

Privileged and Confidential

Amendment No. 7 to Bill 1401

Proposed by: Staff (based on discussions with Critical Area Commission staff)

Introduced by: Mr. Callahan, Mr. Pack, Ms. Price, Ms. Williams

Date: August 14, 2018

A BILL TO REPEAL AND REPLACE TALBOT COUNTY CODE CHAPTER 190, ENTITLED “ZONING, SUBDIVISION, AND LAND USE DEVELOPMENT”, IN ITS ENTIRETY, AND TO ENACT AN ENTIRE NEW CHAPTER 190 OF THE TALBOT COUNTY CODE TO IMPLEMENT ZONING CONTROLS AND REGULATIONS CONSISTENT WITH AND PURSUANT TO THE 2016 TALBOT COUNTY COMPREHENSIVE PLAN

KEY

Boldface.....Heading or defined term

Underlining.....Added by amendment

~~Strikethrough~~.....Deleted by amendment

* * * Existing Bill unaffected

Proposed Amendments: The amendments proposed to the text of Exhibit “A” to the Bill are as follows:

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8.5. RESOURCE CONSERVATION (RC) (CRITICAL AREA ONLY)

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B. RELATIONSHIP TO CRITICAL AREA

The RC District is applied only to areas of the County in the Resource Conservation Area of the Critical Area, unless granted growth allocation in accordance with §190-55.5.K. All land within the RC District is also within the Critical Area Overlay District (see §190-15).

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15.3. LAND MANAGEMENT DESIGNATIONS WITHIN THE CRITICAL AREA

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J. COMPREHENSIVE OR SECTIONAL ZONING MAP AMENDMENT ~~REZONING~~

~~1. A new IDA, LDA or RCA may be established through comprehensive zoning in accordance with §190-55.5:~~

~~a. A new IDA:~~

~~i. May include areas of less than 20 acres provided that the provisions listed under §190-15.3.I.3.b as listed above are met; or~~

~~ii. Shall meet the adjacency standards stated in §190-15.3.I.3.a above.~~

~~b. A new LDA may be located nonadjacent to an existing LDA or IDA provided that the provisions listed under §190-15.3.I.4.c are listed above are met.~~

~~c. New RCA lands:~~

~~i. Shall be consistent with the purposes of §190-15.3.E above and the Comprehensive Plan policies.~~

~~ii. Five percent of the area reclassified from LDA or IDA to RCA as part of a comprehensive rezoning may be added to the County's available acreage that may be used for growth allocation in unincorporated areas of the County.~~

~~2. New RCA lands shall be consistent with the purposes of §190-15.3.E above and the Comprehensive Plan policies. Five percent of the area reclassified from LDA or IDA to RCA as part of a comprehensive rezoning may be added to the County's acreage that may be used for growth allocation in unincorporated areas of the County or through supplemental growth allocation.~~

1. Applicability

a. The procedures in this Section shall govern the County's reclassification of Critical Area land management designations in the County when the reclassifications occur through the County's comprehensive or sectional map amendment process.

- b. Section 190-55 governs the use of growth allocation for reclassifying Critical Area land management designations other than through the comprehensive or sectional map amendment process.
- 2. The following standards apply to reclassification of Critical Area land management designations through the comprehensive or sectional map amendment process:
 - a. A new IDA:
 - i. Shall meet the adjacency standards under § 190-15.3.I.3.a.; and,
 - ii. May include areas of less than 20 acres if the standards under § 190-15.3.I.3.b are met.
 - b. A new LDA:
 - i. Shall meet at least one of the conforming location standards under § 190-15.3.I.4.a.; and,
 - ii. Shall be adjacent to an existing LDA or an existing IDA, or shall meet the non-adjacency standards as listed in §190-15.3.I.4.c.
 - c. New LDA or IDA in the RCA shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
- 3. The County Council shall consider each of the following factors in reclassifying Critical Area land management designations from less intense to more intense land management designations:
 - a. Consistency with the County's adopted comprehensive plan and whether the reclassified Critical Area land management designations would implement the goals and objectives of the adopted plan;
 - b. Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in the need of conservation;
 - c. Impacts on a priority preservation area, as defined under §2-518 of the Agricultural Article;
 - d. Environmental impacts associated with location in coastal hazard area or an increased risk of severe flooding;
 - e. Whether the area is located in a manner that:
 - i. Minimizes impacts to habitat protection areas;

vii. Total parcel acreage of the proposed Critical Area land destination change.

6. Calculating growth allocation.

a. The total acres reclassified to a more intense designation shall be deducted from the County's growth allocation allotment.

b. Five percent of the area reclassified from a more intense designation to RCA may be added to the County's available acreage that may be used for growth allocation in unincorporated areas of the County or through supplemental growth allocation.

7. Such comprehensive or section amendments, if approved by the County Council, shall comply with § 190-55.1 D. and E., describing the process for approval by the Chesapeake Bay Critical Area Commission.

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15.5. REQUIREMENTS SPECIFIC TO THE RCA

A. The RC Zoning District covers all land areas within the RCA in Talbot County, unless granted growth allocation in accordance with §190-55.5.K. Lot size, density, subdivision and land use requirements for the RCA are incorporated into the RC zoning district requirements; see §190-8.5.

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15.10. HABITAT PROTECTION AREAS; HABITAT PROTECTION PLANS

A. HABITAT PROTECTION AREAS

1. As established in COMAR Title 27, habitat protection areas are the following: the Shoreline Development Buffer, nontidal wetlands, habitats of species in need of conservation, threatened and endangered species, plant and wildlife habitat areas, and anadromous fish propagation waters.
2. Development and redevelopment activities shall be subject to the requirements of this Section to avoid disturbance to habitat protection areas. When no alternative exists and such activities must cross or be located in habitat protection areas, the applicant shall minimize impacts to habitats and show that no reasonable feasible alternative location for such activity exists.
3. 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 (DNR WHS), and as necessary United States Fish and Wildlife Service (USFWS), for comment and technical advice.

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E. THREATENED AND ENDANGERED SPECIES; SPECIES IN NEED OF PROTECTION OR CONSERVATION

1. PURPOSE

The purpose of this Section is to provide protection for threatened and endangered species, for species in need of conservation, and for the habitats of these species in the Critical Area.

2. SPECIES

- a. Species protected under this Section include, but are not necessarily limited to, the Bald Eagle, Delmarva Fox Squirrel, and the Sedge Wren.
- b. As part of the habitat protection plan, the applicant shall coordinate with the appropriate State and Federal agencies (Department of Natural Resources, United States Fish and Wildlife Services, etc.) to identify any threatened and endangered species and species in need of conservation that might be affected by the proposed development activity, and to identify protection and management mechanisms.

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H. SHORELINE DEVELOPMENT BUFFER (SEE §§190-15.11 AND 190-15.12)

1. The Shoreline Development Buffer is intended to consist of naturally vegetated areas, or areas to be established in vegetation, that are managed to protect aquatic, shoreline, wetland, and terrestrial environments from human-made disturbances.
2. In order to accomplish this intent, the Shoreline Development Buffer generally prohibits new development, requires protection of naturally vegetated areas, and requires mitigation whenever natural vegetation is disturbed or new development occurs.
3. The location and width of the Shoreline Development Buffer is determined by COMAR, §27.01.09.01. ~~01.(E.)~~ This area is established for each lot or parcel based upon the criteria given in §190-15.11.B below.
4. Requirements for the Shoreline Development Buffer are given in §§190-15.11 and 190-15.12.

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15.11. SHORELINE DEVELOPMENT BUFFER (ALSO REFERRED TO AS THE BUFFER)

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B. MEASUREMENT

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3. The 200-foot Shoreline Development Buffer may be reduced if the strict application of the minimum 200-foot Buffer would preclude:

a. Subdivision of the property at a density of one dwelling unit per 20 acres, provided all other state and local requirements will be satisfied; or

b. An intrafamily transfer as permitted by the RC District standards.

c. The reduced Buffer should be the minimum necessary to accommodate a dwelling and a sewage reserve area, as determined by the Planning Director, but no less than 100 feet.

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D. SHORELINE BUFFER ESTABLISHMENT

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TABLE III-5. SHORELINE DEVELOPMENT BUFFER ESTABLISHMENT REQUIREMENTS		
DEVELOPMENT CATEGORY	LOT CREATED BEFORE 8/13/89	LOT CREATED AFTER 8/13/89
Development on a vacant lot	Establish an area of the Buffer equal to at least the total square footage of lot coverage outside the Buffer	Fully establish the Buffer
Subdivision	Fully establish the Buffer	
New lot with an existing dwelling unit	Establish an area of the Buffer equal to at least the total square footage of lot coverage outside the Buffer	
Conversion of a land use on a parcel or lot to another land use	Fully establish the Buffer	
Construction of an addition, accessory structure, or redevelopment	Establish an area of the Buffer equal to at least the net square footage increase in lot coverage outside the Buffer	
Substantial alteration to an existing structure	Establish an area of the Buffer equal to at least the total square footage of lot coverage outside the Buffer	

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28.1. DAY-CARE CENTER, ~~LARGE-GROUP~~FAMILY

In the RC District, the following regulations apply:

- A. The use shall be located in a structure existing prior to August 13, 1989.
- B. Expansion is permitted, provided lot coverage is limited to 15% of the site or 20,000 square feet, whichever is less, except that lot coverage may be increased through the use of growth allocation subject to §190-55.5.

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33.23. STORAGE ACCESSORY TO COMMERCIAL AND INDUSTRIAL USES

- A. Storage areas or structures accessory to a commercial or industrial use require a major, minor or ~~simplified-administrative~~ site plan based upon the criteria in §190-60.2.
- B. Portable storage units are permitted temporary uses as provided in §190-34.2.D. In addition, portable storage units may be used as permanent storage structures accessory to commercial and industrial uses in the LC, GC and LI Districts, subject to site plan review and provision of a Type C landscape yard in accordance with §190-40.5 to screen the view of the unit from the property line.

C. Accessory storage to a commercial and industrial use can only be located in the Critical Area RCA when the principle use or structure is located within the RCA.

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55.5 GROWTH ALLOCATION AND RECLASSIFICATION OF CRITICAL AREA LAND MANAGEMENT DESIGNATIONS

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D. ALLOWED ACREAGE FOR GROWTH ALLOCATIONS

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TABLE VII-3. CRITICAL AREA GROWTH ALLOCATION ASSIGNED TO TOWNS: ORIGINAL ALLOCATION AND AMOUNT REMAINING IN 2018

	ACRES ALLOWED TO BE RECLASSIFIED FROM RCA TO LDA OR IDA		ACRES ALLOWED TO BE RECLASSIFIED FROM LDA TO IDA	
	Original 1985 allocation	Remaining as of January 1, 2018	Original 1985 allocation	Remaining as of January 1, 2018
Reserved for Easton	155	0	24	24 16.49
Reserved for Oxford	195	179.787	44	44 38.2
Reserved for St. Michaels	245	193.02 173.80	24	24.01 19.13
	595	372.79353.58*	92	89.0173.82*

*subject to ~~confirmation and~~ pending applications

E. SUBMISSION AND REVIEW PROCEDURES

1. WHEN APPLICABLE

- a. These submission and review procedures apply to applications for reclassification of a Critical Area land management designation.
- b. These procedures are not applicable to County comprehensive or sectional rezoning that result in the need for growth allocation or addition to RCA lands.

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2. The concept site plan shall consist of all application items and requirements listed in COMAR 27.01.02.065-1B to include:

- a. Project name and street address;
- b. Tax Map, grid, parcel and lot number;
- c. Property and project boundaries;
- d. Field run topography and natural features;
- e. For a proposed subdivision, the general location of proposed lots, structures, and roads;
- f. For a proposed commercial or industrial use, the general location of proposed structures, stormwater management, paved areas and open space.

3. The required environmental report shall consist of all application items and requirements as listed in COMAR 27.01.02.065-2.

* * *

13. The subdivision or site plan shall be substantially in accordance with the concept plan approved by the County Council.
 - a. The Planning Commission in its approval of the subdivision or site plan may approve minor deviations from the concept plan resulting from more detailed engineering and site design.
 - b. Significant changes must be approved by the County Council in accordance with the procedures for the original growth allocation application.

F. STANDARDS

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3. The Council may approve the application only if it finds that the proposed concept site plan will:
 - a. Create lots or parcels that maximize opportunities for clustered development that protect habitat and agricultural resources;
 - b. Locate structures to minimize impact on habitat protection areas and agricultural areas;
 - c. Avoid or Pprovide a minimally disturbed Shoreline Development Buffer;
 - d. Minimize soil erosion and runoff;
 - e. Maximize protection of eroding shorelines;
 - f. Have a minimal impact or cause an improvement to stormwater, floodplain and stream characteristics;
 - g. Avoid or Mminimize impacts on nontidal wetlands;
 - h. Maximize protection of plant and wildlife habitats, particularly for threatened and endangered species, plant and wildlife common to the Chesapeake Bay Region, and anadromous fish propagation waters; and
 - i. Maximize protection of forests.

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SECTION 190-78 TERMS DEFINED

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ESTABLISHMENT, BUFFER(CA)

The planting of native vegetation or regeneration of predominately native vegetation in the Shoreline Development Buffer or stream and wetland buffers.

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GROUP HOME, LARGE

A residential facility that provides housing and supportive services, such as personal care, social or counseling services, or transportation, to at least nine ~~or~~ and no more than sixteen residents who need services due to a disability. The facility may also include housing for staff.

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Purpose: This new language is intended to clarify various Critical Area zoning regulations.

Amendment not substantive: An amended ordinance cannot be deemed to be a new or different one unless it enlarges or narrows the scope of the original ordinance to such an extent that the ordinance as enacted can be said to be misleading in a substantial manner in its final form. Amendments that do not defeat the original purpose of the ordinance are not so substantial as to become a new ordinance. *Ajamian v. Montgomery County*, 99 Md. App. 665, 684-685 (1994). This amendment does not meet the test and therefore is non-substantive.