Maryland's Critical Area Program

Overview of the Critical Area Program

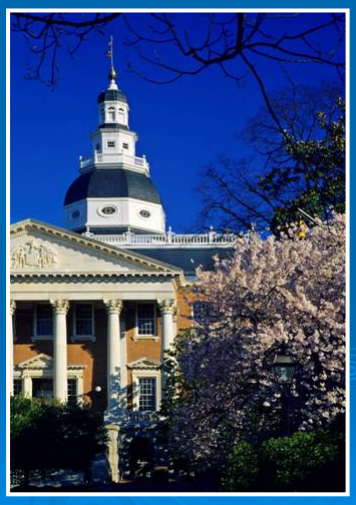
Highlights of 2008 Legislative Session

Cecil County Land Use Alliance

May 29, 2008

What Is the Critical Area Program?

- Based on Chesapeake Bay Critical Area Act introduced by Governor Harry Hughes in 1984
- Criteria approved by Joint Resolutions of the General Assembly in 1986
- Local governments required to adopt their own local programs based on State law and Criteria



Legislative Findings

- The Bays are resources of great significance to the State and to the nation.
- Shoreline and adjacent lands are a valuable, fragile, and sensitive part of these estuarine systems.
- Human activities can have immediate and adverse impacts.

Goals of the Critical Area Act

- Minimize adverse impacts to water quality from run-off
- Conserve fish, wildlife, and plant habitat
- Establish land use policies that accommodate growth but also address the fact that the number, movement, and activities of people in the Critical Area can have adverse environmental impacts.

Where Is the Critical Area?

- All waters of the Chesapeake Bay, the Atlantic Coastal Bays, and their tributaries to the head of tide
- All land under these waters
- All land within 1,000 feet of the landward edge of tidal waters and tidal wetlands

64 Jurisdictions in the Critical Area

- 16 Counties, 47 Municipalities and Baltimore City
- 11% of the land area of the State of Maryland
- 680,000 acres
- 5,200 miles of shoreline

How Do Local Programs Work?

- Cooperative arrangement between local governments and the State
- Local government, including Board of Appeals and Planning Commission, is primary implementing agency
- CAC staff reviews projects, analyzes program changes, and provides technical assistance
- The full Commission has an oversight role, approves certain projects, and all program changes

Critical Area Commission Membership

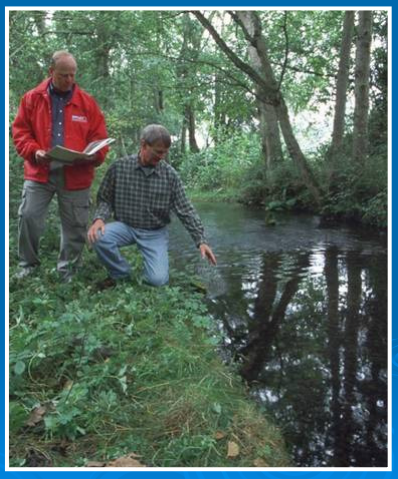
- Appointed by the Governor
- 29 Members
- Full-time Chair
- Representatives from each County
- Municipal officials
- Citizen and business interests
- State agency representatives

Commission Responsibilities

- Growth allocation
- State projects on State lands
- Major local government projects
- Local government projects that are not fully consistent with the Critical Area Program
- Changes to local Critical Area programs

Commission Staff Responsibilities

- Assist local governments with project review
- Review State projects and present them to the Commission for approval
- Review changes to local programs
- Present local program changes to the Commission for review
- Conduct workshops and training
- Provide technical assistance



Intensely Developed Areas (IDAs)

- Existing urban, industrial, institutional, commercial and other developed areas
- Little existing natural habitats
- Water quality already impaired

IDA Requirements

- Intense development permitted, regulated by underlying zoning; local density limits control
- No clearing limits, establish vegetation where possible
- Construction on slopes greater than 15% can be permitted
- No impervious surface limits
- Stormwater management required to reduce pollutant loadings by 10%

Limited Development Areas (LDAs)

- Residential and commercial areas of moderate intensity
- Some commercial, institutional uses
- Some natural habitats exist
- Water quality is only somewhat degraded

LDA Requirements

- Development of all types allowed, local zoning controls
- Residential density may be limited, not required
- Forest and tree clearing permitted up to 30 percent with replanting
- 15% Afforestation required
- No construction on slopes greater than 15%
- Impervious surfaces limited to 15% or 25% of lot, depending on lot size

Resource Conservation Areas (RCAs)

- Farms, forests, wetlands, fields, and open spaces
- Low density residential development
- Commercial uses related to natural resources

RCA Requirements

- Development limited to agriculture, forestry, and fisheries, and residential
- Residential development – one unit / 20 acres
- New commercial, industrial, and institutional uses prohibited
- Forest and tree clearing permitted up to 30 percent with replanting
- 15% Afforestation required
- No construction on slopes greater than 15%
- Impervious surfaces limited to 15% or 25% of lot, depending on lot size

Habitat Protection Areas

- Specifically identified areas that can be found in RCA, LDA, and IDA
- Receive special protection in the Critical Area
- Protection must be adequate to provide conservation of the species
- Can be adversely affected by clearing, stormwater run-off, and increased human activity

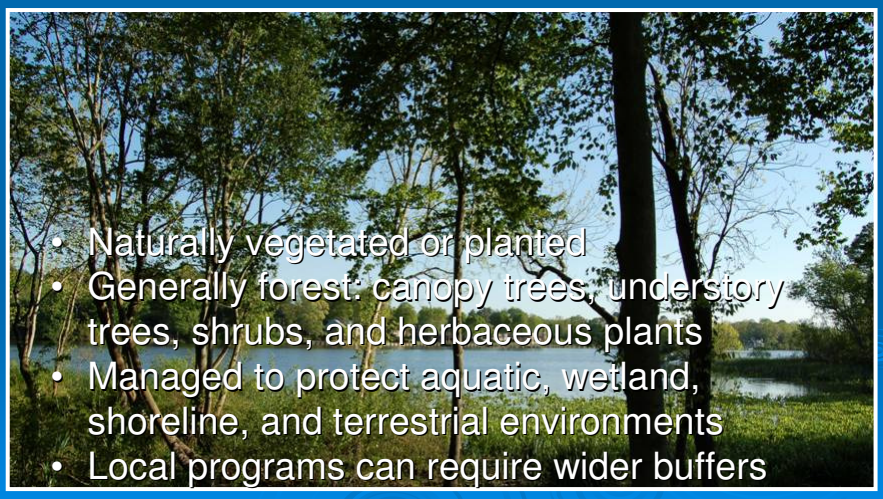
Habitat Protection Areas are areas that benefit from special protection measures in the Critical Area.

Photo by Tim McCabe, USDA Natural Resources Conservation Service

Habitat Protection Areas

- 100-foot Buffer
- Threatened and endangered species habitats
- Species in need of conservation
- Anadromous fish spawning waters
- FIDS habitat
- Historic waterfowl staging and concentration areas
- Colonial Water Bird Nesting Areas
- Natural Heritage Areas

100-Foot Buffer



Functions of the Buffer

- Remove or reduce sediments, nutrients, and toxic substances
- Minimize adverse effects of human activities
- Maintain an area of transitional habitat
- Maintain natural environment of streams
- Provide riparian habitat

Interagency Coordination to Protect Wetlands and Water Resources

- MDE – primary regulatory agency
- ACOE – regulatory agency for larger impacts, those impacting federally protected lands or species
- CAC/Local Governments – regulate CA Buffer and coordinate with MDE and ACOE
- Agencies work together to identify resources, ensure accurate delineation, implement appropriate protection measures, and require mitigation when impacts are unavoidable.

Buffer Protection

- No new development including structures, roads, septic systems, and pools
- Grandfathered lots may be eligible for variances
- No disturbance of natural vegetation
- Areas that are mowed can remain, no bush-hogging of natural areas
- Buffer must be established (planted) when new development takes place

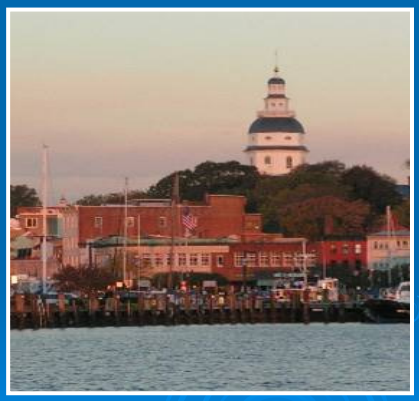
Delineating the Buffer

Photo courtesy of USDA NRCS

- Buffer is required on all tidal waters, tidal wetlands, and tributary streams
- Buffer must be expanded for contiguous steep slopes (4 feet for every 1% slope)
- Buffer may need to be expanded for hydric soils or highly erodible soils

Permitted Activities in the Buffer

- Water-dependent facilities such as piers and boat ramps
- Shore erosion control measures
- Development in Buffer Exemption Areas
- Development in accordance with an approved variance – mitigation is required

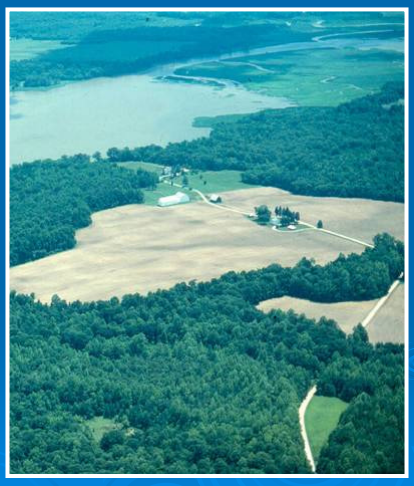


Buffer Exemption Areas

- Developed areas where the Buffer is not functioning
- Provisions allow for some new development without a variance
- Minimum setback required
- Mitigation is required

What Is Growth Allocation?

- Considered a program change because maps are changed
- RCA can be changed to LDA or IDA; LDA can be changed to IDA
- Allows more intense development or different types of land use
- Similar to a “rezoning”



How Much Can Be Used?

- Growth allocation is equal to 5% of RCA acreage
- Cecil started with 996.12 acres
- Acres used = 291.18
- Acres left = 704.94
- Past projects include National Humane Society, Cecil County Airport, and Wapiti Wilderness Retreat Center

Growth Allocation Process

- County reviews project and growth allocation is approved by Commissioners
- County submits request to CAC for review
- CAC responds within 10 working days regarding completeness
- Chair makes an amendment or refinement determination
- For refinements, Program Subcommittee reviews at next meeting, makes a recommendation to the Chair
- Chairman makes final decision within 10 days

Growth Allocation Amendment Process

- For amendments, Chair appoints a Panel of 5 Commission members
- Commission staff and County staff organize a public hearing and advertise
- Panel holds a public hearing in the County
- Panel meets to develop a recommendation to the full Commission
- Panel makes a recommendation to the full Commission at a regular meeting
- Commission votes

New in 2008!
Growth Allocation Standards

- Locate new IDAs in LDA or adjacent to IDA
- Locate new LDAs adjacent to LDA or IDA
- Locate growth allocation to minimize impacts to HPAs and optimize benefits to water quality
- New IDAs and LDAs should be located at least 300 feet from the landward edge of tidal waters and tidal wetlands
- Locate new IDAs and LDAs to minimize impacts to the defined land uses in the RCA
- Limits set (50%) on growth allocation that is not adjacent and is used in the RCA – requires clustering

New in 2008!
Factors to be Considered

- Consistency with the comprehensive plan
- Use of existing infrastructure
- Consistency with State and regional environmental protection policies
- Impacts on a Priority Preservation Area
- Impacts from stormwater and wastewater discharges
- Coastal hazards and flood risk

Additional Factors to be Considered

- For new IDAs
  - Public wastewater
  - Average density of 3.5 units /acre
  - Location in a Priority Funding Area
  - Economic benefit to the area
- For new LDAs
  - Public wastewater or best available N-removal technology
  - Completion of existing subdivision
  - Expansion of existing business
  - Clustering

2008 Session Highlights

- Six month effort
- Collaboration among diverse stakeholders
- Bill supported by MACO, MML, Maryland State Builders Association, Critical Area Coalition (more than 40 environmentally based non-profits)
- Bill passed and was signed into law on April 24, 2008
- Partnership between the State and counties strengthened

Improved Variance Procedures

- Administrative variance process can be established
- Commission must be notified of variance decisions
- After-the-fact variances can only be processed after payment of fines and some restoration
- Uniform and consistent process

Contractors More Responsible

- MHICs and others can lose their licenses for Critical Area violations.
- Shore erosion control projects are now considered a type of “home improvement,” and these contractors can also lose their licenses
- Penalty provisions can apply to a contractor, property owner, or any other person who committed, assisted, authorized, or participated in the violation

Stronger Local Enforcement Tools

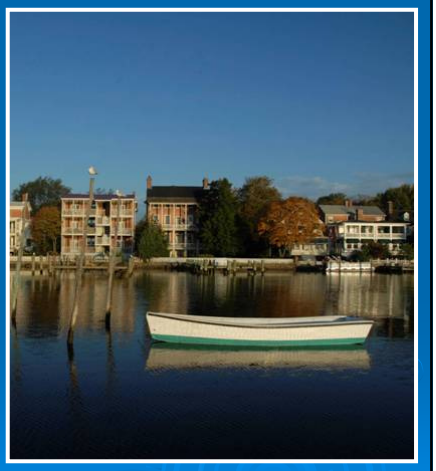
- Fines at $10,000 per offense
- Each day can be considered a separate offense
- Payment of penalties required before permit, approval, variance, special exception
- Three-year statute of limitations
- Commission Chair may seek enforcement in the courts
- Local government has right to enter property if a violation is suspected

More Effective Water Quality Controls

- Lot coverage as opposed to impervious surface
- Applies in RCA and LDA
- Includes pavers, gravel, porous concrete, impermeable decks
- Does not include walkways, stairs in the Buffer or mulch paths
- MDE stormwater credits are not affected

Commission Authority to Adopt Regulations

- All State agencies have regulatory authority
- Allows for clarity, streamlining, predictability
- Flexibility remains
- Regulations adopted through official AELR process
- Specific categories identified including Buffer planting, growth allocation, forest clearing, procedures for notice to the Commission



Regulations Related to Existing Areas of Jurisdiction

- Buffer planting standards, protection, establishment and BEAs
- Growth allocation processes
- Shore erosion control
- Enforcement and penalties
- Water-dependent facilities and access
- Habitat Protection Areas
- Critical Area mapping
- Notice of local decisions
- Variances
- Clustering to promote conservation
- Program administration

200-Foot Buffer

- Applies to new subdivisions in RCA that stay RCA
- Applies to RCA projects involving site plan approval and change in use
- 200-Foot Buffer may be reduced under procedures adopted by Commission
- Does not apply to grandfathered lots for residential development

Critical Area Mapping

- Digital Critical Area Maps are needed
- Existing paper maps based on 1972 Tidal Wetlands Maps are inaccurate, outdated
- State to prepare new Critical Area Maps based on actual conditions (2007 and 2008 imagery)
- 1,000' boundary will be created digitally and georeferenced
- Consistent methodology and source data to be used
- Regulations will address "new areas"
- Pilot project is underway

Habitat Enhancing Erosion Control

- Nonstructural measures (living shorelines) must be used unless alternative authorized by MDE
- Factors include feasibility, excessive erosion, heavy tides, or narrow waterways
- MDE will be working on regulations in coordination with CAC

Conclusion

- 2008 Legislation needed to improve the Critical Area Program
- New provisions will provide for clear and effective implementation
- Local governments have better enforcement tools
- Commission can use regulations to be flexible and responsive