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**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

August 3, 2020

Miguel Salinas  
Talbot County Assistant Planning Officer  
Talbot County Planning and Zoning  
215 Bay Street, Suite 2  
Easton, MD 21601

**Re: Draft Working Waterfronts Overlay District**

Dear Mr. Salinas:

Thank you for the opportunity to coordinate with County staff and provide comments on the draft Working Waterfront Overlay District (WWOD) proposal, which consists of a new section to Article III of the Zoning Code outlining the provisions of the WWOD as well as text amendments to other related provisions of the County Zoning Code, including water-dependent facilities. The design of the WWOD zoning overlay is to allow for the protection of existing working waterfronts in order to promote and foster the economic revitalization of both maritime-dependent and maritime-related uses within Talbot County.

The proposed overlay defines water-dependent, water-related, and water-enhanced uses and then specifies how these uses are permitted within three sub-districts. Within two of these districts, the County proposes to implement a Waterfront Revitalization Area (WRA) designation. The purpose of the WRA is to allow the County to authorize non-water dependent lot coverage in the Buffer. As you know, in order for the Commission to approve any change to the County's Critical Area Program, the County must demonstrate that the program change is consistent with all three goals of the Critical Area law:

- To minimize adverse impacts on water quality;
- To conserve fish, wildlife, and plant habitat; and
- To establish land use policies that accommodate growth while addressing the fact that even if pollution is controlled, the number, movement, and activities of people in that area can create adverse environmental impacts.

Talbot County's proposed WRA allows for the location of certain non-water dependent uses within the Buffer, based on the history and intensity of use of the site. The language includes the following allowances or standards:

- Allowance for a pedestrian walkway or promenade for the public;

- Reduction of the waterfront setback up to 25 feet if a walkway or promenade is proposed;
- Exemption from mitigation requirements for any impervious area placed into a walkway or promenade; and
- Allowance of non-water dependent uses associated with water dependent structures or activities within the Shoreline Development Buffer provided that they occupy less than 50% of a structure.

As you know, we have met with County staff on a few occasions to discuss the framework of the WWOD and WRA language. This included a site visit to Tilghman Island last fall to look at potential WRA sites. Based on those meetings, and based on the current draft, we wanted to provide constructive feedback to the County, as we have concerns that the drafted WRA language may not provide enough measures for habitat and water quality protection, particularly as it pertains to the impacts of additional non-water dependent development in the Buffer on vulnerable, flood-prone sites. However, we believe that the upcoming revisions to the Commission's water-dependent facilities regulations and along with minor revisions to Modified Buffer Area provisions within the County's zoning code can provide the County the flexibility to permit certain commercial maritime facilities and activities within the Buffer in a manner that meets the goals of the Critical Area law and the goals of the WWOD.

#### Modifications to the Draft Working Waterfront Overlay District Language

In reviewing the Working Waterfront Overlay District and Waterfront Revitalization Area text and mapping amendments to the Critical Area Commission, it appears that the draft language regarding the WRA allows for a significant increase in non-water dependent development in the Shoreline Development Area, particularly within vulnerable flood-prone areas; however, the draft language does not provide an assessment to address how water quality and habitat impacts will be minimized or offset when developing in these areas. Without such measures, it is unclear if the language meets the goals of the Critical Area Law and thus can be approved. Moreover, several uses listed in the County's list of proposed water-dependent uses are not wholly consistent with the Commission's current or draft water-dependent regulations, including marine contracting, marine fabrication, and marine salvaging service.<sup>1</sup> For other listed water-dependent uses, it is unclear if they conflict with the Commission's water-dependent regulations as no definition is provided. We would like to resolve any inconsistencies with state regulations prior to the County Council proposing legislation to adopt the WWOD and associated text changes.

In speaking with the County, one of the major goals of establishing the WRA was to allow uses such as crab steaming businesses, marine product sales and seafood markets to occupy less than 50% of an existing water-dependent structure located within the Shoreline Development Buffer. We believe that this goal can still be met if revisions are made to the County's Modified Buffer Area provisions. The County has great flexibility under the Modified Buffer Area section of the

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<sup>1</sup> These uses do not necessarily always include by their intrinsic nature a requirement that they be located in the Buffer in order to access the water. Marine contracting is not defined in the Code. Marine Fabrication and Marine Salvaging Services include activities that do not necessarily require a location at or near the shoreline. None of these uses include provisions in the Land Use Table of the County Code describing where and how they may be located consistent with COMAR 27.01.03.

code to create development and mitigation standards that are specific to working waterfronts. This includes allowing non-water dependent structures within the Buffer but outside of the setback if proper mitigation is provided. In addition, we are open to discussing whether language can be added to the MBA provisions to allow a water-related use to be located within an existing water-dependent structure.

### **COMMENTS ON THE WATER-DEPENDENT FACILITY CHANGES**

#### Critical Area Program Update Approval Process

Please note that any amendment to a local Critical Area Program first requires local approval, and then requires approval from the Critical Area Commission. When reviewing any change to a local Critical Area program, the Critical Area Commission must determine that the new update meets the three goals of the Critical Area Law noted on the first page of this letter.

Once again, Critical Area staff supports a targeted program to enhance working waterfronts, and we are available to offer assistance and guidance to ensure that any proposed text and/or mapping amendments are consistent with the Critical Area Law and Criteria.

In particular, Commission staff is open to working with the County to review the water-dependent facilities and Modified Buffer Area provisions to ensure that any proposed revisions mentioned are consistent with state regulations. We appreciate the opportunity to work with County staff in this effort.

Thank you for the continued coordination with Commission staff on the draft WWOD language. If you have any questions or would like to discuss further, you may contact me at 410-260-3468.

Sincerely,



Jennifer Esposito  
Natural Resources Planner

cc: Ms. Mary Kay Verdery, Talbot County  
Ms. Katherine Charbonneau, CAC  
Ms. Emily Vainieri, CAC  
Dr. Nick Kelly, CAC