

**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

**Date:** November 15, 2018

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

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Thank you for agreeing to serve on the Panel reviewing the request submitted by Talbot County under § 8-1809(d) of the Natural Resources Article to comprehensively update their Critical Area Program. The purpose of this memo is to provide you with some initial information on the County's proposed Critical Area Program changes prior to the public hearing. The public hearing is scheduled for 6:30 PM on November 29, 2018 at the Talbot County Community Center in the Wye Oak Room, located 10228 Ocean Gateway, Easton, Maryland 21601. Members of the public will have the opportunity to provide the Commission Panel with oral or written comments on the County's proposed Program changes.

At subsequent panel meetings, the Panel will review the components of the County's Critical Area Program, the proposed changes to the Program, and any relevant public comments. At the conclusion of this review process, the Panel will make a recommendation to the Critical Area Commission as to whether the Commission should approve the updated Critical Area Program; approve the Program with conditions; send back the Program with changes to be made; or deny the updated Critical Area Program.

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**I. INTRODUCTION**

On September 11, 2018, the Talbot County Council enacted Bill 1401 which repealed and replaced Chapter 190 of the County Code, the County's zoning, subdivision, and land development ordinance. Chapter 190 includes all regulations pertaining to the Talbot County Critical Area Program. The adoption of the new Chapter 190 is the result of a County effort to

update both its development regulations and zoning maps in order to more effectively implement the Comprehensive Plan adopted by Talbot County in 2016.

County staff conducted a great deal of public outreach throughout the two-year legislative process for Bill 1401 and heard from a wide variety of stakeholders within the County, such as engineers, attorneys, and residents, at several public meetings. In addition, public review was completed by the Talbot County Planning Commission. Critical Area Commission staff also provided feedback on draft amendments in order to provide guidance on the minimum requirements outlined in statute and regulation. This included Commission staff attendance at public meetings, meeting with the County Council and Planning Commission, and meeting with County planning staff to review proposed changes.

## **II. SUMMARY OF PROPOSED CHANGES**

Bill 1401 repeals and replaces the Talbot County Zoning Code that relate to implementation of the County's Critical Area Program as well as other elements of the Code that apply outside the Critical Area or to zoning generally. For the purposes of review by the Panel, I have characterized the amendments in this summary as follows:

- (Type I) Those which are required as a result of changes to the state's Critical Area statute and regulations;
- (Type II) Those which are also required by the statute and regulations but constitute proposed program alternatives that the Commission must determine are at least as effective as the statute and regulations; or
- (Type III) Those which are either an improvement to existing Critical Area requirements, are necessary to address specific county procedures, or apply county-wide but still have relevance to Critical Area.

Ordinance changes that do not relate to the implementation of the Critical Area Program are not noted in this memo.

In summarizing the proposed changes, I have noted general comments, potential issues in conflict with state law and/or Criteria, or issues related to implementation in italics. For reference, enclosed in this packet are copies of the County approved Bill 1401 and the County approved amended Chapter 190 Zoning Code.

### **Article II: ZONING DISTRICTS**

- 190-8.5 (Type III) Page 15: The County elected to keep the Resource Conservation (RC) District (base zoning) as the only zoning designation that can apply in the Resource Conservation Area (RCA) of the Critical Area, unless the RC is granted growth allocation in accordance with §190-55.5.K. In that case, an RC zone could be designated as a Limited Development Area (LDA).

- 190-8.5.G.3 (Type I) Page 17: Included “siblings” in the immediate family definition for intrafamily transfers in the RC District.

### **Article III: OVERLAY AND FLOATING ZONING DISTRICTS**

- 190-13 (Type III) Page 33: Currently, the Critical Area Program is integrated within the County Zoning, Subdivision and Land Development Code. With the proposed amendment, the County is changing from an integrated zoning approach to overlay zoning.
- 190-15 – Critical Area Overlay District (CAO): This section comprises the following within the Critical Area: purpose, background, land management designations, development standards, agricultural uses, timber harvest plans, habitat protection areas - including the Buffer, Buffer Management Plans, Modified Buffer Areas, shoreline stabilization measures, and water-dependent facilities. Although most of the language within these subsections did not change as a result of Bill 1401, a list of the notable changes follows.
  - 190-15.3.H (Type III) Page 39: Table III-2 shows the County’s base zoning districts that are permissible within each Critical Area land management designation.
  - 190-15.3.I (Type II) Page 39:

Includes criteria to allow for new Intensely Developed Area (IDA) lands to be less than 20 acres when such lands are intensified through the use of growth allocation. Any proposal for new IDA lands less than 20 acres must meet all of the prescribed provisions listed within the amended zoning code.

*COMAR 27.01.02.03.B.2 (a-b), allows a local jurisdiction to propose alternative standards to the new IDA lands of at least 20 acres provision provided that as part of a local program, the Commission approved the alternative standard and that the area is part of a growth allocation approved by the Commission. The Panel must determine if the County’s proposal meets the intent of this regulation.*

This section also includes criteria to allow new Limited Development Area (LDA) lands to be located nonadjacent to existing LDA or IDA lands when the new LDA is intensified through the use of growth allocation. Any proposal for new LDA land that is nonadjacent to existing LDA or IDA lands must meet certain provisions that the County prescribes. The County elected to not pursue nonadjacent IDA provisions.

*Natural Resources Article §8-1808.1.(3)(i - ii) and COMAR 27.01.02.06-3.F(1-2), allows a local jurisdiction to use alternative standards to the adjacency provisions provided that the alternative standard is consistent with the County’s comprehensive plan and that the Commission approves the alternative standard.*

*The Panel must determine if the County's proposal meets the intent of this regulation.*

- 190-15.3.I.7 (Type II) Page 40: Allows Talbot County to locate more than 50% of its growth allocation within the RCA provided that the area receiving the growth allocation meets the standards listed within 190-15.3.I.7(a-d).

*The current code only allows for half of the allotted RCA acreage that are allowed to be intensified through growth allocation and separates the remaining 50% for a 'potential additional limit' that may be used for growth allocation once that amount has been approved by the Critical Area Commission.*

*Natural Resources Article §8-1808.1(c)(2)(viii) and COMAR 27.01.02.06-3.D, allows a local jurisdiction to use a standard that varies from the 50% initial limit provided that: the alternative standard is consistent with the County's adopted comprehensive plan; the alternative standard is approved by the Commission; and the County requires an applicant for growth allocation to cluster development in the growth allocation area.*

*Staff recommends for the County to revise the wording in the second sentence in 190-15.3.I.7 for consistency with state law and Criteria as provided below:*

***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:***

- 190-15.3.J (Type II) Page 40: The County is proposing to use growth allocation to designate new areas of IDA and LDA under a Comprehensive or Sectional Zoning Map Amendment process.

*These provisions are intended to address the Commission concerns regarding Talbot County Bill 1376, which was discussed at the February 7, 2018 Commission meeting. After significant debate within the Program Subcommittee, the Critical Area Commission Chairman returned a portion of that bill to Talbot County with list of changes to be made. Consequently, in this section, the County specified the process, requirements, and factors to be considered by the County Council, including location criteria for these types of map amendments. If approved, these changes would constitute the first step of a two-part process to fulfill the requirements of the returned portion of Bill 1376. The second step, growth allocation (with findings), cannot be completed until this proposed language is approved by the Critical Area Commission. The Panel should consider if the proposed language addresses the concerns of the Program Subcommittee and Commission Chairman.*

- 190-15.3.J.6.b (Type II) Page 42: New language that allows the County to add five percent of the area reclassified from a more intense Critical Area land designation to a Resource Conservation Area (RCA) to the County's available acreage that may be used for growth allocation.
- 190-15.6.A.d (Type I) Page 43: Includes new language under forest and developed woodland standards at the end of the sentence to state, "including the first 20 percent", for clarity and to follow along with the intent in COMAR.
- 190-15.6.A.E (Type II) Page 44: Includes forest clearing provisions to allow an exemption from the clearing limitation on lots 1 acre or less in size.

*COMAR 27.01.02.04.C(3)(ii) allows local jurisdictions to incorporate procedures to remove more than 30% of forest or developed woodland into their local Program. This proposal is more permissive than other Critical Area programs to date. The Panel must determine if the County's proposal meets the intent of this regulation.*

- 190-15.11.B.5.c.i-iv (Type II) Page 57: Includes alternative language to Buffer expansion for steep slopes.

*The intent of the alternative language for steep slopes listed in c.i-iv is to cover agricultural ditches and isolated steep slopes. The Panel must determine if the County's proposed alternative standards meets the intent of COMAR 27.01.09.D.3 – the allowance for a local jurisdiction to propose alternative Buffer standards as long as the Commission deems the language to be as least effective as the standards within COMAR.*

- 190-15.11.B.6 (Type I) Page 57: Added language for consistency with COMAR for Buffer expansion for contiguous highly erodible soils.
- 190-15.11.B.7 (Type I) Page 57: Includes provisions to allow a development activity in the expanded Buffer when certain criteria is met.
- 190-15.11.C.6 (Type III) Page 58: Includes provisions for a direct access path to the Buffer. If the pathway is constructed in a hardened, manmade substrate, mitigation is required at two times the area of the hard surfaced pathway.
- 190-15.11.D.6 (Type II) Page 59: New 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. Additional Buffer establishment changes were made to sections regarding the installation of shore erosion control projects such as living shorelines to allow for

an increase in herbaceous plantings.

*COMAR 27.01.09.01.D allows local jurisdictions to proposal alternative procedures and requirements related to the Buffer, provided they are at least as effective as State law and regulations. Commission staff worked with the County in evaluating and developing this language. However, no jurisdiction has submitted alternative language of this nature. The Panel must determine if the County's proposal meets the intent of this regulation.*

- 190-15.11.E.4 (Type I) Page 60: Added Buffer mitigation planting priorities to reflect the requirement in COMAR.
- 190.15-11.F.8 (Type II) Page 63: 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.

*COMAR 27.01.09.01.D allows local jurisdictions to proposal alternative procedures and requirements related to the Buffer, provided they are at least as effective as State law and regulations. Commission staff worked with the County in evaluating and developing this language. However, no jurisdiction has submitted alternative language of this nature. The Panel must determine if the County's proposal meets the intent of this regulation.*

- 190-15.12 (Type I) Page 65: Includes requirements for Buffer Management Plans.

*The County condensed the listed requirements for Buffer Management Plans and references a checklist of required information for each type of Buffer Management Plans.*

- 190-15.13 (Type I) Page 68: The County reorganized this section and made slight changes to clarify that the Maryland Department of the Environment (MDE) is the agency that determines whether a structural or nonstructural shore erosion control method can be utilized.

*This section does not address canopy clearing.*

#### **ARTICLE IV: LAND USES**

- 190-28.11 (Type II) Page 102: Public or private conservation areas remain a permitted use in the RC. However, these areas now may include accessory offices, visitor information structures, and storage structures.
- 190-28.12 (Type II) Page 102: A new permitted use to allow natural resource-oriented public recreation, education, and research. Includes conservation areas owned by a quasi-public or private organization that include, as a principal use,

visitor centers, research facilities, educational programming and similar uses.

*Commission staff has concerns with these specific RCA uses not listing a lot coverage limit. Other similar approved RCA uses limit the allowed lot coverage to 15% of the site or 20,000 square feet, whichever is less, and states that lot coverage may be increased over the allowed limits through the use of growth allocation.*

## **ARTICLE VI: NONCONFORMING LOTS, STRUCTURES, AND USES**

- 190-48.3.B (Type III) Page 197: Limits the expansion of nonconforming uses to 20% of the gross floor area (GFA). The current language allows for an expansion of a nonconforming use to no more than 20% of the GFA, or 1,000 square feet of additional GFA, whichever is less.
- 190-47.4 (Type III) Page 196: A change to the in-kind replacement definition to include the allowance for a small shift in the original location of the nonconforming structure provided that the location change does not increase the nonconformity.
- 190-48.3.C (Type III) Page 197: Increases the allowed expansion of nonconforming uses not involving structures, such as outdoor parking and storage, from 10 percent to 20 percent.
- 190-50.1.B (Type III) Page 200: Permits the vertical expansion of a nonconforming structure located in the 100-foot Critical Area Buffer and structures that are nonconforming to lot coverage to expand without a variance from the County's Board of Appeals provided that the certain standards are met, including that the vertical expansion does not increase the Critical Area nonconformity.

## **ARTICLE VII: ADMINISTRATION**

- 190-55.5.D.1 (Type II) Page 214: Calculates additional RCA acres that resulted from reclassifying LDA land designation to RCA land designation. Five percent of the reclassified lands from LDA to RCA was added back in the County's growth allocation acreage that may be used for future growth allocation requests.
- 190-55.5.D.3 (Type III) Page 214: Provides the amount of RCA acres that may be used for growth allocation.

*This amount does not include the amount of growth allocation the County has used since the inception of the Critical Area Program. The County will need to provide Critical Area staff with a reconciling of the growth allocation acreage used to date to ensure our records match.*

## **ARTICLE IX: DEFINITIONS**

- 190-78 (Type II) Page 271: Buffer Establishment: The definition was amended to include the allowance for predominately native species in the Buffer for natural regeneration.

*COMAR 27.01.09.01-2.B.2 requires the 'planting' of native species in the Buffer. COMAR 27.01.09.01-4 requires for the natural regeneration to be within 300 feet of a mature forest of at least 1 acre that contains a native seed bank and that controls for invasive species. The regulation does not specify that the natural regeneration survival requirements must be native.*

*The Panel must determine if the County's proposed alternative definition meets the intent of COMAR 27.01.09.D.3 – the allowance for a local jurisdiction to propose alternative Buffer standards as long as the Commission deems the language to be at least effective as the standards within COMAR.*

### **III. ISSUES FOR FURTHER DISCUSSION**

As noted above, there are a number of items that will specifically require the panel's consideration and recommendation. Based on the comments received at the public hearing, and any additional questions of the Panel members, I will further detail those items in a subsequent panel memo. The next meeting of the panel is scheduled for December 17th from 1pm-4pm.

For questions prior to the public hearing on November 29, 2018, please feel free to contact me at 410-260-3468 or at [jennifer.esposito@maryland.gov](mailto:jennifer.esposito@maryland.gov).