Enforcement in Maryland’s Critical Area: Perception and Practice
Report Findings
University of Maryland Environmental Law Clinic
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In a report commissioned by the West/Rhode Riverkeeper, the University of Maryland Environmental Law Clinic discovered improvements could be made to the text of the Maryland Critical Area Act and how it is enforced by local governments and the State. The report, *Enforcement in Maryland's Critical Area: Perception and Practice*, evaluates the intent of the Critical Area Act and the enforcement of the Act's requirements.

Some of the findings of the report include:

- In many cases, the various parties responsible for enforcing the Critical Area Act use their discretion to interpret the Act in ways that minimize impacts to private property owners, at the expense of stricter environmental standards. Examples of this include the Critical Area Commission’s policy of approving most living space expansions on grandfathered lots, and Queen Anne’s County’s minimal replanting requirements.

- With the exception of Anne Arundel County, very few fines are issued for violations. Most jurisdictions are incapable of dealing with the costs of litigation that almost always accompanies the issuance of a fine. Many jurisdictions also feel that requiring mitigation is a more beneficial way of dealing with violators.

- Enforcement relies heavily on public participation and education. A greater understanding of the relationship between the actions of private landowners and the impacts on the Chesapeake Bay could reduce Critical Area Act violations.

- Local enforcement is almost entirely responsive and not proactive, allowing many Critical Area violations to go unnoticed. Local governments do not have sufficient resources to proactively seek out Critical Area violations. For example, none of the jurisdictions the Clinic surveyed own a boat from which they can view Critical Area violations, and according to the Critical Area Commission, most large jurisdictions do not have enough inspectors to seek out and remedy all of the Critical Area violations.

- Site plans, permits, variances, and other applications are reviewed on a highly individualized, case-by-case basis. There is no analysis of the cumulative impacts associated with development that occurs in the Critical Area.

- Some Counties are more committed than others; however, the Clinic did not find any blatant disregard for the enforcement of the provisions of the Act.

- The text of the Critical Area Act does not create strict enforcement provisions, but instead allows great flexibility and explicitly allows for development to occur in the Critical Area. Many seem to forget that part of the purpose of the Act is to accommodate growth and this misperception of the Act’s purpose seems to affect the way they believe the law is being enforced.
Lastly, although the Critical Area Act is an important tool in regulating land use, it alone will not solve all of Maryland’s environmental problems along the shoreline.

The report focuses on enforcement in Anne Arundel County, Queen Anne’s County, and St. Mary’s County. In order to gather information regarding the enforcement of the Critical Area Act, various files were reviewed at the Critical Area Commission, interviews were conducted with stakeholders representing different interests, and surveys were distributed to most jurisdictions with Critical Area programs.

The Critical Area Act seeks to preserve the shoreline environment while also accommodating growth and development. The Act was passed in 1984 and regulates land use policies for all land within 1,000 feet of tidal waters.

The West/Rhode Riverkeeper is one of ten Maryland Waterkeeper programs affiliated with the Waterkeeper Alliance. The Maryland Waterkeepers are: Anacostia Riverkeeper, Assateague Coastkeeper, Chester Riverkeeper, Lower Susquehanna Riverkeeper, Patapsco Riverkeeper, Patuxent Riverkeeper, Potomac Riverkeeper, Severn Riverkeeper, South Riverkeeper, and West/Rhode Riverkeeper.

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