

## Article - Natural Resources

§8-1808.

(a) (1) It is the intent of this subtitle that each local jurisdiction shall have primary responsibility for developing and implementing a program, subject to review and approval by the Commission.

(2) (i) The Governor shall include in the budget a sum of money to be used for grants to reimburse local jurisdictions for the reasonable costs of developing a program under this section.

(ii) Each local jurisdiction shall submit to the Governor a detailed request for funds that are equivalent to the additional costs incurred in developing the program under this section.

(iii) The Governor shall include in the fiscal year 2003 budget a sum of money to be used for grants to reimburse local jurisdictions in the Atlantic Coastal Bays Critical Area for the reasonable costs of developing a program under this section.

(3) The Governor shall include in the budget annually a sum of money to be used for grants to assist local jurisdictions with the reasonable costs of implementing a program under this section. Each local jurisdiction shall submit to the Governor by May 1 of each year a detailed request for funds to assist in the implementation of a program under this section.

(b) A program shall consist of those elements which are necessary or appropriate:

(1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

(2) To conserve fish, wildlife, and plant habitat; and

(3) To establish land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

(c) (1) (i) Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this

subtitle shall apply to, and be applied by, a local jurisdiction as minimum standards for a program sufficient to meet the goals of the Critical Area Program.

(ii) With the approval of the Commission, a local jurisdiction may establish procedures for the granting of an administrative variance.

(iii) At a minimum, a program shall contain all of the following elements, including:

jurisdiction;

1. A map designating the critical area in a local

2. A comprehensive zoning map for the critical area;

3. As necessary, new or amended provisions of the jurisdiction's:

- A. Subdivision regulations;

- B. Comprehensive or master plan;

- C. Zoning ordinances or regulations;

- D. Provisions relating to enforcement; and

- E. Provisions as appropriate relating to grandfathering of development at the time the program is adopted or approved by the Commission, including provisions for bringing lands into conformance with the Program as required under item 12 of this subparagraph;

4. Provisions requiring that:

- A. Project approvals shall be based on findings that projects are consistent with the standards stated in subsection (b) of this section; and

- B. The Commission shall receive written notice of local decisions regarding project approvals or denials in accordance with local procedures approved by the Commission;

5. Provisions to limit lot coverage and to require or encourage cluster development, where necessary or appropriate;

6. Establishment of buffer areas along shorelines within which agriculture will be permitted only if best management practices are

used, provided that structures or any other use of land which is necessary for adjacent agriculture shall also be permitted in any buffer area;

7. Requirements for minimum setbacks for structures and septic fields along shorelines, including the establishment of a minimum buffer landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands;

8. Designation of shoreline areas, if any, that are suitable for parks, hiking, biking, wildlife refuges, scenic drives, public access or assembly, and water-related recreation such as boat slips, piers, and beaches;

9. Designation of shoreline areas, if any, that are suitable for ports, marinas, and industries that use water for transportation or derive economic benefits from shore access;

10. Provisions requiring that all harvesting of timber in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area be in accordance with plans approved by the district forestry board;

11. Provisions for reasonable accommodations in policies or procedures when the accommodations are necessary to avoid discrimination on the basis of physical disability, including provisions that authorize a local jurisdiction to require removal of a structure that was installed or built to accommodate a physical disability and require restoration when the accommodation permitted by this paragraph is no longer necessary;

12. Procedures, including consolidation or reconfiguration of lots, that shall be approved by the Commission and assure that the following lots and lands are brought into conformance with the Program to the extent possible:

A. In the Chesapeake Bay Critical Area, any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;

B. In the Chesapeake Bay Critical Area, land that was subdivided into recorded legally buildable lots, where the subdivision received the local jurisdiction's final approval before June 1, 1984;

C. In the Atlantic Coastal Bays Critical Area, any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of June 1, 2002; and

D. In the Atlantic Coastal Bays Critical Area, land that was subdivided into recorded legally buildable lots, where the subdivision received the local jurisdiction's final approval before June 1, 2002;

13. Except as provided in subsection (d) of this section, provisions for granting a variance to the local jurisdiction's critical area program, in accordance with regulations adopted by the Commission concerning variances set forth in COMAR 27.01.11;

14. Penalty provisions establishing that, in addition to any other penalty applicable under State or local law, each person who violates a provision of this subtitle or of a program, including a contractor, property owner, or any other person who committed, assisted, authorized, or participated in the violation is subject to a fine not exceeding \$10,000; and

15. Administrative enforcement procedures in accordance with due process principles, including notice and an opportunity to be heard, and establishing that:

A. Each violation of this subtitle or of a regulation, rule, order, program, or other requirement adopted under the authority of this subtitle constitutes a separate offense;

B. Each calendar day that a violation continues constitutes a separate offense;

C. For each offense, a person shall be subject to separate fines, orders, sanctions, and other penalties;

D. Civil penalties for continuing violations shall accrue without a requirement for an additional assessment, notice, or opportunity for hearing for each separate offense;

E. On consideration of all the factors included under this subsection and any other factors in the local jurisdiction's approved program, the local jurisdiction shall impose the amount of the penalty;

F. Satisfaction of all conditions specified under paragraph (4) of this subsection shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property; and

G. Unless an extension of time is appropriate because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation

required as a condition of approval for the permit, approval, variance, or special exception shall be completed.

(2) (i) In determining the amount of the penalty to be assessed under paragraph (1)(iii)14 of this subsection, a local jurisdiction shall consider:

1. The gravity of the violation;
2. Any willfulness or negligence involved in the violation;
3. The environmental impact of the violation; and
4. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to the State or local authorities for performing, supervising, or rendering assistance to the restoration and mitigation.

(ii) In paragraph (1)(iii)14 of this subsection, “property owner” includes two or more persons holding title to the property under any form of joint ownership.

(3) Regulations adopted under paragraph (1)(iii)15 of this subsection shall provide for the Commission’s consideration of enforcement provisions submitted by a local jurisdiction that are at least as effective as enforcement requirements under this subtitle and regulations adopted under the authority of this subtitle.

(4) A local jurisdiction may not issue a permit, approval, variance, or special exception unless the person seeking the permit, approval, variance, or special exception has:

(i) Fully paid all administrative, civil, and criminal penalties imposed under paragraph (1)(iii)15 of this subsection;

(ii) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and

(iii) Performed the abatement measures in the approved plan in accordance with the local critical area program.

(d) (1) In this subsection, “unwarranted hardship” means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

(2) (i) Notwithstanding any other provision of law, the provisions of this paragraph shall apply to a proceeding that involves a variance for a development activity in the buffer under the requirements of:

1. This subtitle;
2. A regulation adopted under the authority of this subtitle; or
3. An approved program.

(ii) If a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.

(iii) A person that has standing under subparagraph (ii) of this paragraph may:

1. Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and
2. Petition for judicial review and participate as a party even if the person was not a party to the action which is the subject of the petition.

(3) (i) A local jurisdiction shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provision of an order, permit, plan, or local program in accordance with subsection (c)(1)(iii)15 of this section.

(ii) In considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.

(iii) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, a local jurisdiction shall consider that fact.

(4) (i) An applicant has the burden of proof and the burden of persuasion to overcome the presumption established under paragraph (3)(ii) of this subsection.

(ii) 1. Based on competent and substantial evidence, a local jurisdiction shall make written findings as to whether the applicant has overcome the presumption established under paragraph (3)(ii) of this subsection.

2. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

- A. The applicant;
- B. The local jurisdiction or any other government agency; or
- C. Any other person deemed appropriate by the local jurisdiction.

(5) A variance to a local jurisdiction's critical area program may not be granted unless:

(i) Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant;

(ii) The local jurisdiction finds that the applicant has satisfied each one of the variance provisions; and

(iii) Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.

(6) (i) Within 10 working days after a written decision regarding a variance application is issued, the Commission shall receive a copy of the decision from a local jurisdiction.

(ii) A local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed.

(7) (i) A development activity commenced without a required permit, approval, variance, or special exception is a violation of this subtitle.

(ii) A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or development activity, unless the local jurisdiction first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

(iii) If a final adjudication of a notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs.

(iv) Application for a variance under this paragraph constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

(v) If the local jurisdiction finds that the activity or structure for which a variance is requested commenced without permits or approvals and:

1. Does not meet each of the variance criteria under this subsection, the local jurisdiction shall deny the requested variance and order removal or relocation of any structure and restoration of the affected resources; or

2. Does meet each of the variance criteria under this subsection, the local jurisdiction may grant approval to the requested variance.

(8) This subsection does not apply to building permits or activities that comply with a buffer exemption plan or buffer management plan of a local jurisdiction which has been approved by the Commission.

(9) Notwithstanding any provision of a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the provisions of this subsection shall apply to, and shall be applied by, a local jurisdiction in the consideration, processing, and decision on an application for a variance.

(e) (1) The Commission shall adopt by regulation on or before December 1, 1985 criteria for program development and approval, which are necessary or appropriate to achieve the standards stated in subsection (b) of this section. Prior to developing its criteria and also prior to adopting its criteria, the Commission shall hold at least 6 regional public hearings, 1 in each of the following areas:

(i) Harford, Cecil, and Kent counties;

(ii) Queen Anne's, Talbot, and Caroline counties;



- (iii) Dorchester, Somerset, and Wicomico counties;
- (iv) Baltimore City and Baltimore County;
- (v) Charles, Calvert, and St. Mary's counties; and
- (vi) Anne Arundel and Prince George's counties.

(2) During the hearing process, the Commission shall consult with each affected local jurisdiction.

(3) In accordance with its powers under § 8-1806(a) of this subtitle, the Commission may amend the criteria for program development and approval adopted under paragraph (1) of this subsection.

(f) Nothing in this section shall impede or prevent the dredging of any waterway in a critical area. However, dredging in a critical area is subject to other applicable federal and State laws and regulations.

(g) In adopting the initial land classification for the Atlantic Coastal Bays Critical Area, the local program:

(1) Of the Town of Ocean City shall classify as an intensely developed area that area that is within the municipal boundaries of Ocean City as of January 1, 2002; and

(2) Of Worcester County shall classify as an intensely developed area that area located on the western mainland that is east of Golf Course Road, south of Charles Street, and north of Route 707 (Old Bridge Road).

(h) The provisions of this subtitle and Title 27 of the Code of Maryland Regulations apply to the Atlantic Coastal Bays Critical Area.