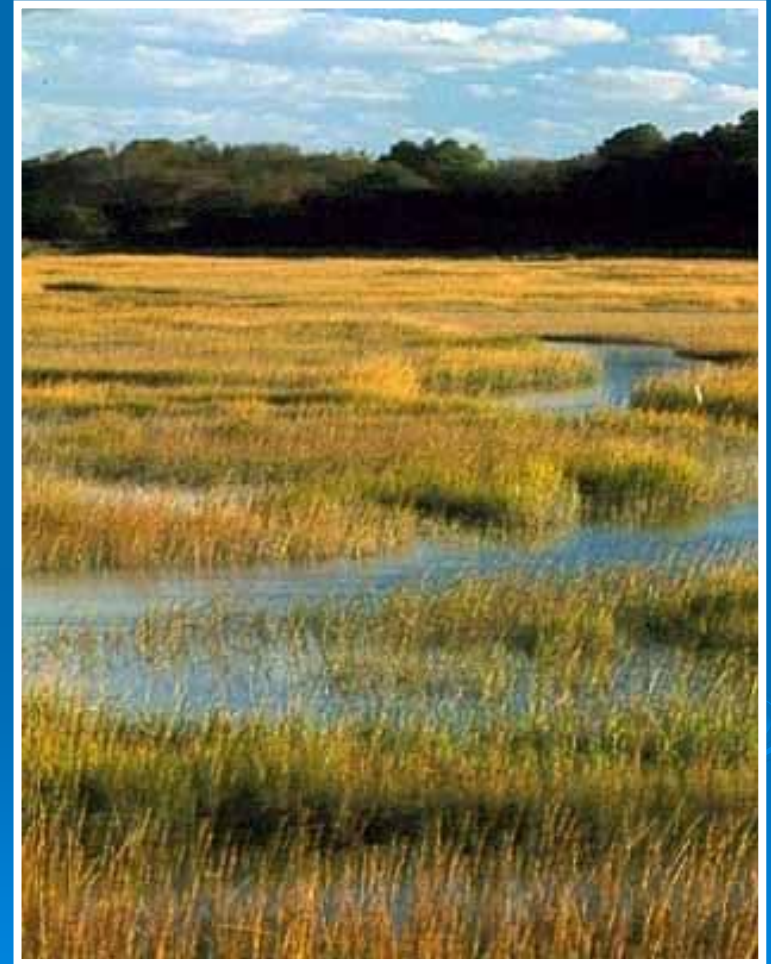


Critical Area Commission New Directions

Calvert County
Critical Area Update
Prince Frederick, Maryland
January 12, 2010

What Is the Critical Area Program?

- Based on Chesapeake Bay Critical Area Act passed in 1984
- Resulted from acknowledging that the Bay was in a “state of decline”
- Attributed to water quality and habitat destruction associated with land use and development activity
- Realization that a “new strategy” was needed to restore and protect Maryland’s water resources



Concept of “Protective Zone”

- Restoration based on creating a “protective zone” – 1,000 feet wide around all tidal waters and tidal wetlands
- Within this area – land use and development activities would be “strictly regulated” and focused on restoration and protection
- Implementation would be through local zoning and existing environmental plans – such as Calvert County’s Patuxent River Protection Plan, and other programs and policies
- Three goals identified

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
- Approximately 11% of the State



How Has It Worked?

- Using Law and Criteria (without regulations) to implement 64 different Programs – difficult and often inconsistent
- State and local partnership - sometimes ineffective, time consuming, and confusing
- Many violations and enforcement problems – fines, restoration, and mitigation – difficult to accomplish
- Certain elements of the Program viewed as difficult to implement fairly and consistently throughout the State
- Bay restoration efforts viewed as largely unsuccessful in light of cumulative impacts of growth and development

Change Needed – 2008 Legislation



- Fill gaps in how local programs operated
- Streamline and use “regulations” to improve consistency, predictability and fairness
- Clarify and strengthen “key provisions”
- Enhance State and local coordination
- CAC tasked with working more aggressively with local governments to update programs and make them effective

Implementing 2008 Legislation

- Initial shock has worn off
- Partners in legislation have stayed engaged
- Short term goals
 - Adopt “consistent” regulations first
 - Provide education to local government staff, consultants, and the public
 - Improve enforcement and provide local assistance
- Long term goals
 - Adopt “Buffer” regulations
 - Provide model ordinance
 - Identify future regulation needs

2008 Legislation - Provisions Affected



- Variance Process
- Enforcement
- Lot Coverage
- Growth Allocation
- Critical Area Mapping
- Regulatory Authority
- Buffer Provisions

After 18 Months – What's Working?



- Enforcement is improving
- Variance process starting to change
- Growth allocation affected by construction slowdown
- Mapping pilot project complete
- Regulatory authority – providing for change
- Biggest change – public perception

Variance Process



- Consistency has improved
- Violations and after-the-fact construction being addressed
- Local governments beginning to understand process
- Administrative variance process being effectively used in more jurisdictions
- New regulations may help
- CAC doing educational sessions for local Boards

Variance Process

- Political support still lacking in many jurisdictions
- Many Boards still struggling with variance standards and findings
- Hard to address mitigation on sites where variance approval is unlikely
- Most fines are significantly reduced
- CAC still appealing decisions



Enforcement Using New Tools

- Violations must be cited
- Local government has right to enter property if a violation is suspected
- Penalty provisions can apply to a contractor, property owner, or any other person who committed, assisted, authorized, or participated in the violation
- Licensed home improvement contractors 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

Enforcement Using New 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
- Mitigation that provides water quality and/or habitat benefits is required for all violations
- Violation mitigation – separate from fines
- Commission Chair may seek enforcement in the courts



Lot Coverage

- 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, decks “through which water passes freely,” or mulch paths
- MDE stormwater credits are not affected



Lot Coverage

- Decks are problematic – still considered disturbance and many aren't constructed in a pervious manner
- Lot coverage limits provide more on-site area for water quality treatment
- More areas available for planting, infiltration
- Will facilitate implementation of new MDE regulations
- “Misconceptions” about CAC not allowing credit for permeable materials



Growth Allocation



- Legislation included more specific provisions
- Growth allocation submittal requirements became effective on April 6, 2009
- New regulations found in COMAR 27.01.02.05 -1 and 2
- Uniform and consistent review process now in effect

Growth Allocation



- Guidelines about location changed to standards
- New - factors to be considered broaden scope of review
- Specific factors for LDA applications
- Specific factors for IDA applications
- Consistency with local comprehensive plan

Critical Area Mapping

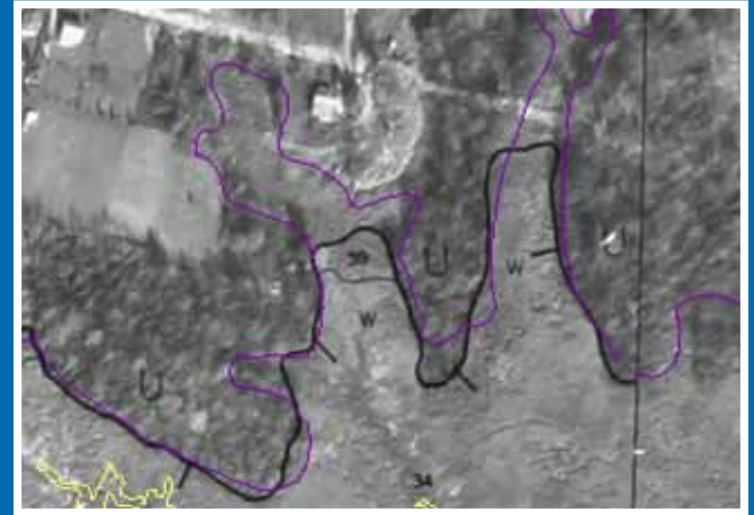
Using Technology to Update Maps

- Program hindered by use of existing paper maps based on 1972 Tidal Wetlands Maps
- State required to prepare new Critical Area Maps based on actual conditions (2007 and 2008 imagery)
- Will be integrated into State-wide Base Map system
- New digital maps will be web-accessible
- Shoreline and edge of wetlands to be determined by State with local input
- Using best available, current source data (aerial imagery, LIDAR, CIR imagery, 0' contour line, etc.)
- 1,000' boundary will be created digitally and georeferenced

Critical Area Mapping

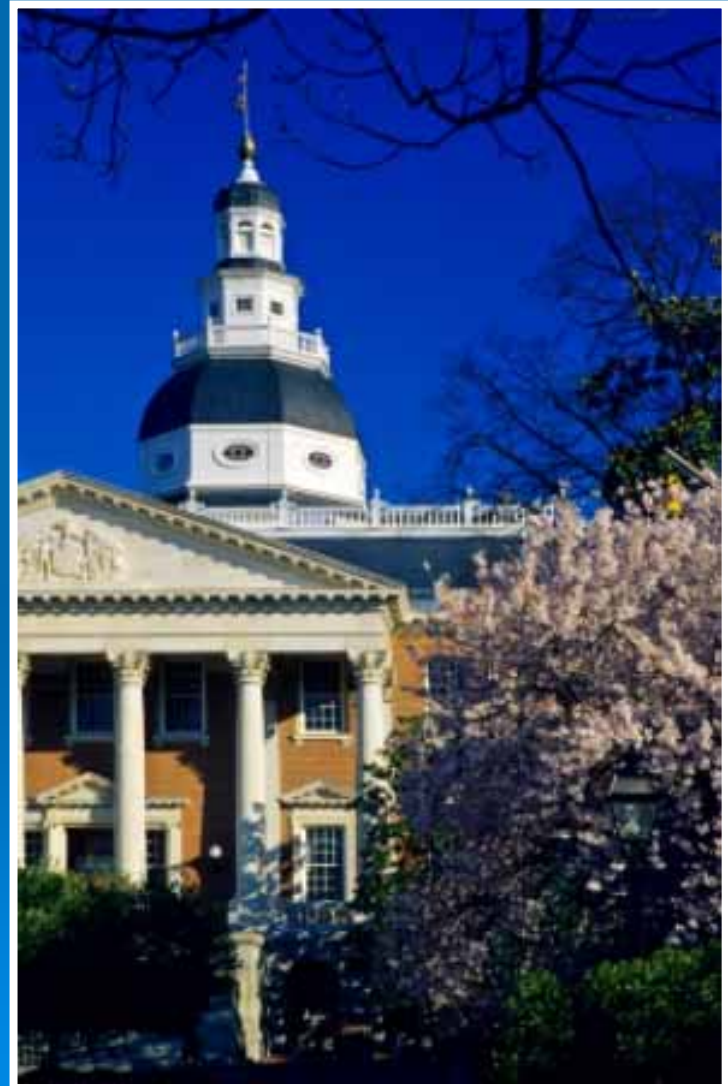
New Maps Will Improve Consistency

- Pilot project – develop methodology
- Consultant does initial shoreline and wetland mapping
- Local and State staff review drafts
- Problem areas resolved cooperatively
- Regulations will address “new areas” and grandfathering
- Consistent methodology
- Uniform products



Regulatory Authority

- Most important part of 2008 legislation
- Tremendous undertaking, CAC has full-time “Regulations Coordinator”
- Approach has been to work closely with stakeholders and use an “open process”
- Regulations adopted: 4
- Regulations in MD Register 2
- Regulations in development 4



Notice Requirements for Government Projects



- Necessary to ensure “transparency”
- New regulations adopted in COMAR 27.03.01.03
- Applies to State projects and specific local projects
- Requires advertisement in a local paper
- Requires posting of site
- Sponsoring agency to collect public comments

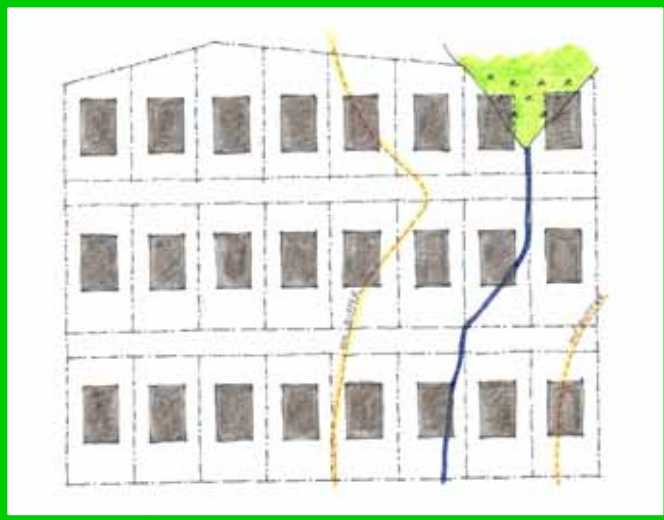
Lot Consolidation and Reconfiguration Regulations



Photo Courtesy of Lynn Betts, NRCS

- Existing process – not specific and was not working
- New regulations adopted in COMAR 27.01.02.08
- Applies to lot line adjustments, reconfigurations, resubdivisions, replatting (whatever they are called)
- Must meet habitat and water quality goals
- Can't increase or intensify impacts in an HPA
- Jurisdiction must make findings

Lot Consolidation and Reconfiguration Findings



- No increase in lots, parcels, or dwellings
- In RCA and LDA – no increase in lot coverage over original plan and no increase to area of steep slopes impacted
- No additional riparian or waterfront lots can be created
- All HPAs must be identified and protection/restoration provided
- Must comply with afforestation and reforestation
- Stormwater management must be provided

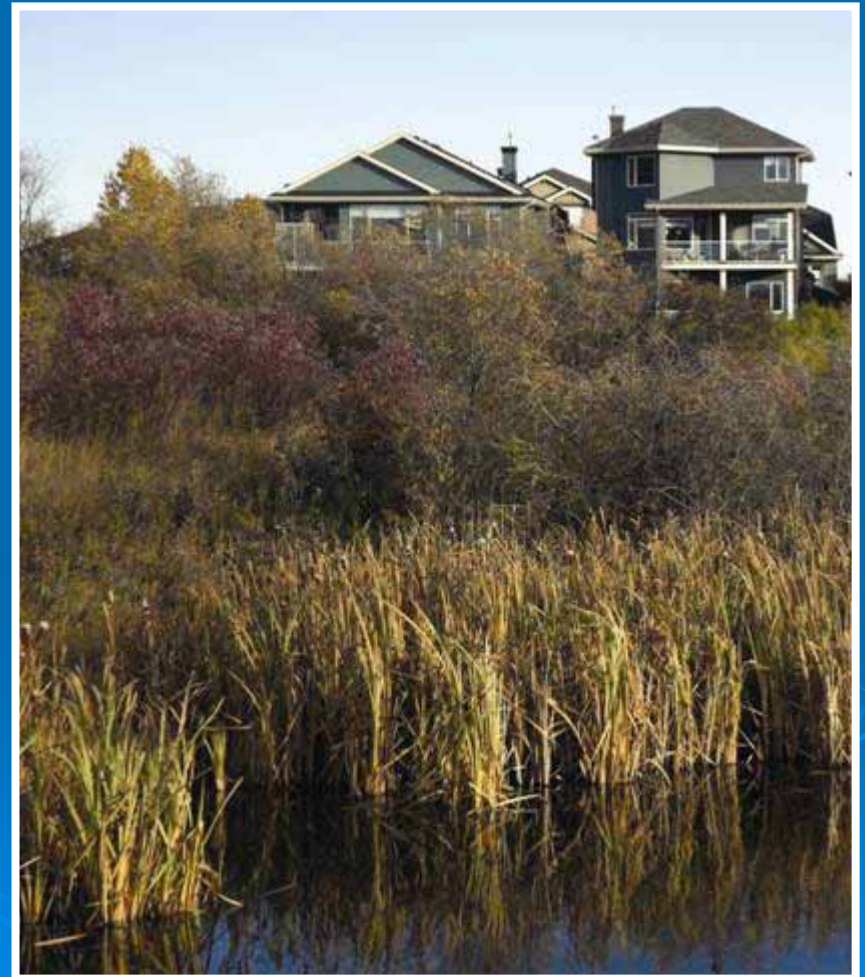
Buffer Regulations

- Buffer concept is key element of Program
- Implementation has been inconsistent and greatly hinders effectiveness of Critical Area Program
- Specific provisions needed
- Work on regulations initiated in early 2009
- Local government staff – key players in development
- Regulations published in Maryland Register – November 20, 2009
- Public hearing held on December 10, 2009
- Currently on hold with AELR Committee to resolve concerns about specific concepts

Buffer Regulations

General Provisions

- New definitions
- Clarifies that “disturbance” of the Buffer is prohibited
- Addresses 200-foot Buffer for new subdivisions in the RCA
- Includes specific provisions for expansion
 - For steep slopes
 - For hydric soils
 - For highly erodible soils
 - For nontidal wetlands of special State concern and other nontidal wetlands



Buffer Regulations Establishment

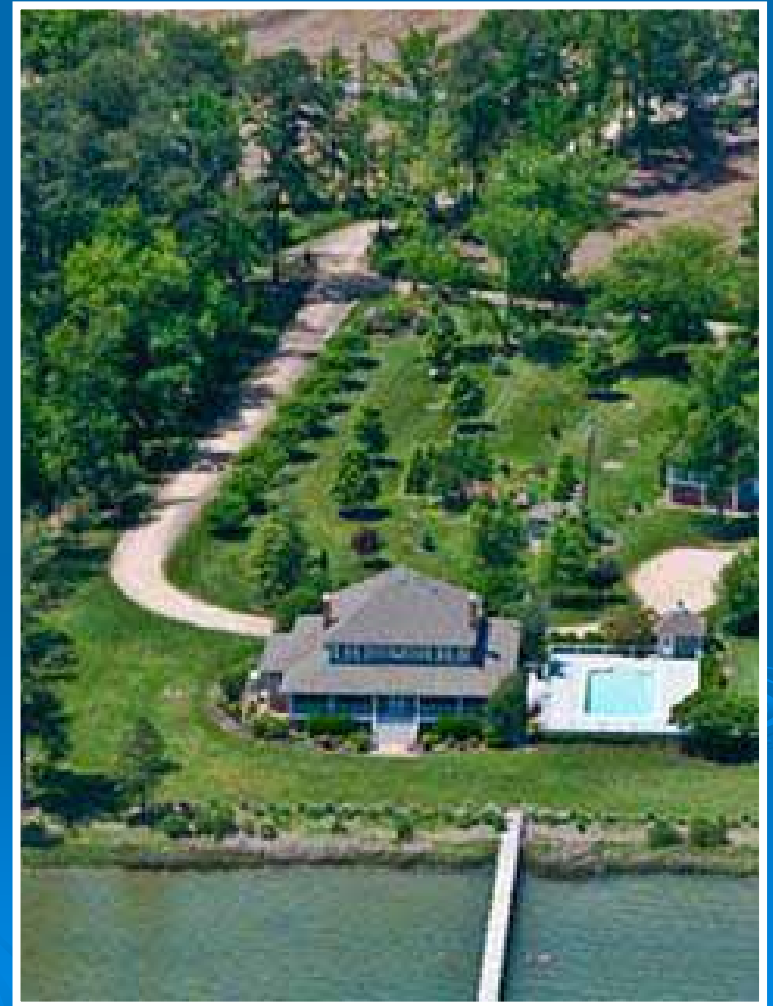
- Add new provisions for Buffer establishment
- Full establishment required for:
 - New subdivisions
 - New lots
 - New development on a vacant lot created after local Program adoption
 - Conversion from one land use to another
- Partial establishment required for:
 - Addition or accessory structure
 - Substantial alteration
 - New lot with an existing dwelling unit



Buffer Regulations

Mitigation and Planting Standards

- Creation of new lawn or turf in the Buffer prohibited
- Use native species
- Require mulch or ground cover
- Provide optimum habitat and water quality benefits
- Mitigation required for all tree removal (including dead, diseased)
- Different ratios depending on activity
 - Shore erosion control 1:1
 - Riparian water access 2:1
 - Water-dependent facilities 2:1
 - Approved variance 3:1
 - Violation 4:1

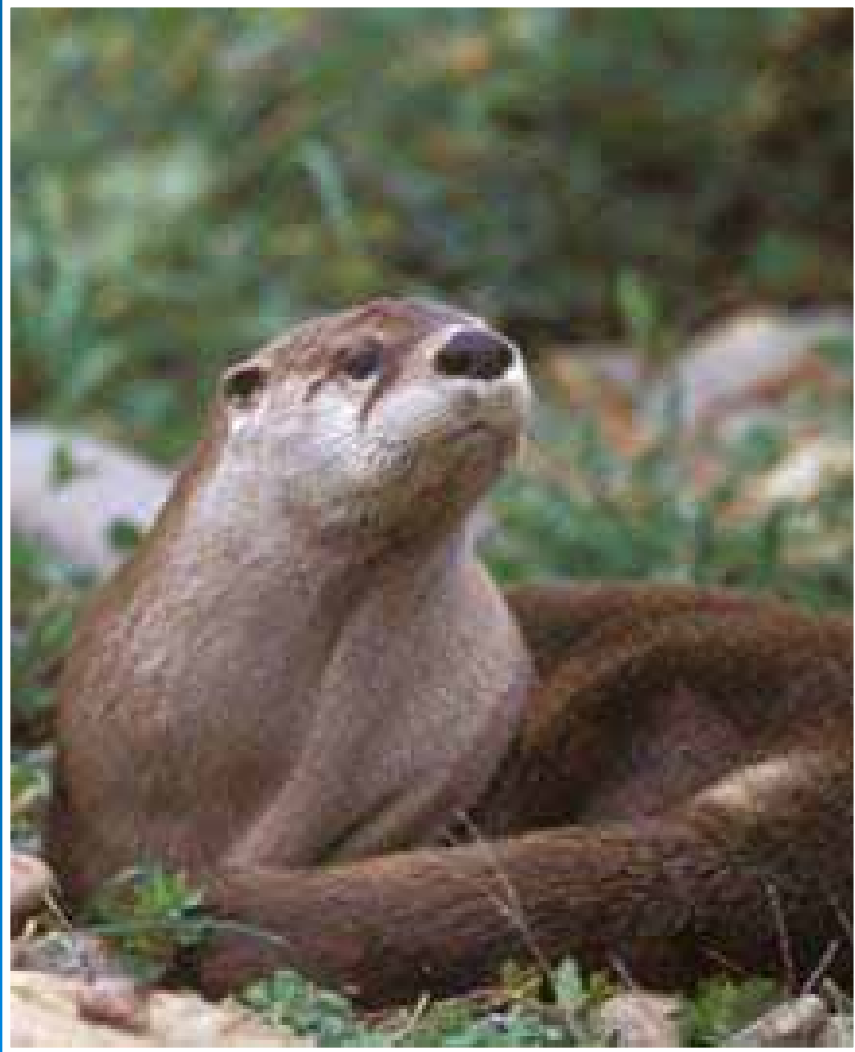


Buffer Regulations

Buffer Management Plans

- Buffer Management Plans required for all development activity
- Simplified
 - Access to a private pier or shoreline (<3' wide)
 - Manual removal of noxious vegetation
 - Filling to maintain a grass lawn
 - Cutting a hazardous tree
- Minor
 - Buffer establishment or mitigation that is less than 5,000 SF
- Major
 - Buffer establishment or mitigation that is greater than 5,000 SF

New Legislation - An Important First Step



- Legislation needed to improve the Critical Area Program
- General Assembly and Governor are looking for success
- New provisions will provide for clear and effective implementation
- Local governments have better tools and more back-up
- Commission can use regulations to be flexible and responsive
- Collaborative process strengthened - key to successful implementation