

Critical Area Commission

STAFF REPORT

September 2, 2020

APPLICANT: City of Baltimore

PROPOSAL: City of Baltimore Comprehensive Review
Critical Area Management Program (CAMP) Update

COMMISSION ACTION: Concurrence with Chair's Determination of Refinement

RECOMMENDATION: Approve with Conditions

STAFF: Alex DeWeese

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article 8-1809(g)

DISCUSSION:

Natural Resources Article, §8-1809(g) requires each local jurisdiction to review its entire Critical Area program at least every six years. The purpose of the review is to comprehensively update the program and ensure conformance with the requirements of the Critical Area law and criteria. The City of Baltimore last performed a comprehensive review of its Critical Area Program in 2002. On May 20, 2020 the Baltimore City Council approved an update to the City's Critical Area Program by amending certain provisions within their Zoning Code and repealing and replacing the City's Critical Area Management Program (CAMP) Manual through the adoption of Bill 20-0506, titled "An Ordinance Concerning Baltimore City Critical Area Management Program". The Mayor signed the Bill on June 24, 2020, finalizing the City's approval process of the Bill.

The City of Baltimore is centrally located on Maryland's western shore, along the Patapsco River. Most of the City's Critical Area is designated as an Intensely Developed Area (IDA). However, there are less developed portions of the City including some park areas that are designated as Resource Conservation Area (RCA). The City does not include any Limited Development Area (LDA).

The City's Critical Area program is somewhat unique in that the Zoning Code designates a Critical Area Overlay District, but the rules for development in the District are contained within the City's Critical Area Management Program (CAMP) Manual. A copy of the Ordinance and portions of Manual are attached for reference.

Bill 20-0506 updates certain provisions of the City's Zoning Code as well as repeals and replaces the 2002 CAMP Manual. Taken together, the intent of the comprehensive update is to bring the Baltimore City Critical Area Program into conformance with the requirements of the Critical

Area Law and Criteria. Some of the proposed changes to the City's Critical Area Program are related to changes made to the Critical Area law and regulations since 2005. These include provisions for lot consolidation and reconfiguration, prohibition of specific uses and updated Buffer requirements. Other changes are intended to address locally specific issues, such as the new Shoreline Conservation Area subdistrict.

The specific changes to Article 32 – Zoning, include the sections listed below. These changes are necessary in order to correct or clarify how the Critical Area Overlay district interacts and conforms to the CAMP Manual.

7-402(b)(2), (c)(2), (d), (e)(1), (f), and (g)(3) – Definitions

7-403 – Designation of Critical Area

7-404 – Developed areas

7-405 – CAMP Map

7-406(b)(2) and (c)(intro) – Prohibited uses

7-407 – Resource Conservation Areas; and

7-408 – Intensely Developed Areas.

SUMMARY OF CAMP MANUAL CHANGES

As noted above, the City has repealed and replaced its CAMP Manual with this comprehensive review. While many of the proposed changes to the Manual were made to reflect current law and regulations, the City is proposing a few significant changes including a new area designation, strengthened Buffer mitigation requirements, new afforestation requirements, and changes to their fee-in-lieu provisions.

Shoreline Conservation Area (SCA) Subdistrict

The City's Critical Area Program includes designations of all IDA properties as either Waterfront Revitalization Areas (WRA) or Waterfront Industrial Areas (WIA); Natural Resources Article 8-1808.3 allows lands designated as WRA or WIA additionally flexibility in locating non-water dependent lot coverage in the Buffer.

The City proposes the addition of a new subdistrict of the WRA located within the IDA, known as the Shoreline Conservation Area (SCA). The purpose of the SCA designation is to accommodate development in industrial areas, while maintaining existing green, natural shorelines. This is achieved through language that prohibits the construction of new bulkheads in designated areas. Additional benefits of maintaining these green shorelines include natural attenuation of storm surge and flood waters, filtration of pollutants, and potential creation and protection of carbon sinks through the maintenance of wetlands.

The proposed SCA is defined as land within 30 feet of mean high water, and encompasses a total of 595.9 acres within the City. This equates to 46.5% of the total land designated as WRA, and 10.8% of Baltimore City's Critical Area. This newly designated area includes portions of Masonville Cove, the MedStar Hospital site, Westport, the shoreline between Horseshoe Casino and BGE Spring Garden site, Port Covington, and Fort McHenry National Monument and Historic Shrine.

The SCA and its requirements are described in Section 2.1.2, Shoreline Conservation Area (see attachment). Under these requirements, new bulkheads are prohibited in the SCA, and any removal of vegetation must be approved by the City's Department of Planning. In addition, variances may be pursued for projects that propose water-dependent uses that deviate from the criteria. Mitigation, afforestation, and stormwater management requirements are applicable and match those requirements for standard WIA development.

Afforestation

Previously, the 2002 CAMP Manual excluded the Buffer area of any site from the 15% afforestation requirement and calculation. Under the new revisions to Section 6.1, Afforestation Requirements, the City proposes to require 15% afforestation for an entire site, rather than excluding Buffer areas. Current Chesapeake Bay Critical Area regulations do not require afforestation for development in the IDA¹; this proposal by the City exceeds Critical Area requirements by requiring 15% afforestation in a manner consistent with requirements for LDA and RCA development sites in COMAR 27.01.02.

Buffer Mitigation Requirements

The old Manual calculated Buffer mitigation based on a fee system and a 1:1 ratio. The new Manual replaces this calculation with mitigation ratios, located in Section 6.2.3. Previously, the Buffer disturbance fee was a flat rate applied at a 1:1 ratio, but it was applied across the entire area being redeveloped in the Buffer. The proposed replacement requirement will apply only to new impervious areas in the Buffer, but the mitigation ratio is being increased. For a water dependent project, the City proposes a mitigation ratio of 2:1. One square foot of new additional impervious area in the Buffer will require two square feet of mitigation. For a non-water dependent project, the City proposes a mitigation ratio of 3:1. One square foot of new additional impervious area in the Buffer will require three square feet of mitigation. These ratios are consistent with COMAR 27.01.09.01-2.

Planting Credits

The City proposes adjustments to planting credits for trees planted in both the Buffer and non-Buffer areas. Previously, the CAMP Manual allotted 625 square feet of credit per tree in or outside of the Buffer. For consistency with COMAR 27.01.09.01-2, Section 6.4, Planting Credits, and Section 8.2, Critical Area Buffer and Afforestation Offset Program, specify 200 square feet of credit for a 2-inch caliper tree within the Buffer. Section 6.4 allows 435.6 square feet for a 2-inch caliper tree outside of the Buffer, for Consistency with the City's Forest Conservation Program (based upon the requirement of 100 trees per acre).

Tree Mitigation and Stormwater Offset Fees

The updated Manual includes adjustments to the City's Critical Area Program offset fees that were set in 2002. Both the stormwater management and tree mitigation offset fees were increased to maintain consistency with other Baltimore City requirements, plans and manuals.

Section 8.2, Critical Area Buffer and Afforestation Offset Program, references the Baltimore City Landscape Manual for setting the cost, which may be revised and readjusted at any time. The City proposes to increase the cost of tree mitigation from \$400 to \$600 per tree when planting

¹ The Atlantic Coastal Bays Critical Area Law (NR §8-1808.8(a)) requires 15% afforestation in the IDA.

requirements cannot be met onsite. This equates to \$3 per square foot, which exceeds the minimum required \$1.50 per square foot in the Buffer established by COMAR.

Section 8.5, Assessing the Fee for a Stormwater Offset, sets a fee of \$45,000 per pound of phosphorous per year. This is a \$10,000 increase from the 2002 Manual. The adjustment was calculated based on the actual cost of stormwater treatment facilities implementation in the City's most recent Watershed Implementation Plan, and is consistent with Commission staff guidance on setting stormwater offset fees.

REQUIRED REVISIONS

Based on staff review, the proposed CAMP Manual and Zoning Code updates require some revisions that would bring the Manual's and Code's changes into conformance with Critical Area law and regulations. These changes include revised definitions, and updated text regarding the Critical Area Overlay District Map. The new text will exclude outdated references to State wetland maps, as the map update uses recent technologies rather than previous wetland maps.

In the Zoning Code Article 32 Section 7-402(b)(2) and CAMP Manual Section 13.1, Commission staff recommends updating the definition of Buffer with the following:

“Buffer” means area that based on conditions at the time of development, is immediately landward from mean high water of tidal waterways, the edge of bank of a tributary stream, or the edge of a tidal wetland; and the area exists, or may be established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance. The Buffer includes an area of at least 100-feet, even if that area was previously disturbed by human activity, and also includes any expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

In the Zoning Code Article 32 Section 7-402(c)(2) and CAMP Manual Section 13.1, Commission staff recommends updating the definition of Critical Area with the following:

"Critical Area" means all lands and waters defined in §8-1807 of the Natural Resources Article, Annotated Code of Maryland. Critical Area includes:

- a) All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide;**
- b) All State and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;**
- c) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article, Annotated Code of Maryland; and**
- d) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.**

In the Zoning Code Article 32 Section 7-403 (1) through (3), Commission staff recommends updating the text “Designation of the Critical Area” with the following:

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

RECOMMENDATION

Commission staff recommends that the Commission concur with the Chairman’s determination that this comprehensive review be processed as a refinement to the City’s Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations. Further, Commission staff recommends that the Chairman approve the City’s Comprehensive update with the condition that the City amend the CAMP Manual and Zoning Code as described above.