

ARTICLE VII. - ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM

Sec. 30-551. - Intent; purpose; findings; severability.

- (a) *Intent.* In 2002 the Maryland General Assembly passed the Atlantic Coastal Bays Protection Act for the purpose of preserving, protecting, and improving the water quality and natural habitats of the Atlantic Coastal Bays and their tributaries. The Legislature has determined that the Atlantic Coastal Bays require especially sensitive consideration with regard to development. It is the intent of the Mayor and City Council of Ocean City to establish a local program to implement the requirements of the act.
- (b) *Findings.* The **Mayor and City Council** find and declare that:
- (1) The Atlantic Coastal Bays and their tributaries are natural resources of great significance to the town;
 - (2) The shoreline and adjacent lands, particularly the 100-foot buffer area, constitute a valuable, fragile, and sensitive part of this estuarine system, where human activity can have a particularly immediate and adverse impact on water quality and natural habitats;
 - (3) The capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited;
 - (4) Studies have documented that the quality and productivity of the waters of the Atlantic Coastal Bays and their tributaries **had** declined due to the cumulative effects of human activity that **had** caused increased levels of pollutants, nutrients, and toxins in the bay systems and declines in more protective land uses such as forestland and agricultural land in the watershed;
 - (5) Those portions of the Atlantic Coastal Bays and their tributaries within Maryland are particularly stressed by the continuing population growth and development activity concentrated in the Ocean City, West Ocean City, Ocean Pines, St. Martins Neck, South Point, and Maryland Route 611 corridor areas;
 - (6) The quality of life for the citizens of Ocean City would be enhanced through the restoration of the quality and productivity of the water of the Atlantic Coastal Bays;
 - (7) The preservation of the Atlantic Coastal Bays is dependent, in part, on minimizing further adverse impacts to the water quality and natural habitats of the shoreline and adjacent lands;
 - (8) The cumulative impact of **previous** development practices **was** inimical to these purposes;
 - (9) It is in the Town's interest for the benefit of current and future generations to **continue to** foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Atlantic Coastal Bays so as to minimize damage to water quality and natural habitats.
 - (10) Since all developed property in the Town of Ocean City drains directly to the Maryland Coastal Bays, all properties will be subject to a critical area mitigation fee. All proposed improvements will impact the water quality and habitat of the Coastal Bays and will need to be offset.
- (c) *Purpose.* The purpose of the Ocean City Atlantic Coastal Bays Critical Area Program is to:
- (1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or runoff from surrounding lands;
 - (2) Conserve fish, wildlife, and plant habitat; and

- (3) Establish land use policies for development in the Atlantic Coastal Bays 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.
- (4) Encourage the use of retrofitting measures to address existing stormwater management problems.
- (5) Establish landscaping to promote the reduction of ground water pollution, stormwater runoff, airborne pollution, visual pollution and artificial light glare.

(6) Also the purpose or intent of this article is to improve the appearance of the vehicular use areas and property abutting public rights-of-way; to require buffering between noncompatible land uses; to protect, preserve and promote the aesthetic appeal, scenic beauty, character and value of Ocean City; and to promote public health and safety through the reduction of noise pollution, stormwater runoff, air pollution, visual pollution and artificial light glare.

- (d) *Citing.* This subtitle may be cited as the "Ocean City Atlantic Coastal Bays Critical Area Program."
- (e) *Territory affected.* Within the Town of Ocean City, the Atlantic Coastal Bays Critical Area shall mean:
 - (1) All waters of and lands under the Atlantic Coastal Bays and their tributaries to the head of tide as indicated on the state wetlands maps and all state and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland, as from time to time amended, and all land and water areas within the corporate limits of the Town of Ocean City, as from time to time amended. The boundaries of the Atlantic Coastal Bays Critical Area and the limits of each of the land classification designations will be as shown on maps adopted by resolution of the **Mayor and City Council** after a duly advertised public hearing and approved by the critical area commission.
- (f) *Applicability.*
 - (1) From the effective date of a program approved or adopted by the commission, a project or development activity approval that involves land located in the Atlantic Coastal Bays Critical Area may not be granted unless the project approval is consistent and complies with this program. **No new site development building, structure or vehicular use area shall hereafter be created and used unless landscaping is provided as required by the provisions of this article**
 - (a) Expansion. If any existing building, structure or vehicular use area is expanded by more than five percent of the total existing gross area, the new area must comply with the minimum requirements of this article; also, the existing area must be landscaped in accordance with the provisions of this article whenever possible. However, in no instance shall this requirement cause the elimination of required parking spaces or alteration or relocation of preexisting buildings or structures.**
 - (b) Exemptions. In the event that a building or structure exists in an area otherwise required by this article to be landscaped, then no landscaping shall be required in that area. No landscaping requirement shall cause the elimination of existing required parking. The provisions of this article relative to landscaping of vehicular use areas shall only apply to required parking and shall not apply to additional parking provided by the owner which is not required under the provisions of this Code.**
 - (2) Except as provided herein, the requirements of this subtitle shall not apply to the initial development of the undeveloped property in Ocean City, known locally as "Holland's Island," in accordance with the final site plan approval, as amended, received on March 27, 2002.

- (g) *Underlying zoning.* This subtitle is supplemental and is applicable in addition to underlying zoning and land use provisions of this Code and other applicable land use laws and regulations. Where such provisions are in conflict with the provisions of this subtitle, the stricter provisions shall prevail, provided, however, that the minimum requirements of this subtitle must always be met even when a stricter standard is applicable.
- (h) *Severability.* Should any section or provision of this subtitle be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the subtitle as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-552. - Definitions.

- (a) *Applicability.* The following words have the following meanings for the purposes of implementing the Atlantic Coastal Bays Critical Area Law.

Abatement. The act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.

Additions and alterations. Additions are changes to the existing footprint or lot coverage; alterations are internal in nature, or increase in height and result in no change of footprint or hydrology.

Afforestation. The establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

Areas with species in need of conservation. Those areas where these species, as designated by the Secretary of the Department of Natural Resources, are found or have historically been found and their surrounding habitats.

Areas of threatened and endangered species. Those areas where these species, as designated by the Secretary of the Department of Natural Resources, are found or have historically been found and their surrounding habitats.

Atlantic Coastal Bays. Means and includes the Assawoman Bay, Isle of Wight Bay, Sinepuxent Bay, Newport Bay, Chincoteague Bay, associated smaller bays forming parts thereof and other bodies of water between Assateague Island and Ocean City on the east and the mainland on the west and including their tidal tributaries and canals.

Atlantic Coastal Bays Critical Area. All waters of and lands under the Atlantic Coastal Bays and their tributaries to the head of tide as indicated on the state wetlands maps and all state and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland, as from time to time amended, and including all land within the corporate limits of the Town of Ocean City, as from time to time amended.

Best Management Practices (BMPs). Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins and sediment.

Buffer. An area immediately landward from mean high water of tidal waterways, the edge of bank of a tributary stream, or the edge of a tidal wetland; and the area is characterized by, or established in, natural vegetation for the purpose of protecting aquatic, wetlands, shoreline and terrestrial environments from manmade disturbances. The Buffer includes an area of at least 100-feet even if that area was previously disturbed by human activity or is currently developed and also includes any expansion for contiguous sensitive areas, such as steep slope, hydric soil,

highly erodible soil, nontidal wetland, or a nontidal wetland of special state concern as defined in COMAR 26.23.01.01.

Buffer management area. An area within the buffer designated by the **Mayor and City Council** and approved by the critical area commission which, due to its existing pattern of development, is prevented from fulfilling its intended functions for water quality and habitat protection as set forth in COMAR 27.01.09.

Cluster development. A residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.

Colonial nesting water birds. Herons, egrets, terns, glossy ibis and other such birds that for the purpose of nesting congregate (that is, "colonize") in a limited number of areas, which can be susceptible to local disturbances.

COMAR. The Code of Maryland Regulations.

Commission. The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

Community pier. A boat docking facility associated with a subdivision or similar residential area, or other multiple family dwelling units. Individual private piers are excluded from this definition.

Consolidation. Any term used by the town for a development application that proposes to combine legal parcels of land or recorded, legally buildable lots into fewer parcels or lots than the number that existed before the application, including **lot** line abandonment, deed restricted as a unit, deed consolidation, boundary line adjustment, or lot line adjustment.

Department. The department designated or created by the **Mayor and City Council** as responsible for a task.

Developed woodlands. An area of trees and natural vegetation interspersed with residential, commercial, or industrial development.

Developer. A person who undertakes development activity as defined in this ordinance; or a person who undertakes development as defined in the criteria of the commission.

Development activity. Human activity that results in disturbance to land, vegetation, or a structure.

Disturbed area. The entire upland area of a site as determined by the sediment and erosion control plan. If the development activity is an accessory structure, addition, deck or paving project or similar activity that disturbs less than 50 percent of the parcel or site, the disturbed area is the footprint of the improvements as determined by the department.

Disturbance. An alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintenance of an existing grass lawn.

Endangered species. Any species of fish, wildlife, or plants which have been designated as such by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the state's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, 16 USC 1531 et seq., as from time to time amended.

Fastland -Upland area of land near the water

Fisheries activities. Commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations but not including wholesale and retail sales.

Forest. A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre with at least 50 percent of those trees having two-inch or greater diameter at four and one-half feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.

Habitat protection area. Those areas, including buffers; nontidal wetlands; habitats of threatened or endangered species or species in need of conservation; colonial water bird nesting sites; historical waterfowl staging and concentration areas; Natural Heritage Areas; other areas, which may, in the future, be identified by federal, state or local agencies as important plant and wildlife areas; and anadromous fish propagation waters that are identified in COMAR 27.01.09 that require protection within the critical area.

Highly erodible soils. Those soils with a slope greater than 15 percent or those soils with a K value greater than 0.35 and with slopes greater than five percent.

Historic waterfowl staging and concentration area. An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are historic in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

Hydric soils. Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on or in those soils.

Hydrophytic vegetation. Those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

Impact, temporary. Development activities or projects that are meant to exist for less than one year following which original conditions are restored.

Impervious surface or cover. A surface that impedes the infiltration of rainfall and results in an increased volume of surface runoff. Impervious surfaces include roofs, buildings, paved streets and parking areas and any concrete, asphalt, curbs and retaining walls over six inches in width. For purposes of calculating the 10% Rule, gravel shall be considered 50 percent impervious if constructed to the town's design specifications.

Includes. Includes or including by way of illustration and not limited to.

Intensely developed area. An area of at least 20 acres or the entire upland portion of the critical area within a municipal corporation, whichever is less, where:

- (1) Residential, commercial, institutional, or industrial developed land uses predominate; and
- (2) A relatively small amount of natural habitat occurs.
- (3) The entire area within the corporate limits of the Town of Ocean City is designated intensely developed area.

Land clearing. Any activity that removes the vegetative ground cover or structures.

Landscaping. Consists of trees, woody plant materials, shrubs, ornamental grasses and herbaceous plants.

Limit of disturbance. See disturbed area

Lot coverage. The percentage of a total lot or parcel that is

- (1) Occupied by a structure, accessory structure, parking area, driveway, and or walkway;

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- (2) Covered with pavers, gravel, stone, shells, decking, permeable pavement, or other such manmade materials used for walkways driveways or non-landscaped areas; or
- (3) Covered by elements protruding from a building such as stairways, cantilevered decks, chimneys, or overhanging decks or balconies excluding roof overhangs over 10' in the air as allowed by section 110-905 ..

Maintenance agreement. A legally binding maintenance agreement to ensure the survivability of all afforestation, reforestation or landscaping and sustainability of stormwater management systems.

Marina. Any commercial facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers, piers serving single-family dwellings, and other noncommercial boat docking and storage facilities.

Mean high water. The average of all the high water levels observed over the national tidal datum epoch.

Mean high water line (MHWL). The average level of high tides at a given location.

Mitigation. Creation, restoration or enhancement of landscape area or other plant communities that will offset undesirable impacts due to regulated activities or fee-in-lieu.

Mitigation, critical area. An action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity and directly relates to critical area mitigation (CAM).

Natural features. Components and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

Natural heritage area. Any community of plants or animals which are considered to be among the best statewide examples of their kind.

Natural vegetation. Those plant communities that develop in the absence of human activities.

Nontidal wetlands. An area that is inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989, as may be amended and approved by the United States Corps of Engineers. Nontidal wetlands do not include tidal wetlands regulated under Title 16 of the Environmental Article of the Annotated Code of Maryland.

Offsets. Landscape, structures, fee-in-lieu or actions that compensate for undesirable impacts.

Parcel (lot). A contiguous upland (fastland) quantity of land, formally set forth in a conveyance, together with the boundaries thereof, and in possession of, owned by, or recorded as property of the same claimant person or company.

Pervious surface. Material or combination of materials which as constructed will allow for the direct vertical drainage of the first inch of rainfall to the subgrade within 20 seconds or less.

Pier. Any pier, wharf, dock, walkway, bulkhead, breakwater, piling or other similar structure. "Pier" does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of state or private wetlands.

Plant habitat. A community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.

Plantable area. Land set aside for the planting of landscaping consistent with professional landscaping standards as required by this ordinance. A plantable area may not be covered by overhangs, decks, pavers, sidewalks, structures, water meters, generators, transformers, asphalt, concrete, or other such obstructions, except roof overhangs, eaves and cornices as permitted in section 110-905 and two and one-half-foot vehicle overhangs.

Port. A facility or area established or designated by the state or local jurisdiction for purposes of waterborne commerce.

Program. The Atlantic Coastal Bays Critical Area Protection Program of Ocean City, including all laws, resolutions, maps and plans necessary for the implementation, application, and enforcement of this subtitle.

Program amendment. Any change or proposed change to an adopted program that is not determined by the chair of the critical area commission to be a program refinement.

Program refinement. Any change or proposed change to an adopted program that the chair of the critical area commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program, or that will not significantly affect the use of land or water in the critical area. Program refinement may include

- (1) A change to an adopted program that results from state law;
- (2) A change to an adopted program that affect local processes and procedures;
- (3) A change to a local ordinance or code that clarifies an existing provision;
- (4) A minor change to an element of an adopted program that is clearly consistent with the provisions of state critical area law and all the criteria of the commission.

Project approval. The approval of development, other than development by the state or local government, in the Atlantic Coastal Bays Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, conditional uses; the term does not include the issuing of a building permit.

Property owner. One or more persons holding title to the property under any form of joint ownership.

Public water-oriented recreation. Shore-dependent recreation facilities or activities provided by public agencies which are available to the general public.

Reconfiguration. A change of the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lots. Reconfiguration includes any term used by the town for a development application that proposes to change the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lot that existed before the application, including a lot line adjustment, boundary line adjustment, deed restricted as a unit, deed consolidation, or a revision of acreage to increase density.

Redevelopment. The process of developing land which is or has been developed. For purposes of implementing specific provisions of this ordinance, redevelopment (as opposed to new development) means a development activity that takes place on property with pre-development imperviousness of 15 percent or greater.

Reforestation. The establishment of a forest through artificial reproduction or natural regeneration.

Road. A public thoroughfare under the jurisdiction of the state, the county, the town or any other public body. Road does not include a drive aisle or driveway.

Setback building. Those lines which describe the front, rear and side yard building setbacks required for the subject lands under chapters 30 and 110. Waterfront setback is determined from

mean high water line or the landward edge of tidal wetlands, whichever is greater, and not based on underlying zoning.

Shrubs. Shrubs required by this article shall be self-supporting woody species, as normally thrive in Ocean City.

Shoreline erosion protection works. Those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Atlantic Coastal Bays Critical Area.

Significantly eroding areas. Areas that erode two feet or more per year.

Site. That portion of **fastland on a** lot or parcel of land or combination of contiguous lots or parcels of land upon which grading or other land-disturbing activity is to be performed as part of a unit, subdivision or project.

Species in need of conservation. Those fish and wildlife species whose continued existence as part of the state's resources are in question and which may be designated by regulation by **the Secretary of Natural Resources** as in need of conservation pursuant to the requirements of Natural Resources Articles, §§ 10-2A-903 and 4-2a-03, Annotated Code of Maryland, as from time to time amended.

Trees. Self-supporting woody plants of species which normally grow to an overall height of a minimum of 15 feet in Ocean City.

Threatened species. Any species of fish, wildlife, or plants designated as such by regulation by the secretary of the **Department of Natural Resources** which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the Federal Endangered Species Act, 16 USC § 1531 et seq., as from time to time amended.

Topography. The existing configuration of the earth's surface including the relative relief, elevation, and position of land features.

Vehicular encroachment. Any protrusion of a vehicle outside of parking space, display area or accessway into a landscaped area.

Vehicular use area. That part of a lot used for off-street parking, including interior drives providing ingress, egress and interior circulation for vehicles.

Water-dependent facilities. 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.

Water-use industry. An industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

Waterfowl. Birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

Watershed. The area of land that drains into a specific body of water.

Wildlife habitat. Those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Atlantic Coastal Bays Critical Area.

Woody vegetation. Vegetation containing wood or wood fibers **includes trees and shrubs.**

(Ord. No. 2010-30, 10-18-2010; Ord. No. 2012-20, 6-4-2012)

Sec. 30-553. - Intensely developed areas.

- (a) *Description.* Intensely developed areas (IDA) are areas within the critical area where residential, commercial, institutional, and/or industrial uses predominate and where relatively little natural habitat occurs or remains. All of the area within the municipal boundaries of Ocean City as of January 1, 2002, is classified as an intensely developed area.
- (b) *General requirements.* New or expanded development or redevelopment within intensely developed areas shall:
 - (1) Improve the quality of runoff from developed areas that enters the Atlantic Coastal Bays or its tributary streams;
 - (2) Accommodate additional development of the type and intensity designated by the **Mayor and City Council** provided that water quality is not impaired;
 - (3) Conserve and enhance habitat protection areas to the extent possible; and
 - (4) Use retrofitting measures to the extent feasible to address existing stormwater management problems.
- (c) *Development standards.* The following criteria are hereby adopted for intensely developed areas:
 - (1) All plans shall be assessed for their impacts on water quality and other biological resources.
 - (2) Environmentally sensitive design_ (ESD) practices shall be considered and, where appropriate, implemented as part of all plans for development or redevelopment. Development and redevelopment projects are encouraged to make use of bioretention methods **and alternatives to impervious surfaces**.
 - (3) Habitat protection areas. Development and redevelopment shall be subject to the habitat protection area requirements prescribed in section 30-555.
 - (4) Prohibit the location of a road, bridge or utility in any portion of the critical area designated as a habitat protection area under COMAR 27.01.09, unless there is no feasible alternative. If the location of a road, bridge or utility in a habitat protection area is authorized under this section, design, construct and maintain the road, bridge, or utility so as to:
 - a. Provide maximum erosion protection;
 - b. Minimize negative impact on wildlife, aquatic life, and their habitats; and
 - c. Maintain hydrological processes and water quality.
 - (5) 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. Provide a natural substrate for stream beds; and
 - c. Minimize adverse water quality and quantity impacts of stormwater.
 - (6) Critical area mitigation (CAM). A critical area mitigation (CAM) fee will be calculated for all improvements and coverage. The CAM fee is calculated as follows:
 - a. For all new development or redevelopment which is 50 percent or more of the site, the CAM fee will be based on the total proposed square feet of lot coverage (LC) multiplied by the percentage of lot coverage (CF%) of the entire site plus removal

of woody vegetation (VEG) **(for wooded lots this excludes trees removed within the proposed building footprint and a 5' perimeter of the building foundations.** The Rate (R) will be set by resolution of the **Mayor and City Council.** The (CAM) Fee thus increases exponentially with increased lot coverage $(LC * CF\% + VEG) * R = CAM$

- b. For additions or modifications covering less than 50 percent of the site the CAM fee will be calculated on the net new lot coverage (NC) multiplied by the total percentage of coverage for the entire parcel plus removal of woody vegetation. This fee thus increases exponentially with increased lot coverage $(NC * CF\% + VEG) * R = CAM$
- c. For development or redevelopment sites that require stormwater management, the area served by a structural best management practice (BMP) **and 50% of alternative pervious surface** can be subtracted from the total lot coverage (LC) area and then the percent of lot coverage will be calculated. $(ADJ CF\%)$ The CAM fee is then calculated by multiplying this adjusted percentage by the total proposed lot coverage plus the removed woody **vegetation (for wooded lots this excludes trees removed within the proposed building footprint and a 5' perimeter of the building foundations.** $(LC * ADJ CF\% + VEG) * R = CAM$. Or if project is < 50% of the Parcel and provide SWM $(NC * ADJ CF\% + VEG) * R = CAM$. The ADJ CF% can not be below 20%.
- d. The CAM fee can be reduced or offset by on site plantings and structural best management practices (BMP) that meet performance requirements. This reduction cannot exceed 80 percent of the fee. The **Town** shall retain ten percent of the fee for program administration purposes.
- e. The CAM fee is based on a rate established by the **Mayor and City Council** as may be revised from time to time. Reducing the rate requires the approval of the critical area commission. The entire CAM fee will be collected prior to the issuance of the building permit and reductions will be refunded after planting or stormwater BMPs have been properly installed. All retained CAM fees will be used by the **Town** for municipal stormwater management and habitat enhancement projects.
- f. On-site plantings and residential best management practices (BMP) are encouraged. A minimum of 15 percent afforestation (as required in section 30-553(c)(8) below) is required and is deducted from the CAM calculation. All projects impacting the buffer will be required to provide plantings in the waterfront setback **where applicable and space available** (section 30-554 (d)(7)).
- g. All structures including pervious decks and walkways count as lot coverage for calculation of the CAM fee.
- h. Repaving projects with no increase in footprint are not subject to CAM Fee.
- i. Any development activity of 250 square feet or less outside the waterfront setback is exempt from the CAM fee but must meet the 15 percent afforestation coverage requirement. All development activity regardless of size in the waterfront setback is subject to the CAM fee.
- j. Maintenance, repair or in-kind replacement of pervious deck surfaces are exempt from the CAM.
- k. All development, additions and modifications are cumulative and previously exempt projects will be added to future improvements and the CAM fee will be applied when applicable.
- l. Only new plantings may be used as an offset to CAM.
- m. The location of mitigation plantings shall be as follows:

- i. First priority - On the parcel within the waterfront setback area, when planting will not interfere with or pose a threat to the existing or future structural integrity of the bulkhead or other shoreline protection system.
- ii. Second priority - On the parcel within the 100-foot buffer.
- iii. Third priority - On site outside of the Buffer. See section 30-553(c)(8)(i.), (13), (14) and (15) for further placement requirements.

(Code 1972, § 59-1)

- (7) Stormwater management - As required by state and local regulations, appropriate stormwater management measures are required for all development and redevelopment projects with a disturbed area greater than 250 square feet in order to minimize adverse impacts to water quality.
 - a. For single-family projects < 5000 sq ft, the CAM will address the required stormwater treatment. The additional landscaping will be the offset. Bioretention is encouraged as an offset to the CAM by allowing for more credit. Credit for residential BMP can be used to offset the CAM at the discretion of the town. Landscaping as an offset shall follow "The Planting Standards Chart", as approved by the *Mayor and City Council* and on file with the engineering department. **Single Family projects >= 5000 sq ft will be required to provide the CAM along with either the WQv or to use Environmental site design techniques with alternatives to impervious surfaces.**
 - b. All other projects are required to meet CAM requirements as described above in (c)(6) and to reduce pollutant loadings by at least ten percent below the level of pollution on the site prior to development. Compliance with the ten percent requirement is provided in article III of chapter 30 of the Ocean City Code and the Critical Area 10% Rule Guidance Manual - Fall 2003 and as may be subsequently amended. In addition the following shall apply:
 - i. BMPs that do not meet the Critical Area Guidance Manual standards will be credited 50 percent of the assigned efficiency rating unless evidence prepared by an engineer is provided that supports an alternate efficiency rating. A minimum one-foot clearance to water table is required for all infiltration BMPs.
 - ii. If lot coverage from a BMP, that is required to be vegetated such as a bioretention system, is used in the CAM calculation as described above in subsection (6)c., the BMP plants may not also be used to meet the CAM planting offset.
 - iii. The planting offset reduction cannot exceed 80 percent of the fee.
 - c. If stormwater management efforts as required under article III of chapter 30 of the Ocean City Code do not satisfy the pollutant removal requirement, the balance of the removal requirement shall be addressed through one of the following:
 - i. An additional best management practice shall be constructed on site to address the balance of the removal requirement or
 - ii. A stormwater management fee shall be paid at a rate set by the **Mayor and City Council** from time to time.
- (8) Afforestation. All development activity shall provide a plantable area as herein set forth, which shall be planted with trees, woody plants, shrubs, and other landscaping as

approved by the department in accordance with the landscaping requirements set forth in this chapter. The required plantable area shall be as follows:

- a. If the net new lot coverage is equal to or less than 250 square feet, no plantable area shall be required. However, existing areas of trees and shrubs must be maintained at predevelopment activity levels. This is counted cumulatively and only one 250 square feet exemption is allowed.
- b. If the net new lot coverage is greater than 250 square feet and less than 50 percent of the parcel, the plantable area shall be 15 percent of the disturbed area up to a minimum of 15 percent of the area of the parcel.
- c. If the disturbed area is 50 percent or more of the area of the parcel, the plantable area shall be a minimum of 15 percent of the area of the entire site area or parcel.
- d. A developed site containing less than 15 percent plantable area that is redeveloped shall retain at least the preexisting plantable **area and provide landscaping when possible.**
- e. Trees or shrubs outside the 100-foot buffer that are removed, including dead, diseased or dying plants, shall be replaced at a 1:1 ratio. Tree or shrub removal done at the direction of the Town for purposes of public safety shall be exempt from this section. Trees removed from the 100-foot buffer shall be mitigated at a 2:1 ratio **and 1:1 for bulkhead or other shoreline protection system replacements.**
- f. Afforestation as required in this section shall follow the mitigation planting priorities outlined above in subsection (6)m. and any planting therein counts toward afforestation and waterfront setback planting requirements as described in section 30-553 and 30-554.
- g. Fee in lieu of planting. In the B-1 Boardwalk and DMX Downtown Mixed Use zoning **districts and the R-3, R-3A, and BC2 in the upper down town overlay district** only, and on sites where the applicant has demonstrated site constraints and the department agrees that the afforestation cannot be performed on site, a fee in lieu of planting may be paid. This fee shall be established by the **Mayor and City Council**, but shall not be less than \$2.40 per square foot. Funds collected by the **Town** in accordance with this section shall be held in a dedicated account as described in section 30-559(e).
- h. All site plans submitted for critical area review will be evaluated to determine if previously required landscaping has been maintained to a minimum of 15 percent of site.
- i. Plantable areas set forth below shall be provided as a minimum requirement:
 - i. A five-foot landscape area shall be provided between vehicular use areas and public street right-of-ways
 - ii. A two-foot six-inch landscape area shall be provided at adjacent properties and public alley ways.
 - iii. Plantable areas shall be provided within the interior of the site to break up the impervious vehicular use areas which contain 30 or more parking spaces. A minimum of five percent of the impervious vehicular use areas shall be provided within the interior of the site.
- j. Single Family, the provision above does not apply to single family detached homes however the following do apply:**

i Any person hereafter erecting or causing to be erected any single-family detached home in Ocean City, Maryland, shall provide landscaping of a minimum of 15 percent of the parcel size with a minimum of one tree.

ii The drainage from the property must be directed to the City right of way or bay and protection from drainage on to adjacent properties must be provided

iii Said landscaping shall utilize plants normally adaptive to this area that are generally considered salt resistant and shall be installed and maintained pursuant to the terms of section (General Landscaping Provisions (15) (c) hereof.

- (9) Whenever possible, all permeable areas shall be planted in vegetation and whenever possible redevelopment shall reduce existing levels of pollution.
- (10) Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within intensely developed areas.
- (11) Whenever possible, future development in the Atlantic Coastal Bays Critical Area should use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.
- (12) When the cutting or clearing of trees is associated with current or planned development activities, the following shall be required:
- a. Development activities shall be designed and implemented to minimize destruction of existing landscaping; and
 - b. Development activities shall address the protection of existing landscaping identified as habitat protection areas in the habitat protection section of this subtitle.
 - c. Trees removed from the Buffer will be required to be replaced 2:1 and in the rest of the Critical Area at 1:1. Replacement trees must be a minimum **five feet tall** and of two-inch caliber tree measured six inches above ground.
- d. On undeveloped residential lots the trees removed within the building footprint and a 5 foot perimeter of the foundation do not need to be mitigated.**
- (13) Screening of trash and garbage containers. All trash and garbage containers four cubic yards or larger shall be screened to reduce airborne and waterborne debris from spillage. Screening shall be on all but one side by an opaque fence or other suitable opaque enclosure. The average height of the enclosure shall be one foot more than the height of the container. The location and size of the enclosure is subject to approval of the solid waste department for accessibility.

(Code 1972, § 59-12; Ord. No. 2004-25, 9-20-2004)

- (14) Oceanfront areas. The oceanfront side of any project shall, at a minimum, be landscaped in accordance with accepted dune stabilization practices as approved by the Department. Additional landscaping behind the dune line is encouraged to achieve the purpose of this article.
- (15) General landscape provisions:

- a. The landscaped area shall be planted with materials which will provide a variety of textures, heights and shapes to create a pleasing appearance, at a spacing and include a ratio of at least one tree for each 35 linear feet and 5 shrubs for every one tree or fraction thereof. The Critical area mitigation fee may be offset by providing landscaping. However there is a minimum quantity of landscaping required which is the most conservative of the 15% afforestation requirement or the prescriptive linear requirement above.

Necessary accessways from the public right-of-way through all such landscaping shall be permitted to service the parking or other vehicular use areas and such accessway may not be subtracted from the linear dimension used to determine the number of trees required.

Two-foot six-inch vehicular overhangs over landscape areas may be part of the vehicular use area, but may not be paved or improved in any manner other than with landscaping. Wheel stops or curbing must be provided to protect the landscaped area from vehicular damage.

When a parallel parking space abuts a public street or alley or adjoining property, the perimeter landscape area must be clear of any obstruction and may not be part of the required vehicular use area.

- b. All plant materials shall be living plants, including trees, woody plant materials, shrubs, ornamental grasses and herbaceous plants, and shall meet the following:
- i. Trees. Evergreen trees shall be a minimum of five feet height at the time of planting. All other trees shall have a minimum caliper (measured six inches above adjacent ground) of at least two inches at the time of planting.
 - ii. Woody plant materials, shrubs, and ornamental grasses. Woody plant materials, shrubs, and ornamental grasses (when used in landscape areas unobstructed by vehicular overhang) shall be at least two feet in average height or width at the time of planting.
- c. Installation; maintenance; and inspections:
- i. All landscaping materials shall be installed in a sound workmanlike manner and according to accepted planting procedures. The department shall determine the adaptability of the proposed plants to the proposed site in accordance with landscape standards on file with the department. All landscaping materials shall be installed, or guaranteed with a cash or surety bond, in accordance with the approved landscape plan prior to issuance of a certificate of occupancy.
 - ii. Each landscape area must be readily accessible to a water supply. Landscape areas shall be kept healthy and free from refuse and debris, at all times. Proper maintenance shall include watering, weeding, mowing, mulching, fertilizing and pruning.
 - iii. Landscaping shall be inspected every three years by the Department to ensure proper maintenance. If it is determined that the landscaping is not being properly maintained, the owner shall be so notified by the department in writing. The owner shall have 30 days from the date of notification to replace unhealthy or dead plant material or restore it to a healthy condition. If this notification occurs during a season not appropriate for planting, the replacement or restoration shall be completed as soon as possible. If replacement or restoration is not completed in the prescribed time period and to the satisfaction of the department, continuing violations will be subject to municipal infraction.

- d. Landscape plan. A landscape plan shall be submitted to the department for review and approval **at an easily readable scale** for all development and redevelopment prior to the issuance of any building permit. The landscape plan shall include the following:

Property lines, easements, buildings and other structures, vehicular use areas including parking stalls, curbs wheel stops, driveways, service areas etc., and water supply sources.

- i. The location of any existing landscape materials.
 - ii. The spacing, installation size **(including corresponding point value per resolution 2010-19)** number and kind of landscaping material to be used including the botanical name and common name.
 - iii. Size credit according to landscape conversion chart for each species of tree, woody plant material, shrub, ornamental grasses, and herbaceous plant.
 - iv. Location and screening details for garbage enclosures.
- e. Maintenance agreement. A maintenance agreement shall be required prior to issuance of a certificate of occupancy.
 - f. Landscape guide and list of suggested plants. The Department shall prepare and The Department shall prepare and from time to time revise a suggested landscape guide and make the same available to the public, which shall provide an illustrative interpretation of the above standards and suggested plants for landscaping in accordance with the above standards.

(Code 1972, § 59-16)

(16) Activities not permitted.

- a. Certain new development or redevelopment activities or facilities, because of their intrinsic nature, or because of their potential for adversely affecting habitats or water quality, may not be permitted in the critical area except in intensely developed areas, and 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:
 - i. Nonmaritime heavy industry;
 - ii. Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility transmission facilities do not include power plants); or
 - iii. 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.
- b. 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:

- i. Solid or hazardous waste collection or disposal facilities; or
 - ii. Sanitary landfills.
- c. Existing, permitted facilities of the type noted in subsections (2)a. and b. above, shall be subject to the standards and requirements of the Maryland Department of the Environment, under COMAR Title 26.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-554. - Buffer and buffer management area.

The purpose of a buffer is to protect aquatic, wetland, shoreline and terrestrial environments from manmade disturbances.

- (a) Functions of the buffer. The functions of the buffer with regard to the protection of the Atlantic Coastal Bays include the following:
 - (1) Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bays and their tributaries;
 - (2) Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;
 - (3) Maintain an area of transitional habitat between aquatic and upland communities;
 - (4) Maintain the natural environment of streams; and
 - (5) Protect riparian wildlife habitat.
- (b) In the Atlantic Coastal Bays Critical Area, a 100-foot buffer is established landward from the mean high water line of tidal waters, the edge of the bank of tributary streams or canals and the landward edge of tidal wetlands. However, the Atlantic Coastal Bays Protection Act permits the Town of Ocean City to designate "buffer management areas" (BMA). These are areas where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, and recreational development in the critical area prevent the buffer from fulfilling its functions. The criteria used to determine qualification as a BMA include:
 - (1) Existing pattern of subdivision into relatively small lots;
 - (2) Preponderance of structures within the 100-foot buffer;
 - (3) Extensive areas of lots having an average depth of 100 feet or less.
- (c) As practically all lands within Ocean City meets one or more of these criteria, all lands within the 100-foot buffer are designated BMA. The buffer shall be expanded beyond 100 feet to include contiguous sensitive areas, such as hydric or highly erodible soils whose development or disturbance may impact streams, wetlands, or other aquatic environments.
- (d) Buffer management area regulations. All development activity within 100 feet landward from the mean high water line of tidal waters and tidal wetlands shall minimize the extent of intrusion into the buffer as follows:
 - (1) Waterfront setbacks. All development and redevelopment activity that disturbs less than 50 percent of the parcel may maintain the setback as defined by existing structures. Further development and redevelopment activity that increases the cumulative disturbed area to an amount greater than 50 percent of the parcel shall

comply with the following setbacks regardless of pre-existing nonconforming setbacks. Mitigation for setback impact will be 3:1.

- a. Lots smaller than 15,000 square feet in size, as of June 1, 2002: Structures shall be located no closer to tidal waters or wetlands than ten feet. However, in the R-1 Single Family Residential zoning district the waterfront setback shall be no less than 15 feet, and in the MH Mobile Home zoning district the waterfront setback shall be no less than five feet. This waterfront setback shall be measured from the landward face of a bulkhead, the mean high water line, the wetland line **or when none of these exists elevation 1' NAVD88**, whichever is more restrictive.
 - b. Lots between 15,000 and 25,000 square feet in size as of June 1, 2002: Structures shall be located no closer than 15 feet to tidal waters or wetlands measured from the landward face of a bulkhead, the mean high water line, the wetland line **or when none of these exists elevation 1' NAVD88** whichever is more restrictive.
 - c. Lots between 25,001 and 40,000 square feet in size as of June 1, 2002: Structures shall be located no closer than 20 feet to tidal waters or wetlands measured from the landward face of a bulkhead, the mean high water line, the wetland line **or when none of these exists elevation 1' NAVD88**, whichever is more restrictive.
 - d. Lots 40,001 square feet or more in size as of June 1 2002: Structures shall be located no closer than 25 feet to tidal waters or wetlands. This waterfront setback shall be measured from the landward face of a bulkhead, **the** mean high water line, **the** wetland line **or when none of these exists elevation 1' NAVD88** whichever is more restrictive.
- (2) No permanent structures may be placed over deadmen or tiebacks; however, accessory buildings not exceeding 100 square feet of gross floor area may be placed over deadmen and tiebacks, but not in the waterfront setback.
 - (3) No impervious surfaces are permitted in the waterfront setback **area except for a 1' roof overhand that is over 10' high**. Any impervious surfaces that are permitted in the setback through the variance or conditional approval process shall provide mitigation at 3:1.
 - (4) Pervious decks and walkways may be constructed within the waterfront setback, but may not cover more than 60 percent of the waterfront setback area and are subject to the mitigation requirements described in this section. To be considered pervious:
 - a. The deck/walkway must allow for the direct vertical drainage of the first inch of rain within 20 seconds;
 - b. The deck/walkway must be constructed over pervious gravel of at least four inches in depth placed over filter cloth;
 - c. The area under the deck/walkway may not be used for storage;
 - d. Permanent roofs, awnings, overhangs, etc., may not be constructed over or under the deck to render the deck impervious.
 - (5) Any decks or walkways in excess of 60 percent that are permitted through the variance or conditional approval process shall provide mitigation at 2:1 for all square footage over 60 percent.
 - (6) Pervious on-grade walkways, leading directly to riparian access, are permitted in the non-vegetated area of the waterfront setback. These walkways count toward the 60 percent coverage limitation and are subject to the mitigation requirements

described in this section. Walkways may be constructed of materials such as mulch, wood chips, screened gravel, pervious pavers and decking material, if such material allows the direct vertical drainage of the first inch of rain.

- (7) At least 40 percent of the waterfront setback shall be vegetated with native plant material. Tree and shrub plantings in the waterfront setback count toward the 15 percent requirement in section 30-553(c)(8). Any amount less than 40 percent that is permitted through the variance or conditional approval process shall provide mitigation at 3:1 for all square footage less than 40 percent.
- (8) The waterfront setback shall not be used for vehicular access or parking except for emergency access.
- (9) Any trees or other woody vegetation removed from the buffer, including from the waterfront setback area, shall be replaced at a two to one (2:1) ratio. These replacements shall be in addition to any trees required by the critical area mitigation fee or section 30-553(c)(4) or by any other section of this article. Existing trees and woody vegetation within the buffer shall be retained except during clearing for development activity and accounted for in the CAM fee.

(Ord. No. 2010-30, 10-18-2010; Ord. No. 2012-20, 6-4-2012)

Sec. 30-555. - Habitat protection.

- (a) *Policies.* The policies of the Town of Ocean City in regard to those Habitat Protection Areas identified in COMAR 27.01.09 are to:
 - (1) Provide protection for threatened and endangered species, those species in need of conservation and their habitats that occur in the critical area;
 - (2) Conserve wildlife habitat in the critical area;
 - (3) Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
 - (4) Protect those wildlife habitat types that are required to support the continued presence of various species;
 - (5) Protect those wildlife habitat types and plant communities which are determined by the town to be of local significance; and
 - (6) Protect natural heritage areas.
- (b) *Identification.* The approximate location of habitat protection areas identified in COMAR 27.01.09 are shown on the Town of Ocean City Critical Area map. This map will be used to assist in the identification of general areas where habitat protection areas are located.
- (c) *Standards.* Each applicant proposing a development activity on a parcel 40,000 square feet or larger as of June 1, 2002, with the exception of development of a single family home, within the critical area of the Town of Ocean City, must submit a habitat protection area statement that addresses the following:
 - (1) The applicant is required to identify all habitat protection areas in the area proposed for development through consultation with the Maryland Department of Natural Resources.
 - (2) If there are habitat protection areas that may be impacted by the proposed development, the applicant must prepare a habitat protection plan to identify measures that will be taken to conserve and protect the identified habitats.
 - (3) If there are no habitat protection areas that may be impacted by the proposed development, the applicant is responsible for documenting the sources of this finding,

such as consultation with the Maryland Department of Natural Resources, the U.S. Fish and Wildlife Service, or other experts.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-556. - Water dependent facilities.

- (a) *Identification.* Water dependent facilities include, but are not limited to, ports, 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 which are located in a subdivision which does not provide community piers.
- (b) *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 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, nonwater-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) Applicants for new or expanded water-dependent facilities shall set out in the application how the above requirements are met.
- (c) *Evaluating plans for new and expanded water-dependent facilities.* The department shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The department 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 runoff, 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 Atlantic Coastal Bays Critical Area, generally;
 - (7) That dredged spoil will not be placed within the buffer or elsewhere in that portion of the Atlantic Coastal Bays 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 section 30-555.
- (d) *Marinas and other commercial maritime facilities.* New, expanded or redeveloped marinas are permitted in the buffer subject to the requirements set forth in this section. New and existing marinas shall meet the sanitary requirements of the department of the environment as required in COMAR 26.04.02 or as amended from time to time. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.
- (e) *Community piers.* New or expanded community marinas and other noncommercial boat-docking and storage facilities are permitted in the buffer subject to the following requirements:
- (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 only of a platted and recorded riparian subdivision;
 - (3) The facilities are associated with a residential development approved by the Department for the Atlantic Coastal Bays Critical Area and consistent with all state requirements for the Atlantic Coastal Bays Critical Area;
 - (4) Disturbance to the buffer is the minimum necessary to provide a single point of access to the facilities;
 - (5) When community piers or slips are provided as part of a new development, private piers are not permitted for each individual lot;
 - (6) The number of community piers or slips permitted at the facility shall be the lesser of the following: One slip for each 50 feet of shoreline in the subdivision, or:

| Platted Lots or Dwellings in the Atlantic Coastal Bays Critical Area | Slips |
|--|--------------------------------|
| up to 15 | 1 for each lot or dwelling |
| 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 |
|----------|--------------------------------|

- (f) *Variiances.* The board of zoning appeals may grant a variance from the provisions of this section in accordance with the provisions of section 30-561.
- (g) *Public water oriented recreation or education areas.* Public water-oriented recreation or education areas including, but not limited to, publicly owned beaches, boat launching and docking facilities and fishing piers may be permitted in the buffer.
- (h) *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 nonwater-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the buffer.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-557. - Individual private piers and docks.

- (a) *General requirements.* Individual private piers or docks may be installed or maintained when in conformance with all other applicable laws and regulations by riparian landowners of lots and parcels legally existing on or after the effective date of this subtitle.
- (b) *Standards.* The following standards shall apply in addition to any other applicable laws or regulations to the construction, expansion, replacement or modification of an existing or newly constructed private pier or dock:
 - (1) New docks, wharves, piers or mooring piles may extend into the waterway for a maximum distance of 20 percent of the width of the waterway, not to exceed a total of 50 feet over wetlands and waterways from the fastland, provided that a distance of at least 40 feet in width shall remain open between either side of the waterway for navigation purposes. These limitations shall be utilized as a guide by the Board of Port Wardens in approving or disapproving permits for construction, but shall not restrict the authority of the board to limit or proscribe or to approve the placement, erection, or construction of any structure in the waters of Ocean City on a case-by-case basis; provided, however, that in no event shall a dock, wharf or pier extend more than 50 feet over a wetland.
 - (2) Any disturbance of the buffer shall be the minimum necessary for the construction and/or maintenance of the pier or dock. Channelward projects that impact the buffer must meet all requirements of this chapter, are subject to the CAM fee and shall be included in the Board of Port Wardens permit.
 - (3) A maximum of one reasonable pedestrian access path per lot or parcel leading to an individual pier or dock may be located in the buffer. The path is subject to the waterfront setback coverage limits and the CAM fee.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-558. - Shore erosion control.

- (a) The Town of Ocean City adopts the following policies with regard to shore erosion protection works:
 - (1) Encourage the protection of rapidly eroding portions of the shoreline in the critical area by public and private landowners.
 - (2) Where such measures can effectively and practically reduce or prevent shore erosion, encourage the use of nonstructural shore protection measures in order to conserve and protect plant, fish, and wildlife habitat.
- (b) The Town of Ocean City, with assistance from the state, shall designate and map the following shoreline areas:
 - (1) Shoreline areas where no significant erosion occurs;
 - (2) Other eroding areas where nonstructural measures would be a practical and effective method of erosion control;
 - (3) Eroding areas where only structural measures would provide effective and practical erosion control.
- (c) The town shall implement the following policies to be reflective of shoreline characteristics:
 - (1) Structural control measures shall only be used in areas designated as areas where nonstructural control measures would be impractical or ineffective;
 - (2) Where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;
 - (3) Nonstructural measures shall be utilized in areas of erosion where nonstructural measures would be practical and effective;
 - (4) Structural erosion control measures shall not be encouraged in areas where no significant erosion occurs; and
 - (5) If significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change may be used for sites in that area.
 - (6) Replacement of existing bulkhead is allowed but use of alternative nonstructural methods are encouraged and should be considered where feasible.
- (d) Mitigation. Applicants for shore erosion control measures shall provide mitigation at a ratio of 1:1 for the area of disturbance within the 100-foot buffer.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-559. - Implementation of the Atlantic Coastal Bays Critical Area Provisions.

- (a) *Regulated activities and applicability.* It shall be unlawful to pursue any new, expanded or intensified activities within the Atlantic Coastal Bays Critical Area, such as development or redevelopment, grading, clearing, sediment and erosion control, shoreline erosion control, 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), without first obtaining approval by the Department after review under the provisions of this section.
- (b) *Responsible agency.* All applications for such permits and licenses that are issued by the Town shall be made to the pertinent Department. The Department shall make available to all agencies involved in overseeing regulated activities a set of maps showing the location so that these agencies may identify affected properties subject to said referrals.
- (c) *Process.* Upon receiving the referred application, the Department shall review the application for compliance of the activity with the requirements of this section, coordinating with other

agencies when appropriate. The Atlantic Coastal Bays Critical Area review includes, but is not limited to, evaluating the 100-foot buffer and buffer management area, area of lot coverage, **landscaping and afforestation**, area of forest cover, area of steep slopes, location of tidal or nontidal wetlands and their buffers, and the mitigation plan if required.

(d) *Application requirements.* In order for the Department to make findings and specific recommendations as to compliance of a project with the goals of the Atlantic Coastal Bays Critical Area Law, information on land and water disturbing activities is required to be submitted by the applicant. Where landscaping is required no building permit shall be issued until the required landscaping/mitigation plan has been submitted and approved and no certificate of occupancy shall be issued until the landscaping is completed or bonded with a cash or surety bond in accordance with the approved landscaping/mitigation plans as certified by an on-site inspection by the Department. This information shall include an Atlantic Coastal Bays Critical Area site plan and may include a written Atlantic Coastal Bays Critical Area report, as described below.

(1) *Atlantic Coastal Bays Critical Area Site Plan.* The Atlantic Coastal Bays Critical Area Site Plan must be drawn to easily readable scale and shall include, but not be limited to, the following information:

- a. Showing and labeling by name and dimensions all existing and proposed property lines, easements, building and other structures topography (if property is flat or gently sloping, state this on the plan).
- b. Mean high water line.
- c. Tidal wetlands (private and state).
- d. Tributary streams.
- e. Nontidal wetlands.
- f. Soils.
- g. Forest cover (show individual trees or a tree line defining wooded areas).
- h. 100-foot buffer and waterfront setback.
- i. Habitat protection areas.
- j. All lot coverage **tabulated** (including all structures, sidewalks, sheds, decks, driveways, pools, etc.) labeled as existing or proposed.
- k. All proposed clearing, grading, and disturbance.
- l. Computation of the amount of existing and proposed lot coverage, existing landscaping cover and proposed clearing, and total disturbed area.
- m. Proposed landscaping and mitigation plan.
- n. For waterfront parcels, all percentage calculations that demonstrate compliance with limits on the setback coverage (60 percent) and native plantings (40 percent).
- o. All proposed plantings required to meet the minimum 15 percent afforestation requirement and any additional plantings or BMPs proposed to meet the CAM.

(2) *Atlantic Coastal Bays Critical Area Report.* In cases where additional information is required by the Department to determine the impact of a development on the Coastal Bays, an Atlantic Coastal Bays Critical Area Report is required, and must include a description of the project and an environmental assessment of the site. This report shall include but not be limited to the following information:

- a. Forest and developed woodland cover, generally describing the size and species of trees and shrubs.

- b. Shoreline condition, including any existing or proposed piers, bulkheads, revetments, or other shoreline stabilization methods.
- c. Proposed or existing stormwater management measures.
- d. Site topography and soil conditions, including any areas of erosion or run-off.
- e. Proposed clearing, excavation and grading.
- f. Discussion of the proposed development, including number of residential units, amount of proposed impervious surface, proposed sewer treatment and water supply, and total square footage of clearing, grading and disturbance.
- g. Discussion of the impact of the proposed development on water quality and habitat protection areas.
- h. Documentation of all correspondence and findings received from any local, town, state or federal agency.

i Critical Area Mitigation worksheet

j Critical Area 10% Rule worksheet where applicable

- k** Landscape guide and list of suggested plants. The Department recommends the following documents for suggested landscape guides:
 - i. Native Plants for Wildlife Habitat and Conservation Landscaping Chesapeake Bay Watershed, U.S. Fish and Wildlife Service 2005.
 - ii. Atlantic Coastal Bays Critical Area, Buffer Management Plan, Mitigation Credit for Species Planted in the Critical Area, pp. 25—31, Worcester County Maryland, March 18, 2003 and as may be subsequently amended.
 - iii. Document prepared by the Department, and from time to time revised, that suggest landscape guidance which shall provide an illustrative interpretation of the above standards and suggested plants for landscaping in accordance with the above standards.

(e) Use of Mitigation funds.

- (1) The CAM fee can be reduced by on-site plantings and BMPs to a maximum of 80 percent of the CAM fee. Any amount of the CAM fee not offset by on-site plantings will be retained by the town and used for program administration, municipal stormwater management and habitat enhancement projects.
- (2) Funds collected by the Town in accordance with this section shall be held in a dedicated account until future use for the purpose of improving water quality, improving habitat, and meeting the Town's responsibilities under the Maryland Coastal Bays Conservation and Management Plan. Funds will be used for projects such as stormwater retrofits; maintenance costs; public outreach and education; mini-grant program; and other projects that will improve the quality of runoff entering the Coastal Bays from the Town. Monies collected through the fees-in-lieu program shall not revert to the general fund of the town government. Use of funds will be coordinated with the critical area commission staff via semi-annual reporting of monies collected and monies expended. The report shall be based on an itemized list of water quality and habitat projects and their cost and an itemized list of development projects that generated the CAM fee, including total CAM fee calculated, CAM fee met on site and CAM fee collected by the Town.
- 3) The total CAM Mitigation fees will be collected at the time a building permit is issued for permits that do not require a certificate of occupancy (CO). Refunds due upon completion of planting and/or installation of BMPs will be made after inspection and approval by the Town. For permits that require certificate of occupancy, ten percent of the CAM fee shall be paid upfront and the balance collected at issuance of CO after

inspection and approval by the Town. If the Town issues a CO without the full landscaping provided, the total CAM will be paid and held in the dedicated account until the work has been completed in accordance to the landscaping/mitigation plan. **A minimum of the 15% afforestation must be planted and the remaining mitigation will be forfeit after one year.** All mitigation fees and fees in lieu will be retained by the town and used as described in this chapter.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-560. - Amendments and refinements.

- (a) *Program changes.* The **Mayor and City Council** may from time to time amend the Town critical area program. Critical area program changes include, but are not limited to, amendments, revisions, and modifications to zoning regulations, subdivision regulations, critical area maps, implementation procedures, and local policies that affect the **Town's** program. All such amendments, revisions, and modifications shall also be approved by the critical area commission as established in Section 8-1809 of the Critical Area Law. No such amendment shall be granted without approval of the critical area commission. Standards and procedures for critical area commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and section 8-1809(d), respectively.
- (b) *Comprehensive reviews.* The Town will review its entire program and propose any necessary amendments to its entire program, including critical area maps, at least every six years. The anniversary of the date that the program became effective shall be used to determine when the review shall be completed. Within 60 days after the completion of the review, the town will send the following information in writing to the commission:
 - (1) A statement certifying that the required review has been accomplished;
 - (2) A necessary requests for program amendments, program refinements, or other matters that the town wishes the commission to consider;
 - (3) An updated resource inventory;
 - (4) A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.
- (c) *Process.* When an amendment is requested, the applicant shall submit the amendment to the **P**lanning **C**ommission for review and research. Upon completing findings of fact, these documents shall be forwarded to the Town **C**ouncil. The Town **C**ouncil shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the town. After the Town **C**ouncil **approves** an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the **C**ritical **A**rea **C**ommission for final approval.
- (d) *Critical **A**rea **C**ommission review.* When the Town submits a request for review and approval of changes to any element of the **T**own's critical area program, including, but not limited to, the zoning ordinance, subdivision regulations, or critical area maps, the request will include all relevant information necessary for the chairman of the commission, and as appropriate, the commission, to evaluate the changes. The chairman, and as appropriate, the commission, shall determine if the requests for program changes are consistent with the purposes, policies, goals, and provisions of the critical area law and all criteria of the commission.
- (e) *Critical **A**rea **C**ommission decision.* In accordance with the determination of consistency outline above, the chairman, or as appropriate, the commission will:
 - (1) Approve the proposed program refinement or amendment and notify the Town;

- (2) Deny the proposed program refinement or amendment;
 - (3) Approve the proposed program refinement or amendment subject to one or more conditions; or
 - (4) Return the proposed program refinement or amendment to the Town with a list of changes to be made.
- (f) *Zoning map amendments.* Except for program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by the mayor and council upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:
- (1) Are wholly consistent with the land classifications in the adopted program; or
 - (2) Propose the use of growth allocation in accordance with the growth allocation provisions of this ordinance.

(Ord. No. 2010-30, 10-18-2010)

Sec. 30-561. - Variances.

- (a) *Applicability.* A variance to the terms of the Ocean City Critical Area Program may be granted by the board of zoning appeals in accordance with the provisions of section 110-95 of the zoning code, where, owing to special features of a site or other circumstances, implementation of this program or a literal enforcement of provisions within the program would result in unwarranted hardship to an applicant. In considering an application for a variance, the town shall presume that the specific development activity in the critical area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the Town's critical area program.
- (b) *Standards.* The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:
 - (1) Special conditions or circumstances exist that are peculiar to the applicant's land or structure and a literal enforcement of provisions and requirements of the Town's critical area program would result in unwarranted hardship. Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.
 - (2) A literal interpretation of the provisions of the Town's critical area program and related laws will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Ocean City;
 - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town's critical area program to other lands or structures within the Critical Area of Ocean City;
 - (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;
 - (5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Atlantic Coastal Bays Critical Area, and the granting of the variance will be in harmony with the general spirit and intent of the Town's critical area program;
- (c) *Process and findings.* Applications for a variance shall be made in writing to the board of zoning appeals on forms prescribed by the department.

- (1) In considering the application for a variance, the town shall presume that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of the Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the Town's critical area program.
 - (2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the town may consider that fact.
 - (3) An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph (1) above.
 - (4) Based on competent and substantial evidence, the town shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.
 - (5) With regard to the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by: a) the applicant; b) the town or any other government agency; c) any other person deemed appropriate by the town.
- (d) *Findings.* Based on competent and substantial evidence, the town shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established in paragraph (a) above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
- (1) The applicant;
 - (2) The town or any other government agency; or
 - (3) Any other person deemed appropriate by the town.
- (e) *Appeals.* Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the town for variances. Variance decisions by the board of zoning appeals may be appealed to the circuit court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency aggrieved or adversely affected by any decision made under this section.
- (f) *Conditions and mitigation.* The board of zoning appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the Ocean City Critical Area Law is maintained, including, but not limited to, the following:
- (1) *Mitigation.* If a variance involves the placement of any lot coverage within a waterfront setback area, or other land disturbance not otherwise permitted, adverse impacts resulting from the granting of the variance shall be mitigated by the planting of trees and shrubs on the site, at an amount equal to not less than three times the square footage of the area of disturbance allowed by the variance. Payment of a fee in lieu of mitigation may be made.
 - (2) New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.
- (g) *Commission notification.* Within ten working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the critical area commission. The town may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed beginning from the date the critical area commission receives notice of the decision of the board of appeals.

(h) *Reasonable accommodations for the needs of disabled citizens.* The Department may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs.

(1) An applicant shall have the burden of demonstrating the following:

- a. The existence of a physical disability; **A medical doctor's authorization that the impervious surface the property owner or occupant has a-is required for the disability**
- b. Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;
- c. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
- d. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;
- e. Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.

(2) The Department shall determine the nature and scope of any accommodation under this section 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 Department may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.

i. The coverage will not be more than 30% of the setback, and

ii The coverage will provide 3:1 mitigation for coverage at a rate set by resolution

If this cannot be met on site the applicant must apply for a Variance with the BZA

(3) The Department 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 the Town's ability to restore the property should the applicant fail to do so.

(i) *After the fact variances.* Any person, partnership, corporation, unincorporated association, or other business entity that shall apply for a variance related to site or use that is the subject of a violation shall be subject to the requirements of section 30-562(c).

(Ord. No. 2010-30, 10-18-2010; Ord. No. 2012-20, 6-4-2012)

Sec. 30-562. - Administration and enforcement.

(a) *Responsible agencies.* The responsibility for the administration and enforcement of this section shall be vested in such Department (hereinafter called "department") as designated or created for such purpose by the Mayor and City Council. The Department may be provided with such personnel and resources as the Mayor and City Council may direct. The department may delegate to its own personnel and to other persons such duties and responsibilities in connection with the administration and enforcement of this ordinance.

The Department is required to take action when a violation is identified and after notification, has the right to enter a property if a violation is reasonably suspected, and if entry is refused, may seek an administrative search warrant or court injunction.

(b) *Enforcement provisions.*

- (1) Violation of any provision hereof or any program adopted hereunder shall be a misdemeanor, punishable as stated in section 1-8 of the Code of Ocean City herein. Violators of the provisions of programs approved or adopted by the Mayor and City Council shall also be subject to prosecution or suit by the Mayor and City Council, who may invoke the sanctions and remedies afforded by State or local law. The Mayor and City Council and the Chair of the Critical Area Commission may invoke any sanction or remedy available, in any court of competent jurisdiction in which it would be authorized to prosecute or sue the violator. In addition to any other sanction or remedy available, the Mayor and City Council shall bring an action in equity to compel compliance or restrain noncompliance with the requirements of approved project plans, and to compel restoration of lands or structures to their condition prior to any modification which was done in violation of approved project plans.
- (2) In addition to any other penalty applicable under State or local law, a person who violates a Provision of Natural Resources Title 8 Subtitle 18, or the Town's Critical Area Program, ordinance or regulation is subject to a fine not exceeding \$10,000.00 for each calendar day and for each violation and shall be required to replant native woody vegetation to replace vegetation that has been removed. Replanting to correct a violation shall be calculated at the rate of four square feet to one square foot (4:1) of the area cleared, graded, or cut in violation of the provisions of this article. A mitigation plan shall be approved by the department. A contractor, property owner and/or any other person who committed, assisted, authorized or participated in a violation may be held liable and is guilty of a misdemeanor.
- (3) In determining the amount to be assessed under section 30-562(b)(2), the Town may consider the following: 1) the gravity of the violation; 2) any willfulness or negligence involved in the violation; 3) the environmental impact of the violation and 4) costs of site restoration and local government inspections in determining a penalty sanction and/or remedy. Payment of all penalties, approval of mitigation plans and guarantee of restoration shall be required prior to issuance of any permit, approval, variance, or special exception. A surety bond shall be posted for any replanting that is done in order to correct a violation where mitigation exceeds 1,000 square feet or expenses exceed \$1,000.00. See section 30-562(c)(4), which describes the bonding process.
- (4) The Town shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provisions of an order, permit, plan, in accordance with the variance provisions of this ordinance, unless the violation has been legalized and no further permitting before or after the fact is requested.
- (5) There is a three-year statute of limitations to take enforcement action for any violation that the Critical Area Commission or Town in fact knew or reasonably should have known of the violation.

(c) After the fact review, permit, approval, special exception, or variances.

- (1) No Town department, commission, or agency, including the Planning Commission or Board of Appeals, may:
 - a. Accept an application for any review, approval, permit, special exception, or variance until a notice of violation has been issued and a separate civil penalty has been assessed for each violation of the Critical Area Program on the affected property;

- b. Issue any review, permit, approval, special exception, or variance for property on which a violation of the Critical Area Program exists, until and unless:
 - (i) All civil monetary penalties imposed under section 30-562(b)(2) have been paid in full;
 - (ii) A restoration or mitigation plan to abate impacts to water quality and natural resources caused by or related to the violation has been prepared and approved by the Town;
 - (iii) All restoration and mitigation has been performed, or bonded per section 30-562(c)(4), as set forth in the approved plan; and
 - (iv) All abatement measures have been performed as set forth in the approved plan described above in section 30-562(c)(1)b.(ii).
- (2) Satisfaction of all conditions specified under Paragraph (c), above shall be a condition precedent to issuance by any Town Department, Commission, or agency, including the Planning Commission or Board of Appeals, of any review, permit, approval, variance, or special exception for the affected property.
- (3) Unless an extension of time is appropriate because of adverse planting conditions, within 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.
- (4) For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000.00, the Town shall require appropriate bonding or other financial security to ensure that the restoration or mitigation is properly completed. If the restoration or mitigation involves planting, the security shall be in effect for a minimum of two years after the date the plantings were established to ensure plant survival. At the request of the property owner, the Town will schedule and conduct periodic inspections as necessary to ensure compliance with the required restoration or mitigation and the release of the security upon successful completion of the required restoration or mitigation. For plants that fail to survive and replanting occurs the minimum two-year period may be extended for an additional period.
- (d) In addition to the fines and penalties herein described, the Mayor and City Council of Ocean City may avail itself of any and all civil and equitable remedies for the purpose of stopping continuing offenses of this article.

(Ord. No. 2010-30, 10-18-2010; Ord. No. 2012-20, 6-4-2012)

Sec. 30-563. - Lot consolidation and reconfiguration.

- (a) *Applicability.* For the purposes of this regulation, conforming means a parcel or lot that meets all critical area regulations. Conforming does not include a parcel or lot for which a critical area variance is sought or has been issued. Notwithstanding the location of the affected lot or parcel in a buffer management area, the provisions of this regulation shall apply to a consolidation or reconfiguration of nonconforming lots or parcel that include:
 - (1) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of June 1, 2002;
 - (2) Land that was subdivided into recorded legally buildable lots, if the subdivision received the local jurisdiction's final approval before June 1, 2002;
- (b) *Goals.* Any consolidation or reconfiguration of any legal parcel of land or recorded legally buildable will meet the goals of the town critical area program set forth in sections 30-553, 30-554, 30-355 of this article to the extent possible.

- (c) *Procedures.* An application to the town for the consolidation or reconfiguration of any legal nonconforming parcel of land or recorded legally buildable lot shall contain at least the following information:
- (1) The date of recordation of each legal parcel of land or legally buildable lot to be consolidated or reconfigured;
 - (2) A plan drawn to scale in accordance with local procedures;
 - (3) Information sufficient for the local jurisdiction to make the findings set forth in subsection (d) of this regulation;
 - (4) A plan that shows all existing and proposed lot or parcel boundaries; and
 - (5) A table that lists the number of all legal parcels of land or recorded legally buildable lot and the number of proposed lots or parcels or dwelling units to be derived.
- (d) *Standards.* A proposed lot consolidation or reconfiguration shall be reviewed by the planning commission or its designee and will make written findings that the following standards have been met:
- (1) The proposed consolidation or reconfiguration will result in no greater number of lots, parcels, or dwelling units in the critical area than the existing configuration would allow;
 - (2) The proposed consolidation or reconfiguration does not:
 - a. Create an additional riparian lot or parcel, waterfront lot, or any other lot or parcel deeded with water access; or
 - b. Intensify or increase impacts associated with riparian access;
 - (3) The proposed consolidation or reconfiguration identifies each habitat protection area;
 - a. If the proposed consolidation or reconfiguration impacts a habitat protection area, the proposal includes protective measures and restoration measures proposed that provide for the least possible adverse impact;
 - b. Results in no greater impact to a habitat protection area than the impact that would have resulted from the existing lot configuration; and
 - c. Minimizes adverse impacts to a habitat protection area;
 - (4) The proposed consolidation or reconfiguration provides:
 - a. Stormwater management for all proposed development activities; and
 - b. Benefits to fish, wildlife, and plant habitat that are clearly identified.
- (e) *Approval and notification.* A copy of a final approved action under subsection (d) of his regulation shall be submitted to the commission within 30 days of the final approval, and the town may not issue a building permit until the appeal time has expired.

(Ord. No. 2010-30, 10-18-2010)

Secs. 30-564—30-600. - Reserved.

(Code 1972, § 59-2)