

**ORDINANCE NO. 21-04**

**Introduced by: Thomas B. Willis, Jr.; President**

**AN ORDINANCE OF THE TOWN OF QUEENSTOWN TO AMEND ARTICLE IV, PART III OF THE QUEENSTOWN ZONING ORDINANCE TITLED, “CRITICAL AREA OVERLAY DISTRICT” TO COMPLY WITH RECENT AMENDMENTS TO THE NATURAL RESOURCES ARTICLE**

WHEREAS, Md. Code Ann. Land Use Article § 4-202 authorizes municipalities to adopt zoning regulations as it determines are in the public health, safety and welfare; and

WHEREAS, in accordance with Md. Code Ann. Natural Resources Article § 8-1808, the Town of Queenstown has adopted a Critical Area Program, which is set forth in Article IV, Part III of the Queenstown Zoning Ordinance, titled “CA Critical Area Overlay District”; and

WHEREAS, pursuant to Md. Code Ann. Natural Resources Article § 8-1809(g), each local jurisdiction is required to review its Critical Area Program and propose any necessary amendments at least every six (6) years; and

WHEREAS, the Queenstown Planning Commission undertook the necessary review and proposed necessary amendments to the Critical Area Program which were submitted to the Critical Area Commission for review; and

WHEREAS, the Commissioners of Queenstown held a duly advertised public hearing on the amendments to the Critical Area Program on \_\_\_\_\_, 2021; and

WHEREAS, the Queenstown Planning Commission and the Commissioners of Queenstown have determined that the amendments set forth herein are consistent with the Town’s planning goals and objectives set forth in the Town’s Comprehensive Plan and the standards sets forth in Md. Code Ann. Natural Resources Article § 8-1808(b)(1) through (3).

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS OF QUEENSTOWN AS FOLLOWS:

**Section 1.** The Queenstown Zoning Ordinance, Article IV, Part III is hereby amended as follows:

**§ 27. Implementation of the Critical Area Program Purpose and Goals.**

A. The Queenstown Critical Area Program

1. The Queenstown Critical Area Program consists of the Queenstown Zoning Chapter and the Queenstown Critical Area map. Related provisions may also be found in the Queenstown Subdivision Regulations.

B. Goals.

The goals of the Queenstown Critical Area Program 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.

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 Town after review to determine compliance with the Queenstown Zoning Chapter.

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 Queenstown. 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 and all state and private wetlands designated under ~~Title 9 of the Natural Resources~~ **Title 16 of the Environment** Article of the Annotated Code of Maryland.
  - 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 9 of the Natural Resources~~ **Title 16 of the Environment** Article of the Annotated Code of Maryland.
2. Within the designated Critical Area Overlay District, all land shall be assigned one of the following land management and development area classifications:
  - a. Intensely Developed Area (IDA).
  - b. Limited Development Area (LDA).

- c. Resource Conservation Area (RCA).
3. The Critical Area Overlay District Map may be amended by the Town Commissioners in compliance with amendment provisions in this Chapter, the Maryland Critical Area Law, the Critical Area Criteria and ~~Critical Area Regulations~~ *COMAR Title 27*.

E. General Requirements

1. Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this Chapter.
2. Reasonable accommodations for the needs of disabled citizens.
  - a. An applicant seeking relief from the Critical Area standards contained in this Chapter in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating 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 Chapter 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 Chapter 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 Chapter 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 Board of Appeals shall determine the nature and scope of any accommodation under this Chapter 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 Chapter. The Board 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 Board of Appeals 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 Chapter. Appropriate bonds may be collected or liens placed in order to ensure the Town’s ability to restore the property should the applicant fail to do so.

***F. Notification of project approval. Applicants are hereby notified that the Town will send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment.***

- 1. *The application will be accompanied by a completed “Project Notification Application” form downloaded from the Critical Area Commission’s website.*
- 2. *The Town will not process an application, which has been sent to the Critical Area Commission for notification until it has received notice of receipt by the Critical Area Commission.*
- 3. *Any cation by the Town in violation of these procedures shall be void.*

***Summary of Notification Requirements  
Critical Area Commission  
(COMAR 27.03.01)***

<b><i>Type of Application</i></b>	<b><i>Requires Notification to the Critical Area Commission</i></b>		
	<b><i>Yes/No</i></b>		
	<b><i>IDA</i></b>	<b><i>LDA</i></b>	<b><i>RCA</i></b>
<b><i>1. Disturbance to a Habitation Protection Area</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>2. Physical disturbance to the Buffer (see Note 1)</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>3. Variance from Critical Area provisions</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>4. Development resulting in less than 5,000 square feet of disturbance</i></b>	<b><i>N</i></b>	<b><i>N</i></b>	<b><i>N</i></b>
<b><i>5. Development resulting in between 5,000 and 15,000 square feet of disturbance</i></b>	<b><i>N</i></b>	<b><i>N</i></b>	<b><i>Y</i></b>
<b><i>6. Development resulting in greater than 15,000 square feet of disturbance</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>7. Subdivision of 3 lots or fewer</i></b>	<b><i>N</i></b>	<b><i>N</i></b>	<b><i>Y</i></b>
<b><i>8. Subdivision of 4 to 10 lots</i></b>	<b><i>N</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>9. Subdivision of greater than 10 lots</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>10. Subdivision affecting Growth Allocation</i></b>	<b><i>N/A</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>
<b><i>11. Intrafamily transfer</i></b>	<b><i>N/A</i></b>	<b><i>N/A</i></b>	<b><i>Y</i></b>
<b><i>12. Rezoning that would occur wholly or partially</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>	<b><i>Y</i></b>

<i>within the Critical Area</i>			
<b>13. Special exception or conditional use for industrial commercial, institutional, non-residential or multi-family</b>	<i>N</i>	<i>Y</i>	<i>Y</i>
<b>14. Substantial alteration to applications previously submitted to the Critical Area Commission</b>	<i>Y</i>	<i>Y</i>	<i>Y</i>
<b>Note 1: Shore erosion control measures and private piers that do not involve disturbance to the Buffer and are not permitted by MDE do not require Critical Area Commission notification</b>			

**§ 28. Intensely Developed Areas.**

A. Intensely Developed Areas are defined as, “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; an area with public water and sewer systems with a housing density of more than three dwelling units per acre.”

B. 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. ***The following uses may only be permitted in the IDA only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water. These activities include the following:***
  - a. ***Nonmaritime heavy industry:***
  - b. ***Permanent sludge handling, storage, and disposal facilities other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100-foot Buffer.***
2. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation;
3. 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.
34. 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.
45. 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.
6. ***New expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of IDAs that have been designated as Buffer Management Areas (BMAs).***

## **§ 29. Limited Development Areas.**

- A. Limited Development Areas are defined as, “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 Chapter.”
- B. 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 Chapter;

2. Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
  - a. Provide maximum erosion protection;
  - b. Minimize negative impacts on wildlife, aquatic life and their habitats; and
  - c. Maintain hydrologic processes and water quality.
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 Chapter. Queenstown shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations.~~ ***If a wildlife corridor system is identified by the Department of Natural Resources on or near the site the following practices are required:***
  - a. ***The applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site;***
  - b. ***A conservation easement, restrictive covenant, or similar instrument approved by the Town shall be provided to ensure maintenance of the wildlife corridor; and***
  - c. ***The wildlife corridor shall be preserved by a public or private group.***

5. Development on slopes greater than ~~15~~ *fifteen* percent (*15%*), 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, lot coverage is limited to 15% of a lot or parcel or any portions of a lot or parcel that are designated LDA.
  - 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;

The following table summarizes the limits set forth in §(1) through §(4) above:

Table B6d Lot Coverage Limits



Lot/Parcel Size (Square Feet)	Lot Coverage Limit
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 Queenstown 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 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~~ **twenty** percent (**20%**) of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the areal extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared.
- d. An applicant may not clear more than ~~30~~ **thirty** percent (**30%**) 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 **three** (3) times the areal extent of the forest or developed woodlands cleared.

- e. If an applicant is authorized to clear any percentage of forest or developed woodland the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by the Town.
8. The following are required for forest or developed woodland 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 Queenstown shall be posted to assure satisfactory replacement as required in §7 above and plant survival;
  - b. No clearing is allowed until the Town has issued a permit. ***Forests and developed woodlands which have been cleared before obtaining a permit is a violation and shall be replanted at three (3) times the areal extent of the cleared forest;***
  - c. Clearing of forest or developed woodlands that exceed the maximum area allowed in §7 above or prior to the issuance of a permit shall be replanted at three times the areal extent of the cleared forest; and
  - 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 or pay a fee in lieu of planting.
9. If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least ~~15 percent~~ ***fifteen percent (15%) the applicant shall designate, subject to Town approval, a new forest area on a part of the site not forested.***
- ~~a. The applicant shall designate, subject to Town approval, 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 Town.~~
10. ***New, expanded or redeveloped industrial facilities may only be permitted in LDA if such a use is permitted in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.***
11. ***All forest, including afforested area, shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Town.***

### § 30. Resource Conservation Areas.

- A. Resource Conservation Areas are defined as, “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.”
- B. 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 Chapter.
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 Chapter. *For the purposes of calculating limitations on lot coverage, is as follows:*
  - a. *When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and*
  - b. *When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.*
4. Nothing in this section shall limit the ability of a land owner to participate in any agricultural easement program or 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 *twenty* (20) acres.
5. *A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.15.*

### § 31. Land Use and Density.

- A. Permitted Uses
  1. Permitted uses in the Critical Area shall limited to those uses allowed by the underlying zoning classification as modified by Table A1a and the supplemental

use standards in §32 provided such uses meet all standards established for the Critical Area Overlay District.

Table A1a 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>ID A</b>	<b>LD A</b>	<b>RC A</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
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	P	PC	NP
6.30	Non-maritime heavy industry	P	NP	NP
<b>7.00</b>	<b>TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES</b>			

	<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>ID A</b>	<b>LD A</b>	<b>RC A</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	NP
8.30	Sludge Facilities	PC	PC	NP

B. Maximum Permitted Density

1. The maximum permitted density for properties located in the Queenstown Critical Area shall be as shown in Table B1.

Table B1  
Maximum Residential  
Density (Dwelling Units Per Acre)

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

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, the Town:

- 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 (8) acres; and
  - (2) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the Town, the Commission, and the State Department of the Environment.

## § 32. Supplemental Use Standards.

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

### A. Accessory Dwelling Unit (1.10)

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 (RCA) provided the additional dwelling unit is served by the Queenstown sewer system 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 (2.10)

1. Existing institutional facilities 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 Chapter and the Grandfathering provisions in §34 and may require growth allocation.

### C. New institutional uses (2.20)

1. New institutional facilities and uses, except those specifically listed shall not be permitted in Resource Conservation Areas (RCAs).
2. Certain institutional uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses in this Chapter. 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 Town and approved by the Critical Area Commission to be similar to those listed above.

D. Existing Commercial Uses (3.10)

- 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 Chapter and the Grandfathering provisions in §34 and may require growth allocation.

E. New commercial uses (3.20)

- 1. New commercial uses, except those specifically listed, shall not be permitted in Resource Conservation Areas (RCAs).
- 2. Certain commercial uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses in this Chapter. These commercial uses are limited to:
  - a. A home occupation as an accessory use on a residential property and as provided for in this Chapter;
  - 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 Town and approved by the Critical Area Commission to be similar to those listed above.~~

~~F. Expansion of existing commercial marinas (4.10)~~

- ~~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 Chapter.~~
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 and Best Management Practices are applied to address impacts;~~
  - 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 Chapter.~~

G. ~~New marina, commercial (4.20)~~

- 1. ~~New commercial marinas shall not be permitted in Resource Conservation Areas (RCAs).~~
- 2. ~~New commercial marinas may be permitted in Limited Development Areas (LDAs) and Intensely Developed Areas (IDAs) 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 Best Management Practices are applied to address impacts; 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 (4.30)~~

- 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 Chapter 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 the Town for the Critical Area and consistent with all State requirements and the requirements of this Chapter 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 Best Management Practices are applied to address impacts; 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 b2 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 (4.40)~~

- ~~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 Best Management Practices are applied to address impacts and Best Management Practices are applied to address impacts; 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 (4.50)~~

- ~~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 (4.60)~~

- ~~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 (4.70)~~

- ~~1. Except as provided in §(1), §(2), and §(3) below, construction of dwelling unit or other non water dependent structure on a pier located on State or private tidal wetlands 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 17, 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 located in an Intensely Developed Area (IDA);~~
    - ~~(2) 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; and~~
    - ~~(3) 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.~~

- e. ~~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.~~

**MF.** Golf course (5.10)

- 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 (RCAs) provided:
  - a. Such use is a permitted use allowed in the underlying zoning district; and
  - b. Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

**NG.** Existing industrial uses (6.10)

- 1. Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in Resource Conservation Areas (RCAs).
- 2. Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in §34 and may require growth allocation..

**OH.** New industrial uses (6.20)

- 1. New industrial uses shall not be permitted in Resource Conservation Areas (RCA).
- 2. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if permitted uses in the underlying zoning

district and provided such facilities meet all requirements for development in the LDA.

3. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas (IDAs) that have been designated as Buffer Management Areas.

**PI.** Non-maritime heavy industry (6.3)

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

**QJ.** Utility transmission facilities (7.10)

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 (IDAs); 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.

**RK.** Sanitary landfill; rubble fill (8.10)

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.

**SL.** Solid or hazardous waste collection or disposal facilities (8.20)

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 wastewater management problem.

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

**FM.** Sludge Facilities (8.40)

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 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. 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.

**§ 33. Growth Allocation.**

- A. Growth allocation acreage *and deductions*. Growth allocation available to Queenstown includes:
  1. An area equal to five (5) percent of the RCA acreage located within Queenstown and;
  2. ~~Growth allocation available to Queenstown as provided for by Queen Anne's County.~~ *Growth allocation totaling 200 acres made available to Queenstown by Queen Anne's County. As of March 1, 2021 the growth allocation remaining is 67.09 acres.*
  3. *Growth Allocation reserves will be deducted in accordance with COMAR 27.01.02.06-4.*
- B. Growth Allocation Floating Zone District GA.
  1. Purpose. The Growth Allocation Floating Zone is not mapped but is designated for use in areas classified as Resource Conservation Areas (RCA) and/or Limited Development Area (LDA) within the Queenstown 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 Town Commissioners for award of the Critical Area Growth Allocation are eligible for floating zones.

2. Designation of floating zones.

a. The Growth Allocation District GA shall be a floating zone.

b. The Growth Allocation District GA provides for changing the land management classification of Resource Conservation Areas (RCA's) and Limited Development Areas (LDA's) in the Critical Area Overlay District.

C. Standards.

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

1. Except as may be provided in subsection (9) below, a new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area;
2. Except as may be provided in subsection (9) below, a new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area;
3. Except as may be provided in subsection (9) below, new Intensely Developed Areas shall be at least 20 acres in size unless:
  - a. They are contiguous to an existing IDA or LDA; or
  - b. They are a grandfathered commercial or industrial use, which existed as of January 17, 1989. 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. Except as may be provided in subsection (9) below, no more than one-half of the Queenstown's growth allocation may be located in Resource Conservation Areas (RCAs);
5. A new Limited Development Area or Intensely Developed Area shall be located in a manner that minimizes impacts to Habitat Protection Area as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality;
6. New Intensely Developed Areas shall only be located where they minimize the impacts to the defined land uses of the Resource Conservation Area (RCA);

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 or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of this Chapter for such areas, shall be so designated on the Queenstown Critical Area Maps and shall constitute an amendment to this Chapter subject to review by the Queenstown Planning Commission and approval by the Town Commissioners and the Critical Area Commission as provided herein.
9. The Town Commissioners recognize that the Town may not be able to utilize growth allocation acreage in the locations set forth in subsections 1 and 2 above, and/or may not satisfy the 20 acre size threshold set forth in subsection 3 above, and further recognize that the majority of its critical area lands for which growth allocation is planned are currently classified as Resource Conservation Areas. Accordingly, in the event that the Town is unable to satisfy any or all of the criteria set forth in subsection 1-4, the Town may utilize a portion of its growth allocation in manner that varies from subsections 1, 2, 3 and/or 4 above, provided that the area to receive growth allocation meets the following standards:
  - a. Any development will be serviced by public water and sewer;
  - b. The area is located in a Priority Funding Area;
  - c. The development is consistent with the Queenstown Comprehensive Plan; and
  - d. The development will have an overall economic benefit to the community, or implements a specific goal, objective or policy of the Queenstown Comprehensive Plan.

D. Additional Factors.

In reviewing map amendments or refinements involving the use of growth allocation the Planning Commission and Town Commissioners shall consider the following factors:

1. Consistency with *Queenstown Community 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;
    - 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 and/or sea level rise.

**§ 34. Grandfathering.**

A. Continuation of existing uses.

1. The continuation, but not necessarily the intensification or expansion, of any use in existence on January 17, 1989 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal Chapters.
2. If any existing use does not conform with the provisions of this Chapter, its intensification or expansion may be permitted only in accordance with the variance procedures in §35.

B. Residential density on Grandfathered Lots.

1. Except as otherwise provided, the following types of land are permitted to be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this Chapter.
  - 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 January 17, 1989.
  - c. Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985;
  - 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 IDA, LDA or RCA requirements in this Chapter or the area of the land has been counted against the growth allocation permitted under this Chapter.
  - e. ***Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members prior to January 17, 1989.***

C. Consistency.

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

1. ***For purposes of implementing this regulation, Queenstown has determined, based on land uses and development in existence of December 1, 1985, which land areas fall within the three (3) types of development areas described in this Chapter.***

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

**§ 35. Variances.**

A. Applicability.

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

1. In considering an application for a variance, the Board of Appeals 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 Chapter.
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. *Standing. In accordance with Natural Resources Article, §8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.*

C. 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 Chapter would result in unwarranted hardship;
2. A literal interpretation of the provisions of this Chapter will deprive the applicant of ~~rights commonly enjoyed by other properties in similar areas within the Critical Area~~ *the use of land or a structure permitted to others in accordance with the provisions of this Chapter which would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area.*
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Chapter 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 Critical Area Law and this Chapter.
6. ***The granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and this Chapter.***

€D. Process.

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

1. After hearing an application for a Critical Area variance, the Board of Appeals shall make written findings reflecting analysis of each standard. ***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:***
  - a. ***The applicant;***
  - b. ***Queenstown or any other government agency; or***
  - c. ***Any other person deemed appropriate by Town officials.***
2. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the Board of Appeals shall consider that fact. ***Queenstown shall consider that fact, and whether the application has met the requirements of Part E below.***
3. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in §A above.
4. The Board of Appeals shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request ***within ten (10) working days after issuance of a written variance decision.***

**DE.** 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 and any witnesses of the applicant;
2. Town Officials or staff or any other government agency; or
3. Any other person deemed appropriate by the Board of Appeals.

**F.** *After-the-Fact Requests.*

1. *The Town will not accept an application of a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity until the Town has:*
  - a. *Issued a notice of violation; and*
  - b. *Assessed an administrative or civil penalty for the violation.*
2. *The Town will not approve an after-the-fact variance unless an applicant has:*
  - a. *Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article, §8-1808(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;*
  - b. *Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and*
  - c. *Performed the abatement measures in the approved plan in accordance with this Chapter.*
3. *If the Board denies the requested after-the-fact variance, then the Town will:*
  - a. *Order removal or relocation of any structure; and*

*b. Order restoration of the affected resources.*

*4. Application for an after-the-fact variance constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.*

**EG.** Appeals.

Appeals from a decision concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures 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 Chapter.

**FH.** 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 Chapter is maintained including, but not limited to the following:

1. Adverse impacts resulting from the granting of the variance shall be mitigated, by planting on the site at the rate of at least three to one per square foot of the variance from lot coverage granted.
2. New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

**GI.** 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. No permit for the activity that was the subject of the application will be issued until the applicable 30-day appeal period has elapsed.

### **§ 36. Lot Consolidation and Reconfiguration.**

**A.** Applicability

The provisions of this section 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.

1. Queenstown will 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 Planning Commission 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, the Planning Commission shall send a copy of the decision or order and a copy of any approved development plan within ten (10) business days by U.S. mail to the Critical Area Commission's business address.

**§ 37. Amendments.**

A. Amendments.

The Town Commissioners may from time to time amend the Critical Area provisions of this Chapter. Changes may include, but are not limited to amendments, revisions, and modifications to these zoning regulations, Critical Area Maps, implementation procedures, and local policies that affect Queenstown'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 program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by Town Commissioners upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:

1. Are wholly consistent with the land classifications as shown on the adopted Official Critical Area Overlay Map; or

2. The use of growth allocation in accordance with the growth allocation provisions of this Chapter is proposed.

C. Process.

1. When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the Town Commissioners.
2. Town 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 Queenstown.
3. After the Town 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.

**§ 38. Enforcement.**

A. Consistency.

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

B. Violations.

1. No person shall violate any provision of this Chapter. 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 Chapter shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.
3. Noncompliance with any permit or order issued by the Town related to the Critical Area shall be a violation of this Chapter 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 Chapter, the Town shall take enforcement action including:

1. Assess administrative civil penalties as necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, 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 Town Commissioners or their designee may obtain access to and enter a property in order to identify or verify a suspected violation, restrain a development activity, or issue a citation if the Town has probable cause to believe that a violation of this Chapter has occurred, is occurring, or will occur. Town officials shall make a reasonable effort to contact a property owner before obtaining access to or enter the property. If entry is denied, the Town may seek an administrative search warrant to enter the property to pursue an enforcement action.

F. Administrative civil penalties.

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

1. Before imposing any civil penalty, the person(s) believed to have violated this Chapter shall receive: 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, the Town shall consider:
  - a. The gravity of the violation;

- b. The presence or absence of good faith of the violator;
  - c. Any willfulness or negligence involved in the violation including a history of prior violations;
  - d. The environmental impact of the violation; and
  - e. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to Queenstown for performing, supervising, or rendering assistance to the restoration and mitigation.
2. Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
  3. The person responsible for any continuing violation shall promptly provide the Town with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Town inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until the Town receives such written notice and verifies compliance by inspection or otherwise.
  4. Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by the Town 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 Chapter.

G. Cumulative remedies.

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

H. Injunctive relief.

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

1. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent the Town from seeking injunctive relief to enforce an

administrative order, permit, decisions, or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.

I. Variances pursuant to a violation.

~~The Town may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle or any provisions of an order, permit, plan, or this Chapter in accordance with the variance provisions of this Chapter. However, the application shall not be reviewed, nor shall a final decision be made until all abatement, restoration, and mitigation measures have been implemented and inspected by the Town~~  
***In accordance with Part 16.E, the Town may not accept an application for a variance to legalize a violation of this Ordinance, including an unpermitted structure or development activity, unless the Town has first issued a notice of violation, including an assessment of an administrative or civil penalty for the violation.***

J. Permits pursuant to a violation.

The Town will 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 §F above;
2. Prepared a restoration or mitigation plan, approved by the Town, 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 all Town regulations; and
4. Unless an extension of time is approved by the Town 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 the Town in connection with the administration and enforcement of this Chapter.

1. An appeal is taken by filing a written notice of appeal with the Board of Appeals in accordance with the provisions of the Chapter and accompanied by the appropriate filing fee.
2. An appeal must be filed within thirty (30) days after the date of the decision or order being appealed; and

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

**§ 39. 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, based on existing field conditions, landward from:
  - a. The mean high water line of tidal water;
  - b. The edge of each bank of a tributary stream; and
  - c. The landward boundary of a tidal wetland.
2. The Buffer shall be expanded beyond the minimum 100-foot Buffer as described in §A1 above and the minimum 200-foot Buffer as described in §A3 below, to include the following contiguous land features:
  - a. A steep slope at a rate of four (**4**) feet for every one percent (**1%**) of slope or the entire steep slope to the top of the slope, whichever is greater;
  - b. A nontidal wetland to the upland boundary of the nontidal wetland;
  - c. The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
  - d. For an area of hydric soils or highly erodible soils, the lesser of:
    - (1) The landward edge of the hydric or highly erodible soils; or
    - (2) Three hundred feet where the 300 foot expansion area includes the minimum 100-foot Buffer.
3. Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include:

- a. An expanded Buffer in accordance with §A(2) above; or
  - b. A Buffer of at least *two hundred* (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 were legally recorded (subdivisions) or received final site plan approval (site plans), by July 1, 2010;
  - b. The application involves the use of growth allocation.

B. Permitted activities.

If approved by the Town, in conjunction with an approved Buffer management plan, disturbance to the Buffer is permitted for the following activities only

1. A new development or redevelopment activity associated with a water-dependent facility; or
2. A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Chapter;
3. A development or redevelopment activity approved in accordance with the variance provisions of this Chapter;
4. A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
  - (a) The Buffer is expanded for highly erodible soil on a slope less than 15 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. The installation or replacement of septic systems on a lot created before January 17, 1989 where:

- (a) The Health Department has determined that the Buffer is the only available location for the septic system; and
- (b) Mitigation is provided at a ratio of 1:1 for the area of canopy cleared of any forest or developed woodland.

**6. Riparian access for water access, where mitigation is required at a rate of 2:1.**

**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. A Buffer Management Plan in accordance with the standards of §F is required.~~

~~1. The provisions of this section apply to:~~

- ~~a. Approval of a subdivision;~~
- ~~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 principal structure.~~

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

**1. The requirements of this regulation are applicable to:**

- a. A development or redevelopment activity that occurs on a lot or parcel that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream if that development or redevelopment activity is located outside the buffer; and**
- b. The approval of a subdivision that includes a Buffer to tidal waters, a tidal wetland, or a tributary stream.**

**2. If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:**

- a. In accordance with local land recordation requirements, shall record an approved Buffer Management Plan under F of this Chapter; and**

- b. *May delay implementation of the Buffer Management Plan until the use of the lot is converted to a nonagricultural purpose.*
- 3. *The requirements of this regulation are not applicable to an in-kind replacement of a structure.*
- 4. *The applicant shall establish the Buffer in vegetation in accordance with the table below and E of this Chapter and provide a Buffer Management Plan under F when an applicant applies for:*
  - a. *Approval of a subdivision;*
  - b. *Conversion from one land use to another land use on a lot or a parcel; or*
  - c. *Development on a lot or a parcel created before January 1, 2010.*
- 5. *When the Buffer is not fully forested or is not fully established in existing, naturally occurring woody or wetland vegetation, an applicant shall establish the buffer to the extent required in COMAR 27.01.09.01-1(C).*

*Table C.4 Buffer establishment requirements*

<i>Development Category</i>	<i>Lot Created Before January 17, 1989</i>	<i>Lot Created After January 17, 1989</i>
<i>Development on a vacant lot</i>	<i>Establish the Buffer based on total square footage of lot coverage outside the Buffer</i>	<i>Fully establish the Buffer</i>
<i>Subdivision</i>	<i>Fully establish the buffer</i>	
<i>New lot with an existing dwelling unit</i>	<i>Establish the Buffer based on total square footage of lot coverage outside the Buffer</i>	
<i>Conversion of a land use on a parcel or lot to another land use</i>	<i>Fully establish the Buffer</i>	
<i>Addition, accessory structure, or redevelopment</i>	<i>Establish the Buffer based on net square footage increase in lot coverage outside the Buffer</i>	
<i>Substantial alteration</i>	<i>Establish the Buffer based on total square footage of lot coverage outside the Buffer</i>	

- 6. *The Town may authorize an applicant to deduct from the total establishment requirement an area of lot coverage removed from the Buffer if:*
  - a. *The lot coverage existed before the date of local program adoption or was allowed by local procedures; and*
  - b. *The total area is stabilized.*

D. Mitigation for impacts to the Buffer.

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

1. Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, and special exception, septic system approved by the Health Department on a lot created before January 17, 1989.
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 area 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, the Town 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; and
  - c. Fee-in-lieu in accordance with *§39.I. of this Section and* COMAR 27.01.09.01-5.

E. Buffer Planting Standards.

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

F. Required Submittal of Buffer Management Plans.

An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall submit a Buffer Management Plan as provided in COMAR 27.01.09.01-3 with the application for the specific activity. The provisions of this 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, and shall 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 the Town approves a Buffer Management Plan.
3. An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by the Town.
4. The Town will not approve a Buffer Management Plan unless:
  - a. The plan clearly indicates that all planting standards under §E will be met; and
  - b. Appropriate measures are in place for the 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 implementation of a Buffer Management Plan; or
  - b. Provides financial assurance to cover the costs for:
    - (1) Materials and installation; and
    - (2) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
6. Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
7. If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Chapter.
  - a. ~~A permit for development activity will not be issued for a property that has the violation.~~
8. An applicant shall post the property proposed for subdivision prior to final recordation in accordance with COMAR 27.01.09.01-2.

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

I. 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 Queenstown'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 the Town and the Critical Area Commission.

J. 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 26.24.06.01.

**§ 40. Buffer Management Area (BMA) Provisions.**

*The following provisions apply to areas designated and mapped by Queenstown and approved by the Critical Area Commission as a Buffer Management Area (BMA) and are shown on the Official Critical Area maps.*

A. Development and Redevelopment Standards.

New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer in a designated BMA unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission finds that efforts have been made to minimize Buffer impacts and the development complies 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 fifty (50) feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.
  - b. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the minimum setback for the zoning district or twenty-five (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 minimum setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than fifty (50) 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 Planning Commission has determined there are no other locations for the structures. The area of new accessory structures shall not exceed five hundred (500) square feet within fifty (50) feet of the water and 1,000 square feet total in the Buffer.
5. Variances to other local setback requirements shall be considered before additional intrusion into the Buffer is permitted.
6. Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
7. Buffer Management Area (BMA) designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
8. No natural vegetation may be removed in the Buffer except that required by the proposed construction.
9. Mitigation for development or redevelopment in the BMA approved under the provisions of this subsection shall be implemented as follows:
  - a. Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 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 this requirement 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 into a fee-in-lieu program as follows:
    - (1) Applicants shall submit to the Planning Commission two cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching and a one year survival guarantee.
    - (2) The Planning Commission shall determine the amount of the fee-in-lieu based on the average of the two estimates.
  - d. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure the use of the funds only for projects within the

Critical Area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the Queenstown's Critical Area Program. 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 in the jurisdiction's quarterly reports.

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

#### **§ 41. Other Habitat Protection Areas.**

##### **A. Identification.**

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

1. Threatened or endangered species or species in need of conservation;
2. Colonial waterbird nesting sites;
3. Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
4. Existing riparian forests;
5. Forest areas utilized as breeding areas by forest 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 for a development activity proposed 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 specific location of a Habitat Protection Area on or near the 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 Resource.~~ ***If the presence of any HPA is confirmed by the Department of Natural Resources, the applicant shall follow all recommendations from Department of Natural Resources, and as necessary United States Fish Wildlife Service.***
  - a. ***If potential Forest Interior Dwelling Species (FIDS) habitat is identified, the proposed development shall conform to the Critical Area Commission's FIDS Guidance Manual, dated June 2000 and as updated.***
  - b. ***If potential anadromous fish propagation waters are identified, the proposed development shall conform to the policies and criteria listed in COMAR 27.01.09.05.***
3. The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission or the appropriate designated approving authority. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

**§ 42. Part 19. Water Dependent Facilities.**

- A. ***Applicability. The provisions of this chapter apply to those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.***
- B. ***Identification. Water dependent facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision that provides community piers.***
- C. ***General policies. The policies of Queenstown with regard to water-dependent facilities shall be to limit development activities in the Buffer to those that are water-dependent and provide by design and location criteria that these activities will have minimal individual and cumulative impacts on water quality and fish, wildlife, and plant habitat in the Critical Area.***
- D. ***Standards. The following standards shall apply to new or expanded development activities associated with water-dependent facilities:***

1. *New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:*
  - a. *That they are water-dependent;*
  - b. *That the project meets a recognized private right or public need;*
  - c. *That adverse effects on water quality, fish, plant and wildlife habitat are minimized;*
  - d. *That, insofar as possible, non-water-dependent structures or operations associated with water-dependent projects or activities are located outside the buffer; and*
  - e. *That the facilities are consistent with an approved local plan as set forth below.*
  
2. *New or expanded development activities may not be permitted in those portions of the Buffer which occur in Resource Conservation Areas. Applicants for water-dependent facilities in a Resource Conservation Area, other than those specifically permitted herein, must apply for a portion of the Town's growth allocation as set forth in this ordinance.*

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

1. *That the activities will not significantly alter existing water circulation patterns or salinity regimes;*
2. *That the water body upon which these activities are proposed has adequate flushing characteristics in the area;*
3. *That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;*
4. *That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;*
5. *That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;*

6. *That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the critical area, generally;*
7. *That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical Area which has been designated as a Habitat Protection Area except as necessary for:*
  - a. *Backfill for permitted shore erosion protection measures;*
  - b. *Use in approved vegetated shore erosion projects;*
  - c. *Placement on previously approved channel maintenance spoil disposal areas; and*
  - d. *Beach nourishment.*
8. *That interference with the natural transport of sand will be minimized; and*
9. *That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection Areas identified in the Habitat Protection Area Chapters of this ordinance.*

*F. Industrial and port-related facilities. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas that have been designated as Buffer Management Areas as described in this ordinance and are subject to the provisions set forth in that Chapter.*

*G. Marinas and other commercial maritime facilities. New, expanded or redeveloped marinas may be permitted subject to the requirements set forth below:*

1. *New, expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas.*
2. *New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except, expansion of existing marinas may be permitted within Resource Conservation Areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina.*
3. *New and existing marinas shall meet the sanitary requirements of the Department of the Environment as required in COMAR 26.04.02. New marinas*



*shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.*

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

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

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

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

**Table I.2 Number of Slips Permitted**

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

**J. Public beaches and other public recreation or education areas.** *Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the*

*Buffer in Intensely Developed Areas. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:*

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

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

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

*K. Non-water-dependent Structures on Piers.*

- 1. Except as provided in paragraphs 2 and 3 of this subsection and notwithstanding any other provisions of the law, Queenstown may not issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area.*
- 2. The Town may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:*
  - a. Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;*

b. *Is not located on a pier that is attached to residentially, institutionally, or industrially used property;*

c. *Is located in:*

*(1) An Intensely Developed Area (IDA) and the project is authorized under a program amendment to Town's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to Town's zoning, subdivision and other ordinances so as to be consistent with, or more restrictive than, the requirements required under this paragraph; or*

*(2) An area that has been excluded from the Queenstown Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;*

d. *Is approved by the Planning Commission after the Queenstown program amendment under Subparagraph (c)(1) above, if applicable, has been approved;*

e. *Allows or enhances public access to State wetlands;*

f. *Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;*

g. *Has a height of up to eighteen (18) feet unless the project is located at a marina; and*

h. *Is up to 1,000 square feet in total area; or*

*(1) Is located on a pier that was in existence on or before December 31, 2012;*

*(2) Satisfies all of the requirements under Section 2a-g of this paragraph; and*

*(3) If applicable, has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total area.*

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

a. *Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article;*

**b. Is located in:**

**(1) The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under a program amendment to the Town's Critical Area Program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to the Town's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or**

**(2) An area that has been excluded from the Town's Critical Area Program that has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;**

**c. Is approved by the Planning Commission after the Town's amendment in accordance with Subparagraph 3b.1 above, if applicable, has been approved;**

**d. A building permit or other approval issued under the requirements in Subparagraph 3 above may include the installation or placement of:**

**(1) A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than:**

**(i) four (4) feet above or eighteen (18) inches below the deck of the pier; or**

**(ii) one (1) foot beyond the length or width of the pier;**

**(2) A solar energy system attached to a piling if there is only one solar panel per boat slip;**

**(3) A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;**

**(4) A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:**

**(i) Extend beyond the length, width, or channelward encroachment of the pier;**

**(ii) Deleteriously alter longshore drift; or**

**(iii) Cause significant individual or cumulative thermal impacts to aquatic resources; or**

(5) *A wind energy system attached to a pier if there is only one wind energy system per pier for which:*

(i) *The height from the deck of the pier to the blade extended at its highest point is up to twelve (12) feet;*

(ii) *The rotor diameter of the wind turbine is up to four (4) feet; and*

(iii) *The setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.*

**Section 2.** The Queenstown Zoning Ordinance, Article II, Section 8 is hereby amended to include the following definitions:

***ACCESSORY STRUCTURE*** - *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.*

***ADDITION*** - *A newly constructed area that increases the size of a structure.*

***BUFFER MANAGEMENT AREA (BMA)*** - *An area officially mapped by Queenstown and approved by the Critical Area Commission as a MBA, 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 MBA provisions can be permitted in the Buffer without a variance.*

***BUFFER MANAGEMENT PLAN*** - *A major Buffer Management Plan, a minor Buffer Management Plan, and a simplified Buffer Management Plan.*

***CRITICAL AREA COMMISSION*** - *The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.*

**Section 3.** Unless specifically amended as set forth above, all other provisions of the Queenstown Zoning Ordinance shall remain unchanged.

**Section 4.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Commissioners of Queenstown hereby declare that they would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

ORDAINED, APPROVED, AND PASSED by the Town Commissioners for the Town of Queenstown on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESS:

TOWN COMMISSIONERS FOR THE  
TOWN OF QUEENSTOWN:

\_\_\_\_\_  
Aaron Horney, Town Clerk

\_\_\_\_\_  
Thomas B. Willis, Jr., President

\_\_\_\_\_  
Aaron Horney, Town Clerk

\_\_\_\_\_  
Alton Hardee, Commissioner

\_\_\_\_\_  
Aaron Horney, Town Clerk

\_\_\_\_\_  
Bryon Callahan, Commissioner

**NOTE:** ~~Strike through text~~ = deleted text  
*Italicized, bold text* = added text