

**CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS  
1804 West Street, Suite 100  
Annapolis, Maryland 21401**

**MEMORANDUM**

**To:** Deborah Herr Cornwell (Chair), Jim Lewis, Gary Mangum, Gary Setzer and Sue Greer

**From:** Jennifer Esposito, Natural Resources Planner and Nick Kelly, Regional Program Chief

**Date:** January 4, 2019

**Subject:** Talbot County Critical Area Program Comprehensive Review

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Once again, thank you for your participation as a member of the panel to evaluate the comprehensive review of Talbot County's Critical Area Program. A panel meeting to discuss the proposed amendment has been scheduled for Thursday, January 10<sup>th</sup> from 1:00pm until 4:00pm at the Critical Area Commission's office (address noted above). Lunch will be provided to the panel at 12:30pm.

This memorandum provides a summary of the topics that were discussed at the December panel meeting as well as a list of items that will need to be discussed during the January meeting.

**I. SUMMARY OF THE DECEMBER 17, 2018 PANEL MEETING**

The Panel covered several topics during its December 17, 2018 meeting. Below is a recap of topics that were discussed. This recap also includes potential recommendations (*in italics*) that the panel considered during their discussion as possible conditions of approval.

Short Term Rentals

The panel discussed, in detail, the public comments submitted concerning the short-term rental use that would be allowed in the Resource Conservation Area (RCA) under the new County code. The Panel determined that the use did not appear to conflict with the intent of the Critical Area Law.

As a result of this discussion, the panel learned that the County requires every rental owner to provide a set of house rules. The Panel discussed asking the County to amend those house rules to address the sensitive nature of the Critical Area and asked staff to draft some recommendations. Attached to this memo is that draft proposal.

Growth Allocation

The Panel reviewed the County's proposed alternative standards related to growth allocation, including new IDAs less than 20 acres, and nonadjacent new LDAs and had no concerns on

those two proposals. The Panel also discussed the proposed standard to exceed the 50% limit for growth allocation in the RCA. There were no concerns on this standard, but there was discussion about including language to address clustering and making it more consistent with the Criteria.

Next, the Panel reviewed the proposed Comprehensive or Sectional Zoning Map Amendment process and associated public comments. This is a new process that would allow the County to change the Critical Area land designations on multiple properties. The Panel had no further questions or concerns.

*Panel Recommendations:*

Section 190-15.3.i.7: **No more than 50%** ~~More than one-half~~ of the County's growth allocation may be utilized on lands located in the Resource Conservation Area (RCA) ~~provided that the area to receive growth allocation meets the following standards:~~ **unless the following standards are met:**

- a. Any development will be served by public sewer;
- b. The area is located in a Priority Funding Area or municipal growth area;
- c. Development is consistent with the County Comprehensive Plan;
- d. The development will have an overall economic benefit to the community, or implements a specific goal, objective or policy of the Comprehensive Plan;
- e. **Development within the growth allocation area shall be clustered.**

Forests and Developed Woodlands – Clearing Greater than 30% on 1 Acre Lots

The County is including forest clearing provisions to allow an exemption from the clearing limitation on lots 1 acre or less in size. The panel discussed this alternative forest clearing standard and had several questions relating to how this standard would be implemented. Specifically, the panel discussed: if this standard only pertained to grandfathered lots of record; how it would apply in Habitat Protection Areas such as Forest Interior Dwelling species habitat; how Talbot County's fee-in-lieu (FIL) was currently structured; and how the mitigation would be fulfilled.

The following information was requested and is attached: alternative forest clearing provisions approved by the Critical Area Commission in other jurisdictions, and FIL rates utilized for forest clearing in other jurisdictions.

It was suggested by the panel that this language only pertain to grandfathered lots of record, and the panel decided to continue the conversation during the next panel meeting.

Buffer – Establishment Requirement Alternatives

Talbot County is proposing alternative standards to Buffer establishment when the establishment requirement is based on the total square footage of lot coverage located outside of the Buffer. This includes an allowance for at least half of the standard Buffer planting requirements to be planted up to 300-feet from the edge of tidal waters or the landward edge of tidal wetlands, while the other half must be located within the 100-foot (or 200-foot Buffer).

The panel discussed this proposal and decided that the County will need to include language under §190.15.11.D.6.a., to ensure the plantings located outside of the Buffer will be protected and covered under the County approved Buffer Management Plan.

Additional changes to the Buffer planting requirements were made regarding the installation of shore erosion control projects such as living shorelines to allow for an increase in herbaceous plantings. The Panel did not have any significant questions or concerns with this proposal, but it was noticed in the meeting that the County's language only pertained to fulfilling Buffer establishment requirements, and that this option should also be permitted to meet mitigation requirements.

*Panel Recommendations:*

(1) The Panel considered a condition that the County make the following change to §190.15.11.D.6.a:

Plantings shall be located in a manner that provide water quality and habitat benefits, and the County approved Buffer Management Plan shall include appropriate measures for the protection and the maintenance of the entire area planted, including those areas planted outside the 100-foot (or 200-foot) Buffer.

(2) The Panel considered a condition that requires the County to report to the Commission on a two-year basis to provide details on the effectiveness of the proposed changes to §190.15.11.D.6 and §190.15.11.F.8.c. The report should include the following information:

- a. Identifying Information (Addresses, Tax Map, Parcel) showing where the alternative standards were used.
- b. Copies of approved Buffer Management Plans for the sites.
- c. Photos of the plantings.
- d. Survivability percentages during and after the monitoring and maintenance period.

(3) The Panel considered a condition that the County make the following change to §190.15.11.F.8:

The percentage of shrubs or herbaceous perennials required by Table III-9, for the landscape stock component of Buffer establishment **or mitigation**, may be increased:

## II. NEW ITEMS FOR DISCUSSION

During this meeting, the panel will review and discuss the outstanding topics from the December 17<sup>th</sup> meeting noted above, and time permitting will discuss the following topics. Items 1 through 4 are outlined in the original panel memorandum, dated November 15, 2018, which provides a summary of the proposed changes to the Talbot County Critical Area Code. The remaining items were not listed within the November 15<sup>th</sup> memorandum, but warrant review and discussion by the panel.

A summary of the items from the first Panel Memo (Memo 1) that will be discussed at the January meeting are listed below.

1. Buffer – Expansion for Steep Slopes (Memo 1, Page 5)
2. Land Uses – Limits on New Uses in the Resource Conservation Area (Memo 1, Page 6-7)
3. Nonconforming Lots, Structures, and Uses (Memo 1, Page 7)
4. Buffer Establishment Definition (Memo 1, Page 8)

Additional topics not previously noted, are further described below.

- 190-33.11 – Event Venue (Page 145): This is a new permitted use that will be allowed in all Critical Area designations. The new use is allowed by Special Exception as an accessory use to allow events to be located on a parcel that contains an existing hotel/motel, inn, golf course and country club, marina or private educational institutional uses. These may exist as grandfathered uses within the RCA. These are prohibited as new uses in the RCA under current County code. Commission staff does not have any concerns for the proposed new use, but does believe there should be language restricting tents or other structures related to the event use to be located outside of the 100-foot Buffer or outside of the setback as defined within a Modified Buffer Area.
- 190-47.5.B – Nonconformities to Critical Area Requirements (Page 196): This language states that certain land uses in the Critical Area are restricted by standards in the land use article to a maximum floor area or site area. Uses in the Critical Area that are nonconforming to such Critical Area requirements shall not be enlarged to increase the nonconformity through the provisions of this article for expansion of a nonconforming use or nonconforming structure. However, §190-48.3.B allows for a 20% expansion on nonconforming uses. Staff is unclear as to how these two provisions will interact.
- 190-49.2 Consolidation or Reconfiguration of Nonconforming Lots in the Critical Area (Page 199): This section of the Code is existing language that provides some, but not all, of the Critical Area Lot Consolidation and Reconfiguration standards. Commission staff is concerned that it lacks a specific reference for providing a final written decision and order, as well as appeal standards and is recommending the Panel require additional edits.
- 190-55.5.K Administration of Growth Allocation (Page 220): This is existing language that is specific to land uses in the RC District (equivalent to the RCA) that requires growth allocation in order to allow an increase in lot coverage. While this section requires review of these applications in accordance with major site plan approval, it does not reference the growth allocation submittal and review process. Staff recommends an additional reference be added to clarify that growth allocation procedures also apply.

### **III. CONTACT INFORMATION**

For questions prior to the panel meeting, please feel free to contact Jennifer Esposito at (410) 260-3468 or [jennifer.esposito@maryland.gov](mailto:jennifer.esposito@maryland.gov).