

TOWN OF VIENNA, MARYLAND

ORDINANCE NO. 2011- 4

AN ORDINANCE AMENDING THE CODE OF LAWS OF THE TOWN OF VIENNA BY REPEALING AND REENACTING SECTION 16-10 CRITICAL AREA DISTRICT WITHIN THE TOWN OF VIENNA.

AN ORDINANCE to amend Chapter 16, entitled "Zoning Ordinance" of the Town Code of Vienna, Section 16-10 entitled "Critical Area District" by repealing and reenacting Section 16-10 with provisions to address gaps in the operational structure of the previous Section 16-10; to clarify and strengthen enforcement procedures; to streamline the program to enhance consistency; predictability and fairness; and to further protect Maryland's shoreline from the negative impacts of growth and development.

WHEREAS, it appears advisable, upon the favorable recommendation of the Planning and Zoning Commission, after public meeting, on November 16, 2011 to repeal and reenact the aforesaid Chapter 16-10, to reestablish the Critical Area District with provisions to address gaps in the operational structure of the previous Section 16-10; to clarify and strengthen enforcement procedures; to streamline the program to enhance consistency; predictability and fairness; and to further protect Maryland's shoreline from the negative impacts of growth and development.

WHEREAS, it appears advisable upon the recommendation of the Mayor and Commissioners and Staff, of the Town of Vienna, after public hearing of December 27, 2011 to repeal and reenact the aforesaid Chapter 16-10, with provisions to address gaps in the operational structure of the previous Section 16-10; to clarify and strengthen enforcement procedures; to streamline the program to enhance consistency; predictability and fairness; and to further protect Maryland's shoreline from the negative impacts of growth and development.

**SECTION I. NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE MAYOR AND TOWN COMMISSIONERS OF THE TOWN OF VIENNA, MARYLAND,** that Section 16-10 is hereby enacted as follows:



**16- \_\_\_\_\_ Conflict with other Articles**

- A. Provisions of the Critical Area District ordinance, when found to be in conflict with other provisions of this Chapter, shall supersede those other provisions with which they conflict. Provisions of the Critical Area District ordinance, when found to be in conflict with the provisions of the Vienna Subdivision Code or zoning code shall supersede those provisions with which they conflict.

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE MAYOR AND COMMISSIONERS** that the title of this legislative bill, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this bill for publication and all other purposes.

**SECTION III. SEVERABILITY.** Should any provision, section, paragraph or subparagraph of this Article, including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a court having competent jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, sections, paragraph or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

**SECTION IV. ADDITION TO CODE.** It is the intention of the Mayor and Commissioners, and it is hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances, and the Sections of this Ordinance may be renumbered to accomplish such intention.

**SECTION V. EFFECTIVE DATE.** This Ordinance shall be known as Ordinance **2011 – 4** of Vienna, Maryland and shall take effect at the expiration of twenty (20) calendar days from the date of approval by the Mayor or the approval of the full body of the Commissioners if vetoed by the Mayor.

This Ordinance was introduced and read at a meeting of the Town Commissioners of the Town of Vienna, Maryland held on the **12<sup>th</sup> day of DECEMBER, 2011** and, passed for Second Reading. In accordance with Section 22-11 and 22-17 of the Charter of Vienna,

Maryland, a copy of the Ordinance has been posted not less than 10 days prior to the effective date stated above. Thereafter, the Ordinance was finally passed by the Town Commissioners on the 12<sup>th</sup> day of December, 2011.

Passed this 12<sup>th</sup> day of December 2011.

Gregory M. Cusick  
Commissioner Gregory M. Cusick

Pamela R. Travers  
Commissioner Pamela R. Travers

Approved by me this 12<sup>th</sup>

Day of December, 2011.

Russell Brinsfield  
Russell Brinsfield, Mayor

ATTEST:

Marcia H. Gosnell  
Marcia Gosnell, Town Clerk

I HEREBY CERTIFY that four copies of the above ordinance have been posted in Town in accordance with the posting policy established by the Town and that public notice of this ordinance was duly advertised in the Banner in accordance with proper procedures.

ATTEST

Marcia H. Gosnell  
Marcia Gosnell, Town Clerk

VIENNA CRITICAL AREA ORDINANCE Chapter 16 - 10

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## **Critical Area Overlay District**

### **Part 1. Implementation of the Critical Area Ordinance Purpose and Goals.**

#### **A. Goals.**

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

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

#### **B. The Vienna Critical Area Ordinance.**

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

#### **C. Regulated activities and applicability.**

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

#### **D. Critical Area Overlay District Map.**

1. The Official Critical Area Overlay District Map is maintained in force as part of the Official Zoning Map for Town of Vienna. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:
  - a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetland maps, and all state and

private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and

- b. All land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under Title 16 of the Environment Article of the Annotated Code of Maryland.
2. Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:
  - a. Intensely Developed Area (IDA).
  - b. Limited Development Area (LDA).
  - c. Resource Conservation Area. (RCA)
3. The Critical Area Overlay District Map may be amended by the Mayor and Town Commissioners in compliance with amendment provisions in this Ordinance, the Maryland Critical Area Law, and COMAR Title 27.

E. General requirements.

1. Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this Ordinance.
2. Reasonable accommodations for the needs of disabled citizens.
  - a. An applicant seeking relief from the Critical Area standards contained in this Ordinance in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating by a preponderance of evidence the following:
    - (1) The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act
    - (2) Literal enforcement of the provisions of this Ordinance would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;
    - (3) A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this Ordinance or restore the disabled resident's or user's reasonable use or enjoyment of the



property;

(4) The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and

(5) The accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.

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

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

## **Part 2. Intensely Developed Areas.**

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

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

1. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation;
2. All roads, bridges, and utilities are prohibited in a Habitat Protection Area, unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction, and maintenance shall:
  - a. Provide maximum erosion protection;

- b. Minimize negative impact on wildlife, aquatic life, and their habitats; and
  - c. Maintain hydrologic process and water quality.
- 3. All development activities that must cross or affect streams shall be designed to:
  - a. Reduce increases in flood frequency and severity that are attributable to development;
  - b. Retain tree canopy so as to maintain stream water temperature within normal variation;
  - d. Provide a natural substrate for stream beds; and
  - e. Minimize adverse water quality and quantity impacts of stormwater.
- 4. All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to development or redevelopment as provided in *Critical Area 10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.

### **Part 3. Limited Development Areas.**

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

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

- 1. Development and redevelopment shall be subject to the water-dependent facilities requirements of this Ordinance;
- 2. Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
  - a. Provide maximum erosion protection;
  - b. Minimize negative impacts on wildlife, aquatic life and their habitats; and
  - c. Maintain hydrologic processes and water quality.

3. All development activities that must cross or affect streams shall be designed to:
  - a. Reduce increases in flood frequency and severity that are attributable to development;
  - b. Retain tree canopy so as to maintain stream water temperature within normal variation;
  - c. Provide a natural substrate for stream beds; and
  - d. Minimize adverse water quality and quantity impacts of stormwater.
4. If there is a wildlife corridor system identified by the Wildlife Heritage Service on or near the site which can be enhanced by additional plantings, the applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Ordinance. Town of Vienna shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town Attorney through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations, if present.
5. Development on slopes 15 percent or greater, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
6. Except as otherwise provided in this subsection, for stormwater runoff, lot coverage is limited to 15% of a lot or parcel or any portions of a lot or parcel that are designated Limited Development Area.
  - a. If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
  - b. If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
  - c. If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).

- d. Lot coverage limits provided in §a. and §b. above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
- (1) The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements.
  - (2) Lot coverage associated with new development activities on the property have been minimized;
  - (3) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in §a. by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
  - (4) For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
  - (5) The following table summarizes the limits set forth in §(1) through §(4) above:

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

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

- e. If the Planning Commission or its designee makes the findings set forth in §d. above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
- (1) Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of best management practices to improve water quality; and
  - (2) Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.



- (3) If the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to Town of Vienna in lieu of performing the on-site mitigation. The amount of the fee shall be \$1.50 per square foot of the required mitigation.
- 7. The alteration of forest and developed woodlands shall be restricted and shall be mitigated as follows:
  - a. The total acreage in forest and developed woodlands within Town of Vienna in the Critical Area shall be maintained or preferably increased;
  - b. All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
  - c. If an applicant is authorized to clear more than 20 percent of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared.
  - d. An applicant may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel, unless the Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of 3 times the areal extent of the forest or developed woodlands cleared.
  - e. If an applicant is authorized to clear any percentage of forest or developed woodlands associated with a subdivision or a site plan approval, the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by Town of Vienna.
- 8. The following are required for forest or developed woodlands clearing as required in § 7 above:
  - a. The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by Town of Vienna shall be posted to assure satisfactory replacement as required in §7 above and plant survival;
  - b. A permit issued by Town of Vienna before forest or developed woodlands is cleared. Clearing forests and developed woodlands before obtaining a Town of Vienna permit is a violation; any forests and developed woodlands cleared before obtaining a Vienna permit shall be replanted at three times the areal extent of the cleared forest or developed woodlands;

- c. Clearing of forest or developed woodlands that exceed the maximum area allowed in §7 above shall be replanted at three times the areal extent of the cleared forest or developed woodlands;
  - d. If the areal extent of the site limits the application of the reforestation standards in this section the applicant may be allowed to plant offsite at the required ratio or pay a fee in lieu of planting at a rate of \$1.50 per square foot.
9. If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodlands cover of at least 15 percent.
- a. The applicant shall designate, subject to the approval of the Town of Vienna, a new forest area on a part of the site not forested; and
  - b. The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Vienna Town Attorney.

#### **Part 4. Resource Conservation Areas.**

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

For all development activities and resource utilization in the Resource Conservation Areas, the applicant shall meet all of the following standards:

- 1. Land use management practices shall be consistent with the policies and criteria for the Habitat Protection Area provisions of this Ordinance.
- 2. Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres.
- 3. Development activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in this Ordinance.
- 4. Nothing in this Section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than one dwelling unit per 20 acres.

## Part 5. Land Use and Density.

### A. Permitted uses.

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

Table A.1. Permitted Uses

	<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted			
		<b>Land Use Management Designation</b>		
<b>Item</b>	<b>Use Description</b>	<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
<b>1.00</b>	<b>RESIDENTIAL</b>			
1.10	Accessory Dwelling Unit	P	P	PC
<b>2.00</b>	<b>INSTITUTIONAL</b>			
2.10	Existing institutional uses	P	P	PC
2.20	New institutional uses	P	P	NP
2.30	Cemetery	P	P	PC
2.40	Group Home	P	P	PC
2.50	Day Care	P	P	PC
<b>3.00</b>	<b>COMMERCIAL</b>			
3.10	Existing commercial uses	P	P	PC
3.20	New commercial uses	P	P	NP
3.30	Home occupation	P	P	PC
3.40	Bed and breakfast facility	P	P	PC
<b>4.00</b>	<b>MARITIME/WATER DEPENDENT</b>			
4.10	Expansion of existing commercial marinas	P	P	PC
4.20	New marina, commercial	P	P	NP
4.30	Community piers and noncommercial boat docking and storage	P	P	PC
4.40	Public beaches and public water-oriented recreational and educational areas	P	P	PC
4.50	Research Areas	P	P	PC
4.60	Fisheries activities	P	P	P
4.70	Structures on Piers	PC	PC	PC

	<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted			
		<b>Land Use Management Designation</b>		
<b>Item</b>	<b>Use Description</b>	<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
4.80	Private pier	P	P	P
<b>5.00</b>	<b>RECREATION</b>			
5.10	Golf course	P	P	PC
<b>6.00</b>	<b>INDUSTRIAL</b>			
6.10	Existing industrial uses	P	P	PC
6.20	New industrial uses	PC	PC	NP
6.30	Non-maritime heavy industry	PC	NP	NP
<b>7.00</b>	<b>TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES</b>			
7.10	Utility transmission facilities	PC	PC	PC
<b>8.00</b>	<b>PUBLIC/QUASI-PUBLIC</b>			
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	PC
8.30	Sludge Facilities	PC	PC	PC
<b>9.00</b>	<b>OTHER (reserved)</b>			



B. Maximum permitted density.

1. The maximum permitted density in the Vienna Critical Area shall be as shown in Table B.1.

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

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

2. Calculation of 1-in-20 acre density of development.

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

- a. Shall count each dwelling unit;
- b. May permit the area of any private wetlands located on the property to be included under the following conditions:
  - (1) The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and
  - (2) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by Town of Vienna, the Critical Area Commission, and the Maryland Department of the Environment.

**Part 6. Supplemental Use Standards.**

The following supplemental use standards apply to the permitted uses listed in Table A.1. above and shall apply when the permitted use is allowed in the underlying zoning district.

A. Accessory dwelling unit.

1. If a permitted use in the underlying zoning district, one additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the Resource Conservation Area provided the additional dwelling unit is served by the same sewage disposal system as the primary dwelling unit and:
  - a. is located within the primary dwelling unit or its entire perimeter is within

100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed areas; or

- b. is located within the primary dwelling unit and does not increase the amount of lot coverage already attributed to the primary dwelling unit.
- 2. An additional dwelling unit meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling unit; and
- 3. The provisions of this section may not be construed to authorize the granting of a variance, unless the variance is granted in accordance with the variance provisions contained herein.

B. Existing institutional uses.

- 1. Existing institutional facilities, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in Resource Conservation Areas.
- 2. Expansion of existing institutional facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.

C. New institutional uses.

- 1. New institutional facilities and uses, except those specifically listed in Table A.1, shall not be permitted in Resource Conservation Areas.
- 2. Certain institutional uses may be permitted in a Resource Conservation Area if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in the Vienna Zoning Ordinance. These institutional uses are limited to:
  - a. A cemetery that is an accessory use to an existing church; provided manmade lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;
  - b. A day care facility in a dwelling where the operators live on the premises and there are no more than eight (8) children;
  - c. A group home or assisted living facility with no more than eight (8) residents; and

- d. Other similar uses determined by the Municipality and approved by the Critical Area Commission to be similar to those listed above.

D. Existing commercial uses.

1. Existing commercial facilities and uses, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in Resource Conservation Areas.
2. Expansion of existing commercial facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.

E. New commercial uses.

1. New commercial uses, except those specifically listed in Table A.1., shall not be permitted in Resource Conservation Areas.
2. Certain commercial uses may be permitted in the Resource Conservation Area if allowed in the underlying zoning district and if the use complies with all requirements for such uses as provided in the Vienna Zoning Ordinance. These commercial uses are limited to:
  - a. A home occupation as an accessory use on a residential property and as provided for in Vienna's Zoning Ordinance;
  - b. A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility; and
  - c. Other uses determined by the Municipality and approved by the Critical Area Commission to be similar to those listed above.

F. Expansion of existing commercial marinas.

1. Expansion of existing commercial marinas may be permitted within Resource Conservation Areas provided:
  - a. Water quality impacts are quantified and appropriate Best Management Practices that address impacts are provided;
  - b. That it will result in an overall net improvement in water quality at or leaving the site of the marina;

- c. The marina meets the sanitary requirements of the Department of the Environment; and
  - d. Expansion is permitted under the nonconforming use provisions of this Ordinance.
- 2. Expansion of existing commercial marinas may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that the applicant demonstrates:
  - a. The project meets a recognized private right or public need;
  - b. Adverse effects on water quality, fish, plant and wildlife habitat are minimized;
  - c. Insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and
  - d. Expansion is permitted under the nonconforming use provisions of this Ordinance.

G. New marina, commercial.

- 1. New commercial marinas shall not be permitted in Resource Conservation Areas.
- 2. New commercial marinas may be permitted in Limited Development Areas and Intensely Developed Areas if allowed in the underlying zoning, provided:
  - a. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.
  - b. New marinas meet the sanitary requirements of the Department of the Environment.
  - c. New marinas may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:
    - (1) The project meets a recognized private right or public need;
    - (2) Adverse effects on water quality, fish, plant and wildlife habitat are minimized; and
    - (3) Insofar as possible, non-water-dependent structures or operations



associated with water-dependent projects or activities are located outside the Buffer.

H. Community piers and noncommercial boat docking and storage.

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

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

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

Table H.2.b. Number of Slips Permitted

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

- I. Public beaches and public water-oriented recreational and educational areas.
  1. Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed Areas.
  2. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:
    - a. Adequate sanitary facilities exist;
    - b. Service facilities are, to the extent possible, located outside the Buffer;
    - c. Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
    - d. Disturbance to natural vegetation is minimized; and
    - e. Areas for possible recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within Resource Conservation Areas if service facilities for these uses are located outside of the Buffer.
- J. Research areas.
  1. Water-dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the Buffer.

K. Fisheries activities.

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

L. Structures on piers.

1. Except as provided in §a., §b., and §c. below, construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private tidal wetlands within the Critical Area is prohibited.
  - a. A building permit for a project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area may be approved provided a permit was issued by the Department of Natural Resources on or before January 1, 1989.
  - b. A building permit for a project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area may be approved if the following conditions exist:
    - (1) The project is constructed on a pier that existed as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area;
    - (2) The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface of a pier to be removed is not intact, but pilings identify its previous size, then that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed; and
    - (3) The project is located in an Intensely Developed Area.

- c. A building permit for the repair of an existing dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area may be approved.
- d. If a structure that is not water-dependent is permitted under the exceptions included in this section, an applicant is required to demonstrate that the project will meet the following environmental objectives using the standards established herein:
  - (1) The construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water;
  - (2) The quality of stormwater runoff from the project will be improved; and
  - (3) Sewer lines or other utility lines extended for the pier will not affect the water quality of adjoining waters.

M. Golf course.

- 1. A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc., may be permitted in Resource Conservation Areas provided:
  - a. Such use is permitted in the underlying zoning; and
  - b. Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

N. Existing industrial uses.

- 1. Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in Resource Conservation Areas.
- 2. Expansion of existing industrial facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in Part 8 and may require growth allocation.

O. New industrial uses.

- 1. New industrial uses shall not be permitted in Resource Conservation Areas.

2. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas and Intensely Developed Areas if permitted uses in the underlying zoning district and provided such facilities meet all requirements for development in the Limited Development Area and Intensely Developed Areas.
3. New, expanded or redeveloped water-dependent industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Buffer Management Areas.

P. Non-maritime heavy industry.

1. Non-maritime heavy industry may be permitted if:
  - a. The site is located in an Intensely Developed Area; and
  - b. The activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

Q. Utility transmission facilities.

1. Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:
  - a. The facilities are located in Intensely Developed Areas; and
  - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. These provisions do not include power plants.

R. Sanitary landfill; rubble fill.

1. Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

S. Solid or hazardous waste collection or disposal facilities.

1. Solid or hazardous waste collection or disposal facilities, including transfer stations 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.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

T. Sludge facilities.

1. Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities may be permitted in the Critical Area provided:
  - a. The facility or activity is located in an Intensely Developed Area; and
  - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. 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.

**Part 7. Growth Allocation.**

A. Growth Allocation acreage.

Growth Allocation available to Town of Vienna includes:

1. An area equal to five (5) percent of the Resource Conservation Areas acreage located within Town of Vienna and/or;
2. Growth allocation available to Town of Vienna as provided for by Dorchester County.
3. As of the date of adoption of this Ordinance, there were 30 acres of municipal infill growth allocation available to the Town of Vienna to be used on projects located on land within the boundaries of the municipality as of December 12, 1988.

B. Growth Allocation Floating Zone District.

1. Purpose. The Growth Allocation Floating Zone is not mapped but is designated for use in areas classified as Resource Conservation Areas and/or Limited Development Area within the Vienna Critical Area Overlay District. The purpose of the floating zone is to permit a change in the land management classification established in the Critical Area Overlay District on specific sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification. Only projects which have been approved by the Mayor and Town Commissioners for award of the Critical Area Growth Allocation are eligible for the floating zone district.
2. Designation of floating zones.
  - a. The Growth Allocation District shall be a floating zone.
  - b. The Growth Allocation District provides for changing the land management classification of Resource Conservation Areas and Limited Development Areas in the Critical Area Overlay District.

C. Standards.

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

1. A new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area;
2. A new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area;
3. New Intensely Developed Areas shall be at least 20 acres in size unless:
  - a. They are contiguous to an existing Intensely Developed Area or located in a Limited Development Area; or
  - b. They are a grandfathered commercial or industrial use, which existed as of December 12, 1988. The amount of growth allocation deducted shall be equivalent to the area of the entire parcel or parcels subject to the growth allocation request.
4. No more than one-half of Town of Vienna's growth allocation may be located in Resource Conservation Areas except as provided in § 9 below;

5. A new Limited Development Area or Intensely Developed Area shall be located in a manner that minimizes impacts to Habitat Protection Areas as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
6. A new Intensely Developed Area shall only be located where it minimizes impacts to the defined land uses of the Resource Conservation Area;
7. A new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;
8. New Intensely Developed Areas or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of this Ordinance for such areas, shall be so designated on the Vienna Critical Area Maps and shall constitute an amendment to this Ordinance subject to review and recommendation by the Planning Commission, and the approval of the Town Commissioners and the Critical Area Commission, as provided herein.
9. If the Town of Vienna is unable to utilize a portion of its growth allocation as set out in §1 and §2 above within or adjacent to existing Intensely Developed or Limited Development Areas, then that portion of the growth allocation which cannot be so located may be located in the Resource Conservation Areas in addition to the expansion allowed in §4 above under program measures specifically approved by the Critical Area Commission.

D. Additional factors.

In reviewing map amendments or refinements involving the use of growth allocation, Town of Vienna shall consider the following factors:

1. Consistency with Town of Vienna's adopted Comprehensive Plan and whether the growth allocation would implement the goals and objectives of the adopted plan. "Consistency with" means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan:
  - a. Policies;
  - b. Timing of the implementation of the plan, of development, and of rezoning;
  - c. Development patterns;
  - d. Land uses; and
  - e. Densities or intensities.



2. For a map amendment or refinement involving a new Limited Development Area, whether the development is:
  - a. To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;
  - b. A completion of an existing subdivision;
  - c. An expansion of an existing business; or
  - d. To be clustered.
3. For a map amendment or refinement involving a new Intensely Developed Area, whether the development is:
  - a. To be served by a public wastewater system;
  - b. If greater than 20 acres, to be located in a designated Priority Funding Area; and
  - c. To have a demonstrable economic benefit.
4. The use of existing public infrastructure, where practical;
5. Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;
6. Impacts on a Priority Preservation Area;
7. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
8. Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

## **Part 8. Grandfathering.**

### **A. Continuation of existing uses.**

1. The continuation, but not necessarily the intensification or expansion, of any use in existence on December 12, 1988 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal ordinances.
2. If any existing use does not conform with the provisions of this Ordinance, its

intensification or expansion may be permitted only in accordance with the variance procedures in Part 9.

**B. Residential density on Grandfathered lots.**

1. Except as otherwise provided, the following types of land are permitted to be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this Ordinance.
  - a. A legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;
  - b. Land that received a building permit subsequent to December 1, 1985, but prior to December 12, 1988;
  - c. Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; or
  - d. Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the Intensely Developed Area, Limited Development Area or Resource Conservation Area requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.

**C. Consistency.**

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

**Part 9. Variances.**

**A. Applicability.**

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

1. In considering an application for a variance, Town of Vienna 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 this Ordinance.

2. 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.

#### 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 land or structure involved and that a literal enforcement of provisions and requirements of this Ordinance would result in unwarranted hardship;
2. A literal interpretation of the provisions of this Ordinance will deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Ordinance;
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Critical Area Ordinance to other lands or structures within the Critical Area;
4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property; and
5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and this Ordinance.

#### C. Process.

Applications for a variance will be made in writing to the Board of Appeals with a copy provided to the Critical Area Commission. Town of Vienna shall follow its established procedures for advertising and notification of affected landowners.

1. After hearing an application for a Critical Area Ordinance variance, the Board of Appeals shall make written findings reflecting analysis of each standard.

2. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, Town of Vienna shall consider that fact.
3. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in §A above.
4. Town of Vienna shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request in accordance with §G below.

D. Findings.

Based on competent and substantial evidence, the Board of Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established in §A above, and if applicable §B 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. Town of Vienna or any other government agency; or
3. Any other person deemed appropriate by the Town of Vienna.

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 of Vienna for variances. Variance decisions by the Board of 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 Ordinance.

F. Conditions and mitigation.

The Board of 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 this Ordinance is maintained including, but not limited to the following:

1. Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the appropriate local body or approving authority, but not less than by planting on the site per square foot of the variance granted at no less than a three to one basis.
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, non-tidal wetlands, or steep slopes.

G. Commission notification.

Within ten (10) 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. Town of Vienna may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed.

**Part 10. Lot Consolidation and Reconfiguration.**

A. Applicability.

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

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

B. Procedure

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the information required in COMAR 27.01.02.08.E to the Town of Vienna.

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

**Part 11. Amendments.**

A. Amendments.

The Vienna Mayor and Town Commissioners may from time to time amend the Critical Area provisions of this Ordinance. Changes may include, but are not limited to amendments, revisions, and modifications to these Critical Area regulations, Critical Area Maps, implementation procedures, and local policies that affect the Town of Vienna's Critical Area. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in § 8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be implemented 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 § 8-1809(i) and § 8-1809(d), respectively.

B. Zoning map amendments.

Except for Ordinance amendments or Ordinance refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by the Vienna Mayor and Commissioners upon proof 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 as shown on the adopted Critical Area Overlay Map; or
2. The use of growth allocation in accordance with the growth allocation provisions of this Ordinance is proposed.

C. Process.

1. When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and recommendation. Upon completing Findings of Fact, these documents shall be forwarded to the Vienna Mayor and Commissioners.
2. The Vienna Mayor and Commissioners shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fourteen (14) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town of Vienna.
3. After the Mayor and Commissioners approve an amendment, they shall forward their decision and applicable resolutions along with the amendment request to the Critical Area Commission for final approval.

## **Part 12. Enforcement.**

### **A. Consistency.**

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

### **B. Violations.**

1. No person shall violate any provision of this Ordinance. Each violation that occurs and each calendar day that a violation continues shall be a separate offense.
2. Each person who violates a provision of this Ordinance shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.
3. Non compliance with any permit or order issued by Town of Vienna related to the Critical Area shall be a violation of this Ordinance and shall be enforced as provided herein.

### **C. Responsible persons.**

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

### **D. Required enforcement action.**

In the case of violations of this Ordinance, Town of Vienna shall take enforcement action including:

1. Assess administrative civil penalties as necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, and reviewing mitigation plans and ensuring compliance with these plans;
2. Issue abatement, restoration, and mitigation orders as necessary to:
  - a. Stop unauthorized activity;
  - b. Restore and stabilize the site, as appropriate, to its condition prior to the

violation or to a condition that provides the same water quality and habitat benefits; and

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

E. Right to enter property.

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

F. Administrative civil penalties.

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

1. Before imposing any civil penalty, the person(s) believed to have violated this Ordinance shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, Town of Vienna shall consider:
  - a. The gravity of the violation;
  - b. The presence or absence of good faith of the violator;
  - c. Any willfulness or negligence involved in the violation including a history of prior violations;
  - d. The environmental impact of the violation; and
  - e. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to Town of Vienna for performing, supervising, or rendering assistance to the restoration and mitigation.



2. Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
3. The person responsible for any continuing violation shall promptly provide Town of Vienna with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Town of Vienna's inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until Town of Vienna receives such written notice and verifies compliance by inspection or otherwise.
4. Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by Town of Vienna of all damages, costs, and other expenses caused by the violation.
5. Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Ordinance.

G. Cumulative remedies.

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

H. Injunctive relief.

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

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

I. Variances pursuant to a violation.

Town of Vienna may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an order, permit, plan, or this Ordinance in accordance with the variance provisions of this Ordinance. However,

the application shall not be reviewed, nor shall a final decision be made until all abatement, restoration, and mitigation measures have been implemented and inspected by the Town of Vienna.

J. Permits pursuant to a violation.

Town of Vienna may not issue any permit, approval, variance, or special exception, unless the person seeking the permit has:

1. Fully paid all administrative, civil, or criminal penalties as set forth in Section F. above;
2. Prepared a restoration or mitigation plan, approved by Town of Vienna, to abate impacts to water quality or natural resources as a result of the violation;
3. Performed the abatement measures in the approved plan in accordance with the Town of Vienna regulations; and
4. Unless an extension of time is approved by Town of Vienna 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.

K. Appeals.

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

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

### **Part 13. The 100-Foot Buffer.**

#### **A. Applicability and delineation.**

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

1. The minimum 100-foot Buffer is delineated landward from:
  - a. The mean high water line of tidal water;
  - b. The edge of each bank of a tributary stream; and
  - c. The upland boundary of a tidal wetland.
2. The Buffer shall be expanded beyond the minimum 100-foot Buffer as described in §A.1. above and the minimum 200-foot Buffer as described in §A.3. below, to include the following contiguous land features:
  - a. A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
  - b. A non-tidal wetland to the upland boundary of the non-tidal wetland;
  - c. The 100-foot Buffer that is associated with a Non-tidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
  - d. For an area of hydric soils or highly erodible soils, the lesser of:
    - (1) The landward edge of the hydric or highly erodible soils; or
    - (2) Three hundred feet where the expansion area includes the minimum 100-foot Buffer.
3. Applications for a subdivision or for a development activity on land located within the Resource Conservation Areas requiring site plan approval after July 1, 2008 shall include:
  - a. An expanded Buffer in accordance with §A.2. above; or
  - b. A Buffer of at least 200 feet from a tidal waterway or tidal wetlands; and a Buffer of at least 100-feet from a tributary stream, whichever is greater.

4. The provisions of §A.3. above do not apply if:
  - a. The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded (subdivisions) or received approval (site plans), by July 1, 2010;
  - b. The application involves the use of growth allocation.

B. Permitted activities.

If approved by Town of Vienna, disturbance to the Buffer is permitted for the following activities , provided mitigation is performed in accordance with an approved Buffer Management Plan as required per Section F of this Part:

1. A new development or redevelopment activity associated with a water-dependent facility or located in an approved Buffer Management Area;
2. A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Ordinance;
3. A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance;
4. A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
  - a. The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;
  - b. The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
  - c. Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
5. A new or replacement septic system on a lot created before December 12, 1988, where:
  - a. The Dorchester County Health Department has determined the Buffer is the only available location for the septic system; and

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

C. Buffer establishment in vegetation.

An applicant for a development activity, redevelopment activity or a change in land use that occurs outside the Buffer, but is located on a riparian lot or parcel that includes the minimum 100-foot Buffer, shall establish the Buffer in vegetation if the Buffer is not fully forested or fully established in woody or wetland vegetation. Town of Vienna shall require a Buffer Management Plan in accordance with the standards of this Part.

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

D. Mitigation for impacts to the Buffer.

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

- 1. Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, septic system approved by the Dorchester County Health Department on a lot created before December 12, 1988, and or a special exception.
- 2. All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2.
- 3. All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the limit of disturbance in the Buffer.

4. Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then Town of Vienna may permit planting in the following order of priority:
  - a. On-site and adjacent to the Buffer; and
  - b. On-site elsewhere in the Critical Area.
  - c. A fee in lieu as referenced in §G below.

E. Buffer planting standards.

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

F. Required submittal of Buffer Management Plans.

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

1. A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials, clearly specify the area to be planted and state if the applicant is:
  - a. Fully establishing the Buffer;
  - b. Partially establishing an area of the Buffer equal to the net increase in lot coverage, or
  - c. Partially establishing an area of the Buffer equal to the total lot coverage.
2. Any permit for development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by Town of Vienna.
3. An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by Town of Vienna.
4. Town of Vienna may not approve a Buffer Management Plan unless:

- a. The plan clearly indicates that all planting standards under §E of this Ordinance will be met; and
  - b. Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
- 5. For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
  - a. Completes the implementation of a Buffer Management Plan; or
  - b. Provides financial assurance to cover the costs for:
    - (1) Materials and installation; and
    - (2) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
- 6. Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
- 7. If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance.
  - a. A permit for development activity will not be issued for a property that has the violation.
- 8. An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.

G. Fees-In-Lieu of Buffer mitigation.

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

- 1. Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to Town of Vienna's general fund;
- 2. Fee-in-lieu shall be assessed at \$1.50 per square foot of required Buffer mitigation;

3. A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and
4. Fee-in-lieu monies shall be used for the following projects:
  - a. To establish the Buffer on sites where planting is not a condition of development or redevelopment;
  - b. For water quality and habitat enhancement projects as approved by the Critical Area Commission or by agreement between Town of Vienna and the Critical Area Commission.

H. Shore erosion control projects.

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

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

**Part 14. Buffer Management Area (BMA) Provisions.**

A. Development and redevelopment standards.

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

1. Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
2. Variances to other local setback requirements have been considered before additional intrusion into the Buffer.



3. Commercial, industrial, institutional, recreational and multi-family residential development and redevelopment shall meet the following standards:
  - a. New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the minimum required setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.
  - b. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the local setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. A new structure may be constructed on the footprint of an existing structure.
4. Single family residential development and redevelopment shall meet the following standards:
  - a. New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development be located less than 50 feet, or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).
  - b. Existing principal or accessory structures may be replaced in the same footprint.
  - c. New accessory structures may be located closer to the water than the setback if the Town of Vienna has determined there are no other locations for the structures. The area of new accessory structures shall not exceed 500 square feet within 25 feet of the water and 1,000 square feet total in the Buffer.
5. Variances to other local setback requirements shall be considered before additional intrusion into the Buffer is permitted.
6. Development and redevelopment may not impact any Habitat Protection Area other than the Buffer, including non-tidal wetlands, other State or federal permits notwithstanding.
7. Buffer Management Area designation shall not be used to facilitate the filling of

tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.

8. No natural vegetation may be removed in the Buffer except that required by the proposed construction.
9. Mitigation for development or redevelopment in the Buffer Management Area approved under the provisions of this subsection shall be implemented as follows:
  - a) Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-foot Buffer shall be planted on site in the Buffer or at another location approved by the Planning Commission.
  - b) Applicants who cannot fully comply with the planting requirement in §a above, may use offset by removing an equivalent area of existing lot coverage in the Buffer.
  - c) Applicants who cannot comply with either the planting or offset requirements in §a. or §b. above shall pay \$1.50/sq.ft. into a fee-in-lieu program.
  - d) Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the Town of Vienna's Critical Area Ordinance. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported to the Critical Area Commission on an annual basis.
  - e) Any required mitigation or offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of the County.

## **Part 15. Other Habitat Protection Areas.**

### **A. Identification.**

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

1. Threatened or endangered species or species in need of conservation;

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

**B. Standards.**

1. An applicant proposing a subdivision or a site plan for a site within the Critical Area that is in or near a Habitat Protection Area listed above, shall request review by the Department of Natural Resources Wildlife and Heritage Service for comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.
2. If the presence of a Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall develop a Habitat Protection Plan in coordination with the Department of Natural Resources.
3. The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

**Part 16. Vienna Watershed Restoration.**

**A. Background.**

In late 2007, the Department of Natural Resources acquired a 96-acre parcel to the west of Trunk Creek and a 122-acre parcel south and west of Trunk Creek. The goal of the acquisition was to enhance protection of the Mill Creek Natural Heritage Area (NHA) through various restoration efforts, as well as to establish a long-envisioned, permanently protected greenbelt around the Town of Vienna's designated growth area. At the time, it was determined that reforestation and other restoration activities would be implemented by the Department of Natural Resources and the Town as a means of enhancing and optimizing the long-term protection of the Natural Heritage Area and greenbelt. In spring

2008, the Town and Department of Natural Resources began working on plans for restoration of the property. The restoration would consist of several elements including the planting of forested buffers, the planting of warm-season and cool-season grassed buffers, the planting of forested corridors to improve wildlife habitat, and the restoration of nontidal wetlands including 69 acres of enhancement and restoration and 149 acres of agriculture. The properties were subsequently transferred to the Town of Vienna, and, on July 7, 2010, the Critical Area Commission approved the Town of Vienna Greenbelt and Wetland Restoration Plan.

B. Restoration activities.

Under the guidance of, and implementation by the Department of Natural Resources, the first element of the restoration involved planting 21 acres of forest in the Critical Area Buffer adjacent to Trunk Creek and the Mill Creek Natural Heritage Area. An existing 25-foot agricultural Buffer was widened to a minimum of 100-feet adjacent to Trunk Creek and approximately 300-feet adjacent to the NHA. In addition to the forest planting in the Buffer, additional water quality enhancements were proposed along the agricultural drainage ditches on the site. Four of the agricultural drainage ditches on the property were determined to be tributary streams. Restoration efforts will establish 50-foot buffers of cool-season grasses on both sides of these streams. Grass buffers will be planted on both sides of four additional agricultural ditches that were not classified as streams, resulting in an additional 22 acres of new grass buffers.

C. Wildlife habitat enhancements.

Approximately 20 acres of tilled land will be planted with a variety of tree species. Planting 10 acres of forest in the northwest quadrant of the property will provide an important connection between two large forested tracts, identified as Delmarva Fox Squirrel Habitat. Forest planting of approximately eight acres in the southwest corner of the property will provide an important corridor for other wildlife as well, connecting the large forested tracts to the new riparian buffer adjacent to the Mill Creek Natural Heritage Area and the Nanticoke River. Nontidal wetland restoration activities will take place in this area as well.

D. Creation of nontidal wetlands.

One nontidal wetland, located where the southern tributary stream meets Trunk Creek, will be created to establish additional forested nontidal wetland and emergent intertidal habitat. This low-lying site is periodically flooded during storm events and is classified as “prior converted wetlands.” Due to this classification, authorization from the Maryland Department of Environment is not required for the disturbances associated with the restoration. By providing approximately 20 acres of new nontidal wetlands, adverse impacts to the Natural Heritage Area associated with nutrients, herbicides, and sediments

from agricultural use should be dramatically decreased or eliminated. Approximately 12 acres of the new wetlands will be forested nontidal wetlands and the remaining eight acres will be emergent wetlands.

E. Mitigation policy for municipally-owned lands.

The Critical Area Commission has authorized the Town of Vienna to utilize the forest restoration activities associated with the Town of Vienna Greenbelt and Wetland Restoration Plan as mitigation for required Critical Area planting in association with future development activity on municipally-owned properties.

1. Emperor's Landing Waterfront Park.

Approximately 21 acres of new greenbelt restoration plantings of Critical Area Buffer adjacent to Trunk Creek and Mill Creek were approved by the Critical Area Commission to offset amenities associated with Emperor's Waterfront Park.

2. Future development activity.

The Town of Vienna will continue to coordinate with State agencies and the Critical Area Commission to ensure that future disturbances on municipally-owned properties in the Critical Area will be appropriately mitigated and the Town will utilize the Vienna Greenbelt forest restoration activities as off-site mitigation, when necessary, due to on-site constraints.

**Part 17. Definitions.**

The following words have the following meanings for the purposes of implementing the Critical Area Ordinance and the Vienna Zoning Ordinance, and the singular always include the plural, and vice versa, except where such construction would be unreasonable:

- (1) "Abatement" means the act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.
- (2) "Accessory structure" means a structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to a principal structure, or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure.
- (3) "Addition" means newly constructed area that increases the size of a structure.
- (4) "Afforestation" means 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.

- (5) "Agriculture" means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.
- (6) "Agricultural easement" means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.
- (7) "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.
- (8) "Anadromous fish propagation waters" means those streams that are tributary to the Chesapeake Bay and Atlantic Coastal Bays in which the spawning of anadromous species of fish (e.g., rockfish, striped bass, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are identified by the Department of Natural Resources.
- (9) "Aquaculture" means: (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquacultural practices.
- (10) "Best Management Practices (BMPs)" means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.
- (11) "Buffer" means area that based on conditions at the time of development is 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 exists in, or is established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. 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 include any

expansion for contiguous sensitive areas, such as a steep slope, hydric soil, highly erodible soil, non-tidal wetland, or a Non-tidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.

- (12) "Buffer Management Area" means an area officially mapped by the Town of Vienna and approved by the Critical Area Commission as a Buffer Management Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional, or recreational development prevents the Buffer from fulfilling its water quality and habitat functions, and where development in accordance with specific Buffer Management Area provisions can be permitted in the Buffer without a variance.
- (13) "Buffer Management Plan" includes a major Buffer management plan, a minor Buffer management plan, and a simplified Buffer management plan.
- (14) "Canopy tree" means a tree that when mature commonly reaches a height of at least 35 feet.
- (15) "Cluster development" means 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.
- (16) "Colonial nesting water birds" means herons, egrets, terns, and glossy ibis. For the purposes of nesting, these birds congregate (that is "colonize") in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.
- (17) "COMAR" means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.
- (18) "Commission" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
- (19) "Community piers" means boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment and other multiple family dwelling units. Private piers are excluded from this definition.
- (20) "Comprehensive or master plan" means a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning board, agency or office.
- (21) "Conservation easement" means a non-possessory interest in land which restricts the

manner in which the land may be developed in an effort to reserve natural resources for future use.

- (22) "Consolidation" means a combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. An application for consolidation may include a subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot line adjustment.
- (23) "Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
  - (a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide as indicated on State wetland maps;
  - (b) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;
  - (c) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and
  - (d) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.
- (24) "Density" means the number of dwelling units per acre within a defined and measurable area.
- (25) "Developed woodlands" means an area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial or recreational development
- (26) "Developer" means a person who undertakes development activity as defined in this Ordinance; or a person who undertakes development activity as defined in the Criteria of the Commission.
- (27) "Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.
- (28) "Disturbance" means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintaining an existing grass lawn.
- (29) "Documented breeding bird areas" means forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.



- (30) "Dwelling unit" means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.
- (31) "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.
- (32) "Endangered species" means any species of fish, wildlife, or plants that have been designated as endangered by regulation by 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 U.S.C. §et seq., as amended.
- (33) "Establishment" means the planting or regeneration of native vegetation throughout the Buffer.
- (34) "Excess stormwater run-off" means all increases in stormwater resulting from:
- (a) An increase in the imperviousness or lot coverage of the site, including all additions to buildings, roads, and parking lots;
  - (b) Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
  - (c) Alteration of drainageways, or regrading of slopes;
  - (d) Destruction of forest; or
  - (e) Installation of collection systems to intercept street flows or to replace swales or other drainageways.
- (35) "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the Town of Vienna.
- (36) "Fisheries activities" means commercial water dependent fisheries facilities including structures for the parking, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquacultural operations.
- (37) "Forest" means 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% of those trees having two-inch or greater diameter at 4.5 feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.

- (38) "Forest Interior Dwelling Birds" means species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).
- (39) "Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.
- (40) "Fully Established" means the Buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.
- (41) "Grandfathered parcel" or "Grandfathered lot" means a parcel of land that was created or a lot created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.
- (42) "Growth allocation" means the number of acres of land in the Critical Area that the Town of Vienna may use, or Dorchester County may allocate to municipal jurisdictions to use, to create new Intensely Developed Areas and new Limited Development Areas. The Growth Allocation acreage is five percent of the total Resource Conservation Area acreage in the Town of Vienna at the time the Critical Area Commission approved the Town of Vienna's original Critical Area Program, not including tidal wetlands, plus additional acres included from the County's calculated amount [5%] of County Resource Conservation Areas that existed when the Critical Area Commission approved Dorchester County's original Critical Area Program [that the Town may request and the County may allocate].
- (43) "Habitat Protection Plan" means a plan that provides for the protection and conservation of the species and habitats identified as Habitat Protection Areas in the Critical Area. The plan shall be specific to the site or area where the species or its habitat is located and shall address all aspects of a proposed development activity that may affect the continued presence of the species. These include, but are not limited to, cutting, clearing, alterations of natural hydrology, and increases in lot coverage. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be effectively implemented on the specific site.
- (44) "Highly erodible soils" means those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

- (45) "Historic waterfowl staging and concentration area" means 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.
- (46) "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils.
- (47) "Hydrophytic vegetation" means 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).
- (48) "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.
- (49) "In-kind replacement" means the replacement of a structure with another structure that is smaller than or identical to the original structure in footprint area, width, length, and use.
- (50) "Intensely Developed Area" means an area of at least 20 acres or the entire upland portion of the Critical Area within a municipal corporation, whichever is less, where: residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include: an area with a housing density of at least four dwelling units per acre and/or an area with public water and sewer systems with a housing density of more than three dwelling units per acre.
- (51) "Invasive species" means a species that is non-native or alien to the ecosystem under consideration whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
- (52) "K Value" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value, that is experimentally determined.
- (53) "Land clearing" means any activity that removes the vegetative ground cover.
- (54) "Large shrub" means a shrub that, when mature, reaches a height of at least six feet.
- (55) "Legally developed" means all physical improvements to a property that existed before Critical Area Commission approval of a local Ordinance, or were properly permitted in accordance with the provisions of the local Ordinance in effect at the time of construction.

- (56) “Limited Development Area” means an area: with a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre; with a public water or sewer system; that is not dominated by agricultural land, wetland, forests, barren land, surface water, or open space; or that is less than 20 acres and otherwise qualifies as an Intensely Developed Area under the definition in this Ordinance.
- (57) “Living shoreline” means a suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal process, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures, breakwaters, or other natural components.
- (58) “Local significance” means development of a minor scale, which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Ordinance of the Town of Vienna; and is not considered to be major development as defined in this Ordinance.
- (59) “Lot coverage” means the percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with a paver, walkway gravel, stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade material. Lot coverage includes the ground area covered or occupied by a stairway or impermeable deck, but does not include: a fence or wall that is less than one foot in width that has not been constructed with a footer; a walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; a wood mulch pathway; or a deck with gaps to allow water to pass freely.
- (60) "Marina" means any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.
- (61) “Major development” means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts to the Critical Area of a local jurisdiction. This development includes, but is not limited to, airports, powerplants, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities.
- (62) "Mean High Water Line" (MHWL) means the average level of high tides at a given location.
- (63) “Mitigation” means an action taken to compensate for adverse impacts to the

environment resulting from development, development activity, or a change in land use or intensity.

- (64) “Native plant” means a species that is indigenous to the physiographic area in Maryland where the planting is proposed.
- (65) "Natural Heritage Area" means any community of plants or animals which are considered to be among the best State-wide examples of their kind, and are designated by regulation by the Department of Natural Resources.
- (66) “Natural regeneration” means the natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.
- (67) "Natural vegetation" means those plant communities that develop in the absence of human activity.
- (68) “New development” means that for purposes of implementing specific provisions of this Ordinance, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in Intensely Developed Areas) or lot coverage (Limited Development Area and Resource Conservation Areas) of less than 15 percent as of December 1, 1985.
- (69) "Non-point source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than by deliberate discharge. Non-point source pollution is not generally corrected by "end-of-pipe" treatment, but rather by changes in land management practices.
- (70) "Non-tidal wetlands" means those areas regulated under Subtitle 9 of the Environment Article that are inundated or saturated by surface water or groundwater at a frequency and 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 non-tidal wetland shall be made in accordance with the publication known as the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands,” published in 1989, and as may be amended. Non-tidal wetlands do not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.
- (71) "Offsets" means structures or actions that compensate for undesirable impacts.
- (72) "Open space" means land and water areas retained in an essentially undeveloped state.
- (73) “Person” means an individual, partnership, corporation, contractor, property owner, or

any other person or entity.

- (74) "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.
- (75) "Pier" means any pier, wharf, dock, walkway, bulkhead, breakwater, piles 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.
- (76) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
- (77) "Port" means a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.
- (78) "Principal structure" means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.
- (79) "Program amendment" means any change or proposed change to an adopted Ordinance that is not determined by the Chairman of the Critical Area Commission to be a Ordinance refinement.
- (80) "Program refinement" means any change or proposed change to an adopted Ordinance that the Chairman 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 Ordinance, or that will not significantly affect the use of land or water in the Critical Area. Ordinance refinement may include:
  - (a) A change to an adopted Ordinance that results from State law;
  - (b) A change to an adopted Ordinance that affects local processes and procedures;
  - (c) A change to a local ordinance or code that clarifies an existing provision; and
  - (d) A minor change to an element of an adopted Ordinance that is clearly consistent with the provisions of State Critical Area law and all the Criteria of the Commission.
- (81) "Property owner" means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.
- (82) "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.
- (83) "Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies.

- (84) "Reconfiguration" means a change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. An application for reconfiguration may include a subdivision, a lot line adjustment, a boundary line adjustment, a replatting request, or a revision of acreage to increase density.
- (85) "Redevelopment" means 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 (in Intensely Developed Areas) or lot coverage (in Limited Development Areas and Resource Conservation Areas) of 15 percent or greater.
- (86) "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.
- (87) "Resource Conservation Area" means an area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource Conservation Areas include areas with a housing density of less than one dwelling per five acres.
- (88) "Resource utilization activities" means any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.
- (89) "Restoration" means the act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.
- (90) "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.
- (91) "Road"
- (a) "Road" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body.
  - (b) "Road" does not include a drive aisle or driveway.
- (92) "Seasonally flooded water regime" means a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.
- (93) "Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

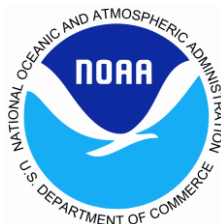
- (94) "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.
- (95) "Significantly eroding areas" means areas that erode two feet or more per year.
- (96) "Small shrub" means a shrub that, when mature, reaches a height no greater than six feet.
- (97) "Species in need of conservation" means those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland.
- (98) "Steep slopes" means slopes of 15 percent or greater incline.
- (99) "Structure" means building or construction materials, or a combination of those materials, that are purposely assembled or joined together on or over land or water. Structure includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.
- (100) "Substantial alteration" means any repair, reconstruction, or improvement of a principal structure, where the proposed footprint equals or exceeds 50 percent of the existing principal structure.
- (101) "Thinning" means a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.
- (102) "Threatened species" means any species of fish, wildlife, or plants designated as such by regulation by the Department of Natural Resources that 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 U.S.C. § 1431 et seq., as amended.
- (103) "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.
- (104) "Transitional habitat" means a plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.
- (105) "Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.



- (106) "Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local Ordinance procedures approved by the Critical Area Commission.
- (107) "Understory" means the layer of forest vegetation typically located underneath the forest canopy.
- (108) "Understory tree" means a tree that, when mature, reaches a height between 12 and 35 feet.
- (109) "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."
- (110) "Upland boundary" means the landward edge of a tidal wetland or non-tidal wetland.
- (111) "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.
- (112) "Water-based aquaculture" means the raising of fish and shellfish in any natural, open, free-flowing water body.
- (113) "Water-dependent facilities" means 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. Such activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.
- (114) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.
- (115) "Waterfowl" means birds that 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.
- (116) "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passage for wildlife.
- (117) "Wildlife habitat" means those plant communities and physiographic features that provide food, water, cover, and nesting areas, as well as foraging and feeding conditions necessary to maintain populations of animals in the Critical Area.

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