

# The Capital

## Top Stories

### Enforcement of Critical Area law lacking, report says

By E.B. FURGURSON III, Staff Writer

The state's Critical Area Law lacks teeth to fully protect the Chesapeake Bay in part because local jurisdictions don't have enough resources to enforce it and often side with development over environmental protection, according to a new study released today.

The University of Maryland Environmental Law Clinic found that although Anne Arundel County has more inspectors on the job and hands down more serious fines than most other jurisdictions, it still has lot of work to do.

Because 63 individual counties and towns enforce the law, Critical Area decisions, especially those regarding variances, reflect the "private property rights vs. environmental conservation policy choices of local officials," the report said.

Commissioned by West/Rhode Riverkeeper Bob Gallagher on behalf of the state's 10 riverkeepers, the report analyzed survey responses from individuals, governments and concerned groups plus interviews with specific stakeholders.

Overall it does not point to one "smoking gun" reason for the disparate enforcement, but more a collection of factors.

"The study validates a widely held public perception that there are problems with critical area enforcement and it provides a catalyst for concerned citizens, regulators and elected officials to work together to restore public confidence in critical area enforcement," Mr. Gallagher said.

While it does not recommend specific ways to fix the Critical Area Law, it lays out problems that should be addressed.

"The study reinforces what we already knew," said Mr. Gallagher. "It does confirm that they are not doing enough inspections, that there are not enough of them to do the job."

Major findings of the study include:

Enforcement is reactive and not proactive, allowing many violations to go undetected.

Most jurisdictions do not have enough inspectors and none has a boat available for inspections.

In issuing permits and variances for development, officials have tipped the balance in favor of development over the environment.

Those who violate the law by building without required permits or variances are rarely fined.

Officials grant retroactive permits and variances, even to those with repeated and willful violations of the law.

Permit, variance, and site plan decisions are made on a case-by-case basis without any tracking or analysis of the cumulative impacts of Critical Area development.

Fair assessment

Ren Serey, executive director of the Critical Area Commission, said the study fairly points out some of the enforcement challenges and variables under the law.

"It pointed out, correctly, the need for more inspectors and higher fines," Mr. Serey said. "It also identified the real concerns many people have with retroactive permits and variances. It is something we are aware of and hope local boards of appeal or hearing officers . . . apply the minimization standard" meaning to reduce the impacts, possibly the structures themselves, to protect the bay.

The law gives local jurisdictions wide discretion in enforcement, in effect creating 63 different sets of regulations, meant to control development occurring within 1,000 feet of the bay and its tidal tributaries. The most sensitive of that land is the 100-foot buffer of land at the water's edge.

The report found counties and municipalities give variances that allow people to build virtually anything in the buffer, so long as it is connected to a house - or can be called a living space - like decks, pools, and garages.

But that system is often abused.

"Notwithstanding that very liberal interpretation of the law, a large number of people don't get the permits or variances required," Mr. Gallagher said. "And when they are caught, they often are not fined. And when they are fined, it is not meaningful."

On top of that, he says the violators are then often given retroactive variances or permits for the work that was a violation in the first place.

"That provides an incentive to people not to get a permit," Mr. Gallagher said.

County record

The county is noted as having more people working on Critical Area issues than most jurisdiction, and handing down the most, and more weighty fines. But there is more to do.

The report notes the infamous case of a home built without permits on Dobbins Island in the Magothy River as an example of Critical Area enforcement gone wrong.

Although Anne Arundel County is still pursuing enforcement measures against the builder of the home, County Executive Janet S. Owens has said it is unlikely the county will seek to have the house torn down although some accessory structures might have to be removed.

According to the study, the county generally requires more trees and other plants to mitigate development than any other jurisdiction.

But it also notes that the sheer volume of projects requires more personnel. It has two people, a supervisor and one inspector, detailed exclusively to Critical Area enforcement, plus 16 grading inspectors and three environmental review teams to handle about 2,400 building permits, 1,569 plant management plans, and 704 buffer management plans a year.

Add to that the number of critical area variances, 175 in 2005 - nearly three times as many as St. Mary's County, plus other responsibilities makes for an impossible load.

"Anne Arundel County has the most aggressive enforcement program of any local jurisdiction as indicated in the report," Spurgeon R. Eismeier, county director of inspections and permits, said in a prepared statement this morning.

"Through education and a willingness by property owners to do the right thing, our program can and will become even more effective."

The report says part of the problem with the act is perception: many believe it was written to protect the bay by limiting development within 1,000 feet of the bay and its tributaries - that the law was *the* regulation that would save the bay.

On the other hand, developers and others thought it was too restrictive, limiting building and property rights close to coveted waterfront property.

In fact, the act actually promoted development projects that take sensitive land into consideration in both design and execution.

"The problem comes in striking a balance," Mr. Gallagher said. "Now that balance is stuck in favor of development."

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The full report is available on the law clinic web site:  
[www.law.umaryland.edu/Environment/clinic.asp](http://www.law.umaryland.edu/Environment/clinic.asp).

*Published May 03, 2006, The Capital, Annapolis, Md.  
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