



February 28, 2020

The Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
House Office Building, Room 251
6 Bladen St., Annapolis, MD 21401

Oppose: HB 1080 – Coast Smart Siting and Design

Dear Chair, Barve and Committee Members:

Climate resiliency and mitigation are built into the everyday operation and future investment decisions of commercial real estate companies. Ensuring that construction and reconstruction in flood hazard areas adapts to changing conditions is a critical component of protecting public and private assets.

The NAIOP Maryland Chapters represent more than 700 companies that develop and own commercial, industrial and mixed-use real estate oppose the application of Coast Smart Criteria to private construction as proposed in House Bill 1080 because:

1. The Coast Smart Council does not have the regulatory or administrative capacity to scale up to regulate private construction,
2. Our design professionals found some of the criteria to be unrealistic (please see attached list) and would like to know how the state complied, and,
3. The self-certification process, self-activating categorical exemptions and the review of variance request by the Smart Growth Subcabinet are not feasible.

We recommend that state and local construction projects and resiliency measures be brought into the nationally adopted codes and standards framework that currently governs private construction in flood hazard areas, these are:

1. International Building Code standards for *Flood Resistant Design and Construction* (ASCE 24-14) that is incorporated in the State-wide building code, and
2. The National Flood Insurance Program / FEMA [model floodplain management ordinance](#), that is administered by MDE and adopted by every county

If you decide current requirements are insufficient to ensure long term resiliency and it is necessary to increase freeboard, we ask that you implement those changes through the codes process so they can be effectively administered during construction and integrated into local floodplain management ordinances and the state building code.

This way flood hazard and upland areas in the same project can be reviewed and regulated efficiently. The administrative capacity of the local code official can be available to make determinations of substantial improvements, identify flood hazard areas, design elevations and evaluate variance requests.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.M. Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Environment and Transportation Committee Members
Nick Manis – Manis, Canning Assoc.

NAIOP's review of the Coast Smart Criteria raised numerous concerns and questions. Some are objections to individual requirements; some are related to our concern that the Council has no regulatory or administrative capacity to scale up to cover private construction. For example:

1. Project Certification – Current criteria require a pre-construction certification that is signed by the applicant. How will that apply to private construction projects?
2. Avoidance – *“Construction and reconstruction shall be avoided, to the fullest extent practicable, within areas likely to be inundated by sea level rise within the next 50 years.”* How can an accurate 50-year assessment be made?
3. Waiver Criteria – Coast Smart waiver criteria differ significantly from the criteria in MDE's model floodplain management ordinance as well as National Flood Insurance Program guidance on granting a variance from flood plain regulations. These differences are related to both the legal standard review and the factors considered, some of which do not apply to private construction.
4. Waiver Process – Coast Smart waivers are reviewed and decided by the Governor's Smart Growth Subcabinet. Applicants are instructed to write, a no more than, two-page letter explaining the request for waiver. Applicants are advised to allow up to 8 weeks for a response.
5. Self-Determined Exemptions – The criteria allow agencies to determine and approve their own exemption for seven categorical exceptions. We question the appropriateness of this provision.
6. Consultation & Advice – “Using Agencies” may request a pre-construction meeting with the Coast Smart Council to review a project. The council meets only 4 times per year.
7. Application “wherever practicable” – *“Projects not subject to comply with the Program requirements..shall employ Coast Smart principles and practices, wherever practicable.”*
8. Natural Features – *“Natural and nature-based features that may serve to buffer the project from the impacts of future sea level rise, coastal flooding or storm surge or that support general climate adaptation shall be identified and should be protected and maintained to the maximum extent practicable.”* This element may be met through forest conservation requirements, but it confuses the jurisdictional review.
9. Critical Area Commission Compliance – *“All projects shall be in compliance with Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.”*
10. Determination of Freeboard – *“Non-critical”* Structures in Flood Hazard Areas shall be constructed with “a minimum” 2-feet above 100yr flood. *“Critical and essential”* projects require 3-feet of freeboard. What uses are critical and non-critical, who makes this determination?
11. Applies to Project Life Cycle – *“Coast Smart” includes both siting and design guidelines that are applicable throughout the entire life cycle of a project.”*