

**AMENDMENTS TO ARTICLE 8-1.08
ENVIRONMENTAL REQUIREMENTS
(Includes Critical Area Map Amendments)**

Public Hearing Draft

October 16, 2009

**The Public Forum will be held 7 PM, November 3, 2009
Planning Commission Hearing Room, Courthouse Square Bldg.
205 Main Street, Prince Frederick**

**Amendments proposed by Dept. of Planning & Zoning staff shown in red.
Amendments proposed by Critical Area Commission staff shown in blue.**

Additions shown in **bold underline**.

Deletions shown in ~~strikethrough~~.

**ARTICLE 8
ENVIRONMENTAL REQUIREMENTS**

Section 8-1.08. (Current Z.O.: Art. 8-page 21)

Case # 09-8-1-20. Purpose of amendment of Section 8-1.08.C.1.f. Clarifies that Locally Significant Habitats must be designated and mapped by the County.

Case # 09-8-1-21. Purpose of amendment of Section 8-1.08.C.3.b-d. Meets the Critical Area Commission requirements relative to Buffer Management Plans.

Case # 09-8-1-22. Purpose of amendment to Section 8-1.08.D.2.b: Meets the Critical Area Commission requirements relative to expansion of the Critical Area Buffer. For expansion for highly erodible soils and hydric soils, two options are proposed.

Case # 09-8-1-23. Purpose of amendment to Section 8-1.08.D.3.c: Meets the Critical Area Law requiring a 200 ft. Critical Area Buffer in new RCA subdivisions.

Case # 09-8-1-24. Purpose of amendment to Section 8-1.08.D.3.d: Meets the Critical Area Commission requirements relative to mitigation ratios for impacts to the Critical Area Buffer.

C. 1. f. Protect by appropriate means, those plant and wildlife habitats **designated and mapped by the County as Locally Significant Habitat** ~~considered to be of significance by the County~~. Examples of these areas are those whose habitat values may not be of Statewide significance, but are or importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are in unusually high concentrations.

C. 3. b. Critical Area Buffer areas (including expanded Buffer areas) that do not have another habitat Protection Area overlay, require a Buffer Management Plan for development activities, **afforestation or reforestation**, clearing, or cutting of vegetation in these areas. The Buffer Management Plan shall be submitted to the Department of Planning and Zoning for review and approval and shall address the following:

i. Minimization of the removal of vegetation; **and**

ii. Plant and wildlife habitat protection; **and**

iii. Reduction of the runoff of pollutants; **and**

iv. Required reforestation and /or afforestation including a planting plan and other mitigation measures; **and**

v. Protection of the area during development activities;

The specific requirements of buffer management plans are given in Section 8-1.08.D.3. Appeals of decisions made by the Department of Planning and Zoning with regard to **Habitat Protection Plans including** Buffer Management Plans for subdivisions and site plans may be appealed to the Planning Commission. Appeals of decisions regarding **Habitat Protection Plans including** Buffer Management Plans for other activities proposed in **a Habitat Protection Area** ~~the Critical Area Buffer~~ may be appealed to the Board of Appeals.

D. 2. Critical Area Buffer Description.

a. The Buffer shall consist at a minimum of the area 100 feet landward from the Mean High Water Line of tidal waters, the edge of the bank of tributary streams, and the ~~landward edge~~ **upland boundary** of tidal wetlands and shall be expanded as set out in paragraph 'b' of this Section.

b. The Buffer shall be expanded beyond 100 feet to include contiguous, sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development or disturbance may impact streams, wetlands, or other aquatic environments. ~~In the case of contiguous slopes of 15 percent or greater, the Buffer shall be expanded four feet for every~~

~~one percent of slope, or to the top of the slope, whichever is greater. The percent of slope will be measured as an average of the entire extent of steep slope (along the slope) beyond 100 feet from mean high tide, edge of tidal wetlands and tributary streams. The expansion of the Buffer shall be perpendicular to the shoreline, tidal wetland or tributary stream to be protected. The provisions of Section 8-1.08.D.3 apply to clearing within the Buffer area.~~ **The minimum 100-foot Buffer shall be expanded to include the following contiguous areas:**

- i. In the case of contiguous slopes of 15 percent or greater, the Buffer shall be expanded four feet for every one percent of slope, or to the top of the slope, whichever is greater. The percent of slope will be measured as an average of the entire extent of steep slope (along the slope) beyond the 100 foot buffer feet from mean high tide, upland boundary of tidal wetlands and the edge of the bank of tributary streams. The expansion of the Buffer shall be perpendicular to the shoreline, tidal wetland or tributary stream to be protected. The provisions of Section 8-1.08.D.3 apply to clearing within the expanded Buffer area;**
- ii. A nontidal wetland and its 50 ft buffer;**
- iii. A “Wetland of Special State Concern” and its contiguous 100-foot buffer;**
- iv. Highly erodible soils on a slope less than 15% and greater than 5% or a hydric soil to the landward edge of the highly erodible or hydric soil or 300 feet, whichever is less; and**
- v. On a lot or parcel that was created before January 1, 2010, a development activity may be allowed that impacts the expanded buffer for highly erodible soils on slopes less than 15% or hydric soils, if**
 - (a) The development activity is in the expanded portion of the Buffer, but not in the 100 ft Buffer or expanded buffer for 15% slopes,**
 - (b) The entire Buffer occupies at least 75 percent of the lot or parcel; and**
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.**

Option #1,
State

Option #2,
County

- iv. Highly erodible soils on a slope less than 15% and greater than 5% or a hydric soil to the landward edge of the highly erodible or hydric soil or 300 feet, whichever is less; and
- v. On a lot or parcel that was created before January 1, 2010, a development activity may be allowed that impacts the expanded buffer for highly erodible soils on slopes less than 15% or hydric soils,if
 - (a) The development activity is in the expanded portion of the Buffer, but not in the 100 ft Buffer or expanded buffer for 15% slopes, and
 - (b) The entire Buffer occupies at least 75 percent of the lot or parcel; and
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- vi On a lot or parcel that is created on or after January 1, 2010, a development activity may be allowed that impacts the expanded buffer for highly erodible soils on slopes less than 15% or hydric soils,if
 - (a) The development activity is in the expanded portion of the Buffer, but not in the 100 ft Buffer or expanded buffer for 15% slopes,
 - (b) The entire Buffer occupies at least 75 percent of the lot or parcel; and
 - (c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer,
 - (d) The maximum density cannot be achieved on site using minimum lot sizes and standard County setbacks without impacting the expanded Buffer. The minimum reduction in the expanded Buffer necessary to accommodate the proposed development shall be applied.
 - (e) For lots created on or after December 13, 1988, the platted Critical Area Buffer and expanded Buffer shall be the Critical Area Buffer with the exception that the Buffer will be moved landward an equal amount to any land lost due to shore erosion.

c. For subdivisions in the RCA and all projects in the RCA that require a site plan and/or change in use which were submitted on or after July 1, 2008 the Critical Area Buffer shall be 200 ft landward from the Mean High Water Line of tidal waters and tidal wetlands and a 100 ft buffer from the edge of the bank of tributary streams. If the Buffer is not forested, it shall be established in forest. The Buffer shall be expanded beyond 200 ft or 100 ft for tributary streams for the same reasons and in the fashion as described in Section 8-1.08.D.2.b. The 200 ft Buffer for these subdivisions may be reduced to no less than 100 ft or to the edge of the extended Buffer under the following conditions:

- i. An application for subdivision or site plan approval is submitted before July 1, 2008 and legally recorded by July 1, 2010;
- ii. The subdivision or site plan receives growth allocation;
- iii. The maximum density (1 dwelling unit/20 acres) cannot be achieved on site using minimum lot sizes and standard County setbacks without impacting the 200 ft buffer. The minimum reduction in the buffer necessary to accommodate the proposed development shall be applied.
- iv. An Intrafamily transfer allowed under Section 8-1.05.H of this ordinance is precluded. The minimum reduction in the buffer necessary to accommodate the proposed development shall be applied.

3. Buffer Regulations

The following regulations shall govern activities within the Buffer.

a. The Buffer shall be maintained in ~~native~~ **natural** vegetation and shall be managed to achieve or enhance the functions stated in Section 8-1.08. ~~C D-1~~. ~~Cutting, clearing or topping of trees and removal of existing natural vegetation, including understory trees, shrubs and ground cover within the Buffer is prohibited.~~

- i. Except as authorized in Subsection “b” of this Section, disturbance in the Buffer is prohibited.
- ii. Cutting, clearing or topping of trees and removal of existing **natural** vegetation, including understory trees, shrubs and ground cover within the Buffer is prohibited.

- iii. On areas of the property where land disturbance or clearing comes within 25 feet of the Critical Area Buffer, the Buffer shall be demarcated using snow fencing or silt fence prior to clearing, grading, or construction and these protective devices shall remain until construction is complete.
- iv. A 10-foot building setback shall be maintained from the edge of the vegetated Buffers. The Zoning Officer may grant a reduction of the setback after review and recommendation by the Environmental Planner. The setback reduction may only be granted to allow activities permitted in Section 8-2.05.C.6 and for construction of primary residences which could not normally be built because of unusual lot configuration or other site constraints.
- v. Before recordation of a final subdivision:
 - (a) Permanent signs delineating the upland boundary of the Buffer at a ratio of at least one sign per lot or per 200 linear feet of shoreline, whichever is greater, shall be posted.
 - (b) The signs shall be designed to be at least 11” wide and 15” in height, placed at a height of 4.5 feet (but not attached to a tree), and shall state “Critical Area Buffer-No clearing or disturbance permitted.”
- vi. Concurrent with the recordation of a final plat, an applicant shall record a protective easement for the Buffer.
- vii. When a Buffer Management Plan (BMP) is required, a final subdivision application shall not be approved until the jurisdiction has reviewed and approved the BMP.

- b. Notwithstanding the prohibitions of paragraph ‘a’ above, the following activities may be allowed with an approved ~~habitat protection~~ buffer management plan and either a grading permit, grading exemption, or ~~Buffer-cutting~~ vegetation removal permit. No permits are required for pruning limited to the lower one-third of the height of the tree. Tree replacement is required at the ratios given below.

- i. Cutting of trees or removal of vegetation may be permitted where necessary for the following purposes, ~~provided that the vegetation is replaced on a one-to-one (1:1) two-to-one (2:1) basis:~~
- (a) one access to the waterfront for a private pier **(mitigation ratio = 2:1)** or
 - (b) a boat ramp **(mitigation ratio = 2:1)**,
 - (c) other water dependent facility **(mitigation ratio = 2:1)**,
 - (d) **Development in a Special Buffer Management Area consistent with Section 8-1.08.D.4,** or
 - (e) to install or construct a shore erosion protection device or measure, providing the device, measure, or facility has received all necessary State and Federal permits **(mitigation ratio = 1:1)**.

No more than one access through the Buffer is permitted per waterfront lot. A four-foot-wide access is allowed if the access is for steps or a pathway; or a 12-foot-wide access is allowed for vehicular access **to a boat ramp.**

- ii. Individual trees, **living or dead,** may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion **(mitigation ratio = 1:1).**
- iii. Appropriate horticultural practices may be used to maintain the health of individual trees, including removal of noxious, invasive, and exotic species which impair the function and growth of a forested Buffer. Inappropriate horticultural practices, such as topping, girdling, over pruning or severely damaging ~~trees~~ **existing vegetation,** are prohibited.
- iv. Other cutting techniques may be undertaken within the Buffer and/or under the advice and guidance of the Department of Agriculture and/or Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation, ~~or~~ threat from fire, **or to remove invasive species (mitigation ratio = 1:1).**
- v. Selective thinning and cutting may be approved by the Department of Planning and Zoning if the Department determines that the function of the Buffer will not be impaired.

- vi. Removal of vegetation for permitted development and redevelopment activities may be permitted (mitigation ratio = 3:1 in the Critical Area Buffer and 2:1 in the buffer in Special Buffer Management Areas).
 - vii. As long as there is no removal of native vegetation, maintenance of existing lawns and gardens and planting or replacement (within 30 days) of ornamental shrubs is allowed without permits. Planting of native species is recommended.
- c. Buffer Establishment. The Buffer to tidal waters, tidal wetlands or a tributary stream shall be established under the following conditions:
- i. No establishment required for in-kind replacement of a primary structure or improvements within the existing footprint of existing primary structures.
 - ii. For new development on a vacant lot or parcel created prior to December 13, 1988, an area of the Buffer shall be established equal to the total lot coverage approved.
 - iii. For new development on a vacant lot or parcel created on or after December 13, 1988, the entire Buffer shall be established.
 - iv. For a new subdivision or new lot, the entire Buffer shall be established.
 - v. For the conversion of a land use on a parcel or lot to another land use, the entire Buffer shall be established.
 - vi. For an addition or accessory structure, an area of the Buffer shall be established equal to two times the area of new lot coverage approved.
 - vii. For substantial alteration, an area of the Buffer shall be established equal to the total lot coverage; existing and newly approved.
 - viii. All required buffer establishment will be bonded as described in Section 8-1.04.G.4 and will require a Buffer Management Plan.
- d. Disturbance within the Critical Area Buffer based on an approved variance from the Board of Appeals requires mitigation at a 3:1 ratio. Mitigation for a violation (see Section 8-1.09.B) is at a 4:1 ratio.

~~e.~~ Any disturbance within the Critical Area buffer requires either replacement planting on a two-to-one (2:1) basis and the collection of \$0.80 per square foot of disturbance, or if the site has sufficient open areas, replacement planting on a three-to-one (3:1) basis unless otherwise specified herein.

~~e.~~
e. New development, including structures, roads, parking areas and other impervious surfaces, mining and related facilities, or septic systems, shall not be permitted in the Buffer, except for those necessarily associated with water-dependent facilities or for shore erosion control. If no vegetative Buffer exists, one shall be established using native vegetation for any planting required for the activity.

~~d.~~
f. Agricultural activities are permitted in the Buffer, if, as a minimum Best Management Practice, a 25-foot vegetated filter strip measured landward from the Mean High Water Line of tidal waters or tributary streams (excluding drainage ditches), or from the edge of tidal wetlands, whichever is further inland, is established, and further provided that:

- i. The filter strip shall be composed of either trees with a dense ground cover, or thick sod of grass, and shall be so managed as to provide water quality benefits and habitat protection. Noxious weeds, including Johnson grass, Canada thistle, and multiflora rose, which occur in the filter strip, may be controlled by authorized means;
- ii. The filter strip shall be expanded by a distance of four feet for every one percent of slope, for slopes greater than six percent;
- iii. The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved Soil Conservation and Water Quality Plan, a program of Best Management Practices for the specific purposes of improving water quality and protecting plan and wildlife habitat; and provided that the portion of the Soil Conservation and Water Quality Plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip;

- iv. The Best Management Practices shall include a requirement for the implementation of a grassland and manure management program, where appropriate, and that the feeding or watering of livestock, may not be permitted within 50 feet of the Mean High Water Line of tidal water and tributary streams, or from the edge of tidal wetlands, whichever is further inland;
 - v. Farming activities including the grazing of livestock shall not disturb stream banks, tidal shorelines or other Habitat Protection Districts as described in this Section.
 - vi. Where agricultural use of lands within the area of the Buffer ceases and the lands are proposed to be converted to other uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that accomplishes the Buffer functions set forth elsewhere in this Section.
- ~~e.~~ **g.** Commercial harvesting of trees by selection may be permitted to within 50 feet of the landward edge of the Mean High Water Line of tidal waters and perennial tributary streams, or the edge of tidal wetlands, provided that this cutting does not occur in the Habitat Protection Areas described in Section 8-1.08 **F-H** and that the cutting is conducted in conformance with a Buffer Management Plan prepared by a registered, professional forester and approved by the Maryland Forest Service. The plan shall be required for all commercial harvests within the Buffer, regardless of the size of the area to be cut, and shall contain the following minimum requirements:
- i. Disturbance to stream banks and shorelines shall be avoided;
 - ii. The area disturbed or cut shall be replanted, or allowed to regenerate native vegetation in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the Buffer; and
 - iii. The cutting does not involve the creation of logging roads and skid trails within the Buffer; and
 - iv. Sediment and erosion control shall be addressed.
- ~~f.~~ **h.** Grading or disturbance in the Buffer, without tree removal, is only allowed for erosion control or to enhance the Buffer function, and requires a grading permit and mitigation as per Section 8-1.04.G.3.**e.**

- ~~g.~~ i. Fences four feet or less in height are permitted in the Critical Area Buffer provided that the owner or the owners' agent obtains a permit and the fence is made of wood, a material that has a wood-like appearance, chain-link, or wire. Fences that require a foundation are not permitted. A variance from the Board of Appeals is required for any fences not meeting these criteria.
- ~~h.~~ j. On grandfathered lots in the Critical Area (see Section 8-1.07), additions to the principal structure of less than 50 square feet are permitted in the Critical Area Buffer provided:
 - i. no trees are removed during construction and
 - ii. the addition is more than 50 feet from mean high water, the edge of tidal wetlands, or tributary streams and
 - iii. the addition is not on slopes greater than 15 percent and
 - iv. the addition is not within the cliff setbacks (see 8-2.02).
 - v. When grading and/or clearing is allowed in the Buffer, super silt fencing is required to be installed and a vegetative mat or sod shall be installed at finished grade.

k. Buffer Management Plans (BMP)

- i. **A BMP shall address the criteria listed in Section 8-1.08.C.3.b.**
- ii. **A BMP is not required for maintenance of an existing lawn or existing garden in the Buffer, or for the planting or replacement of ornamental shrubs or groundcover not required for afforestation, mitigation or other permit or violation requirement.**
- iii. **A BMP shall be submitted for the following activities: when establishment of the buffer is required or when disturbance to the buffer will result from a variance, subdivision approval, site plan approval, shore erosion control permit, building permit, grading permit, vegetation removal permit, or special exception.**
- iv **A BMP shall include the following**
 - (a) Show LOD including type of vegetation and area of all vegetation removal including all area for which canopy is being removed;**
 - (b) Planting schedule including species, size and spacing of proposed plantings;**

- (c) Maintenance plan including invasive species control, watering and monitoring; and
- (d) Estimated amount of bond and review and inspection fee.
- (e) See additional requirements in Sections v, vi, and vii of this Section.

v. Simplified Buffer Management Plan (SBMP)

- (a) A SBMP is required for the following activities: providing access to a private pier or shoreline that is up to 3 feet wide, manually removing invasive or noxious vegetation, filling to maintain an existing grass lawn; or cutting a tree that is in imminent danger of falling and causing damage to a dwelling or other structure, in danger of falling and causing blockage to a stream, or likely to accelerate shore erosion. When homeowner actions are necessary in emergency situations (tree poses imminent danger of falling and causing damage to a dwelling or other structure) to remove trees in the buffer, the homeowner shall take a photograph of the tree, remove the tree that poses imminent danger, and submit a SBMP within 7 days of removal.
- (b) In addition to the requirement of Section iv above, a SBMP shall include: a brief narrative describing the proposed activity, including the anticipated start date and method to be used; the proposed mitigation, the proposed planting date, and the signature of the party responsible for the proposed activity and for ensuring the survival of the planting.

vi. Minor Buffer Management Plan (MiBMP)

- (a) A MiBMP is required when Buffer establishment or required mitigation (planting) is less than 5,000 square feet.

(b) In addition to the requirement of Section iv above, a MiBMP shall include: A plan that shows the proposed limit of disturbance, the total number and size of trees to be removed and the arrangement of the planting to be done, a landscape schedule that shows the proposed species type, the quantity of plants, the size of plants to be installed, and the planting date, a maintenance plan for the control of invasive species, pests, and predation including invasive species and pest control practices, the provision of at least two years of monitoring, a reinforcement planting provision if survival falls below the standards set in Tables 8-1.3 and 8-1.4, an inspection agreement that grants permission to the County to inspect the plantings at appropriate times, the information on which calculation of the amount of Buffer to be planted was based; the signature of the party responsible for the proposed activity and for ensuring the survival of the planting.

vii. Major Buffer Management Plan (MaBMP)

(a) A MaBMP is required when Buffer establishment or required mitigation (planting) is equal to or greater than 5,000 square feet.

(b) In addition to the requirement of Section iv above, a MiBMP shall include: A plan that shows the proposed limit of disturbance, the total number and size of trees to be removed and the arrangement of the planting to be done, a landscape schedule that shows the proposed species type, the quantity of plants, the size of plants to be installed, and the planting date, a maintenance plan for the control of invasive species, pests, and predation including invasive species and pest control practices, the provision of at least two years of monitoring, and a reinforcement planting provision if survival falls below the standards set in Tables 8-1.3 and 8-1.4, a long-term protection plan that includes evidence of financial assurance, an anticipated planting date before construction or the sale of the lot, an inspection agreement that grants permission to the County to inspect the plantings at appropriate times, the information on which calculation of the amount of Buffer to be planted was based; the signature of the party responsible for the proposed activity and for ensuring the survival of the planting. A single species may not exceed 20 percent of the total planting requirement and shrubs may not exceed 50 percent of the total planting requirement.

viii. When a BMP is required, no permits shall be issued unless:

(a) The BMP is implemented, or

(b) The planting bond has been paid to assure the planting and long-term survivability of the planting.

ix. Failure to implement a BMP in the time period specified in the BMP, is a violation. No permits will be issued if such a violation exists.

I. Buffer Mitigation

i. New areas of managed lawn or turf are prohibited. Beneath required plantings, vegetated ground cover or mulch is required.

- ii. Mitigation is meant to offset area disturbed and to restore the ecological function.
- iii Mitigation shall require planting of overstory and understory unless otherwise approved by the Department of Planning and Zoning.
- iv. Individual trees removed will be mitigated based on canopy coverage lost in square feet.
- v. Forested areas will be mitigated based on square footage of forest removed including the canopy of trees removed at the edge of the forest. **Where canopy does not exist, mitigation will be based on the square footage of subcanopy or herbaceous coverage.**
- vi. Only native plants listed in the “Calvert County Native Plant List”, approved by the Board of County Commissioners and available from the Department of Planning and Zoning may be used for mitigation plantings. Mitigation credits for plantings are also given in the “Calvert County Native Plant List”.
- vii. Single species may not exceed 20% of the total planting requirement.
- viii. Large and small shrubs may not exceed 50% of the total planting requirement.
- ix. Long term protection shall be provided for the buffer areas established under this provision (plats recorded in the land records).
- x. For new subdivisions, signs shall be posted to delineate the Buffer at no less than one per lot or 200 linear feet of shoreline.
- xi. Buffer stocking standards are given in the “Calvert County Native Plant List”, approved by the County Commissioners and available from the Department of Planning and Zoning.
- xii. For the establishment of more than one acre, natural regeneration may be used for up to 50% of the area required to be established, if
 - (a) The Plan does not include any managed lawn or turf and includes invasive species control,
 - (b) All of the natural regeneration is within 50 feet of a natural forest that contains a seed bank of native species adequate for natural regeneration,

(c) The Plan includes a supplemental planting plan for subsequent implementation if the natural regeneration does not succeed, and

(d) The financial assurance provided for implementing the Buffer Management Plan is sufficient to cover the cost of planting an equivalent area; and specifies that release of the financial assurance may not occur until 5 years after the date of Plan approval or the areal coverage of the Buffer is at least 300 native woody stems, on a per acre basis, that are at least 4 feet in height, whichever is later.

(e) At the end of 5 years, after the date of approval of a natural regeneration Plan, an applicant shall implement a supplemental planting plan for at least 2 years if the areal coverage of the Buffer is not, on a per acre basis, at least 300 native woody stems of at least 4 feet in height.

m. Fee in Lieu of Buffer Mitigation

i. The County shall collect a fee in lieu of Buffer mitigation when planting requirements cannot be met onsite.

State
Option #1

ii. The fees in lieu of Buffer planting shall be \$1.50 per square foot of mitigation not accommodated onsite and shall be placed in the Critical Area Fees in Lieu Fund.

County
Option #2

ii. The fees in lieu of Buffer planting shall be \$0.40 per square foot of mitigation required and not accommodated onsite and shall be placed in the Critical Area Fees in Lieu Fund.

n. Planting Requirements for Required Plantings in the Critical Area

i. The planting must meet the criteria listed in Tables 8-1.2, 8-1.3 and 8-1.4, below:

ii. A variance to these requirements cannot be granted

Table 8-1.2. Planting Options

<u>Requirement</u>	<u>Amount</u>	<u>Options</u>
<u>Establishment</u>	<u>Less than ¼ acre</u>	<u>Landscaping stock according to Table 8-1.3 for the entire area</u>
	<u>1/4 acre to less than or equal to 1 acre</u>	<u>At least 50% of area in landscaping stock according to Table 8-1.3, the remainder according to Table 8-1.4</u>
	<u>Greater than 1 acre to less than or equal to 5 acres</u>	<u>At least 25% of area in landscaping stock according to subsection (3), the remainder according to subsection (4)</u>
	<u>Greater than 5 acres</u>	<u>At least 10% of area in landscaping stock according to subsection (3), the remainder according to subsection (4)</u>
<u>Mitigation</u>	<u>Less than 1 acre</u>	<u>Landscaping stock according to subsection (3) for the entire area</u>
	<u>1 acre or greater</u>	<u>At least 50% of area in landscaping stock according to subsection (3), the remainder according to subsection (4)</u>

<u>Vegetation Type</u>	<u>Minimum Size Eligible for Credit</u>	<u>Maximum Credit Allowed (square feet)</u>	<u>Maximum Percent of Credit</u>
<u>Canopy tree</u>	<u>2 inch caliper and 8 feet high</u>	<u>200</u>	<u>Not applicable</u>
<u>Canopy tree</u>	<u>1 inch caliper and 6 feet high</u>	<u>100</u>	<u>Not applicable</u>
<u>Understory tree</u>	<u>1 inch caliper and 6 feet high</u>	<u>75</u>	<u>Not applicable</u>
<u>Large shrub</u>	<u>1 gallon and 4 feet high</u>	<u>50</u>	<u>30</u>
<u>Small shrub</u>	<u>1 gallon and 18 inches high</u>	<u>25</u>	<u>20</u>
<u>Herbaceous perennial*</u>	<u>1 quart</u>	<u>2</u>	<u>10</u>
<u>Planting Cluster 1 *</u>	<u>1 canopy tree; and 3 large shrubs or 6 small shrubs of sizes listed above</u>	<u>300</u>	<u>Not applicable</u>
<u>Planting Cluster 2*</u>	<u>2 understory trees; and 3 large shrubs or 6 small shrubs of sizes listed above</u>	<u>350</u>	<u>Not applicable</u>

*** These options are available only for Buffer establishment and Buffer mitigation of less than 1**

All landscaping stock planted shall be 100 percent guaranteed for at least 2 years after planting is completed.

<u>Stock Size of Trees Only</u>	<u>Required number of Stems Per Acre</u>	<u>Survivability Requirement</u>	<u>Minimum Financial Assurance Period After Planting</u>
<u>Bare-root seedling or whip</u>	<u>700</u>	<u>50 percent</u>	<u>5 years</u>
<u>1/2" to 1" container grown trees</u>	<u>450</u>	<u>75 percent</u>	<u>2 years</u>
<u>1" or more container grown trees</u>	<u>350</u>	<u>90 percent</u>	<u>2 years</u>

o. Planting Location Priorities

- i. First priority. On site in the Critical Area Buffer. Other priorities can only be considered when all area in the buffer has been planted;**
- ii. Second priority. On site and adjacent to the Buffer;**
- iii. Third priority. On site elsewhere in the Critical Area;**
- iv. Offsite in the Critical Area; or**
- v. Payment of fees-in-lieu of planting at a rate set by the Board of County Commissioners.**

Section 8-1.08.D.4 (Current Z.O.: Art. 8-page 26)

Purpose of amendment to Section 8-1.08.D.4.b&d: To delete unnecessary wording.

Case # 09-8-1-25. Purpose of amendment to Section 8-1.08.D.4.e: Meets the Critical Area Commission requirements relative to Special Buffer Management Areas (SBMA). State option requires mitigation for new lot coverage and altered lot coverage in the SBMA, a 30 ft Buffer in Solomons for the expansion or redevelopment of existing structures, and a 50 ft Buffer for removal of existing structures and new development. The County option is the same, except that a 30 ft. buffer would be required in Solomons for all types of development. The Planning and Zoning recommendation simplifies the Section by omitting Subsections i-iii and adding the requirement for mitigating altered impervious surface in the Offset Requirement Section, 'h'.

Case # 09-8-1-26. Purpose of amendment to Section 8-1.08.D.4.f.iv: The wording proposed for deletion is covered in the Offset Requirements Section, 'h'.

Case # 09-8-1-27. Purpose of amendment to Section 8-1.08.D.4.gi: Meets the Critical Area Commission requirements relative to Special Buffer Management Areas (SBMA) in an IDA subdivision including requirements for 15% tree cover of lot or parcel, offsets, and a buffer management plan, which is a type of Habitat Protection Plan (HPP, Section 8-1.08.C) for removal of vegetation in an IDA SBMA.

Case # 09-8-1-28. Purpose of amendment to Section 8-1.08.D.4.h: Proposed changes allows for non-vegetated access to the water through the buffer and requires mitigation and offsets for impervious surface altered in the SBMA in addition to those created.

4. Special Buffer Management Areas

- a. The location of Special Buffer Management Areas are designated by the Board of County Commissioners and approved by the Critical Area Commission and are depicted on Maps 8-1.1 and 8-1.2.

- b. New development or redevelopment is permitted provided that the development and redevelopment rules and offsetting requirements set forth in paragraph ~~'e'~~ **'h' and 'i'** of this Section are observed. ~~Section 8-1.08.D.3.b. also applies.~~
- c. Shore erosion protection measures are permitted provided that such measures are consistent with the shore erosion protection policies described in Section 9-8.01 and provided that the measures have all applicable State and Federal permits.
- d. Cutting or clearing of trees and removal of vegetation is permitted as described in Section 8-1.08.D.3. ~~eb. under a Buffer-cutting permit.~~
- e. Development and Redevelopment Rules. In the Solomons Town Center, the minimum Buffer is 30 feet. Outside the Solomons Town Center, the minimum Buffer is the average of the setbacks of structures on adjacent properties or 50 feet, whichever is greater.
 - i. Existing Structures - In cases where an existing structure does not meet the Buffer requirements of this Section, the expansion or redevelopment of the structure may not extend shoreward. Any **impervious surfaces lot coverage** created within the Special Buffer Management Areas shall be offset as described in the paragraph **'h' and 'i'** ~~'f' and 'g'~~ of this Section.
 - ii. Removal of Existing Structures - When a structure within the Special Buffer Management Area is removed, or destroyed, it may be replaced no closer than 50 feet from the edge of tidal waters, tidal wetlands, or tributary streams. Any impervious surfaces created **greater in extent to the pre-existing impervious surfaces or altered in conjunction with a development** activity within the Special Buffer Management Areas shall be offset as described in paragraphs ~~'f'~~ **'h'** and ~~'g'~~ **'i'** of this Section.
 - iii. New Development - New development shall be located at least 50 feet from the edge of tidal water, tidal wetlands, or tributary streams.

OPTION 1: CAC Staff proposed wording.

OPTION 2: P&Z Staff recommends the wording shown to the right, with out paragraphs 'i' through 'iii' as proposed by CAC Staff.

- e. Development and Redevelopment Rules. In the Solomons Town Center, the minimum **Critical Area** Buffer is 30 feet. Outside of the Solomons Town Center, the minimum **Critical Area** Buffer is the average of the setbacks of structures on adjacent properties or 50 feet, whichever is greater **and offsets described in paragraph 'h' and 'i' of this subsection are required.**
- ~~iv.~~ Subdivision within LDA and LDA-3 Special Buffer
- ~~f.~~ Management Areas – Such land in an LDA or LDA-3 area may be subdivided and retain its status if it meets all of the following criteria:
 - ~~(1)~~ **i.** The original parcel is less than five acres and it is designated LDA.
 - ~~(2)~~ **ii.** Structures, roads and parking areas must be a minimum of 50 feet from tidal waters, the **edge upland boundary** of wetlands, or **the edge of bank of** tributary streams. The total area of existing and new accessory structures per lot in the Buffer in the subdivision shall not exceed 1,000 square feet.
 - ~~(3)~~ **iii.** Community sewer must serve the property.
 - ~~(4)~~ **iv.** Offsetting requirements listed in paragraph ~~'e' and/or 'f' below 'h'~~ must be met. ~~Compliance with the requirements set forth in Section 'd.i.' shall be met on-site through planting or protection of existing natural vegetation within the 50-foot setback. A landscape plan showing existing and proposed vegetation within the setback shall be submitted and approved as part of the subdivision review process. For projects that are required to be submitted to the Critical Area Commission for review and comment, the landscape plan shall be part of the submittal.~~
 - ~~(5)~~ **v.** Housing density does not exceed two dwelling units per acre.
 - ~~(6)~~ **vi.** Any future shore erosion control on the property shall be non-structural if it is practical and effective at the proposed site.

- ~~(7)~~
vii. A 10% reduction in pollutants from stormwater will be met on-site through the implementation of Best Management Practices (BMPs) unless findings are made by the Department of Planning and Zoning and/or the Planning Commission that the implementation of BMPs on site is not feasible because of site conditions such as soil type or depth to water table. This requirement applies to all subdivisions in Special Buffer Management Areas in the Critical Area. If the 10% reduction cannot be obtained the offsets as described in Section 'h' and 'i' below shall be required.
- ~~(8)~~
viii. If land is subdivided, but does not meet the criteria of this Section for subdivision, only the parcel or lot that retains the original primary structure will remain in Special Buffer Management Area status. Any new lots must fully comply with the provisions of this Ordinance.
- ~~v.~~
g. Subdivision within IDA Special Buffer Management Areas – Land in a Special Buffer Management Area may be subdivided and retain its status if it meets all of the following criteria:
 - ~~(1)~~
i. Any development activity, including structures, roads, and parking areas, must be set back a minimum of 50 feet from tidal waters, tidal wetlands, or tributary streams, except in the Solomons Town Center, where the minimum setback is 30 feet. Accessory structures may be permitted within the Buffer, but not within the minimum 50-foot setback.
 - ~~(2)~~
ii. Community sewer must serve the property.
 - ~~(3)~~
iii. The stormwater management plan for a development shall meet the requirements in Section 8-1.03.F.2, except that 20% reduction in pollutants is required (rather than the 10% specified in the referenced Section).
 - iv.** The development activity within the Special Buffer Management Area shall minimize impact to the Buffer.
 - v.** Development or redevelopment within the Special Buffer Management Areas requires that at least 15 percent of the total acreage of the lot or parcel be in forest or developed woodland.

vi. Existing vegetation may not be removed from the Special Buffer Management Area except in accordance with an approved Buffer Management Plan designed to enhance the buffer.

vii. The offset requirements of paragraph 'h' and 'i' of this Section are required.

~~f.~~ ~~Offset Requirements: New development or redevelopment in the Special Buffer Management Exemption Area which causes impervious surfaces as described in this Section shall be required to offset for such developments as follows:~~

- h.
- i. Except for authorized proposed or existing access to the water, the extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained, in natural vegetation; ~~and~~
 - ii. Natural vegetation of an area twice the extent of the impervious surface lot coverage created or altered shall be planted on-site or in an offset area or other location as may be determined by the ~~Board of County Commissioners~~ Department of Planning and Zoning. The Department of Planning and Zoning may collect fees in lieu of such planting for purposes described in the Buffer Offset Program described in paragraph 'g' 'i' of this Section.
 - iii. A landscape plan showing existing and proposed vegetation within the Buffer shall be submitted and approved as part of the subdivision review process. For projects that are required to be submitted to the Critical Area Commission for review and comment, the landscape plan shall be part of the submittal.

~~g.~~ i. Buffer Offset Program: Fees-in-lieu of planting, as described in this Section, shall be used for purposes directly related to the Calvert County Critical Area Program. Such purposes may include:

- i. Projects that improve water quality or that create, improve or restore fish, wildlife or plant habitat.
- ii. Education or public information activities that would create awareness and understanding of the County Critical Area Program.
- iii. Those purposes listed in Section 8-1.04.G.1.c.viii.

Case # 09-8-1-29. Purpose of amendment to Section 8-1.08.F.2&3: Reference is made to the new Habitat Protection Area Maps.

2. Boundaries

- a. Existing Habitat Protection Areas, other than the Critical Area Buffers and extended Buffers and Forest Interior Dwelling Bird Habitat, are identified on the official Critical Area Habitat Protection Area maps. Future districts are to be delineated by the Board of County Commissioners if the Secretary of the Department of Natural Resources designates additional species by regulation.
- b. No designation of habitat and protective measures for newly recognized rare, threatened or endangered species and their habitats shall be accomplished unless the affected public is given an adequate opportunity to be heard. The protection measures shall be adopted within 12 months of the Secretary's designation.

3. 1) Administration

- a. ~~The Board of County Commissioners has designated a protection area around each of the habitats occurring in the County within which d~~Development activities and other disturbances shall be prohibited in habitat protection areas unless it can be shown that these activities or disturbances will not have or cause adverse impacts on these habitats; ~~a red line has been drawn on a mile radius around each habitat and these red circles are shown on the Critical Area Habitat Protection Area Maps.~~
- b. At such time as an activity is proposed which might adversely affect a habitat protection area, the applicant shall provide protection measures ~~will be developed~~ using the expertise of the Maryland Department of Natural Resources and other appropriate public agencies and private organizations.
- c. The following protection measures are required as a minimum for Bald Eagle nesting sites which have been verified by the Department of Natural Resources and shall be addressed in a Habitat Protection Plan submitted by the applicant:
 - i. A protection zone of one-quarter mile (1,320 feet) in radius around each Bald Eagle nest is established.

- ii. Clearcutting or harvesting of timber (except limited timber stand improvement) will not be allowed within one-quarter mile (1,320 feet) of the nest site during the nesting period, which is December 15th to June 15th.
- iii. Land clearing and construction within the protection zone will not be allowed during the nesting season (December 15th to June 15th), unless specifically approved by the Maryland Department of Natural Resources.
- iv. Limited timber stand improvement and maintenance is allowed between 660 feet and the outer limit of the protection zone outside the nesting period (June 16th to December 14th).
- v. Limited timber stand improvement, maintenance and selective cutting may be allowed between 330 feet and the outer protection zone anytime after the nesting season.
- vi. No timber cutting, land clearing or building, road or trail construction may be allowed within 330 feet of a verified nest.
- vii. If a Bald Eagle nest has not been used for three successive nesting seasons, then any protective regulations applied to the specific site may be removed after verification by the Maryland Department of Natural Resources Forest Service that the nest was unused.
- ~~viii. Variances from these regulations may be granted upon subject to recommendation by the Maryland Department of Natural Resources Forest Service, and in accordance with Section 11-1.01.B of this Ordinance.~~
- ~~ix.~~ viii. Existing agricultural activities which are in compliance with this Section may continue in the protection zone though any intensification of activity within the 330-foot zone during the nesting season shall require a protection plan to be developed and approved by the Department of Natural Resources.