

Critical Area Commission
Chesapeake and Atlantic Coastal Bays
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HOUSE BILL 1253

OVERVIEW OF 2008 LEGISLATION

MAY 20, 2008

WHY LEGISLATIVE CHANGES WERE NECESSARY

- Fill gaps in operational structure and enhance State-local coordination
- Clarify and strengthen enforcement procedures
- Streamline the Critical Area Program in order to enhance consistency, predictability, and fairness
- Protect Maryland's tidal shoreline from negative impacts of growth and development

APPLICABILITY

The provisions of House Bill 1253 generally take effect on July 1, 2008. The provisions of the legislation are applicable regardless of whether a county, city, or town government has amended its Critical Area program, ordinance, plan or regulations. There are specific grandfathering provisions that relate to many aspects of the legislation that will allow flexibility for certain projects that have been formally submitted to a local government for review prior to July 1, 2008. Applicants are encouraged to discuss grandfathering related to specific project applications with the staff of the local government.

200-FOOT BUFFER REQUIREMENT FOR SPECIFIC PROJECTS ON RCA LANDS

- 100-foot Buffer is expanded to 200 feet for new subdivisions in the RCA that remain RCA.
- 100-foot Buffer is expanded to 200 feet for projects requiring site plan approval and involving a change in land use in the RCA.

- Local jurisdictions may reduce the 200-foot Buffer under procedures approved by the Commission.
- The 200-foot Buffer does not apply to residential development on existing lots.
- Forthcoming regulations will provide clarification and additional specificity.

LICENSING AND VIOLATIONS BY CONTRACTORS AND OTHERS

- Licensed home improvement contractors, marine contractors, builders, tree experts, landscaping firms, and others can lose their licenses for Critical Area violations.
- Shore erosion control projects are now considered a type of “home improvement,” and contractors performing this type of work are now included in the licensing regulations in the Business Regulation Article of the Annotated Code of Maryland.



SHORE EROSION PROTECTION

- In coordination with changes made to MDE’s regulations, improvements to protect a person’s property against erosion shall consist of nonstructural shoreline stabilization measures, such as marsh creation, except in areas where it can be demonstrated that these measures are not feasible or are otherwise authorized by MDE.

- MDE will develop maps to identify areas that are appropriate for structural shoreline stabilization measures.
- In making the feasibility determination, MDE will consider areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural measures.
- A waiver process will be part of the regulatory structure.

GROWTH ALLOCATION

- Commission approval of Growth Allocations is based on standards rather than guidelines. Standards include location provisions, 300-foot setback, minimization of impacts to Habitat Protection Areas and RCA uses, and optimization of benefits to water quality; however, there is flexibility for local governments to use alternative measures if approved by the Commission as part of a local Critical Area program.
- For new Growth Allocations, the Commission must consider certain factors:
 - Consistency with the local Comprehensive Plan
 - Priority Funding Areas
 - Type of water and sewer service and other public infrastructure
 - Clustering
 - Density
 - Sensitive habitats including local, State, and federally protected lands
 - Coastal flooding
 - Impacts on designated Priority Preservation Areas (agricultural preservation)
 - Economic benefit to the area
 - Completion of an existing subdivision
 - Expansion of an existing business
 - Environmental impacts associated with wastewater and stormwater discharges

COMMISSION AUTHORITY TO ADOPT REGULATIONS

- Regulatory authority is the key to streamlining the program, making it more efficient, understandable, and predictable.
- Commission regulations will continue to provide flexibility for differences in local Critical Area programs.
- Regulations are adopted in an open, public process through the State's existing regulatory procedures.

- Several specific categories for regulations are listed in the Bill and are based solely on areas of existing Critical Area jurisdiction, such as:
 - Buffer planting standards
 - Buffer exemption areas
 - Shore erosion control
 - Water-dependent facilities
 - Public water access
 - Critical Area mapping
 - Notice of local decisions
 - Clustering to promote conservation
 - Growth allocation processes
 - Buffer protection
 - Enforcement and penalties
 - Habitat Protection Areas
 - State and local development projects
 - Surface mining
 - Variances
 - Program administration



LOT COVERAGE

- “Lot coverage” replaces “impervious surface” requirements in existing law.
- Lot coverage continues to apply to Limited Development Areas and Resource Conservation Areas, and not to Intensely Developed Areas.
- Lot coverage is defined to include areas covered by a structure, accessory structure, parking area, driveway, walkway, or roadway. Gravel, stone, shell, impermeable

decking, pavers, permeable pavement, and any other man-made materials are included in lot coverage calculations.

- Lot coverage does not include walkways and stairs in the Buffer, a wood mulch pathway, or decks with gaps to allow water to pass freely.
 - MDE water quality credits still apply.
 - Existing, legally developed structures, accessory structures, parking areas, driveways, walkways, or roadways will be “grandfathered,” even if the overall lot coverage exceeds the limits in the legislation.
 - Existing percentage limits remain the same.
 - 15% for most large lots
 - 25% for grandfathered lots
 - There are three categories of projects and provisions related to lot coverage for projects under design:
 1. The new law does not apply if:
 - The building permit is issued before July 1, 2008; and
 - Construction is initiated and an inspection is performed before July 1, 2009.
 2. Projects under design may be exempted if:
 - By October 1, 2008:
 - An application for a building or grading permit is filed, and the permit is issued by January 1, 2010; or
 - An initial application for development is filed, and the development plan is approved locally by July 1, 2010;
- AND
- All of the following conditions apply:
 - There must be a lot coverage plan approved locally by July 1, 2010 showing the proposed amounts of impervious and partially pervious areas;
 - The development plan must remain valid in accordance with local procedures, except that a local moratorium or Adequate Public Facilities Ordinance cannot terminate an approved development plan for purposes of lot coverage; and
 - Development plans can be changed in accordance with local procedures, but cannot increase the amounts of impervious and partially pervious areas. Reductions in impervious area and partially pervious area are acceptable.
3. New law does apply if the project does not satisfy all the conditions specified under number 1 or number 2 above.



VARIANCE PROCEDURES

- Local jurisdictions may establish administrative variance procedures.
- The Commission can adopt regulations for the variance process that relate to amending a variance application, providing notice to the Commission, ensuring a variance application is complete, requiring that Commission recommendations are part of the record, and applying the variance standards.
- The Commission shall be provided with written notice of all variance decisions within 10 working days, so that if the Commission believes that a decision is inconsistent with the law or local program, a timely appeal can be filed.
- A local government cannot issue a permit for an activity that was the subject of a variance request until the applicable 30-day appeal period has elapsed.

LOT CONSOLIDATION AND RECONFIGURATION

- A local government shall develop and formally adopt provisions to assure that the consolidation and reconfiguration of existing grandfathered lots brings the affected lots and land into conformance with the Critical Area Program to the extent possible.
- These procedures shall be officially adopted by the local government and approved by the Commission.



ENFORCEMENT

- A contractor, property owner or any other person who committed, assisted, authorized, or participated in a violation may be held liable.
- Each violation is considered a separate offense and a fine of up to \$10,000 may be assessed.
- Each calendar day that a violation continues is a separate offense and a fine may accrue at \$10,000 per day that the violation continues.
- Payment of all penalties and guarantee of restoration will be required prior to issuance of any permit, approval, variance, or special exception.
- A local government must consider the environmental impact, and costs of site restoration and local government inspections in determining a penalty.
- Local governments must establish an administrative enforcement program, or other local procedures of at least equal strength.
- There will be a three-year statute of limitations to take enforcement action.
- Local governments are given the right to enter a property if a violation is reasonably suspected, and if entry is refused, may seek a court injunction. (Jurisdictions may use different local procedures if they are equally effective.)
- Prosecution of violators may include jail time up to 90 days.
- Commission Chair may seek enforcement in the courts.



MAPPING

- The Critical Area boundary throughout the State will be updated based on current aerial imagery, and the Commission, DNR, and MDE will work cooperatively with local governments to develop these maps for each jurisdiction.
- The maps will be part of the Statewide Base Map and will include a State-determined shoreline and landward boundary of tidal wetlands and a digitally generated georeferenced 1,000-foot Critical Area boundary.
- A pilot project to develop procedures, identify source documents, and draft regulations is underway for Baltimore County and Talbot County. Following completion of the pilot project, regulations will be developed to address the mapping methodology, the designation of new Critical Area lands, and grandfathering.