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**ARTICLE V**  
**CRITICAL AREA**

**SECTION 28 – 501 CHESAPEAKE BAY CRITICAL AREA OVERLAY DISTRICT**

**28 – 501.1 CHESAPEAKE BAY CRITICAL AREA OVERLAY DISTRICT**

The purpose of this article is to merely reflect state law and not to impose any greater restrictions

**28 – 501.2 IMPLEMENTATION OF CRITICAL AREA ORDINANCE PURPOSE AND GOALS**

A. Goals

The goals of the Easton Critical Area Ordinance are to accomplish the following:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
2. Conserve fish, wildlife, and plant habitat; and
3. Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

B. The Easton Critical Area Ordinance

1. The Easton Critical Area Ordinance consists of the Easton Critical Area Ordinance text and the Official Critical Area Map(s). Related provisions may be found in the Easton Subdivision Regulations and the Easton Zoning Ordinance.

C. Regulated activities and applicability

1. 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 sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the duly appointed local approving authority after review to determine compliance with the Easton Critical Area Ordinance

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2 D. Critical Area Overlay District Map  
3

- 4 1. The Official Critical Area Overlay District Map is maintained in force as part  
5 of the Official Zoning Map for Easton. The Official Critical Area Map  
6 delineates the extent of the Critical Area Overlay District that shall include:  
7  
8 a. All waters of and lands under the Chesapeake Bay and its tributaries  
9 to the head of tide as indicated on the State wetland maps, and all state  
10 and private wetlands designated under Title 16 of the Environment  
11 Article of the Annotated Code of Maryland; and  
12  
13 b. All land and water areas within 1,000 feet beyond the landward  
14 boundaries of state or private wetlands and the heads of tides  
15 designated under Title 16 of the Environment Article of the Annotated  
16 Code of Maryland.  
17  
18 2. Within the designated Critical Area Overlay District, all land shall be assigned  
19 one of the following land management and development area classifications:  
20  
21 a. Intensely Developed Area (IDA).  
22  
23 b. Limited Development Area (LDA).  
24  
25 c. Resource Conservation Area (RCA).  
26

27 E. General requirements  
28

- 29 1. Development and redevelopment shall be subject to the Habitat Protection  
30 Area requirements prescribed in this Ordinance.  
31  
32 2. Reasonable accommodations for the needs of disabled citizens.  
33  
34 a. An applicant seeking relief from the Critical Area standards contained  
35 in this Ordinance in order to accommodate the reasonable needs of  
36 disabled citizens shall have the burden of demonstrating by a  
37 preponderance of evidence the following:  
38  
39 1. The alterations will benefit persons with a disability within the  
40 meaning of the Americans with Disabilities Act;  
41  
42 2. Literal enforcement of the provisions of this Ordinance would  
43 result in discrimination by virtue of such disability or deprive a  
44 disabled resident or user of the reasonable use and enjoyment  
45 of the property;

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3. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this Ordinance or restore the disabled resident's or user's reasonable use or enjoyment of the property;
  4. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and
  5. The accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.

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b. The Planning Commission shall determine the nature and scope of any accommodation under this Ordinance and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Ordinance. The Planning Commission may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.

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c. The Planning Commission may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this Ordinance. Appropriate bonds may be collected or liens placed in order to ensure Easton's ability to restore the property should the applicant fail to do so.

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## **28 – 501.3 INTENSELY DEVELOPED AREAS**

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### **A. Development standards**

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For all development activities in the Intensely Developed Areas, the applicant shall identify any environmental or natural feature described below and meet all of the following standards:

- 41  
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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

1 authorized; the design, construction, and maintenance shall:

- 2
- 3 a. Provide maximum erosion protection;
- 4
- 5 b. Minimize negative impact on wildlife, aquatic life, and their
- 6 habitats; and
- 7
- 8 c. Maintain hydrologic process and water quality.
- 9
- 10 3. All development activities that must cross or affect streams shall be
- 11 designed to:
- 12
- 13 a. Reduce increases in flood frequency and severity that are
- 14 attributable to development;
- 15
- 16 b. Retain tree canopy so as to maintain stream water temperature
- 17 within normal variation;
- 18
- 19 c. Provide a natural substrate for stream beds; and
- 20
- 21 d. Minimize adverse water quality and quantity impacts of storm
- 22 water.
- 23
- 24 4. All development and redevelopment activities shall include storm water
- 25 management technologies that reduce pollutant loadings by at least 10
- 26 percent below the level of pollution on the site prior to development or
- 27 redevelopment as provided in *Critical Area 10% Rule Guidance Manual*
- 28 – *Fall 2003* and as may be subsequently amended.
- 29

## 30 **28 – 501.4 LIMITED DEVELOPMENT AREAS**

### 31 **A. Development standards**

32 For all development activities in the Limited Development Areas, the applicant

33 shall identify any environmental or natural feature described below, and shall

34 meet all of the following standards:

35

36

- 37
- 38 1. Development and redevelopment shall be subject to the water-dependent
- 39 facilities requirements of this Ordinance;
- 40
- 41 2. Roads, bridges, and utilities are prohibited in a Habitat Protection Area
- 42 unless no feasible alternative exists. If a road, bridge, or utility is
- 43 authorized; the design, construction and maintenance shall:
- 44
- 45 a. Provide maximum erosion protection;

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- b. Minimize negative impacts on wildlife, aquatic life and their habitats; and
  - c. Maintain hydrologic processes 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 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 storm water.
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 offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Ordinance. Easton 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 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
6. Except as otherwise provided in this subsection, for storm water 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 one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five percent (25%) of the parcel or lot.

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

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

d. Lot coverage limits provided in §a. and §b. above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:

- 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 one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in §a. by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
- 4. For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
- 5. The following table summarizes the limits set forth in §(1) through §(4) above:

Table A.6.d.(5) Lot Coverage Limits

<b>Lot/Parcel Size (Square Feet)</b>	<b>Lot Coverage Limit</b>
0 – 8,000	25% of parcel + 500 SF
8,001 – 21, 780	31.25% of parcel
21,780 – 36,300	5,445 SF
36,301 – 43,560	15% of parcel

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e. If the Planning Commission or its designee makes the findings set forth in §d. above and authorizes an applicant to use the lot

1 coverage limits set forth in that paragraph, the applicant shall:  
2

- 3 1. Demonstrate that water quality impacts associated with  
4 runoff from the development activities that contribute to lot  
5 coverage have been minimized through site design  
6 considerations or the use of best management practices to  
7 improve water quality; and  
8
- 9 2. Provide on-site mitigation in the form of plantings to offset  
10 potential adverse water quality impacts from the  
11 development activities resulting in new lot coverage. The  
12 plantings shall be equal to two times the area of the  
13 development activity.  
14
- 15 3. If the applicant cannot provide appropriate stormwater  
16 treatment and plantings due to site constraints, then the  
17 applicant shall pay a fee to Easton in lieu of performing the  
18 on-site mitigation. The amount of the fee shall be \$1.50 per  
19 square foot of the required mitigation.  
20

21 7. The alteration of forest and developed woodlands shall be restricted and  
22 shall be mitigated as follows:  
23

- 24 a. The total acreage in forest and developed woodlands within  
25 Easton in the Critical Area shall be maintained or preferably  
26 increased;  
27
- 28 b. All forests and developed woodlands that are allowed to be  
29 cleared or developed shall be replaced in the Critical Area on not  
30 less than an equal area basis  
31
- 32 c. If an applicant is authorized to clear more than 20 percent of a  
33 forest or developed woodlands on a lot or parcel, the applicant  
34 shall replace the forest or developed woodlands at 1.5 times the  
35 areal extent of the forest or developed woodlands cleared,  
36 including the first 20 percent of the forest or developed woodlands  
37 cleared.  
38
- 39 d. An applicant may not clear more than 30 percent of a forest or  
40 developed woodlands on a lot or parcel, unless the Board of  
41 Appeals grants a variance and the applicant replaces forest or  
42 developed woodlands at a rate of 3 times the areal extent of the  
43 forest or developed woodlands cleared.  
44
- 45 e. If an applicant is authorized to clear any percentage of forest or

1 developed woodlands associated with a subdivision or site plan  
2 approval, the remaining percentage shall be maintained through  
3 recorded, restrictive covenants or similar instruments approved by  
4 Easton.  
5

6 8. The following are required for forest or developed woodlands clearing as  
7 required in §7. above:  
8

9 a. The applicant shall ensure that any plantings that die within  
10 twenty-four (24) months of installation shall be replaced. A  
11 performance bond in an amount determined by Easton shall be  
12 posted to assure satisfactory replacement as required in §7. above  
13 and plant survival;  
14

15 b. A permit issued by Easton before forest or developed woodlands  
16 is cleared. Clearing forests and developed woodlands before  
17 obtaining a Easton permit is a violation; any forests and developed  
18 woodlands cleared before obtaining a Easton permit shall be  
19 replanted at three times the areal extent of the cleared forest or  
20 developed woodlands;  
21

22 c. Clearing of forest or developed woodlands that exceed the  
23 maximum area allowed in §7. above shall be replanted at three  
24 times the areal extent of the cleared forest or developed  
25 woodlands;  
26

27 d. If the areal extent of the site limits the application of the  
28 reforestation standards in this section the applicant may be allowed  
29 to plant offsite at the required ratio or pay a fee in lieu of planting  
30 at a rate of \$1.50 per square foot.  
31

32 9. If no forest is established on proposed development sites, these sites shall  
33 be planted to provide a forest or developed woodlands cover of at least 15  
34 percent (15%).  
35

36 a. The applicant shall designate, subject to the approval of the Town  
37 of Easton, a new forest area on a part of the site not forested; and  
38

39 b. The afforested area shall be maintained as forest cover through  
40 easements, restrictive covenants or other protective instruments  
41 approved by the Easton Town Attorney.  
42

## 43 **28 – 501.5 RESOURCE CONSERVATION AREAS**

### 44 **A. Development standards** 45

For all development activities and resource utilization in the Resource Conservation Areas, the applicant shall 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 Ordinance.
2. Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 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 Ordinance.
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 dwelling unit per 20 acres.

**28 – 501.6 LAND USE AND DENSITY**

**A. Permitted uses**

1. Permitted uses in the Critical Area shall be limited to those uses allowed by the underlying zoning classification as modified by Table A.1. and the supplemental use standards in Part 6 provided such uses meet all standards established by the Critical Area Overlay Zone.

Table A.1. Permitted Uses

	<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted			
		<b>Land Use Management Designation</b>		
<b>Item</b>	<b>Use Description</b>	<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
<b>1.00</b>	<b>RESIDENTIAL</b>			
1.10	Accessory Dwelling Unit	P	P	PC
<b>2.00</b>	<b>INSTITUTIONAL</b>			
2.10	Existing institutional uses	P	P	PC
2.20	New institutional uses	P	P	NP
2.30	Cemetery	P	P	PC
2.40	Group Home	P	P	PC

	<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted			
		<b>Land Use Management Designation</b>		
<b>Item</b>	<b>Use Description</b>	<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
2.50	Day Care	P	P	PC
<b>3.00</b>	<b>COMMERCIAL</b>			
3.10	Existing commercial uses	P	P	PC
3.20	New commercial uses	P	P	NP
3.30	Home occupation	P	P	PC
3.40	Bed and breakfast facility	P	P	PC
<b>4.00</b>	<b>MARITIME/WATER DEPENDENT</b>			
4.10	Expansion of existing commercial marinas	P	P	PC
4.20	New marina, commercial	P	P	NP
4.30	Community piers and noncommercial boat docking and storage	P	P	PC
4.40	Public beaches and public water-oriented recreational and educational areas	P	P	PC
4.50	Research Areas	P	P	PC
4.60	Fisheries activities	P	P	P
4.70	Structures on Piers	PC	PC	PC
4.80	Private pier	P	P	P
<b>5.00</b>	<b>RECREATION</b>			
5.10	Golf course	P	P	PC
<b>6.00</b>	<b>INDUSTRIAL</b>			
6.10	Existing industrial uses	P	P	PC
6.20	New industrial uses	PC	PC	NP
6.30	Non-maritime heavy industry	PC	NP	NP
<b>7.00</b>	<b>TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES</b>			
7.10	Utility transmission facilities	PC	PC	PC
<b>8.00</b>	<b>PUBLIC/QUASI-PUBLIC</b>			
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	PC
8.30	Sludge Facilities	PC	PC	PC
<b>9.00</b>	<b>OTHER (reserved)</b>			

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B. Maximum permitted density

1. The maximum permitted density in the Easton Critical Area shall be as

1 shown in Table B.1.  
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Table B.1.  
Maximum Residential Density (Dwelling Units Per Acre)

<b>Land Use Management Designation</b>		
<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
Density permitted by Underlying Zoning	Density permitted by Underlying Zoning	1 dwelling unit per 20 acres

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10  
11 2. Calculation of 1-in-20 acre density of development.  
12

13 In calculating the 1-in-20 acre density of development that is permitted on  
14 a parcel located within the Resource Conservation Area, Easton:

15 a. Shall count each dwelling unit;

16 b. May permit the area of any private wetlands located on the  
17 property to be included under the following conditions:

- 18 1. The density of development on the upland portion of the  
19 parcel may not exceed one dwelling unit per eight acres;  
20 and  
21 2. The area of private wetlands shall be estimated on the basis  
22 of vegetative information as designated on the State  
23 wetlands maps or by private survey approved by Easton,  
24 the Critical Area Commission, and the Maryland  
25 Department of the Environment.  
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31 **28 – 501.7 SUPPLEMENTAL USE STANDARDS**  
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33 The following supplemental use standards apply to the permitted uses listed in Table A.1.  
34 above and shall apply when the permitted use is allowed in the underlying zoning district.  
35

36 A. Accessory dwelling unit  
37

- 38 1. If a permitted use in the underlying zoning district, one additional  
39 dwelling unit (accessory dwelling unit) as part of a primary dwelling unit  
40 may be permitted in the Resource Conservation Area provided the  
41 additional dwelling unit is served by the same sewage disposal system as

1 the primary dwelling unit and:

2  
3 a. is located within the primary dwelling unit or its entire perimeter  
4 is within 100 feet of the primary dwelling unit and does not exceed  
5 900 square feet in total enclosed areas; or

6  
7 b. is located within the primary dwelling unit and does not increase  
8 the amount of lot coverage already attributed to the primary  
9 dwelling unit.

10  
11 2. An additional dwelling unit meeting all of the provisions of this section  
12 may not be subdivided or conveyed separately from the primary dwelling  
13 unit; and

14  
15 3. The provisions of this section may not be construed to authorize the  
16 granting of a variance, unless the variance is granted in accordance with  
17 the variance provisions contained herein.

18  
19 B. Existing institutional uses

20  
21 1. Existing institutional facilities, including those that directly support  
22 agriculture, forestry, aquaculture or residential development shall be  
23 allowed in Resource Conservation Areas.

24  
25 2. Expansion of existing institutional facilities and uses in the Resource  
26 Conservation Area shall be subject to the non-conforming use provisions  
27 of this Ordinance and the Grandfathering provisions in Part 8 and may  
28 require growth allocation.

29  
30 C. New institutional uses

31  
32 1. New institutional facilities and uses, except those specifically listed in  
33 Table A.1. shall not be permitted in Resource Conservation Areas.

34  
35 2. Certain institutional uses may be permitted in a Resource Conservation  
36 Area if allowed in the underlying zoning district and if the use complies  
37 with all requirements for such uses as provided in the Easton Zoning  
38 Ordinance. These institutional uses are limited to:

39  
40 a. A cemetery that is an accessory use to an existing church;  
41 provided manmade lot coverage is limited to 15 percent of the site  
42 or 20,000 square feet, whichever is less;

43  
44 b. A day care facility in a dwelling where the operators live on the  
45 premises and there are no more than eight (8) children;

1  
2 c. A group home or assisted living facility with no more than eight  
3 (8) residents; and  
4

5 d. Other similar uses determined by the Municipality and approved  
6 by the Critical Area Commission to be similar to those listed  
7 above.  
8

9 D. Existing commercial uses  
10

11 1. Existing commercial facilities and uses, including those that directly  
12 support agriculture, forestry, aquaculture or residential development shall  
13 be allowed in Resource Conservation Areas  
14

15 2. Expansion of existing commercial facilities and uses in the Resource  
16 Conservation Area shall be subject to the non-conforming use provisions  
17 of this Ordinance and the Grandfathering provisions in Part 8 and may  
18 require growth allocation.  
19

20 E. New commercial uses  
21

22 1. New commercial uses, except those specifically listed in Table A.1., shall  
23 not be permitted in Resource Conservation Areas  
24

25 2. Certain commercial uses may be permitted in the Resource Conservation  
26 Area if allowed in the underlying zoning district and if the use complies  
27 with all requirements for such uses as provided in the Easton Zoning  
28 Ordinance. These commercial uses are limited to:  
29

30 a. A home occupation as an accessory use on a residential property  
31 and as provided for in Easton's Zoning Ordinance;  
32

33 b. A bed and breakfast facility located in an existing residential  
34 structure and where meals are prepared only for guests staying at  
35 the facility; and  
36

37 c. Other uses determined by the Town of Easton and approved by  
38 the Critical Area Commission to be similar to those listed above.  
39

40 F. Expansion of existing commercial marinas  
41

42 1. Expansion of existing commercial marinas may be permitted within  
43 Resource Conservation Areas provided:  
44

45 a. Water quality impacts are quantified and appropriate Best

1 Management Practices that address impacts are provided;

2  
3 b. That it will result in an overall net improvement in water quality  
4 at or leaving the site of the marina;

5  
6 c. The marina meets the sanitary requirements of the Department of  
7 the Environment; and

8  
9 d. Expansion is permitted under the nonconforming use provisions  
10 of this Ordinance.

11  
12 2. Expansion of existing commercial marinas may be permitted in the Buffer  
13 in the Intensely Developed Areas and Limited Development Areas  
14 provided that the applicant demonstrates:

15 a. The project meets a recognized private right or public need;

16  
17 b. Adverse effects on water quality, fish, plant and wildlife habitat  
18 are minimized;

19  
20 c. Insofar as possible, non-water-dependent structures or operations  
21 associated with water-dependent projects or activities are located  
22 outside the buffer; and

23  
24 d. Expansion is permitted under the nonconforming use provisions  
25 of this Ordinance.

26  
27 G. New marina, commercial

28  
29 1. New commercial marinas shall not be permitted in Resource Conservation  
30 Areas.

31  
32 2. New commercial marinas may be permitted in Limited Development  
33 Areas and Intensely Developed Areas if allowed in the underlying zoning,  
34 provided:

35  
36 a. New marinas shall establish a means of minimizing the discharge  
37 of bottom wash waters into tidal waters.

38  
39 b. New marinas meet the sanitary requirements of the Department of  
40 the Environment.

41  
42 c. New marinas may be permitted in the Buffer in the Intensely  
43 Developed Areas and Limited Development Areas provided that it  
44 can be shown:

- 1. The project meets a recognized private right or public need;
- 2. Adverse effects on water quality, fish, plant and wildlife habitat are minimized; and
- 3. Insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the Buffer.

H. Community piers and noncommercial boat docking and storage

- 1. 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 Ordinance provided that:
  - a. These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
  - b. The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
  - c. The facilities are associated with a residential development approved by Easton for the Critical Area and consistent with all State requirements and the requirements of this Ordinance applicable to the Critical Area;
  - d. Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and
  - e. If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.

2. Number of slips or piers permitted

The number of slips or piers permitted at the facility shall be the lesser of §a. or §b. below:

- a. 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
- b. A density of slips or piers to platted lots or dwellings within the

subdivision in the Critical Area according to the following schedule:

Table H.2. b. Number of Slips Permitted

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

I. Public beaches and public water-oriented recreational and educational areas

1. 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.
2. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:
  - a. Adequate sanitary facilities exist;
  - b. Service facilities are, to the extent possible, located outside the Buffer;
  - c. Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
  - d. Disturbance to natural vegetation is minimized; and
  - e. 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

J. Research areas

1. Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in

1 the Buffer, if non-water-dependent structures or facilities associated with  
2 these projects are, to the extent possible, located outside of the Buffer.  
3

4 K. Fisheries activities  
5

- 6 1. Commercial water-dependent fisheries including, but not limited to  
7 structures for crab shedding, fish off-loading docks, shellfish culture  
8 operations and shore-based facilities necessary for aquaculture operations  
9 and fisheries activities may be permitted in the Buffer in Intensely  
10 Developed Areas, Limited Development Areas and Resource  
11 Conservation Areas.  
12

13 L. Structures on piers  
14

- 15 1. Except as provided in §a., §b., and §c. below, construction of a dwelling  
16 unit or other non-water-dependent structure on a pier located on State or  
17 private tidal wetlands within the Critical Area is prohibited.  
18  
19 a. A building permit for a project involving the construction of a  
20 dwelling unit or other non-water-dependent structure on a pier  
21 located on State or private wetlands within the Critical Area may  
22 be approved provided a permit was issued by the Department of  
23 Natural Resources on or before January 1, 1989.  
24  
25 b. A building permit for a project involving the construction of a  
26 dwelling unit or other non-water-dependent structure on a pier  
27 located on State or private wetlands within the Critical Area may  
28 be approved if the following conditions exist:  
29  
30 1. The project is constructed on a pier that existed as of  
31 December 1, 1985 that can be verified by a Department of  
32 Natural Resources aerial photograph dated 1985,  
33 accompanied by a map of the area;  
34  
35 2. The project does not require an expansion of the pier  
36 greater than 25% of the area of piers or dry docks removed  
37 on the same property; however, additional expansion may  
38 be allowed in the amount of 10% of the water coverage  
39 eliminated by removing complete piers from the same or  
40 other properties. If the horizontal surface of a pier to be  
41 removed is not intact, but pilings identify its previous size,  
42 then that area may be used in determining the additional  
43 expansion permitted. The project expansion based on  
44 water coverage eliminated can be considered only if all  
45 nonfunctional piers on the property are removed except for

1 the project pier. The total expansion may not exceed 35%  
2 of the original size of the piers and dry docks removed; and  
3

4 3. The project is located in an Intensely Developed Area.  
5

6 c. A building permit for the repair of an existing dwelling unit or  
7 other non-water-dependent structure on a pier located on State or  
8 private wetlands within the Critical Area may be approved.  
9

10 d. If a structure that is not water-dependent is permitted under the  
11 exceptions included in this section, an applicant is required to  
12 demonstrate that the project will meet the following environmental  
13 objectives using the standards established herein:  
14

15 1. The construction and operation of the project will not have  
16 a long term adverse effect on the water quality of the  
17 adjacent body of water;  
18

19 2. The quality of stormwater runoff from the project will be  
20 improved; and  
21

22 3. Sewer lines or other utility lines extended for the pier will  
23 not affect the water quality of adjoining waters.  
24

25 M. Golf course  
26

27 1. A golf course, excluding main buildings and/or structures such as the  
28 clubhouse, pro-shop, parking lot, etc., may be permitted in Resource  
29 Conservation Areas provided:  
30

31 a. Such use is permitted in the underlying zoning; and  
32

33 b. Development is in accordance with the official guidance adopted  
34 by the Critical Area Commission on August 3, 2005.  
35

36 N. Existing industrial uses  
37

38 1. Existing industrial facilities and uses, including those that directly support  
39 agriculture, forestry, or aquaculture may be permitted in Resource  
40 Conservation Areas.  
41

42 2. Expansion of existing industrial facilities and uses in the Resource  
43 Conservation Areas shall be subject to the non-conforming use provisions  
44 of this Ordinance and the Grandfathering provisions in Part 8 and may  
45 require growth allocation.

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O. New industrial uses

- 1. New industrial uses shall not be permitted in Resource Conservation Areas.
- 2. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas and Intensely Developed Areas if permitted uses in the underlying zoning district and provided such facilities meet all requirements for development in the Limited Development Area and Intensely Developed Areas.
- 3. New, expanded or redeveloped water-dependent 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 Buffer Management Areas.

P. Non-maritime heavy industry

- 1. Non-maritime heavy industry may be permitted if:
  - a. The site is located in an Intensely Developed Area; and
  - b. 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.

Q. Utility transmission facilities

- 1. 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.
- 2. These provisions do not include power plants.

R. Sanitary landfill; rubble fill

- 1. Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical

1 Area, and these development activities or facilities are needed in order to  
2 correct an existing water quality or wastewater management problem.

- 3  
4 2. Existing, permitted facilities shall be subject to the standards and  
5 requirements of the Department of the Environment.  
6

7 S. Solid or hazardous waste collection or disposal facilities.  
8

- 9 1. Solid or hazardous waste collection or disposal facilities, including  
10 transfer stations may not be permitted in the Critical Area unless no  
11 environmentally acceptable alternative exists outside the Critical Area,  
12 and these development activities or facilities are needed in order to correct  
13 an existing water quality or wastewater management problem.  
14

- 15 2. Existing, permitted facilities shall be subject to the standards and  
16 requirements of the Department of the Environment.  
17

18 T. Sludge facilities  
19

- 20 1. Permanent sludge handling, storage and disposal facilities, other than  
21 those associated with wastewater treatment facilities may be permitted in  
22 the Critical Area provided:  
23

24 a. The facility or activity is located in an Intensely Developed Area;  
25 and  
26

27 b. Only after the activity or facility has demonstrated to all  
28 appropriate local and State permitting agencies that there will be a  
29 net improvement in water quality to the adjacent body of water.  
30

- 31 2. Agricultural or horticultural use of sludge under appropriate approvals  
32 when applied by an approved method at approved application rates may be  
33 permitted in the Critical Area, except in the 100 foot-Buffer.  
34

35 **28 – 501.8 GROWTH ALLOCATION**  
36

37 A. Growth Allocation Acreage  
38

- 39 1. An area equal to five (5) percent of the RCA acreage located within  
40 Easton and/or;  
41  
42 2. Growth allocation available to Easton as provided for by Talbot County.  
43  
44 3. As of the date of adoption of this Ordinance, there is no specific acreage  
45 of Growth Allocation allotted to the Town of Easton. The County will

1 review potential growth allocation requests from the Town on a case by  
2 case basis.

3  
4 B. Growth Allocation Floating Zone District

5  
6 1. Purpose:

7  
8 The Growth Allocation Floating Zone is not mapped but is designated for  
9 use in areas classified as Resource Conservation Areas and/or Limited  
10 Development Areas within the Easton Critical Area Overlay District. The  
11 purpose of the floating zone is to permit a change in the land management  
12 classification established in the Critical Area Overlay District on specific  
13 sites so that they may be developed to the extent permitted by the  
14 underlying zoning classification or the land use management  
15 classification. Only projects which have been approved by the Town  
16 Council for award of the Critical Area Growth Allocation are eligible for  
17 the floating zone district.

18  
19 2. Designation of floating zones

20  
21 a. The Growth Allocation District shall be a floating zone.

22  
23 b. The Growth Allocation District provides for changing the land  
24 management classification of Resource Conservation Areas and  
25 Limited Development Areas in the Critical Area Overlay District.

26  
27 C. Standards

28  
29 When locating new Intensely Developed or Limited Development Areas the  
30 following standards shall apply:

31  
32 1. A new Intensely Developed Area shall only be located in a Limited  
33 Development Area or adjacent to an existing Intensely Developed Area;

34  
35 2. A new Limited Development Area shall only be located adjacent to an  
36 existing Limited Development Area or an Intensely Developed Area:

37  
38 3. New Intensely Developed Areas shall be at least 20 acres in size unless:

39  
40 a. They are contiguous to an existing Intensely Developed Area or  
41 located in a Limited Development Area; or

42  
43 b. They are a grandfathered commercial or industrial use, which  
44 existed as of June 26, 1988. The amount of growth allocation  
45 deducted shall be equivalent to the area of the entire parcel or

1 parcels subject to the growth allocation request; or

2  
3 c. They are(or will be) served by public sewer, the growth allocation  
4 is consistent with the goals and objectives of the Town’s  
5 Comprehensive Plan, and the project has an overall economic  
6 benefit to the community.  
7

- 8 4. No more than one-half of Easton’s growth allocation may be located in  
9 Resource Conservation Areas except as provided in §9 below;  
10  
11 5. A new Limited Development Area or Intensely Developed Area shall be  
12 located in a manner that minimizes impacts to Habitat Protection Areas as  
13 defined herein and in COMAR 27.01.09 and in an area and manner that  
14 optimizes benefits to water quality;  
15  
16 6. A new Intensely Developed Area shall only be located where it minimizes  
17 impacts to the defined land uses of the Resource Conservation Area;  
18  
19 7. A new Intensely Developed Area or a Limited Development Area in a  
20 Resource Conservation Area shall be located at least 300 feet beyond the  
21 landward edge of tidal wetlands or tidal waters;  
22  
23 8. New Intensely Developed Areas or Limited Development Areas to be  
24 located in Resource Conservation Areas shall conform to all criteria of  
25 this Ordinance for such areas, shall be so designated on the Easton Critical  
26 Area Maps and shall constitute an amendment to this Ordinance subject to  
27 review and recommendation by the Planning Commission, and the  
28 approval of the Town Council and the Critical Area Commission, as  
29 provided herein.  
30  
31 9. If Easton is unable to utilize a portion of its growth allocation as set out in  
32 §1 and §2 above within or adjacent to existing Intensely Developed or  
33 Limited Development Areas, then that portion of the growth allocation  
34 which cannot be so located may be located in the Resource Conservation  
35 Areas in addition to the expansion allowed in §4 above under program  
36 measures specifically approved by the Critical Area Commission.  
37

38 D. Additional Factors  
39

40 In reviewing map amendments or refinements involving the use of growth  
41 allocation, Easton shall consider the following factors:  
42

- 43 1. Consistency with Easton’s adopted Comprehensive Plan and whether the  
44 growth allocation would implement the goals and objectives of the  
45 adopted plan. “Consistency with” means that a standard or factor will

1 further, and not be contrary to, the following items in the comprehensive  
2 plan:

- 3 a. Policies
- 4
- 5 b. Timing of the implementation of the plan, of development, and of
- 6 rezoning
- 7
- 8 c. Development patterns
- 9
- 10 d. Land uses; and
- 11
- 12 e. Densities or intensities.
- 13
- 14 2. For a map amendment or refinement involving a new Limited
- 15 Development Area, whether the development is:
- 16
- 17 a. To be served by a public wastewater system or septic system that
- 18 uses the best available nitrogen removal technology;
- 19
- 20 b. A completion of an existing subdivision
- 21
- 22 c. An expansion of an existing business; or
- 23
- 24 d. To be clustered.
- 25
- 26 3. For a map amendment or refinement involving a new Limited
- 27 Development Area, whether the development is:
- 28
- 29 a. To be served by a public wastewater system;
- 30
- 31 b. If greater than 20 acres, to be located in a designated Priority
- 32 Funding Area; and
- 33
- 34 c. To have a demonstrable economic benefit.
- 35
- 36 4. The use of existing public infrastructure, where practical
- 37
- 38 5. Consistency with State and regional environmental protection policies
- 39 concerning the protection of threatened and endangered species and
- 40 species in need of conservation that may be located on- or off-site;
- 41
- 42 6. Impacts on a Priority Preservation Area;
- 43
- 44 7. Environmental impacts associated with wastewater and stormwater
- 45 management practices and wastewater and stormwater discharges to tidal

1 waters, tidal wetlands, and tributary streams; and

- 2  
3 8. Environmental impacts associated with location in a coastal hazard area or  
4 an increased risk of severe flooding attributable to the proposed  
5 development.  
6

7 **28 – 501.9 GRANDFATHERING**

8  
9 A. Continuation of existing uses

- 10  
11 1. The continuation, but not necessarily the intensification or expansion, of  
12 any use in existence on June 26, 1988 may be permitted, unless the use  
13 has been abandoned for more than one year or is otherwise restricted by  
14 existing Town ordinances.  
15  
16 2. If any existing use does not conform with the provisions of this  
17 Ordinance, its intensification or expansion may be permitted only in  
18 accordance with the variance procedures in Part 10.  
19

20 B. Residential density on Grandfathered lots

- 21  
22 1. Except as otherwise provided, the following types of land are permitted to  
23 be developed with a single-family dwelling, if a dwelling is not already  
24 placed there, notwithstanding that such development may be inconsistent  
25 with the density provisions of this Ordinance.  
26  
27 a. A legal parcel of land, not being part of a recorded or approved  
28 subdivision, that was recorded as of December 1, 1985;  
29  
30 b. Land that received a building permit subsequent to December 1,  
31 1985, but prior to June 26, 1988;  
32  
33 c. Land that was subdivided into recorded, legally buildable lots,  
34 where the subdivision received final approval between June 1,  
35 1984 and December 1, 1985; or  
36  
37 d. Land that was subdivided into recorded, legally buildable lots,  
38 where the subdivision received the final approval after December  
39 1, 1985 and provided that either development of any such land  
40 conforms to the , Intensely Developed Area, Limited  
41 Development Area or Resource Conservation Area requirements in  
42 this Ordinance or the area of the land has been counted against the  
43 growth allocation permitted under this Ordinance.  
44

45 C. Consistency

1  
2 Nothing in this Section may be interpreted as altering any requirements of this  
3 Ordinance related to water-dependent facilities or Habitat Protection Areas  
4

5 **28 – 501.10 VARIANCES**  
6

7 A. Applicability  
8

9 Easton has established provisions where, owing to special features of a site or  
10 other circumstances, implementation of this Ordinance or a literal enforcement of  
11 provisions within this Ordinance would result in unwarranted hardship to an  
12 applicant, a Critical Area variance may be obtained.  
13

- 14 1. In considering an application for a variance, Easton shall presume that the  
15 specific development activity in the Critical Area, that is subject to the  
16 application and for which a variance is required, does not conform with  
17 the general purpose and intent of Natural Resources Article, Title 8  
18 Subtitle 18, COMAR Title 27, and the requirements of this Ordinance.  
19
- 20 2. Unwarranted hardship means that without a variance, an applicant would  
21 be denied reasonable and significant use of the entire parcel or lot for  
22 which the variance is requested.  
23

24 B. Reference to Article XII  
25

26 The provisions for granting such a variance shall conform to the requirements  
27 specified in Article XII § 28 – 1303.5 Powers and Duties, relating to powers of  
28 the Board of Appeals to review and grant Variances. More specifically, § 28 –  
29 1303.5.C.8:  
30

31 **28 – 501.11 LOT CONSOLIDATION AND RECONFIGURATION**  
32

33 A. Applicability  
34

35 The provisions of this part apply to a consolidation or a reconfiguration of any  
36 nonconforming legal grandfathered parcel or lot. These provisions do not apply  
37 to the reconfiguration or consolidation of parcels or lots which are conforming or  
38 meet all Critical Area requirements. Nonconforming parcels or lots include  
39

- 40 1. Those for which a Critical Area variance is sought or has been issued; and  
41
- 42 2. Those located in the Resource Conservation Area and are less than 20  
43 acres in size.  
44

45 B. Procedure

1  
2 An applicant seeking a parcel or lot consolidation or reconfiguration shall provide  
3 the information required in COMAR 27.01.02.08.E to Easton.  
4

- 5 1. The Town of Easton may not approve a proposed parcel or lot  
6 consolidation or reconfiguration without making written findings in  
7 accordance with COMAR 27.01.02.08.F.  
8  
9 2. The Town of Easton shall issue a final written decision or order granting  
10 or denying an application for a consolidation or reconfiguration.  
11  
12 a. After a final written decision or order is issued, Easton shall send  
13 a copy of the decision or order and a copy of any approved  
14 development plan within 10 business days by U.S. mail to the  
15 Critical Area Commission's business address.  
16

17 **28 – 501.12 AMENDMENTS**

18  
19 A. Amendments  
20

21 The Easton Town Council may from time to time amend the Critical Area  
22 provisions of this Ordinance. Changes may include, but are not limited to  
23 amendments, revisions, and modifications to the Critical Area regulations, Critical  
24 Area Maps, implementation procedures, and local policies that affect the Easton's  
25 Critical Area. All such amendments, revisions, and modifications shall also be  
26 approved by the Critical Area Commission as established in § 8-1809 of the  
27 Natural Resources Article of the Annotated Code of Maryland. No such  
28 amendment shall be implemented without approval of the Critical Area  
29 Commission. Standards and procedures for Critical Area Commission approval  
30 of proposed amendments are as set forth in the Critical Area Law § 8-1809(i) and  
31 § 8-1809(d), respectively. IN ADDITION TO THE REQUIREMENTS OF  
32 ARTICLE XIV, AMENDMENTS TO THE CRITICAL AREA PROVISIONS  
33 OF THIS ORDINANCE SHALL ALSO COMPLY WITH THIS SECTION.  
34

35 B. Zoning Map Amendments  
36

37 Except for Ordinance amendments or Ordinance refinements developed during a  
38 six-year comprehensive review, a zoning map amendment may only be granted  
39 by the Easton Town Council upon proof of a mistake in the existing zoning. This  
40 requirement does not apply to proposed changes to a zoning map that meet the  
41 following criteria:  
42

- 43 1. Are wholly consistent with the land classifications as shown on the  
44 adopted Critical Area Overlay Map; or  
45

- 1                   2. The use of growth allocation in accordance with the growth allocation  
2                   provisions of this Ordinance is proposed.  
3

4                   C. Process  
5

- 6                   1. When an amendment is requested, the applicant shall submit the  
7                   amendment to the Planning Commission for review and recommendation.  
8                   Upon completing Findings of Fact, these documents shall be forwarded to  
9                   the Easton Town Council. The Easton Town Council shall hold a public  
10                  hearing at which parties of interest and citizens shall have an opportunity  
11                  to be heard. At least fourteen (14) days notice of the time and place of  
12                  such hearing shall be published in a newspaper of general circulation in  
13                  Easton.  
14  
15                  2. After the Town Council approves an amendment, they shall forward their  
16                  decision and applicable resolutions along with the amendment request to  
17                  the Critical Area Commission for final approval.  
18

19                  **28 – 501.13 ENFORCEMENT**  
20

21                  A. Consistency  
22

23                  The Critical Area provisions of this Ordinance, in accordance with the Critical  
24                  Area Act and Criteria supersede any inconsistent law, Chapter or plan of the  
25                  Town of Easton. In the case of conflicting provisions, the stricter provisions shall  
26                  apply  
27

28                  B. Violations  
29

- 30                  1. No person shall violate any provision of this Ordinance. Each violation  
31                  that occurs and each calendar day that a violation continues shall be a  
32                  separate offense.  
33  
34                  2. Each person who violates a provision of this Ordinance shall be subject to  
35                  separate administrative civil penalties, abatement and restoration orders,  
36                  and mitigation for each offense.  
37  
38                  3. Non-compliance with any permit or order issued by Easton related to the  
39                  Critical Area shall be a violation of this Ordinance and shall be enforced  
40                  as provided herein.  
41

42                  C. Reasonable Persons  
43

44                  The following persons may each be held jointly or severally responsible for a  
45                  violation: (1) persons who apply for or obtain any permit or approval, (2)

1 contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6)  
2 any person who has committed, assisted, or participated in the violation.

3  
4 D. Required Enforcement Action

5  
6 In the case of violations of this Ordinance, Easton shall take enforcement action  
7 including:

- 8  
9 1. Assess administrative civil penalties as necessary to cover the costs  
10 associated with performing inspections, supervising or rendering  
11 assistance with identifying and citing the violation, issuing abatement and  
12 restoration orders, and reviewing mitigation plans and ensuring  
13 compliance with these plans;  
14  
15 2. Issue abatement, restoration, and mitigation orders as necessary to:  
16  
17 a. Stop unauthorized activity;  
18  
19 b. Restore and stabilize the site, as appropriate, to its condition prior  
20 to the violation or to a condition that provides the same water  
21 quality and habitat benefits; and  
22  
23 3. Require the implementation of mitigation measures, in addition to  
24 restoration activities, to offset the environmental damage and degradation  
25 or loss of environmental benefit resulting from the violation.  
26

27 E. Right to Enter Property

28  
29 Except as otherwise authorized and in accordance with the procedures specified  
30 herein, the Town of Easton or their designee may obtain access to and enter a  
31 property in order to identify or verify a suspected violation, restrain a  
32 development activity, or issue a citation if Easton has probable cause to believe  
33 that a violation of this Ordinance has occurred, is occurring, or will occur. Easton  
34 shall make a reasonable effort to contact a property owner before obtaining access  
35 to or entering the property. If entry is denied, Easton may seek an injunction to  
36 enter the property to pursue an enforcement action.  
37

38 F. Administrative Civil Penalties

39  
40 In addition to any other penalty applicable under State or Easton law, every  
41 violation of a provision of Natural Resources Article, Title 8, Subtitle 18, and/or  
42 the Critical Area provisions of this Ordinance shall be punishable by a civil  
43 penalty of up to \$10,000 per calendar day.  
44

- 45 1. Before imposing any civil penalty, the person(s) believed to have violated

1 this Ordinance shall receive: written notice of the alleged violation(s)  
2 including which, if any, are continuing violations, and an opportunity to  
3 be heard. The amount of the civil penalty for each violation, including  
4 each continuing violation, shall be determined separately. For each  
5 continuing violation, the amount of the civil penalty shall be determined  
6 per day. In determining the amount of the civil penalty, Easton shall  
7 consider:

- 8
- 9 a. The gravity of the violation;
- 10
- 11 b. The presence or absence of good faith of the violator;
- 12
- 13 c. Any willfulness or negligence involved in the violation including
- 14 a history of prior violations;
- 15
- 16 d. The environmental impact of the violation; and
- 17
- 18 e. The cost of restoration of the resource affected by the violation
- 19 and mitigation for damage to that resource, including the cost to
- 20 Easton for performing, supervising, or rendering assistance to the
- 21 restoration and mitigation.
- 22
- 23 2. Administrative civil penalties for continuing violations shall accrue for
- 24 each violation, every day each violation continues, with no requirements
- 25 for additional assessments, notice, or hearings for each separate offense.
- 26 The total amount payable for continuing violations shall be the amount
- 27 assessed per day for each violation multiplied by the number of days that
- 28 each violation has continued.
- 29
- 30 3. The person responsible for any continuing violation shall promptly
- 31 provide Easton with written notice of the date(s) the violation has been or
- 32 will be brought into compliance and the date(s) for Easton's inspection to
- 33 verify compliance. Administrative civil penalties for continuing violations
- 34 continue to accrue as set forth herein until Easton receives such written
- 35 notice and verifies compliance by inspection or otherwise.
- 36
- 37 4. Assessment and payment of administrative civil penalties shall be in
- 38 addition to and not in substitution for recovery by Easton of all damages,
- 39 costs, and other expenses caused by the violation.
- 40
- 41 5. Payment of all administrative civil penalties assessed shall be a condition
- 42 precedent to the issuance of any permit or other approval required by this
- 43 Ordinance.
- 44

45 G. Cumulative Remedies

1  
2 The remedies available to Easton under this Ordinance are cumulative and not  
3 alternative or exclusive, and the decision to pursue one remedy does not preclude  
4 pursuit of others.  
5

#### 6 H. Injunctive Relief 7

8 Easton is authorized to institute injunctive or other appropriate actions or  
9 proceedings to bring about the discontinuance of any violation of this Ordinance,  
10 an administrative order, a permit, a decision, or other imposed condition.  
11

- 12 1. The pendency of an appeal to the Board of Appeals or subsequent judicial  
13 review shall not prevent Easton from seeking injunctive relief to enforce  
14 an administrative order, permit, decisions, or other imposed condition, or  
15 to restrain a violation pending the outcome of the appeal or judicial  
16 review.  
17

#### 18 I. Variances Pursuant to a Violation 19

20 Easton may accept an application for a variance regarding a parcel or lot that is  
21 subject to a current violation of this subtitle or any provisions of an order, permit,  
22 plan, or this Ordinance in accordance with the variance provisions of this  
23 Ordinance. However, the application shall not be reviewed, nor shall a final  
24 decision be made until all abatement, restoration, and mitigation measures have  
25 been implemented and inspected by the Town of Easton.  
26

#### 27 J. Permits Pursuant to a Violation 28

29 Easton may not issue any permit, approval, variance, or special exception, unless  
30 the person seeking the permit has:  
31

- 32 1. Fully paid all administrative, civil, or criminal penalties as set forth in  
33 Section F. above;  
34
- 35 2. Prepared a restoration or mitigation plan, approved by Easton, to abate  
36 impacts to water quality or natural resources as a result of the violation;  
37
- 38 3. Performed the abatement measures in the approved plan in accordance  
39 with the Easton regulations; and  
40
- 41 4. Unless an extension of time is approved by Easton because of adverse  
42 planting conditions, within 90 days of the issuance of a permit, approval,  
43 variance, or special exception for the affected property, any additional  
44 mitigation required as a condition of approval for the permit, approval,  
45 variance, or special exception shall be completed.

1  
2 K. Appeals  
3

4 An appeal to the Board of Appeals may be filed by any person aggrieved by any  
5 order, requirement, decision or determination by Easton in connection with the  
6 administration and enforcement of this Ordinance.  
7

- 8 1. An appeal is taken by filing a written notice of appeal with the Board of  
9 Appeals in accordance with the provisions in the Easton Zoning  
10 Ordinance and accompanied by the appropriate filing fee.  
11  
12 2. An appeal must be filed within thirty (30) days after the date of the  
13 decision or order being appealed; and  
14  
15 3. An appeal stays all actions by Easton seeking enforcement or compliance  
16 with the order or decisions being appealed, unless Easton certifies to the  
17 Board of Appeals that (because of facts stated in the certification) such  
18 stay will cause imminent peril to life or property. In such a case, action by  
19 Easton shall not be stayed except by order of the Board of Appeals or a  
20 court on application of the party seeking the stay.  
21

22 **28 – 501.14 THE 100-FOOT BUFFER**  
23

24 A. Applicability and delineation  
25

26 An applicant for a development activity or a change in land use shall apply all of the  
27 required standards for a minimum 100-foot Buffer as described in this part. The  
28 minimum 100-foot Buffer shall be delineated in the field and shall be shown on all  
29 applications as follows:  
30

- 31 1. The minimum 100-foot Buffer is delineated landward from:  
32  
33 a. The mean high water line of tidal water;  
34  
35 b. The edge of each bank of a tributary stream; and  
36  
37 c. The upland boundary of a tidal wetland.  
38  
39 2. The Buffer shall be expanded beyond the minimum 100-foot Buffer as  
40 described in §A.1. above and the minimum 200-foot Buffer as described in  
41 §A.3. below, to include the following contiguous land features:  
42  
43 a. A steep slope at a rate of four feet for every one percent of slope or  
44 the entire steep slope to the top of the slope, whichever is greater;  
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- b. A non-tidal wetland to the upland boundary of the non-tidal wetland;
- c. The 100-foot Buffer that is associated with a Non-tidal 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 feet where the expansion area includes the minimum 100-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 §A.2. above; or
  - b. A Buffer of at least 200 feet from a tidal waterway or tidal wetlands; and a Buffer of at least 100-feet from a tributary stream, whichever is greater.
- 4. The provisions of §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 Easton, disturbance to the Buffer is permitted for the following activities, provided mitigation is performed in accordance with an approved Buffer Management Plan as required per Section F of this Part:

- 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 Ordinance
- 3. A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance;
- 4. A new development or redevelopment activity on a lot or parcel that was

1 created before January 1, 2010 where:

- 2
- 3 a. The Buffer is expanded for highly erodible soil on a slope less than 15
- 4 percent or is expanded for a hydric soil and the expanded Buffer
- 5 occupies at least 75% of the lot or parcel;
- 6
- 7 b. The development or redevelopment is located in the expanded
- 8 portion of the Buffer and not within the 100-foot Buffer; and
- 9
- 10 c. Mitigation occurs at a 2:1 ratio based on the lot coverage of the
- 11 proposed development activity that is in the expanded Buffer.
- 12

13 5. A new or replacement septic system on a lot created before May 4, 1994,

14 where:

15

- 16 a. The Talbot County Health Department has determined the Buffer is
- 17 the only available location for the septic system; and
- 18
- 19 b. Mitigation is provided at a 1:1 ratio for area of canopy cleared of any
- 20 forest or developed woodland.
- 21

### 22 C. Buffer Establishment in Vegetation

23

24 An applicant for a development activity, redevelopment activity or a change in land

25 use that occurs outside the Buffer, but is located on a riparian lot or parcel that

26 includes the minimum 100-foot Buffer, shall establish the Buffer in vegetation if the

27 Buffer is not fully forested or fully established in woody or wetland vegetation.

28 Easton shall require a Buffer Management Plan in accordance with the standards of

29 this Part

30

- 31 1. The provisions of this section apply to:
- 32
- 33 a. A new subdivision or a new lot;
- 34
- 35 b. A lot or parcel that is converted from one land use to another;
- 36
- 37 c. Development or redevelopment on a lot or parcel created before
- 38 January 1, 2010.
- 39
- 40 2. The provisions of this section do not apply to the in-kind replacement of a
- 41 structure.
- 42
- 43 3. If a Buffer is not fully forested or fully established in woody or wetland
- 44 vegetation, the Buffer shall be established through planting in accordance with
- 45 COMAR 27.01.09.01-1.

1  
2 D. Mitigation for impacts to the Buffer  
3

- 4 1. Authorized development activities may include a variance, subdivision, site  
5 plan, shore erosion control permit, building permit, grading permit, septic  
6 system approved by the Talbot County Health Department on a lot created  
7 before May 4, 1994, and special exception  
8  
9 2. All authorized development activities shall be mitigated according to  
10 COMAR 27.01.09.01-2.  
11  
12 3. All unauthorized development activities in the Buffer shall be mitigated at a  
13 ratio of 4:1 for the limit of disturbance in the Buffer.  
14  
15 4. Planting for mitigation shall be planted onsite within the Buffer. If mitigation  
16 planting cannot be located within the Buffer, then Easton may permit planting  
17 in the following order of priority:  
18  
19 a. On-site and adjacent to the Buffer; and  
20  
21 b. On-site elsewhere in the Critical Area.  
22  
23 c. A fee in lieu as referenced in §G below.  
24

25 E. Buffer planting standards  
26

- 27 1. An applicant that is required to plant the Buffer for Buffer establishment or  
28 Buffer mitigation shall apply the planting standards set forth in COMAR  
29 27.01.09.01-2.  
30  
31 2. A variance to the planting and mitigation standards of this Ordinance is not  
32 permitted.  
33

34 F. Required submittal of Buffer Management Plans  
35

36 An applicant that is required to plant the Buffer to meet establishment or mitigation  
37 requirements shall submit a Buffer Management Plan as provided in COMAR  
38 27.01.09.01-3 with the application for the specific activity. The provisions of this  
39 Part do not apply to maintaining an existing grass lawn or an existing garden in the  
40 Buffer  
41

- 42 1. A Buffer Management Plan that includes planting for establishment shall be  
43 submitted with all other application materials, clearly specify the area to be  
44 planted and state if the applicant is:  
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- 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 Easton.
  - 3. An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by Easton.
  - 4. Easton may not approve a Buffer Management Plan unless:
    - a. The plan clearly indicates that all planting standards under §E of this Ordinance 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 Ordinance.
    - 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

1 recordation in accordance with COMAR 27.01.09.01-2.  
2

- 3 9. Buffer management plans that includes natural regeneration shall follow the  
4 provisions of COMAR 27.01.09.01-4  
5

6 G. Fees-In-Lieu of Buffer Mitigation  
7

8 A fee- in-lieu of mitigation will be collected if the planting requirements of the Buffer  
9 Management Plan cannot be fully met onsite, in accordance with the following  
10 standards;

- 11
- 12 1. Fee-in-lieu monies shall be collected and held in a special fund, which may  
13 not revert to Easton's general fund;  
14
  - 15 2. Fee-in-lieu shall be assessed at \$1.50 per square foot of required Buffer  
16 mitigation;  
17
  - 18 3. A portion of fee-in-lieu money can be used for management and  
19 administrative costs; however, this cannot exceed 20% of the fees collected;  
20 and  
21
  - 22 4. Fee-in-lieu monies shall be used for the following projects:  
23
    - 24 a. To establish the Buffer on sites where planting is not a condition of  
25 development or redevelopment;  
26
    - 27 b. For water quality and habitat enhancement projects as approved by  
28 the Critical Area Commission or by agreement between Easton and the  
29 Critical Area Commission.  
30

31 H. Shore erosion control projects  
32

33 Shore erosion control measures are permitted activities within the Buffer in  
34 accordance with the following requirements:  
35

- 36 1. An applicant for a shore erosion control project that affects the Buffer in any  
37 way, including, but not limited to access, vegetation removal and pruning, or  
38 backfilling shall submit a Buffer Management Plan in accordance with the  
39 requirements of this section; and  
40
- 41 2. Comply fully with all of the policies and criteria for a shore erosion control  
42 project stated in COMAR 27.01.04 and COMAR 26.24.  
43

44 **28 – 501.15 BUFFER MANAGEMENT AREA (BMA) PROVISIONS**  
45

1 A. Development and redevelopment standards.  
2

3 New development or redevelopment activities, including structures, roads,  
4 parking areas and other impervious surfaces, lot coverage or septic systems will  
5 not be permitted in the Buffer in a designated BMA unless the applicant can  
6 demonstrate that there is no feasible alternative and the Planning Commission  
7 finds that efforts have been made to minimize Buffer impacts and the  
8 development shall comply with the following standards:  
9

- 10 1. Development and redevelopment activities have been located as far as  
11 possible from mean high tide, the landward edge of tidal wetlands, or the  
12 edge of tributary streams.  
13  
14 2. Variances to other local setback requirements have been considered before  
15 additional intrusion into the Buffer.  
16  
17 3. Commercial, industrial, institutional, recreational and multi-family  
18 residential development and redevelopment shall meet the following  
19 standards:  
20  
21 a. New development, including accessory structures, shall minimize  
22 the extent of intrusion into the Buffer. New development shall not  
23 be located closer to the water (or edge of tidal wetlands) than the  
24 minimum required setback for the zoning district or 50 feet,  
25 whichever is greater. Structures on adjacent properties shall not be  
26 used to determine the setback line.  
27  
28 b. Redevelopment, including accessory structures, shall minimize  
29 the extent of intrusion into the Buffer. Redevelopment shall not be  
30 located closer to the water (or edge of tidal wetlands) than the local  
31 setback for the zoning district or 25 feet, whichever is greater.  
32 Structures on adjacent properties shall not be used to determine the  
33 setback line. A new structure may be constructed on the footprint  
34 of an existing structure.  
35  
36 4. Single family residential development and redevelopment shall meet the  
37 following standards:  
38  
39 a. New development or redevelopment shall minimize the shoreward  
40 extent of intrusion into the Buffer. New development and  
41 redevelopment shall not be located closer to the water (or the edge  
42 of tidal wetlands) than principal structures on adjacent properties  
43 or the local setback for the zoning district, whichever is greater. In  
44 no case shall new development be located less than 50 feet, or  
45 redevelopment be located less than 25 feet from the water (or the

1 edge of tidal wetlands).

2  
3 b. Existing principal or accessory structures may be replaced in the  
4 same footprint.

5  
6 c. New accessory structures may be located closer to the water than  
7 the setback if the Town of Easton has determined there are no  
8 other locations for the structures. The area of new accessory  
9 structures shall not exceed 500 square feet within 25 feet of the  
10 water and 1,000 square feet total in the Buffer.

11  
12 5. Variances to other local setback requirements shall be considered before  
13 additional intrusion into the Buffer is permitted.

14  
15 6. Development and redevelopment may not impact any Habitat Protection  
16 Area (HPA) other than the Buffer, including non-tidal wetlands, other  
17 State or federal permits notwithstanding.

18  
19 7. Buffer Management Area (BMA) designation shall not be used to  
20 facilitate the filling of tidal wetlands that are contiguous to the Buffer or to  
21 create additional buildable land for new development or redevelopment.

22  
23 8. No natural vegetation may be removed in the Buffer except that required  
24 by the proposed construction.

25  
26 9. Mitigation for development or redevelopment in the BMA approved under  
27 the provisions of this subsection shall be implemented as follows:

28  
29 a. Natural forest vegetation of an area twice the extent of the  
30 footprint of the development activity within the 100-foot Buffer  
31 shall be planted on site in the Buffer or at another location  
32 approved by the Planning Commission.

33  
34 b. Applicants who cannot fully comply with the planting  
35 requirement in §a above, may offset by removing an equivalent  
36 area of existing lot coverage in the Buffer.

37  
38 c. Applicants who cannot comply with either the planting or offset  
39 requirements in §a. or §b. above shall pay \$1.50/sq.ft. into a fee-in-  
40 lieu program.

41  
42 d. Any fees-in-lieu collected under these provisions shall be placed  
43 in an account that will assure their use only for projects within the  
44 Critical Area to enhance wildlife habitat, improve water quality, or  
45 otherwise promote the goals of Easton's Critical Area Ordinance.

1 The funds cannot be used to accomplish a project or measure that  
2 would have been required under existing local, State, or federal  
3 laws, regulations, statutes, or permits. The status of these funds  
4 must be reported to the Critical Area Commission on an annual  
5 basis.  
6

7 e. Any required mitigation or offset areas shall be protected from  
8 future development through an easement, development agreement,  
9 plat notes or other instrument and recorded among the land records  
10 of the County.  
11

12  
13 **28 – 501.16 OTHER HABITAT PROTECTION AREAS**

14  
15 A. Identification

16  
17 An applicant for a development activity, redevelopment activity or change in land  
18 use shall identify all applicable Habitat Protection Areas and follow the standards  
19 contained in this Part. Habitat Protection Areas includes:  
20

- 21 1. Threatened or endangered species or species in need of conservation;
- 22 2. Colonial water bird nesting sites;
- 23 3. Historic waterfowl staging and concentration areas in tidal waters,  
24 tributary streams or tidal and non-tidal wetlands;
- 25 4. Existing riparian forests;
- 26 5. Forest areas utilized as breeding areas by future interior dwelling birds and  
27 other wildlife species;
- 28 6. Other plant and wildlife habitats determined to be of local significance;
- 29 7. Natural Heritage Areas; and
- 30 8. Anadromous fish propagation water

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39 B. Standards

- 40  
41 1. An applicant proposing a subdivision for a site plan for a site within the  
42 Critical Area that is in or near a Habitat Protection Area listed above, shall  
43 request review by the Department of Natural Resources Wildlife and  
44 Heritage Service for comment and technical advice. Based on the  
45 Department’s recommendations, additional research and site analysis may

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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.

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**Appendix A SUMMARY OF NOTIFICATION REQUIREMENTS – CRITICAL AREA COMMISSION**

APPENDIX A SUMMARY OF NOTIFICATION REQUIREMENT CRITICAL AREA COMMISSION (COMAR 14.20)			
Type of Application	Require Notification to Critical Area Commission (Yes/No)		
	IDA	LDA	RCA
1. Disturbances to Habitat Protection Areas	Y	Y	Y
2. Physical disturbance to Buffer	Y	Y	Y
3. Variance from Critical Area Program	Y	Y	Y
4. Development resulting in less than 5,000 sq. ft. of disturbance	N	N	N
5. Development resulting in between 5,000 and 15,000 sq. ft. of disturbance	N	N	Y
6. Development resulting in greater than 15,000 sq. ft. of disturbance	Y	Y	Y
7. Subdivision of one to four lots	N	N	N
8. Subdivision of five to ten lots	N	Y	Y
9. Subdivision of greater than ten lots	Y	Y	Y
10. Subdivision affecting Growth Allocation	N/A	Y	Y
11. Single family dwelling unit (building permit)	N	N	N
12. Accessory structures (building permit)	N	N	N
13. Rezoning that would occur wholly or partially within the Critical Area	Y	Y	Y
14. Special exception or conditional use for industrial, commercial, institutional non-residential or multi-family	N	Y	Y
15. Substantial alteration to applications previously submitted to Critical Are Commission	Y	Y	Y

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