application is denied by a final decision, thereafter, upon written request by the applicant, the previously filed and stayed application shall be activated for processing by the Town.

[3] Under no circumstances shall there be more than one application for growth allocation relating to some or all of the same land being actively processed by the Town or on appeal at the same time.

(c) Within twelve (12) months after the date of a final decision on the merits regarding an application for the award of growth allocation, no subsequent application for the award of growth allocation shall be filed with the Town by an applicant, or accepted by the Town for processing for the award of growth allocation, involving some or all

of the same land which was the subject of such previous final decision. However, the time limitation imposed by this Subsection C(2) shall not apply to prohibit or delay the processing of a previously filed application that has been reactivated pursuant to Subsection C(2)(b)[2].

D. Process.

(1) All applications will be reviewed by the Planning Commission for consistency with the Town of St. Michaels' Comprehensive Plan, Critical Area requirements as set out in Chapter 340 (Zoning) of the Code of St. Michaels and, where applicable, the Subdivision Ordinance. [1] The Planning Commission shall make a determination of consistency and make additional recommendations concerning conditions of approval.

[1] Editor's Note: See Ch. 290, Subdivision of Land.

(2) After revising the site plan or plat based on the Planning Commission review, the developer shall submit a preliminary site plan or plat and such other information as the Planning Commission may request.

(3) Within sixty (60) days after the submission by the developer of the preliminary site plan or plat to the Planning Commission, or within such extension of time to which the applicant may agree, the Planning Commission shall begin a public hearing on all submissions by the developer relating to the request for growth allocation. Submissions shall include the following:

(a) Presentation of projects by the developer/applicant;

(b) Staff and/or consultant review comments; and

(c) Public comments.

(4) Within ninety (90) days after the Planning Commission begins its public hearing, or within such extension of time to which the applicant may agree, the Planning Commission shall then make its final recommendation, and thereafter forward the application and recommendation to the Town Commissioners for their review and consideration of approval.

(5) Within sixty (60) days, but not sooner than fifteen (15) days, after receiving the final recommendation of the Planning Commission, the Town Commissioners shall begin a public hearing on the application. The hearing shall include the following:

(a) Presentation of the project by the developer/applicant;

(b) Comments by Town staff and/or consultants;

(c) Planning Commission recommendations;

(d) Public comments; and

(e) Such other relevant information and documentation as the Commissioners may require or elect to receive.

(6) A complete record of the hearing shall be kept. Within ninety (90) days after beginning their public hearing, the Town Commissioners shall make the final decision on awarding growth allocation, and may grant the request for the award of growth allocation, subject to the final review and decision of the Chesapeake Bay Critical Area Commission. A complete record of the votes of all members of the Town Commissioners shall be kept.

(a) In considering an application for award of growth allocation, the Town Commissioners shall make findings of fact with regard to the proposed development of the land for which the award of growth allocation is sought, including but not limited to the following matters:

[1] Change in the Town's population;

[2] Availability of public facilities;

[3] Effect on present and future transportation patterns;

[4] Compatibility with existing and proposed development for the area;

[5] The recommendation of the Planning Commission; and

[6] Compatibility with the Town's Comprehensive Plan.

(b) The Town Commission may award, but shall not be required to award, growth allocation based upon a finding that all express criteria for the award of growth allocation will be satisfied.

(c) The Town Commissioners may also establish conditions of approval to accompany the growth allocation, including a time limitation for completion of the proposed project.

(7) Upon approval of the growth allocation request by the Town Commissioners, the Town shall send a request to the Critical Area Commission to use a portion of its growth allocation for the project. When making such submittal, the request shall state how the Town has applied the preceding guidelines. The Critical Area Commission shall ensure that the guidelines set forth in this section have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all criteria of the Critical Area Commission. The request shall be accompanied by

pertinent plans and environmental reports and/or studies. Upon receipt of the request from the Town, the Critical Area Commission shall notify the Town regarding the processing of the request as an amendment or refinement to the Town's Critical Area Program. Refinements shall be acted on within thirty (30) days of the Commission's notification to the Town of a complete submission. Amendments shall be acted on within ninety (90) days of the Commission's notification to the Town of a complete submission.

(8) Following approval of the growth allocation request by the Critical Area Commission, the Town shall amend the Critical Area Maps within one hundred twenty (120) days, and a copy of the amended map shall be provided to the Commission and to the County.

(9) Following approval of the growth allocation request by the Critical Area Commission, the Town Commissioners shall implement the change, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.

(10) Prior to approving the final site plan or subdivision plat, the Planning Commission or its designee shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.

(11) Final subdivision plats and site plans shall be processed in accordance with the requirements of this chapter and/or the Town's Subdivision Regulations. (See Chapter 290.)

(12) Any of the time limitations specified in this Subsection D for processing the application may be extended by a majority of the Planning Commission or the Town Commissioners, as the case may be, with the written consent of the applicant.

E. Conditions of approval.

(1) Project approval and award of growth allocation shall be limited to a project, or phase(s) of a project, that can be completed within two years after approval of the project or phase(s) of a project, unless the Town Commissioners, in their sole discretion:

(a) Specify in their written decision to grant growth allocation for a longer period of time after approval within which the project or phase(s) is required to be completed; or

(b) Impose conditions for progress of the approved project or phase(s) thereof that will automatically allow the growth allocation granted for such project or phase(s) thereof to continue in effect indefinitely, provided that such conditions are met.

(2) If, upon the expiration of two (2) years, or upon the expiration of such longer period of time as may have been specified upon the award of growth allocation, or upon the failure of such condition that may have been imposed upon the award of growth allocation, the project is not completed, the growth allocation awarded for the project or area of the

project that remains incomplete shall be automatically revoked, unless before such automatic revocation the owner of the project for which growth allocation was awarded requests an extension in writing.

(a) The filing of such written request for extension of time to complete the project shall automatically extend such time for the shorter period of 180 days following the original expiration date of the award of growth allocation, or until the Town Commissioners issue a written denial of the request for extension of time, which denial may be issued upon a vote thereon at a public meeting, without a hearing.

(b) Before the expiration of the time within which the project is otherwise required to be completed, as such time may have been automatically extended in accord with Subsection E(2), the Town Commissioners, upon such timely written request for extension, in their sole discretion, may by public vote grant an extension of the time limit within which the project is required to be completed.

(c) For the purpose of this Subsection E, a project or phase(s) thereof shall be considered completed when the construction or installation of all improvements relating to governmental infrastructure (including roads, curbs, sidewalks, streetlights, water supply facilities, stormwater management, and sewage collection facilities) and public utility infrastructure (including electricity distribution facilities, and telephone, cable television and internet communication facilities), as required by or pursuant to applicable law or governmental regulation, have been completed to each lot in the project or phase(s) thereof. The Town Commissioners shall have the sole power to make the determination as to whether a project or a phase is "completed," as that term is defined in this subsection.

(3) If a project or phase(s) thereof, for which growth allocation has been awarded, is not approved within eighteen (18) months after the date on which growth allocation was awarded thereof, then all of the growth allocation awarded for such project or phase(s) thereof shall be automatically revoked and returned to the Town's allotment. For the purpose of this subsection, a project shall be considered "approved" when all governmental permits and approvals that are required by all applicable land use laws and regulations have been issued for such project or phase(s).

F. Deduction methodology. The Town shall calculate the number of acres of growth allocation used for each application based on the following deduction criteria:

(1) Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where development of the parcel requires the use of growth allocation, shall result in the acreage of the entire parcel not in tidal wetlands counting against the growth allocation, unless the development concept outlined in Subsection F(2) below is used.

(2) In order to allow some flexibility in the use of growth allocation when development is only proposed on a portion of the property, the following methodology may be used. On a parcel proposed for the use of growth allocation, a single development envelope may be specified, and the acreage of the development envelope rather than the acreage of the entire parcel shall be deducted from the Town's growth allocation if the development envelope meets the following criteria:

(a) The development envelope shall include individually owned lots, required Buffers, impervious surfaces, roads, utilities, stormwater management areas and structures, on-site sewage disposal areas, any acres subject to human use, such as active recreation acres, and any additional acreage needed to meet the development requirements of the criteria. The required Buffers refer to the minimum one-hundred-foot Buffer and the twenty-five-foot nontidal wetlands Buffer.

(b) Only one development envelope shall be established per parcel of land.

(c) If a development envelope is proposed in the RCA, a minimum of twenty (20) acres must remain outside of the development envelope or the acreage of the entire parcel must be deducted. If the original parcel in the RCA is less than twenty (20) acres, then the acreage of the entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by easement) adjacent and contiguous to a residue that is less than twenty (20) acres, that will result in a minimum twenty-acre residue, then the entire parcel does not have to be deducted.

(d) The minimum twenty-acre residue outside of the development envelope may be developed at an RCA density unless some type of permanent protection exists that restricts development.

(3) For growth allocation areas proposed in the RCA, on Town sewer, where a three-hundred-foot (300) setback is provided, the three-hundred-foot (300) setback acreage shall not be deducted. Naturally vegetated Buffer is strongly encouraged and where it is provided it shall not be deducted even if the Buffer does not meet the twenty-acre minimum requirement. All applicants not proposing a three-hundred-foot Buffer shall propose alternatives to the three-hundred-foot Buffer that demonstrate benefits to increased water quality and wildlife habitat on the site.

(4) For growth allocation areas proposed in the RCA, on private well and septic, with a three-hundred-foot naturally vegetated setback, the three-hundred-foot (300) setback is required and shall not be deducted, even if the Buffer does not meet the twenty-acre minimum requirement.

G. Applications to amend a growth allocation.

(1) Conditions for filing a growth allocation amendment application. No application to amend an approved growth allocation (hereafter "growth allocation amendment application") shall be submitted to or accepted or considered by the Town unless each of the following conditions is satisfied:

(a) The growth allocation amendment application shall relate to an approved growth allocation.

(b) The person submitting a growth allocation amendment application (the "applicant") shall be the current legal or equitable owner of the land that is the subject of the approved growth allocation.

(c) The approved growth allocation to which the growth allocation amendment application relates shall not have been rendered invalid by a final judicial decision.

(d) The growth allocation amendment application shall be based on a concept plan that, as compared to the concept plan approved in conjunction with the approved growth allocation (the "approved concept plan"):

[1] Does not materially change the location or the area of the land included in the approved concept plan;

[2] Does not increase the maximum number of dwelling units included in the approved concept plan;

[3] Does not increase the average number of dwelling units per acre on the land that is included in the approved concept plan;

[4] Does not increase the maximum land area to be devoted to commercial uses included in the approved concept plan;

[5] Does not increase the maximum interior floor space to be devoted to commercial uses included in the approved concept plan;

[6] Does not reduce the combined width of the tidal and nontidal buffer, tributary stream buffer, and setback areas included in the approved concept plan at any point, extending landward from the mean high water line, or the landward edge of tidal wetlands, whichever is more landward;

[7] Does not reduce the combined area of the tidal and nontidal wetland buffer and setback areas included in the approved concept plan;

[8] Does not change the nature or increase the extent of any structures within the tidal or nontidal wetland buffer, tributary stream buffer, or setback areas included in the approved concept plan;

[9] Does not reduce the land area to be devoted to open space included in the approved concept plan;

[10] Does not impact the habitat protection areas as identified in the approved concept plan; and

[11] Does not alter or adversely affect any condition imposed by the Critical Area Commission relating to the approved concept plan.

(c) The growth allocation amendment application does not seek to change a finding of fact, a conclusion, or a condition in the decision of the Town Commissioners relating to the approved growth allocation unless there is a change in the concept plan, site conditions or other facts or circumstances in the record of the growth allocation amendment application process sufficient to justify such a change.

(2) Filing the growth allocation amendment application.

(a) A growth allocation amendment application shall be submitted to the Town Commissioners in writing, in such form as the Town Commissioners may approve, with at least fifteen (15) copies thereof, shall be signed under oath or affirmation as to the truth of its contents by the applicant, and shall include the following supporting information:

[1] Identification of all applicants by name, address and telephone number and, if represented by legal counsel, the name, address and telephone number of legal counsel;

[2] Identification of all land which is the subject of the growth allocation amendment application by street address, Tax Map and parcel numbers, and deed reference;

[3] The written findings of fact and decision of the Town Commissioners, and the Critical Area Commission, if the approved growth allocation was acted on by the Critical Area Commission or the Chair of the Critical Area Commission, relating to the approved growth allocation, which purports to approve the approved growth allocation, address whether and how the criteria for the award of growth allocation are satisfied, state the grounds for approval, and state the conditions upon which approval was granted.

[4] A complete concept plan depicting the subject land and the development sought by the growth allocation amendment application, drawn to the same scale, in the same manner as, and containing the same information as the concept plan as approved in conjunction with the approved growth allocation, to facilitate visual identification and comparison of the differences between concept plan for the approved growth allocation with the concept plan for the development sought by

the growth allocation amendment application. The concept plan submitted to the Town as part of the growth allocation amendment application shall not thereafter be changed by the applicant except as requested by the Town Commissioners or with the express permission of the Town Commissioners. Any change in the concept plan may result in a delay of the proceedings to give other interested parties ample time to review and comment on the change.

[5] A written explanation of each amendment to the approved growth allocation (whether to the concept plan, the conditions of the approval, or otherwise) as proposed by the growth allocation amendment application, including what about the approved growth allocation that is sought to be amended by the growth allocation amendment application and, if amended, how the growth allocation as amended (the "amended growth allocation") would differ from the approved growth allocation;

[6] A summary of the evidence upon which the applicant intends to rely in support of the growth allocation amendment application; and

[7] A summary explanation of how the evidence justifies approval by the Town Commissioners of each amendment being sought to the approved growth allocation, including what additions to evidence and/or changes in the applicable laws, regulations and/or rules justify changes in the findings of fact, conclusions and conditions, as found by the Town Commissioners granting the approved growth allocation, to grant the amendments sought by the growth allocation amendment application.

(b) A growth allocation amendment application shall be accompanied by the filing fee, in the amount established by resolution of the Town Commissioners.

(c) A growth allocation amendment application that is not accompanied by the required filing fee and the required supporting information shall not be accepted for filing by the Town and shall be returned to the applicant with a statement identifying the required, but missing or incomplete, material.

(3) Procedures.

(a) After a growth allocation amendment application has been filed, and before the applicant shall be permitted to proceed any further, the applicant shall obtain from the Town Commissioners, after a public hearing of which public notice has been given in accordance with the Town Code § 340-93A(1) and (2):

[1] Consent to proceed with the growth allocation amendment application must first be granted by the affirmative vote of at least a majority of the Town

~~Commissioners based on a finding that acceptance and processing of the growth allocation amendment application may be in the public interest of the citizens of the Town, which consent may be withheld in the sole discretion of the Town Commissioners.~~

~~[2] A growth allocation amendment application shall not be permitted where it is solely for the tactical or other advantage of the applicant but may be permitted where, on balance, acceptance and processing of a growth allocation amendment application may be in the public interest; consent by the Town Commissioners to accept and process a growth allocation amendment application need not hinge on whether:~~

~~[a] The time for filing a petition for judicial review relating to the approved growth allocation has expired; or~~

~~[b] A petition for judicial review relating to the approved growth allocation has been filed and is pending; or~~

~~[c] The Critical Area Commission has completed its processing and rendered its decision relating to the approved growth allocation (and/or any prior amendment thereof); provided, however, that the Town agrees to either withdraw from consideration by the Critical Area Commission and resubmit the pending approved growth allocation (and/or all prior pending amendments thereof) or to grant the Critical Area Commission one or more extensions of time for action on the pending approved growth allocation (and/or all prior pending amendments thereof), such that the Critical Area Commission is not placed in the position of having to simultaneously process and consider two or more separate submissions for growth allocation by the Town relating to the same project in order for the Critical Area Commission to meet the time provisions for processing such applications provided by law.~~

~~[3] A written scheduling order must be adopted by at least a majority of the Town Commissioners, which shall be made a part of the record, setting forth the deadline dates by which the applicant, the interveners (as defined among the applicable prehearing procedures then in effect relating to Town quasi-judicial hearings), and other interested parties to the growth allocation amendment application shall comply with the applicable prehearing procedures then in effect relating to Town quasi-judicial hearings, and setting the date of the quasi-judicial hearing.~~

~~[a] The Town Commissioners may shorten the times for compliance with the applicable prehearing procedures then in effect relating to Town quasi-judicial hearings, and the time before the scheduled public hearing on the merits of the~~

growth allocation amendment application, based on the apparent lack of complexity of the application and apparent lack of opposition expressed at the hearing held for the purpose of adopting a scheduling order.

[i] The apparent complexity of the application and/or apparent opposition to the application notwithstanding, the Town Commissioners may shorten the times for compliance with the applicable prehearing procedures then in effect relating to Town quasi-judicial hearings, if they find:

[A] The concept plan, upon which the growth allocation was granted, is not proposed to be materially changed;

[B] The proposed amendment does not appear to adversely affect water quality or wildlife habitat; and

[C] The proposed amendment does not appear to adversely affect consistency of the proposed development with the Comprehensive Plan.

(b) After the applicant has obtained the consent and a scheduling order from the Town Commissioners, as required by Subsection G(3)(a), above, the growth allocation amendment application shall be processed according to the rules of prehearing procedures then in effect applicable to quasi-judicial hearings, after which a hearing shall be conducted by the Town Commissioners according to the rules of procedure then in effect applicable to quasi-judicial hearings.

(c) Within a reasonable time after the close of the quasi-judicial hearing and the record relating to the growth allocation amendment application, the Town Commissioners shall render a written decision, including findings of fact, conclusions and any conditions they deem appropriate, based on the evidence in the record and the applicable laws and regulations.

(4) Limited scope of the proceeding. Because a growth allocation amendment application must relate to an approved growth allocation, the processing of a growth allocation amendment application shall not include a rehearing of the same issue or issues that were raised, or reasonably could have been raised, and substantially the same evidence that was or reasonably could have been presented, by an interested person at the public hearing of the Town Commissioners relating to the approved growth allocation unless such issue or evidence:

(a) Relates to a change in the approved growth allocation as proposed by the growth allocation amendment application; and

(b) Is sufficient, either alone or cumulatively when considered with other issues and evidence relating to a proposed change in the approved growth allocation, to either:

[1] Reasonably lead to a different conclusion by the Town Commissioners relating to the applicable criteria necessary to award growth allocation as it relates to the growth allocation amendment application; or

[2] Reasonably lead to the addition, deletion or change in the concept plan or one or more conditions imposed by the Town Commissioners relative to the growth allocation amendment application, as compared to the concept plan and conditions imposed by the Town Commissioners relative to the approved growth allocation.

(5) Acceptance of amendment by applicant.

(a) The written decision of the Town Commissioners on the growth allocation amendment application, including all conditions of approval, if any, shall be promptly mailed or hand-delivered by the Town Manager to the applicant.

(b) If the growth allocation amendment application is approved by the Town Commissioners, without alterations or conditions other than or in addition to those requested by the applicant, then the growth allocation amendment application shall become effective immediately, subject to Subsection G(6), and all inconsistencies therewith in any previously existing growth allocation approval shall be rendered immediately void and of no effect.

(c) If the growth allocation amendment application is approved by the Town Commissioners with alterations or conditions other than those requested by the applicant, then the decision of the Town Commissioners shall be stayed for thirty (30) days from the date on which it was mailed or hand-delivered to the applicant by the Town Manager, and that decision shall take effect automatically, subject to Subsection G(6), at the end of that thirty-day period unless either:

[1] A written notice of rejection by the applicant is delivered to the Town Manager within said thirty-day period, at which time the decision of the Town Commissioners on the growth allocation amendment application shall be rendered void, as if it had never existed; or

[2] A written notice of unconditional acceptance by the applicant is delivered to the Town Manager within said thirty-day period, at which time the decision of the Town Commissioners on the growth allocation amendment application shall become effective immediately, and all inconsistencies therewith in any previously

~~existing growth allocation approval shall be rendered immediately void and of no effect. Any acceptance other than unconditional shall be tantamount to a rejection.~~

~~(6) Critical Area Commission. Upon approval of a growth allocation amendment application by the Town Commissioners, and upon acceptance of such approval of such growth allocation amendment by the applicant as provided above, the Town shall promptly notify the Critical Area Commission of such approval, and shall provide to the Critical Area Commission a copy of the written decision on the growth allocation amendment application by the Town Commissioners and so much of the Town's record relating thereto as the Town deems appropriate and/or the Critical Area Commission requests for the Critical Area Commission to take such action thereon, if any, as the Commission or the Chair of the Commission deems appropriate under the circumstances pursuant to the applicable provisions of Maryland Code, Natural Resources Article, Title 8 (Waters), Subtitle 18 (Chesapeake Bay Critical Area Protection Program), and the Code of Maryland Regulations, Title 27 (Critical Area Commission For the Chesapeake and Atlantic Coastal Bays), as amended from time to time.~~

~~(7) Enactment of ordinance to effect final approval of a growth allocation amendment application. Upon completion of the required procedures and approval of a growth allocation amendment application by the Town Commissioners, and upon the approval of the Critical Area Commission, if any is required, the Town Commissioners shall, without further procedures except those required by the Town Charter, enact an ordinance to effect the change in land management classification and map amendment relating to the approved growth allocation amendment application, and/or the amendments to the concept plan and/or conditions relating thereto, in accordance with all terms and conditions of such approval, within one hundred twenty (120) days of receiving notice of such approval or lack of necessity to take action by the Critical Area Commission.~~

NOTE: Preceding Growth Allocation section moved and revised in GA Growth Allocation Floating Zone.

§ 340-20. Grandfathering.

A. Continuation of existing uses.

(1) The continuation, but not necessarily the intensification or expansion, of any use in existence on May 10, 1988, may be permitted, unless the use has been abandoned for more than one (1) year or is otherwise restricted by existing municipal ordinances.

(2) If any existing use does not conform to the provisions of this section, its intensification or expansion may be permitted only in accordance with the variance procedures in Article **.

B. Residential density on grandfathered lots.

(1) Except as otherwise provided, the following types of land are permitted to be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this chapter **[and the provisions of § 340-9]:**

NOTE: § 340-9 states, "even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zone, provided that yard dimensions shall conform to the regulations for the zone in which such lot is located". Are lots of record in the Critical Area exempt for meeting yard requirements?

(a) Legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;

(b) Land that received a building permit subsequent to December 1, 1985, but prior to May 10, 1988;

(c) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984, and December 1, 1985; or

(d) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985, and provided that either development of any such land conforms to the Intensely Developed Area, Limited Development Area or Resource Conservation Area requirements in this chapter or the area of the land has been counted against the growth allocation permitted under this chapter.

C. Consistency. Nothing in this section may be interpreted as altering any requirements of this chapter related to water-dependent facilities or Habitat Protection Areas.

§ 340-21. Variances from Critical Area Overlay District provisions. See § 340-.**

§ 340-22. Lot Consolidation and Reconfiguration. ~~See § 290-15*.~~

An applicant for development activity that involves the consolidation or reconfiguration, or adjustment of parcel boundaries of existing lots of record in the Critical Area that are not individually owned shall design and implement the project to bring the lands into conformance with the ~~Town's Critical Area Program~~ **[with the provisions of this Article?]** to the maximum extent possible and to minimize adverse impacts to water quality and fish, wildlife, and plant habitat. The following performance standards for these projects shall be used to assess the project relative to the goals ~~of the Critical Area Program~~ **[Critical Area Overlay District].** At a minimum, all applications must fully address the following factors:

A. The applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots of record in the Critical Area results in an overall reduction in the number of lots and that all of the existing lots were considered legally buildable at the time of recordation.

B. The applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots does not result in an increase in the number of waterfront development rights or an intensification of development activity at the shoreline or within the one-hundred-foot Buffer.

C. The applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots does not create any additional development rights within the Resource Conservation Area.

D. The applicant must demonstrate that the proposed consolidation or reconfiguration of existing lots will be served by public water and services at the time of building permit issuance and that the existing public water and sewer infrastructure has adequate capacity to accommodate the proposed development.

E. The applicant must identify proposed impacts to Habitat Protection Areas (HPAs) related to the recorded and legally buildable lots of record as well as identify proposed measures to minimize impacts to HPAs related to the reconfigured lots. Where impacts to HPAs are proposed in conjunction with the reconfigured lots, the applicant must identify measures to mitigate for the impacts.

~~F. The applicant must demonstrate how the proposed consolidation or reconfiguration of existing lots will **exceed the Town's stormwater management requirements**. This may be accomplished by providing on-site secondary or tertiary treatment, or by treating off-site areas, such as existing roads, parking areas, or public community facilities within the same subwatershed.~~

NOTE: This is not a requirement outlined in COMAR 27.01.02.08. The current stormwater management standards and/or the 10% pollution reduction rule are sufficient SWM requirements.

G. The applicant must demonstrate how the proposed consolidation or reconfiguration of existing lots will result in less overall lot coverage as compared to the amount of overall lot coverage that would have resulted from the existing lot configuration.

NOTE: This is not a requirement outlined in COMAR 27.01.02.08. Why require when the base zone and RCA and LDA lot coverage requirements achieve the Town's objectives?

H. The applicant must demonstrate that proposed mitigation plantings are provided to offset any impacts to forested areas, resulting in the creation of new habitat such that no net loss of forest or developed woodland cover is achieved.

NOTE: This is not a requirement outlined in COMAR 27.01.02.08. Does the Town want this performance standard to apply in the IDA where no forest clearing/replacement standards apply? The forest clearing/replacement provisions applicable to the LDA and RCA accomplish the objectives of the overlay district and COMAR. "(8) The proposed consolidation or reconfiguration fully complies with the afforestation and reforestation requirements in COMAR 27.01.05 and 27.01.09, unless clearing is necessary to avoid a habitat protection area."

I. The applicant must demonstrate that a minimum of 15% forested or developed woodland cover is provided where none otherwise exists.

NOTE: This is a LDA and RCA standard. Does the Town intend to have the standard apply in IDA?

J. The applicant must demonstrate how the proposed stormwater treatment will provide habitat as well as water quality benefits by using stormwater treatment practices, such as stormwater ponds, stormwater wetlands or bioretention and rain gardens.

NOTE: This is not a requirement outlined in COMAR 27.01.02.08. The requirements of the Town SWM ordinance should be sufficient to achieve this end.

§ 340-23. Accommodations for needs of disabled in critical area. See § 340-.**

§ 340-24. One-hundred-foot Buffer.

A. Applicability and delineation. An applicant for a development activity or a change in land use shall apply all of the required standards for a minimum one-hundred-foot (100) Buffer as described in this section. The one-hundred-foot (100) Buffer shall be delineated in the field and shall be shown on all applications as follows:

(1) The one-hundred-foot (100) Buffer is delineated landward from:

(a) The mean high water line of tidal water;

(b) The edge of each bank of a tributary stream; and

(c) The upland boundary of a tidal wetland.

(2) The Buffer shall be expanded beyond the minimum one-hundred-foot (100) Buffer as described in Subsection A(1) above and the minimum two-hundred-foot Buffer as described in Subsection A(3) below, to include the following contiguous land features:

(a) A steep slope at a rate of four (4) feet for every 1% of slope or the entire steep slope to the top of the slope, whichever is greater;

(b) A nontidal wetland to the upland boundary of the nontidal wetland;

(c) The one-hundred-foot (100) Buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR § 26.23.06.01;

(d) For an area of hydric soils or highly erodible soils, the lesser of:

[1] The landward edge of the hydric or highly erodible soils; or

[2] Three hundred (300) feet where the expansion area includes the minimum one-hundred-foot Buffer.

(3) Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008, shall include:

(a) An expanded Buffer in accordance with Subsection A(2) above; or

(b) A Buffer of at least two hundred (200) feet from a tidal waterway or tidal wetlands; and a Buffer of at least one hundred (100) feet from a tributary stream, whichever is greater.

(4) The provisions of Subsection A(3) above do not apply if:

(a) The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans) by July 1, 2010;

(b) The application involves the use of growth allocation.

B. Permitted activities. If approved by St. Michaels, disturbance to the Buffer is permitted for the following activities, provided that mitigation is performed in accordance with an approved Buffer Management Plan as required per Subsection F of this section.

(1) A new development or redevelopment activity associated with a water-dependent facility or located in an approved Buffer Management Area;

(2) A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this chapter;

(3) A development or redevelopment activity approved in accordance with the variance provisions of this chapter;

(4) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010, where:

(a) The Buffer is expanded for highly erodible soil on a slope less than 15% or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;

(b) The development or redevelopment is located in the expanded portion of the Buffer and not within the one-hundred-foot Buffer; and

(c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.

(5) A new or replacement septic system on a lot created before May 4, 1994, where:

(a) The Talbot County Health Department has determined the Buffer is the only available location for the septic system; and

(b) Mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.

C. Buffer establishment in vegetation. An applicant for a development activity, redevelopment activity or a change in land use that occurs outside the Buffer, but is located on a riparian lot or parcel that includes the minimum one-hundred-foot Buffer, shall establish the Buffer in vegetation if the Buffer is not fully forested or fully established in woody or wetland vegetation. St. Michaels shall require a Buffer Management Plan in accordance with the standards of this section.

(1) The provisions of this section apply to:

(a) A new subdivision or a new lot;

(b) A lot or parcel that is converted from one land use to another;

(c) Development or redevelopment on a lot or parcel created before January 1, 2010.

(2) The provisions of this section do not apply to the in-kind replacement of a structure.

(3) If a Buffer is not fully forested or fully established in woody or wetland vegetation, the Buffer shall be established through planting in accordance with COMAR 27.01.09.01-1.

NOTE: Are there any examples of application of these provisions?

D. Mitigation for impacts to the Buffer. An applicant for a development activity that includes disturbance to the Buffer shall mitigate for impacts to the Buffer and shall provide a Buffer Management Plan in accordance with the standards set forth in this section.

(1) Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, septic system approved by the

Talbot County Health Department on a lot created before May 4, 1994, and special exception.

(2) All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2.

(3) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the limit of disturbance in the Buffer.

(4) Planting for mitigation shall be planted on site within the Buffer. If mitigation planting cannot be located within the Buffer, then St. Michaels may permit planting in the following order of priority:

(a) On site and adjacent to the Buffer; and

(b) On site elsewhere in the Critical Area.

(c) A fee in lieu as referenced in Subsection G below.

E. Buffer planting standards.

(1) An applicant that is required to plant the Buffer for Buffer establishment or Buffer mitigation shall apply the planting standards set forth in COMAR 27.01.09.01-2.

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

F. Required submittal of Buffer Management Plans. An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall submit a Buffer Management Plan as provided in COMAR 27.01.09.01-3 with the application for the specific activity. The provisions of this section do not apply to maintaining an existing grass lawn or an existing garden in the Buffer.

(1) A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials, clearly specify the area to be planted and state if the applicant is:

(a) Fully establishing the Buffer;

(b) Partially establishing an area of the Buffer equal to the net increase in lot coverage; or

(c) Partially establishing an area of the Buffer equal to the total lot coverage.

(2) Any permit for development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by St. Michaels.

(3) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by St. Michaels.

(4) St. Michaels may not approve a Buffer Management Plan unless:

(a) The plan clearly indicates that all planting standards under Subsection E of this section will be met; and

(b) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.

(5) For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:

(a) Completes the implementation of a Buffer Management Plan; or

(b) Provides financial assurance to cover the costs for:

[1] Materials and installation; and

[2] If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.

(6) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.

(7) If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this chapter.

(a) A permit for development activity will not be issued for a property that has the violation.

(8) An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.

(9) Buffer management plans that include natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.

G. Fees in lieu of Buffer mitigation. A fee in lieu of mitigation will be collected if the planting requirements of the Buffer Management Plan cannot be fully met on site, in accordance with the following standards:

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

(2) Fees in lieu shall be assessed at $1.50 per square foot of required Buffer mitigation;

(3) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and

(4) Fee-in-lieu monies shall be used for the following projects:

(a) To establish the Buffer on sites where planting is not a condition of development or redevelopment;

(b) For water quality and habitat enhancement projects as approved by the Critical Area Commission or by agreement between St. Michaels and the Critical Area Commission.

H. Shore erosion control projects. Shore erosion control measures are permitted activities within the Buffer in accordance with the following requirements:

(1) An applicant for a shore erosion control project that affects the Buffer in any way, including, but not limited to access, vegetation removal and pruning, or backfilling shall submit a Buffer Management Plan in accordance with the requirements of this section; and

(2) Comply fully with all of the policies and criteria for a shore erosion control project stated in COMAR 27.01.04 and COMAR 26.24.

~~I. Special Buffer requirements. The following special yard requirements shall apply within the Critical Area Overlay District:~~

~~(1) Except as provided for water-dependent facilities in § 340-27.3**, new development activities, including structures, roads, parking areas, impervious surfaces, and septic systems are not permitted in the Buffer.~~

~~(2) The Buffer shall be expanded to include contiguous sensitive areas on the parcel whose development or disturbance may impact streams, wetlands, or other aquatic environments. This expansion will occur whenever new land development or other land-disturbing activities, such as clearing natural vegetation for agriculture or mining, are proposed. The expanded Buffer must be shown on plans required for such development.~~

~~(3) Sensitive areas have the following features: 1) hydric soils and soils with hydric properties as designated by the Soil Conservation Service; 2) high erodible soils with a K value greater than 35; and 3) steep slopes greater than 15%. The Buffer shall be expanded according to the following rules:~~

~~(a) When the site of the proposed land disturbance drains to a slope greater than 15% contiguous to the Buffer, the Buffer shall be expanded four feet for every percent of~~

~~slope over 15% or to the top of slope, whichever is greater, but in no case more than 10 feet beyond the top of the slope greater than 15%.~~

~~(b) The Buffer shall be expanded to the upland limit of adjacent hydric soils, soils with hydric properties, and erodible soils, within the Critical Area whichever is less. The Buffer will be expanded to include those soils lying in the drainage area between the proposed land disturbance and the Buffer.~~

NOTE: Is this redundant of 27.12.A and B

§ 340-25. Buffer Management Area (BMA) provisions.

A. Development and redevelopment standards. New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces, lot coverage or septic systems will not be permitted in the Buffer in a designated BMA unless the applicant can demonstrate that there is no feasible alternative and the Board of Zoning Appeals finds that efforts have been made to minimize Buffer impacts and the development shall comply with the following standards:

(1) Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.

(2) Variances to other local setback requirements have been considered before additional intrusion into the Buffer.

(3) Commercial, industrial, institutional, recreational and multifamily residential development and redevelopment shall meet the following standards:

(a) New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the minimum required setback for the zoning district or fifty (50) feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.

(b) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than twenty-five (25) feet. Structures on adjacent properties shall not be used to determine the setback line. A new structure may be constructed on the footprint of an existing structure.

(4) Single-family residential development and redevelopment shall meet the following standards:

(a) New development or redevelopment shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or fifty (50) feet, whichever is greater. In no case shall redevelopment be located less than twenty-five (25) feet from the water (or the edge of tidal wetlands).

(b) Existing principal or accessory structures may be replaced in the same footprint.

(c) New accessory structures may be located closer to the water than the setback if the Town of St. Michaels has determined there are no other locations for the structures. The area of new accessory structures shall not exceed five hundred (500) square feet within twenty-five 25 feet of the water and 1,000 square feet total in the Buffer.

(5) Variances to other local setback requirements shall be considered before additional intrusion into the Buffer is permitted.

(6) Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other state or federal permits notwithstanding.

(7) Buffer Management Area (BMA) designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.

(8) No natural vegetation may be removed in the Buffer except that required by the proposed construction.

(9) Mitigation for development or redevelopment in the BMA approved under the provisions of this subsection shall be implemented as follows:

(a) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the one-hundred-foot (100) Buffer shall be planted on site in the Buffer or at another location approved by the Planning Commission.

(b) Applicants who cannot fully comply with the planting requirement in Subsection A(9)(a) above may offset by removing an equivalent area of existing lot coverage in the Buffer.

(c) Applicants who cannot comply with either the planting or offset requirements in Subsection A(9)(a) or (b) above shall pay $1.50 per square foot into a fee-in-lieu program.

(d) Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of St. Michaels'

~~Critical Area Ordinance~~ **[Chesapeake Bay Critical Area Overlay District].** The funds cannot be used to accomplish a project or measure that would have been required under existing local, state, or federal laws, regulations, statutes, or permits. The status of these funds must be reported to the Critical Area Commission on an annual basis.

(e) Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the County.

[B. Notification Requirements. All new commercial, industrial, institutional, recreational, multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission.

C. Review Process. The Planning Commission shall make written findings documenting that all the Criteria in this Chapter are met including that the disturbance to the Buffer is the least intrusion necessary. These findings shall be available to the Commission upon request.

D. Modified Buffer Area Mapping Standards. The following standards shall apply for the mapping of new Modified Buffer Areas:

(1) Only lots of record as of December 1, 1985 are eligible for mapping as Modified Buffer Areas (MBAs).

(2) The parcel or lot being considered for MBA status shall contain a Buffer that was significantly impacted by development at the time of program adoption and that prevent the Buffer from fulfilling its functions.

(3) Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).

(4) Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a MBA if development within the Buffer cannot be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.

(5) If only part of a parcel or lot meets the criteria for designation as a Modified Buffer Area, then only portions of the parcel or lot shall be designated as a Modified Buffer Area. The portion of the parcel designated as a Modified Buffer Area will be subject to the Modified Buffer Area requirements. Portions of the property that are not designated as a Modified Buffer Area shall comply fully with the 100-foot Buffer restrictions.

(6) Any proposal by the Town for designation of an area as a MBA shall include, at a minimum, a written evaluation and supporting reasons which demonstrate the degree to which the proposed MBA does not perform each of the following Buffer functions:

(a) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;

(b) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;

(c) Maintain an area of transitional habitat between aquatic and upland communities;

(d) Maintain the natural environment of streams; and

(e) Protect riparian wildlife habitat.]

§ 340-26. Other Habitat Protection Areas.

A. Identification. An applicant for a development activity, redevelopment activity or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this section. Habitat Protection Areas include:

(1) Threatened or endangered species or species in need of conservation;

(2) Colonial water bird nesting sites;

(3) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;

(4) Existing riparian forests;

(5) Forest areas utilized as breeding areas by future interior dwelling birds and other wildlife species;

(6) Other plant and wildlife habitats determined to be of local significance;

NOTE: Are there any plant and wildlife habitats determined to be of local significance?

(7) Natural Heritage Areas; and

(8) Anadromous fish propagation waters.

B. Standards.

(1) An applicant proposing a subdivision or a site plan for a site within the Critical Area that is in or near a Habitat Protection Area listed above shall request review by the Department of Natural Resources Wildlife and Heritage Service for comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.

(2) If the presence of a Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall develop a Habitat Protection Plan in coordination with the Department of Natural Resources.

(3) The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

§ 340-27. Environmental impact assessment (EIA).

A. Applicability. St. Michaels may require an environmental impact assessment (EIA) for the following:

(1) Development or redevelopment activities in the Critical Area requiring site plan approval;

(2) Development or redevelopment activities in the Critical Area requiring subdivision approval;

(3) Development or redevelopment activities within a Habitat Protection Area other than a detached single-family dwelling;

(4) An application for growth allocation; or

(5) An application for a variance other than for a detached single-family dwelling.

[§ 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

Platted Lots or Dwellings in the Critical Area	Slips
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.

§ 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 highest point.]

§ 340-30. Reserved.