

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL NO. 301

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike the first comma and substitute “and”; in the same line, strike “and”; and in the same line, strike “(Administration)” and substitute “(Administration), and Delegates Hurson, Billings, Oaks, D. Davis, Stern, Sher, Hammen, Owings, Nathan-Pulliam, Hubbard, Frush, and Klausmeier”.

AMENDMENT NO. 2

On page 1, strike beginning with “adding” in line 9 down through “to” in line 10 and substitute “altering the membership of”; strike beginning with “requiring” in line 14 down through “date;” in line 16; in line 16, strike “of Maryland”; strike beginning with the second “of” in line 17 down through “date” in line 19 and substitute “; requiring certain local programs to classify certain areas as intensely developed areas; providing for the calculation and utilization of certain growth allocations by certain local jurisdictions under certain circumstances; requiring local jurisdictions in the Atlantic Coastal Bays Critical Area to include a certain element in their local program; authorizing local jurisdictions in the Atlantic Coastal Bays Critical Area to include certain elements in their local program; requiring the Department of Natural Resources to provide certain assistance to local jurisdictions in the preparation of certain maps or studies; clarifying that agricultural activities are allowed in certain areas in accordance with certain requirements under a certain circumstance; establishing certain requirements for the Commission and for a local jurisdiction located in the Atlantic Coastal Bays watershed but not in the Atlantic Coastal Bays Critical Area relating to minimum stream buffers; requiring a certain local jurisdiction to submit certain information to the Commission on or before a certain date; establishing certain requirements for a local jurisdiction in the Atlantic Coastal Bays Critical Area relating to the development of a local critical area program; requiring certain local jurisdictions to submit to the Commission on or before a certain date certain information relating to the jurisdiction’s intent to establish a local critical area program”; in line 23, after “circumstances;” insert “requiring programs in the Atlantic Coastal Bays Critical Area to be approved or adopted by the Commission and in effect on or before a certain date; providing that the

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authority, powers, and responsibilities of the chairman of the Commission apply to the Atlantic Coastal Bays Critical Area;”; in line 24, strike “relative” and substitute “relating”; in line 25, after “approvals” insert “on or”; in line 28, after “circumstances;” insert “authorizing the development of a planned unit development under certain circumstances; authorizing a local jurisdiction to include in its local program, subject to approval by the Commission, an alternative buffer provision for a planned unit development under certain circumstances;”; strike beginning with “prohibiting” in line 28 down through “circumstances;” in line 29; and in line 31, after “Bays;” insert “altering certain definitions; prohibiting certain applications of this Act; providing for a certain calculation of a certain growth allocation in a certain area; providing for certain development conditions for certain planned unit developments under a certain circumstance;”.

On page 2, in line 9, after “8-1808.8” insert “, 8-1808.9,”; and strike in their entirety lines 12 through 16, inclusive.

AMENDMENT NO. 3

On page 5, in line 31, after “(a)” insert “(1)”.

On page 6, in lines 1, 3, 10, 12, 13, 14, 15, 16, 17, 19, 22, and 28, strike “(1)”, “(2)”, “(i)”, “(ii)”, “(iii)”, “(iv)”, “(v)”, “(vi)”, “(vii)”, “(VIII)”, “(3)”, and “(4)”, respectively, and substitute “(I)”, “(II)”, “1.”, “2.”, “3.”, “4.”, “5.”, “6.”, “7.”, “8.”, “(III)”, and “(IV)”, respectively; and after line 31, insert:

“(2) OF THE 2 WORCESTER COUNTY MEMBERS FROM THE ATLANTIC COASTAL BAYS WATERSHED, 1 SHALL BE THE MAYOR OF OCEAN CITY.”

On page 8, in line 4, after “COMMITTEE” insert “, COMPOSED OF MEMBERS OF THE COMMISSION AND LOCAL CITIZENS AND LOCAL STAKEHOLDER GROUPS,”.

On page 12, after line 9, insert:

“(F) 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).”;

and in line 10, strike “(F)” and substitute “(G)”.

On page 13, strike in their entirety lines 16 through 25, inclusive, and substitute:

“(D) (1) SUBJECT TO THE CONDITIONS UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF A JURISDICTION HAS WITHIN ITS TERRITORIAL LIMITS AN AREA THAT IS SUBJECT TO THE CHESAPEAKE BAY CRITICAL AREA PROGRAM AND AN AREA THAT IS SUBJECT TO THE ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM, THE GROWTH ALLOCATION FOR THAT JURISDICTION MAY BE UTILIZED WITHIN EITHER CRITICAL AREA, AS THE JURISDICTION’S LOCAL PROGRAM CONSIDERS APPROPRIATE.

(2) A LOCAL JURISDICTION’S PROGRAM MAY NOT UTILIZE THE GROWTH ALLOCATION FROM ANOTHER CRITICAL AREA UNLESS THE GROWTH ALLOCATION REMAINING IN EITHER CRITICAL AREA IS INSUFFICIENT TO ALLOW APPROVAL OF A GROWTH ALLOCATION PROPOSAL ASSOCIATED WITH A PROGRAM AMENDMENT FOR WHICH THE LOCAL PROGRAM SEEKS COMMISSION APPROVAL.

(3) A LOCAL JURISDICTION’S PROGRAM MAY NOT TRANSFER MORE THAN 150 ACRES OF GROWTH ALLOCATION TO ANOTHER CRITICAL AREA.”.

On page 14 in line 9, on page 15 in lines 26 and 27, 31, and 35, on page 16 in line 3, and on page 25 in lines 16 and 26 and 27, in each instance, strike “APRIL 17, 2001” and substitute “JUNE 1, 2002”.

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On pages 16 and 17, strike in their entirety the lines beginning with line 30 on page 16 down through line 6 on page 17, inclusive.

On page 17, strike in their entirety lines 1 through 6, inclusive; in line 7, strike “(3)” and substitute “(A) EXCEPT AS PROVIDED IN SUBSECTION (B) (2) OF THIS SECTION, EACH LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL INCLUDE IN ITS LOCAL CRITICAL AREA PROTECTION PROGRAM”; strike beginning with “; AND” in line 11 down through “JURISDICTIONS” in line 19; after line 19, insert:

“(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE PROVISIONS OF THIS SUBTITLE REPLACE THE REQUIREMENTS OF THE FOREST CONSERVATION ACT PROVIDED UNDER TITLE 5, SUBTITLE 16 OF THIS ARTICLE WITHIN THE ATLANTIC COASTAL BAYS CRITICAL AREA.

(2) SUBSECTION (A) OF THIS SECTION AND PARAGRAPH (1) OF THIS SUBSECTION DO NOT APPLY TO:

(I) DEVELOPMENT OF A SINGLE LOT FOR THE PURPOSE OF CONSTRUCTING A DWELLING INTENDED FOR THE USE OF THE OWNER, OR A CHILD OR GRANDCHILD OF THE OWNER, IF THE DEVELOPMENT DOES NOT RESULT IN THE CUTTING, CLEARING, OR GRADING OF MORE THAN 40,000 SQUARE FEET OF FOREST, AND THE LOT WAS LEGALLY RECORDED PRIOR TO JULY 31, 1994; OR

(II) A SINGLE LOT THAT IS PART OF A PROJECT THAT HAS OTHERWISE COMPLIED WITH THE FOREST CONSERVATION ACT.

(3) FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, FOREST OR DEVELOPED WOODLAND COVER MAY INCLUDE TREES, WOODY PLANTS, AND SHRUBS, AND ANY LANDSCAPING UNDER AN APPROVED LANDSCAPING PLAN.

(C) EACH LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL AREA MAY INCLUDE IN ITS LOCAL CRITICAL AREA PROTECTION PROGRAM:

(1) AS PART OF COMPLIANCE WITH THE STORMWATER

MANAGEMENT REQUIREMENTS OF TITLE 27 OF THE CODE OF MARYLAND REGULATIONS AND TITLE 4, SUBTITLE 2 OF THE ENVIRONMENT ARTICLE, A PROVISION ENCOURAGING THE USE OF BIORETENTION FOR REDEVELOPMENT IN INTENSELY DEVELOPED AREAS;

(2) A PROVISION APPLYING BUFFER REQUIREMENTS TO TRIBUTARY STREAMS LOCATED OUTSIDE THE CRITICAL AREA AND WITHIN THE ATLANTIC COASTAL BAYS WATERSHED THAT ARE NOTED AS PERENNIAL AND INTERMITTENT STREAMS IN THE ATLANTIC COASTAL BAYS WATERSHED AND THAT ARE SO NOTED ON THE MOST RECENT U.S. GEOLOGICAL SURVEY 7-1/2 MINUTE TOPOGRAPHIC QUADRANGLE MAPS (SCALE 1:24,000) OR ON MORE DETAILED MAPS OR STUDIES AT THE DISCRETION OF THE LOCAL JURISDICTION; AND

(3) TO THE EXTENT OTHERWISE PERMITTED BY LAW, A PROVISION REGARDING IMPROVEMENTS OVER STATE OR PRIVATE WETLANDS, INCLUDING CRITERIA FOR THE PROTECTION OF WATER QUALITY AND FISH, WILDLIFE, AND PLANT HABITATS, AND THE USE AND CONSTRUCTION OF PRIVATE AND COMMUNITY PIERS IN THE LOCAL JURISDICTION.

(D) ON REQUEST, THE DEPARTMENT SHALL ASSIST A LOCAL JURISDICTION IN THE PREPARATION OF:

(1) ANY MORE DETAILED MAPS OR STUDIES NECESSARY TO IMPLEMENT THE BUFFER PROVISIONS UNDER SUBSECTION (C)(2) OF THIS SECTION; AND

(2) THE WETLAND PROTECTION PROVISIONS UNDER SUBSECTION (C) (3) OF THIS SECTION.

(E) IF A LOCAL JURISDICTION ADOPTS PROVISIONS CONSISTENT WITH SUBSECTION (C)(2) OF THIS SECTION, AGRICULTURAL ACTIVITIES ARE PERMITTED IN THE BUFFER OUTSIDE THE CRITICAL AREA AND IN THE ATLANTIC COASTAL BAYS WATERSHED THAT ARE IN ACCORDANCE WITH TITLE 27 OF THE CODE OF

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MARYLAND REGULATIONS UNDER AN APPROVED SOIL CONSERVATION AND WATER QUALITY PLAN.”;

strike in their entirety lines 20 through 23, inclusive, and substitute:

“8-1808.9.

(A) THE PROVISIONS OF THIS SECTION APPLY TO A LOCAL JURISDICTION THAT IS LOCATED IN THE ATLANTIC COASTAL BAYS WATERSHED AND NOT IN THE ATLANTIC COASTAL BAYS CRITICAL AREA.

(B) ON OR BEFORE JULY 15, 2002, A LOCAL JURISDICTION SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL SUBMIT TO THE COMMISSION A WRITTEN STATEMENT OF ITS INTENT EITHER:

(1) TO ADOPT PROVISIONS APPLYING A BUFFER TO PERENNIAL AND INTERMITTENT STREAMS THAT ARE WITHIN THE BOUNDARIES OF THE LOCAL JURISDICTION AND ARE NOTED ON THE MOST RECENT U.S. GEOLOGICAL SURVEY 7-1/2 MINUTE TOPOGRAPHIC QUADRANGLE MAPS (SCALE 1:24,000) OR ON MORE DETAILED MAPS OR STUDIES AT THE DISCRETION OF THE LOCAL JURISDICTION; OR

(2) NOT TO ADOPT THE PROVISIONS.

(C) IF A LOCAL JURISDICTION STATES THE LOCAL JURISDICTION’S INTENT TO ADOPT PROVISIONS MEETING THE REQUIREMENTS OF THIS SECTION, THE LOCAL JURISDICTION SHALL SUBMIT THE PROVISIONS TO THE COMMISSION AND ADOPT THE PROVISIONS IN ACCORDANCE WITH THE SCHEDULE OF SUBMISSIONS FOR THE ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM SET FORTH UNDER § 8-1809 OF THIS SUBTITLE.”.

On page 25, in line 2, strike “SUBSECTION (B)” and substitute “SUBSECTIONS (B), (C), AND (D)”; in line 8, strike “AND”; in the same line after “THAT” insert “;

(1)”;

in line 9, strike “THESE” and substitute “THE LOTS OR”; in line 10, strike “AS FAR AS” and substitute “TO THE EXTENT”; in line 12, strike “, AND THESE” and substitute “; AND

(2) THE”;

in the same line, after “PROCEDURES” insert “DEVELOPED IN ACCORDANCE WITH ITEM (1) OF THIS SUBSECTION”; in line 21, strike “COUNTED BY” and substitute “DEDUCTED FROM”; in lines 21 and 22, strike “JURISDICTION AGAINST THE GROWTH INCREMENT” and substitute “JURISDICTION’S GROWTH ALLOCATION”; in line 23, strike “TITLE” and substitute “SUBTITLE”; and after line 23, insert:

“(C) (1) (I) IN THIS SUBSECTION AND SUBSECTION (D) OF THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) “BAYSIDE MIXED USE DISTRICT” MEANS A DISTRICT OF EXISTING LARGE BAYSIDE PARCELS THAT:

1. ARE ESSENTIALLY UNDEVELOPED WITH PERMANENT STRUCTURES;

2. ARE SUITABLE FOR LARGE-SCALE COMMERCIAL OR MIXED USE DEVELOPMENT; AND

3. OFFER THE OPPORTUNITY FOR WELL-PLANNED, EFFICIENT, AND DIVERSIFIED COMPREHENSIVE DEVELOPMENT.

(III) 1. “PLANNED UNIT DEVELOPMENT” MEANS A DEVELOPMENT COMPRISED OF A COMBINATION OF LAND USES OR VARYING INTENSITIES OF THE SAME LAND USE IN ACCORDANCE WITH AN INTEGRATED PLAN THAT PROVIDES FLEXIBILITY IN LAND USE DESIGN APPROVED BY THE LOCAL JURISDICTION.

2. "PLANNED UNIT DEVELOPMENT" INCLUDES A RESIDENTIAL PLANNED COMMUNITY.

(2) A PLANNED UNIT DEVELOPMENT IN A BAYSIDE MIXED USE DISTRICT THAT HAS RECEIVED THE LOCAL JURISDICTION'S FINAL SITE APPROVAL AND IS LEGALLY BUILDABLE AFTER JUNE 1, 2002 BUT PRIOR TO PROGRAM APPROVAL MAY BE DEVELOPED IF:

(I) DEVELOPMENT OF THE LAND CONFORMS TO THE REQUIREMENTS OF THIS TITLE AND TITLE 27 OF THE CODE OF MARYLAND REGULATIONS;

(II) THE AREA IS DEDUCTED FROM THE LOCAL JURISDICTION'S GROWTH ALLOCATION IN ACCORDANCE WITH § 8-1808.1(B) OF THIS SUBTITLE AND COMAR 27.01.02.06; OR

(III) THE LAND:

1. IS DESIGNATED AS AN INTENSELY DEVELOPED AREA;

2. IS EXEMPTED FROM THE BUFFER DESIGNATION IN COMAR 27.01.09; AND

3. IS PART OF A PROJECT THAT COMPLIES WITH TITLE 4, SUBTITLE 2 OF THE ENVIRONMENT ARTICLE.

(D) A LOCAL JURISDICTION MAY INCLUDE IN THE JURISDICTION'S LOCAL CRITICAL AREA PROTECTION PROGRAM, TO BE APPROVED BY THE COMMISSION, AN ALTERNATIVE BUFFER PROVISION FOR THE DEVELOPMENT OF A PLANNED UNIT DEVELOPMENT IN ACCORDANCE WITH THE PLANNED UNIT DEVELOPMENT'S STEP III APPROVAL, PROVIDED THAT:

(1) THE PLANNED UNIT DEVELOPMENT RECEIVED STEP III APPROVAL FROM THE LOCAL JURISDICTION PRIOR TO JUNE 1, 2002;

(2) THE PLANNED UNIT DEVELOPMENT HAS RECEIVED THE LOCAL JURISDICTION'S FINAL SUBDIVISION APPROVAL AND IS LEGALLY BUILDABLE AFTER DECEMBER 1, 2001 BUT PRIOR TO PROGRAM APPROVAL;

(3) THE AREA IS DEDUCTED FROM THE LOCAL JURISDICTION'S GROWTH ALLOCATION IN ACCORDANCE WITH § 8-1808.1(B) OF THIS SUBTITLE AND COMAR 27.01.02.06, IF APPLICABLE;

(4) THE PROVISION INCLUDES MEASURES THAT PROTECT WATER QUALITY AND FISH, WILDLIFE, AND PLANT HABITATS IN ACCORDANCE WITH THE INTENT OF TITLE 8, SUBTITLE 18 OF THIS ARTICLE AND TITLE 27 OF THE CODE OF MARYLAND REGULATIONS; AND

(5) AT LEAST 75% OF THE DWELLING UNITS IN THE PLANNED UNIT DEVELOPMENT COMPLY WITH THE BUFFER REQUIREMENTS IN COMAR 27.01.09.01 AND NO DWELLING UNIT HAS A BUFFER OF LESS THAN 50 FEET FROM EXISTING OR PROPOSED TIDAL WATERS, TIDAL WETLANDS, OR TRIBUTARY STREAMS.”;

and in line 24, strike “(C)” and substitute “(E)”.

On pages 27 and 28, strike in their entirety the lines beginning with line 10 on page 27 through line 16 on page 28, inclusive, and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) Except as provided in subsection (b) of this section, this Act may not be construed to apply to the initial development of a planned unit development, as defined in § 5-1601 of the Natural Resources Article, and including a residential planned community:

(i) for which the following are issued prior to June 1, 2002:

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1. a valid Step III approval in accordance with the current Worcester County Zoning and Subdivision Control Ordinance; and

2. at least 3 of the following State permits:

A. groundwater discharge or surface water discharge;

B. nontidal wetlands;

C. water quality certification; and

D. water appropriation; and

(ii) which is subdivided into recorded and legally buildable lots.

(2) The growth allocation for Worcester County's Atlantic Coastal Bays resource conservation area shall be reduced by an amount equal to the total acreage exempted under this subsection that is or would be located in a resource conservation area multiplied by 25%.

(b) (1) Except as provided in paragraph (2) of this subsection, if a planned unit development described in subsection (a) of this section includes an inland marina built after April 8, 2002:

(i) at least 85% of the dwelling units in the planned unit development shall comply with the buffer requirements in COMAR 27.01.09.01; and

(ii) no dwelling unit may have a buffer of less than 50 feet from existing or proposed tidal waters, tidal wetlands, or tributary streams.

(2) Paragraph (1) of this subsection may not apply to those dwelling units immediately adjacent to tidal waters in an inland marina built after April 8, 2002.

SECTION 3. AND BE IT FURTHER ENACTED, That, for the purpose of making improvements, this Act may not be construed to apply to a property:

(1) that, as of January 1, 2002, has received a valid special exception for fairground or racetrack use in an agricultural district; and

(2) is used consistently with that special exception.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply to the initial development of the undeveloped property in Ocean City, Maryland, known locally as “Holland’s Island,” in accordance with the final site plan approval received on March 27, 2002.”.

On page 28, in line 17, strike “2.” and substitute “5.”.