

HOUSE BILL 301

Unofficial Copy  
M1

2002 Regular Session  
(2r0186)

**ENROLLED BILL**

-- Environmental Matters/Education, Health, and Environmental Affairs --

Introduced by **Delegates Morhaim, ~~and~~ Weir, ~~and~~ The Speaker**  
**~~(Administration) (Administration), and Delegates Hurson, Billings,~~**  
**Oaks, D. Davis, Stern, Sher, Hammen, Owings, Nathan-Pulliam,**  
**Hubbard, Frush, and Klausmeier**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER 433

1 AN ACT concerning

2 **Atlantic Coastal Bays Protection Act**

3 FOR the purpose of preserving, protecting, and improving the water quality and  
4 natural habitats of the Atlantic Coastal Bays and certain tributaries and  
5 streams by designating certain lands and waters as critical areas that require  
6 especially sensitive consideration with regard to development; making certain  
7 legislative findings; renaming the Chesapeake Bay Critical Area Commission to  
8 be the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;  
9 defining certain terms; ~~adding members representing the Atlantic Coastal Bays~~  
10 ~~watershed to~~ altering the membership of the Critical Area Commission for the  
11 Chesapeake and Atlantic Coastal Bays; authorizing the Commission to establish  
12 a certain Advisory Committee; designating certain areas of lands and waters to  
13 be included in the Atlantic Coastal Bays Critical Area, subject to exclusion of  
14 certain types of land after certain findings are made; ~~requiring that every part~~

1 of the Atlantic Coastal Bays Critical Area be subject to an approved critical area  
2 protection program by a certain date; requiring the Governor of Maryland to  
3 include a certain amount of funds in the budget for certain purposes of this Act;  
4 requiring each local jurisdiction under this Act to submit certain information to  
5 the Commission on or before a certain date; requiring certain local programs to  
6 classify certain areas as intensely developed areas; providing for the calculation  
7 and utilization of certain growth allocations by certain local jurisdictions under  
8 certain circumstances; requiring local jurisdictions in the Atlantic Coastal Bays  
9 Critical Area to include a certain element in their local program; authorizing  
10 local jurisdictions in the Atlantic Coastal Bays Critical Area to include certain  
11 elements in their local program; requiring the Department of Natural Resources  
12 to provide certain assistance to local jurisdictions in the preparation of certain  
13 maps or studies; clarifying that agricultural activities are allowed in certain  
14 areas in accordance with certain requirements under a certain circumstance;  
15 establishing certain requirements for the Commission and for a local  
16 jurisdiction located in the Atlantic Coastal Bays watershed but not in the  
17 Atlantic Coastal Bays Critical Area relating to minimum stream buffers;  
18 requiring a certain local jurisdiction to submit certain information to the  
19 Commission on or before a certain date; establishing certain requirements for a  
20 local jurisdiction in the Atlantic Coastal Bays Critical Area relating to the  
21 development of a local critical area program; requiring certain local jurisdictions  
22 to submit to the Commission on or before a certain date certain information  
23 relating to the jurisdiction's intent to establish a local critical area program;  
24 requiring certain public hearings during program development by a local  
25 jurisdiction and during program development or approval by the Commission;  
26 requiring that a local jurisdiction review its program within a certain time  
27 period and providing that within that certain time period, certain changes may  
28 only be made under certain circumstances; requiring programs in the Atlantic  
29 Coastal Bays Critical Area to be approved or adopted by the Commission and in  
30 effect on or before a certain date; providing that the authority, powers, and  
31 responsibilities of the chairman of the Commission apply to the Atlantic Coastal  
32 Bays Critical Area; requiring certain local authorities to make certain findings  
33 relative relating to certain applications for certain land use approvals on or after  
34 a certain date and prior to an approved program becoming effective; requiring  
35 certain local jurisdictions to permit certain uses of land in the Atlantic Coastal  
36 Bay Critical Area under certain circumstances; authorizing the development of a  
37 planned unit development under certain circumstances; authorizing a local  
38 jurisdiction to include in its local program, subject to approval by the  
39 Commission, an alternative buffer provision for a planned unit development  
40 under certain circumstances; prohibiting certain extensions of improvements  
41 under certain circumstances; requiring a certain local jurisdiction to include  
42 certain provisions regarding land use in the critical area and certain tributaries  
43 of the Atlantic Coastal Bays; providing for the construction of this Act; providing  
44 for the termination of certain provisions of this Act; altering certain definitions;  
45 prohibiting certain applications of this Act; providing for a certain calculation of  
46 a certain growth allocation in a certain area; providing for certain development  
47 conditions for certain planned unit developments under a certain circumstance;  
48 and generally relating to establishment and enforcement of a comprehensive

1 State and local resource management program for certain land areas critical to  
 2 the quality and productivity of the tidal waters of the Atlantic Coastal Bays and  
 3 its tributaries.

4 BY repealing and reenacting, with amendments,  
 5 Article - Natural Resources  
 6 Section 8-1801, 8-1802, 8-1803, 8-1804, 8-1806, 8-1807, 8-1808, 8-1808.1,  
 7 8-1808.2, 8-1808.3, 8-1809, 8-1810, 8-1811(a), 8-1812(a), 8-1813,  
 8 8-1815.1, and 8-1817  
 9 Annotated Code of Maryland  
 10 (2000 Replacement Volume and 2001 Supplement)

11 BY adding to  
 12 Article - Natural Resources  
 13 Section 8-1808.8, 8-1808.9, and 8-1813.1  
 14 Annotated Code of Maryland  
 15 (2000 Replacement Volume and 2001 Supplement)

16 ~~BY repealing and reenacting, with amendments,~~  
 17 ~~Article - Environment~~  
 18 ~~Section 16-201 and 16-304~~  
 19 ~~Annotated Code of Maryland~~  
 20 ~~(1996 Replacement Volume and 2001 Supplement)~~

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Natural Resources**

24 8-1801.

25 (a) The General Assembly finds and declares that:

26 (1) The Chesapeake [Bay and its] AND THE ATLANTIC COASTAL BAYS  
 27 AND THEIR tributaries are natural resources of great significance to the State and the  
 28 nation;

29 (2) The shoreline and adjacent lands constitute a valuable, fragile, and  
 30 sensitive part of this estuarine system, where human activity can have a particularly  
 31 immediate and adverse impact on water quality and natural habitats;

32 (3) The capacity of these shoreline and adjacent lands to withstand  
 33 continuing demands without further degradation to water quality and natural  
 34 habitats is limited;

35 (4) National studies have documented that the quality and productivity  
 36 of the waters of the Chesapeake Bay and its tributaries have declined due to the

1 cumulative effects of human activity that have caused increased levels of pollutants,  
2 nutrients, and toxics in the Bay System and declines in more protective land uses  
3 such as forestland and agricultural land in the Bay region;

4 (5) Those portions of the Chesapeake [Bay and its] AND THE ATLANTIC  
5 COASTAL BAYS AND THEIR tributaries within Maryland are particularly stressed by  
6 the continuing population growth and development activity concentrated in the  
7 Baltimore-Washington metropolitan corridor AND ALONG THE ATLANTIC COAST;

8 (6) The quality of life for the citizens of Maryland is enhanced through  
9 the restoration of the quality and productivity of the waters of the Chesapeake [Bay  
10 and its] AND THE ATLANTIC COASTAL BAYS, AND THEIR tributaries;

11 (7) The restoration of the Chesapeake [Bay and its] AND THE ATLANTIC  
12 COASTAL BAYS AND THEIR tributaries is dependent, in part, on minimizing further  
13 adverse impacts to the water quality and natural habitats of the shoreline and  
14 adjacent lands;

15 (8) The cumulative impact of current development is inimical to these  
16 purposes; and

17 (9) There is a critical and substantial State interest for the benefit of  
18 current and future generations in fostering more sensitive development activity in a  
19 consistent and uniform manner along shoreline areas of the Chesapeake [Bay and  
20 its] AND THE ATLANTIC COASTAL BAYS AND THEIR tributaries so as to minimize  
21 damage to water quality and natural habitats.

22 (b) It is the purpose of the General Assembly in enacting this subtitle:

23 (1) To establish a Resource Protection Program for the Chesapeake [Bay  
24 and its] AND THE ATLANTIC COASTAL BAYS AND THEIR tributaries by fostering more  
25 sensitive development activity for certain shoreline areas so as to minimize damage to  
26 water quality and natural habitats; and

27 (2) To implement the Resource Protection Program on a cooperative  
28 basis between the State and affected local governments, with local governments  
29 establishing and implementing their programs in a consistent and uniform manner  
30 subject to State criteria and oversight.

31 8-1802.

32 (a) (1) In this subtitle the following words have the meanings indicated.

33 (2) "ATLANTIC COASTAL BAYS" MEANS THE ASSAWOMAN, ISLE OF  
34 WIGHT, SINEPUXENT, NEWPORT, AND CHINCOTEAGUE BAYS.

35 (3) "ATLANTIC COASTAL BAYS CRITICAL AREA" MEANS THE INITIAL  
36 PLANNING AREA IDENTIFIED UNDER § 8-1807 OF THIS SUBTITLE.

1 (4) "CHESAPEAKE BAY CRITICAL AREA" MEANS THE INITIAL PLANNING  
2 AREA IDENTIFIED UNDER § 8-1807 OF THIS SUBTITLE.

3 [(2)] (5) "Commission" means the [Chesapeake Bay] Critical Area  
4 Commission FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS established in this  
5 subtitle.

6 (6) "CRITICAL AREA" MEANS THE CHESAPEAKE BAY CRITICAL AREA AND  
7 THE ATLANTIC COASTAL BAYS CRITICAL AREA.

8 [(3)] (7) "Development" means any activity that materially affects the  
9 condition or use of dry land, land under water, or any structure.

10 [(4)] (8) "Growth allocation" means the number of acres of land in the  
11 Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA that a  
12 local jurisdiction may use to create new intensely developed areas and new limited  
13 development areas.

14 [(5)] (9) "Includes" means includes or including by way of illustration  
15 and not by way of limitation.

16 [(6)] (10) "Land classification" means the designation of land in the  
17 Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA in  
18 accordance with the criteria adopted by the Commission as an intensely developed  
19 area or district, a limited development area or district, or a resource conservation  
20 area or district.

21 [(7)] (11) "Local jurisdiction" means a county, or a municipal corporation  
22 with planning and zoning powers, in which any part of the Chesapeake Bay Critical  
23 Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA, as defined in this subtitle, is  
24 located.

25 [(8)] (12) (i) "Program" means the critical area protection program of a  
26 local jurisdiction.

27 (ii) "Program" includes any amendments to the program.

28 [(9)] (13) (i) "Program amendment" means any change to an adopted  
29 program that the Commission determines will result in a use of land or water in the  
30 Chesapeake Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA in a  
31 manner not provided for in the adopted program.

32 (ii) "Program amendment" includes a change to a zoning map that  
33 is not consistent with the method for using the growth allocation contained in an  
34 adopted program.

35 [(10)] (14) (i) "Program refinement" means any change to an adopted  
36 program that the Commission determines will result in a use of land or water in the  
37 Chesapeake Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA in a  
38 manner consistent with the adopted program.

1 (ii) "Program refinement" includes:

2 1. A change to a zoning map that is consistent with the  
3 development area designation of an adopted program; and

4 2. The use of the growth allocation in accordance with an  
5 adopted program.

6 [(11)] (15) (i) "Project approval" means the approval of development,  
7 other than development by a State or local government agency, in the Chesapeake  
8 Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA by the  
9 appropriate local approval authority.

10 (ii) "Project approval" includes:

11 1. Approval of subdivision plats and site plans;

12 2. Inclusion of areas within floating zones;

13 3. Issuance of variances, special exceptions, and conditional  
14 use permits; and

15 4. Approval of rezoning.

16 (iii) "Project approval" does not include building permits.

17 (b) Wherever this subtitle requires Prince George's County to exercise any  
18 power or authority Prince George's County shares with the Maryland-National  
19 Capital Park and Planning Commission, the obligation imposed by this subtitle rests  
20 on both the county and the Maryland-National Capital Park and Planning  
21 Commission in accordance with their respective powers and authorities.

22 8-1803.

23 (a) There is a [Chesapeake Bay] Critical Area Commission FOR THE  
24 CHESAPEAKE AND ATLANTIC COASTAL BAYS in the Department.

25 (b) The Secretary has no authority under Title 1 of this article:

26 (1) To approve, alter, or amend the policies or programs of the  
27 Commission;

28 (2) To transfer, assign, or reassign statutory functions or activities to or  
29 from the Commission; or

30 (3) To adopt, approve, or revise regulations of the Commission.

31 8-1804.

32 (a) (1) The Commission consists of [27] 29 voting members who are  
33 appointed by the Governor, as follows:

1                   (+)    (I)     A full-time chairman, appointed with the advice and consent of  
2 the Senate, who shall serve at the pleasure of the Governor;

3                   (2)    (II)    [11] 13 individuals, appointed with the advice and consent of  
4 the Senate, each of whom is a resident and an elected or appointed official of a local  
5 jurisdiction. At least 1 of these [11] 13 individuals must be an elected or appointed  
6 official of a municipality. These individuals shall serve on the Commission only while  
7 they hold local office. Each shall be selected from certain counties or from  
8 municipalities within the counties as follows, and only after the Governor has  
9 consulted with elected county and municipal officials:

10                   (+)    1.     1 from each of Baltimore City and Anne Arundel,  
11 Baltimore, and Prince George's counties;

12                   (ii)   2.     1 from Harford County or Cecil County;

13                   (iii) 3.     1 from Kent County or Queen Anne's County;

14                   (iv) 4.     1 from Caroline County [or Worcester County];

15                   (v) 5.     1 from Talbot County or Dorchester County;

16                   (vi) 6.     1 from Wicomico County or Somerset County; [and]

17                   (vii) 7.     2 from Calvert County, Charles County, or St. Mary's  
18 County, both of whom may not be from the same county; AND

19                   (viii) 8.     2 FROM WORCESTER COUNTY, 1 OF WHOM SHALL BE A  
20 RESIDENT OF THE CHESAPEAKE BAY WATERSHED AND THE OTHER OF WHOM SHALL  
21 BE A RESIDENT OF THE ATLANTIC COASTAL BAYS WATERSHED;

22                   (3)    (III)    8 individuals, appointed with the advice and consent of the  
23 Senate, who shall represent diverse interests, and among whom shall be a resident  
24 from each of the [6] 5 counties that are listed and from which an appointment has  
25 not been made under paragraph (2) of this subsection and [2] 3 of the 8 members  
26 appointed under this item shall be at large members, 1 OF WHOM SHALL BE A  
27 PRIVATE CITIZEN AND RESIDENT OF THE ATLANTIC COASTAL BAYS WATERSHED; and

28                   (4)    (IV)    The Secretaries of Agriculture, Business and Economic  
29 Development, Housing and Community Development, the Environment,  
30 Transportation, [and] Natural Resources, and [the Director of] Planning, ex officio,  
31 or the designee of the Secretaries [or the Director].

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

34           (b)     A member of the Commission who does not hold another office of profit at  
35 the State or local level shall be entitled to compensation as provided in the budget.  
36 Members of the Commission shall be entitled to reimbursement for expenses as  
37 provided in the budget.

1 (c) Except for the chairman and ex officio State officers or their  
2 representatives:

3 (1) The term of a member is 4 years;

4 (2) The terms of members are staggered as required by the terms  
5 provided for members of the Commission on July 1, 1984;

6 (3) At the end of a term, a member continues to serve until a successor is  
7 appointed and qualifies;

8 (4) A member who is appointed after a term is begun serves for the rest  
9 of the term and until a successor is appointed and qualifies;

10 (5) A member may serve no more than 2 terms; and

11 (6) Any member of the Commission appointed by the Governor who shall  
12 fail to attend at least 60% of the meetings of the Commission during any period of 12  
13 consecutive months shall be considered to have resigned, and the chairman shall  
14 forward the member's name to the Governor, not later than January 15 of the year  
15 following the nonattendance with the statement of the nonattendance, and the  
16 Governor shall appoint a successor for the remainder of the term. If the member has  
17 been unable to attend meetings as required by this subtitle for reasons satisfactory to  
18 the Governor, the Governor may waive the resignation if the reasons are made public.

19 (d) If a vacancy arises other than by the expiration of a term, the Governor  
20 shall appoint within 30 days, with the advice and consent of the Senate, a successor of  
21 like qualification to serve the remainder of the term.

22 (e) (1) A quorum of the Commission consists of 1 member more than a  
23 majority of the full authorized membership of the Commission.

24 (2) A quorum of a panel of the Commission consists of 3 members.

25 (3) The Commission or a panel of the Commission may not hold a public  
26 hearing unless a quorum is present.

27 (4) The Commission or a panel of the Commission may not take any  
28 official action unless:

29 (i) A quorum is present; and

30 (ii) A majority of the members who are present and eligible to vote  
31 concur in or vote for the action.

32 8-1806.

33 (A) The Commission has all powers necessary for carrying out the purposes of  
34 this subtitle, including the following:

1 (1) To adopt regulations and criteria in accordance with Title 2, Subtitle  
 2 5 (Joint Committee on Administrative, Executive and Legislative Review) and Title  
 3 10, Subtitle 1 (Administrative Procedure Act) of the State Government Article;

4 (2) To conduct hearings in connection with policies, proposed programs,  
 5 and proposed regulations or amendments to regulations; [and]

6 (3) To contract for consultant or other services; AND

7 (4) TO ESTABLISH AN ADVISORY COMMITTEE, COMPOSED OF MEMBERS  
 8 OF THE COMMISSION AND LOCAL CITIZENS AND LOCAL STAKEHOLDER GROUPS, TO  
 9 MAKE RECOMMENDATIONS TO THE COMMISSION WITH RESPECT TO ATLANTIC  
 10 COASTAL BAYS CRITICAL AREA PROGRAMS.

11 (B) THE MEMBERS OF THE COMMISSION WHO RESIDE IN THE ATLANTIC  
 12 COASTAL BAYS WATERSHED SHALL SERVE ON ANY COMMITTEE ESTABLISHED  
 13 UNDER SUBSECTION (A)(4) OF THIS SECTION.

14 8-1807.

15 (a) The initial planning area for determination of the Chesapeake Bay Critical  
 16 Area consists of:

17 (1) All waters of and lands under the Chesapeake Bay and its tributaries  
 18 to the head of tide as indicated on the State wetlands maps, and all State and private  
 19 wetlands designated under Title 16 of the Environment Article; and

20 (2) All land and water areas within 1,000 feet beyond the landward  
 21 boundaries of State or private wetlands and the heads of tides designated under Title  
 22 [9] 16 of the Environment Article.

23 (B) THE INITIAL PLANNING AREA FOR DETERMINATION OF THE ATLANTIC  
 24 COASTAL BAYS CRITICAL AREA CONSISTS OF:

25 (1) ALL WATERS OF AND LANDS UNDER THE COASTAL BAYS AND THEIR  
 26 TRIBUTARIES TO THE HEAD OF TIDE AS INDICATED ON THE STATE WETLANDS MAPS,  
 27 AND ALL STATE AND PRIVATE WETLANDS DESIGNATED UNDER TITLE 16 OF THE  
 28 ENVIRONMENT ARTICLE; AND

29 (2) ALL LAND AND WATER AREAS WITHIN 1,000 FEET BEYOND THE  
 30 LANDWARD BOUNDARIES OF STATE OR PRIVATE WETLANDS AND THE HEADS OF  
 31 TIDES DESIGNATED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE.

32 [(b)] (C) (1) (i) In determining the Chesapeake Bay Critical Area OR THE  
 33 ATLANTIC COASTAL BAYS CRITICAL AREA within its boundaries, a local jurisdiction  
 34 may exclude those portions of the planning area designated in subsection (a) OR (B) of  
 35 this section which the local jurisdiction finds to be:

36 1. Part of a developed, urban area in which, in view of  
 37 available public facilities and applicable laws and restrictions, the imposition of a



1 8-1808.

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

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

8 (II) Each local jurisdiction shall submit to the Governor by October  
9 31, 1984 a detailed request for funds that are equivalent to the additional costs  
10 incurred in developing the program under this section.

11 (III) THE GOVERNOR SHALL INCLUDE IN THE FISCAL YEAR 2003  
12 BUDGET A SUM OF MONEY TO BE USED FOR GRANTS TO REIMBURSE LOCAL  
13 JURISDICTIONS IN THE ATLANTIC COASTAL BAYS CRITICAL AREA FOR THE  
14 REASONABLE COSTS OF DEVELOPING A PROGRAM UNDER THIS SECTION.

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

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

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

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

26 (3) To establish land use policies for development in the Chesapeake Bay  
27 Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA which accommodate  
28 growth and also address the fact that, even if pollution is controlled, the number,  
29 movement, and activities of persons in that area can create adverse environmental  
30 impacts.

31 (c) At a minimum, a program sufficient to meet the goals stated in subsection  
32 (b) of this section includes:

33 (1) A map designating the critical area in a local jurisdiction;

34 (2) A comprehensive zoning map for the critical area;

35 (3) As necessary, new or amended provisions of the jurisdiction's:

36 (i) Subdivision regulations;

- 1 (ii) Comprehensive or master plan;
- 2 (iii) Zoning ordinances or regulations;
- 3 (iv) Provisions relating to enforcement; and
- 4 (v) Provisions as appropriate relating to grandfathering of  
5 development at the time the program is adopted or approved by the Commission;
- 6 (4) Provisions requiring that project approvals shall be based on findings  
7 that projects are consistent with the standards stated in subsection (b) of this section;
- 8 (5) Provisions to limit the amount of land covered by buildings, roads,  
9 parking lots, or other impervious surfaces, and to require or encourage cluster  
10 development, where necessary or appropriate;
- 11 (6) Establishment of buffer areas along shorelines within which  
12 agriculture will be permitted only if best management practices are used, provided  
13 that structures or any other use of land which is necessary for adjacent agriculture  
14 shall also be permitted in any buffer area;
- 15 (7) Requirements for minimum setbacks for structures and septic fields  
16 along shorelines;
- 17 (8) Designation of shoreline areas, if any, that are suitable for parks,  
18 hiking, biking, wildlife refuges, scenic drives, public access or assembly, and  
19 water-related recreation such as boat slips, piers, and beaches;
- 20 (9) Designation of shoreline areas, if any, that are suitable for ports,  
21 marinas, and industries that use water for transportation or derive economic benefits  
22 from shore access;
- 23 (10) Provisions requiring that all harvesting of timber in the Chesapeake  
24 Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA be in accordance  
25 with plans approved by the district forestry board;
- 26 (11) Provisions establishing that the controls in a program which are  
27 designed to prevent runoff of pollutants will not be required on sites where the  
28 topography prevents runoff from directly or indirectly reaching tidal waters; and
- 29 (12) Provisions for reasonable accommodations in policies or procedures  
30 when the accommodations are necessary to avoid discrimination on the basis of  
31 physical disability, including provisions that authorize a local jurisdiction to require  
32 removal of a structure that was installed or built to accommodate a physical disability  
33 and require restoration when the accommodation permitted by this paragraph is no  
34 longer necessary.
- 35 (d) (1) The Commission shall adopt by regulation on or before December 1,  
36 1985 criteria for program development and approval, which are necessary or  
37 appropriate to achieve the standards stated in subsection (b) of this section. Prior to

1 developing its criteria and also prior to adopting its criteria, the Commission shall  
2 hold at least 6 regional public hearings, 1 in each of the following areas:

- 3 (i) Harford, Cecil, and Kent counties;
- 4 (ii) Queen Anne's, Talbot, and Caroline counties;
- 5 (iii) Dorchester, Somerset, and Wicomico counties;
- 6 (iv) Baltimore City and Baltimore County;
- 7 (v) Charles, Calvert, and St. Mary's counties; and
- 8 (vi) Anne Arundel and Prince George's counties.

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

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

14 (F) IN ADOPTING THE INITIAL LAND CLASSIFICATION FOR THE ATLANTIC  
15 COASTAL BAYS CRITICAL AREA, THE LOCAL PROGRAM:

16 (1) OF THE TOWN OF OCEAN CITY SHALL CLASSIFY AS AN INTENSELY  
17 DEVELOPED AREA THAT AREA THAT IS WITHIN THE MUNICIPAL BOUNDARIES OF  
18 OCEAN CITY AS OF JANUARY 1, 2002; AND

19 (2) OF WORCESTER COUNTY SHALL CLASSIFY AS AN INTENSELY  
20 DEVELOPED AREA THAT AREA LOCATED ON THE WESTERN MAINLAND THAT IS EAST  
21 OF GOLF COURSE ROAD, SOUTH OF CHARLES STREET, AND NORTH OF ROUTE 707  
22 (OLD BRIDGE ROAD).

23 ~~(F)~~ (G) THE PROVISIONS OF THIS SUBTITLE AND TITLE 27 OF THE CODE OF  
24 MARYLAND REGULATIONS APPLY TO THE ATLANTIC COASTAL BAYS CRITICAL AREA.

25 8-1808.1.

26 (a) This section is intended to establish conditions for development in the  
27 Chesapeake Bay Critical Area AND THE ATLANTIC COASTAL BAYS CRITICAL AREA in  
28 addition to those established in criteria of the Commission. However, in the event of  
29 any inconsistency between the criteria and the provisions of this section, this section  
30 shall control.

31 (b) The growth allocation for a local jurisdiction shall be calculated based on 5  
32 percent of the total resource conservation area in [the] A local jurisdiction:

33 (1) IN THE CHESAPEAKE BAY CRITICAL AREA at the time of the original  
34 approval of the local jurisdiction's program by the Commission, not including tidal  
35 wetlands or land owned by the federal government; OR

1 (2) IN THE ATLANTIC COASTAL BAYS CRITICAL AREA AT THE TIME OF  
2 THE ORIGINAL APPROVAL OF THE LOCAL JURISDICTION'S PROGRAM BY THE  
3 COMMISSION, NOT INCLUDING TIDAL WETLANDS OR LAND OWNED BY THE FEDERAL  
4 GOVERNMENT.

5 (c) When locating new intensely developed or limited development areas, local  
6 jurisdictions shall use the following guidelines:

7 (1) New intensely developed areas should be located in limited  
8 development areas or adjacent to existing intensely developed areas;

9 (2) New limited development areas should be located adjacent to existing  
10 limited development areas or intensely developed areas;

11 (3) Except as provided in paragraph (5) of this subsection, no more than  
12 one-half of the expansion allocated in the criteria of the Commission may be located  
13 in resource conservation areas;

14 (4) New intensely developed or limited development areas to be located  
15 in the resource conservation area shall conform to all criteria of the Commission for  
16 intensely developed or limited development areas and shall be designated on the  
17 comprehensive zoning map submitted by the local jurisdiction as part of its  
18 application to the Commission for program approval or at a later date in compliance  
19 with § 8-1809(g) of this subtitle; and

20 (5) In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's,  
21 St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county is  
22 unable to utilize a portion of the growth allocated to the county in paragraphs (1) and  
23 (2) of this subsection within or adjacent to existing intensely developed or limited  
24 development areas as demonstrated in the local plan approved by the Commission,  
25 then that portion of the allocated expansion which cannot be so located may be  
26 located in the resource conservation area in addition to the expansion allocated in  
27 paragraph (3) of this subsection. A developer shall be required to cluster any  
28 development in an area of expansion authorized under this paragraph.

29 ~~(D) (1) THE GROWTH ALLOCATION FOR A LOCAL JURISDICTION BASED ON~~  
30 ~~5% OF THE TOTAL RESOURCE CONSERVATION AREA IN THE CHESAPEAKE BAY~~  
31 ~~CRITICAL AREA IN A LOCAL JURISDICTION IN THE CHESAPEAKE BAY CRITICAL AREA~~  
32 ~~UNDER SUBSECTION (C)(5) OF THIS SECTION SHALL BE UTILIZED WITHIN THE~~  
33 ~~CHESAPEAKE BAY CRITICAL AREA.~~

34 ~~(2) THE GROWTH ALLOCATION FOR A LOCAL JURISDICTION BASED ON~~  
35 ~~5% OF THE TOTAL RESOURCE CONSERVATION AREA IN THE ATLANTIC COASTAL BAYS~~  
36 ~~CRITICAL AREA IN A LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS~~  
37 ~~CRITICAL AREA UNDER (C)(5) OF THIS SECTION SHALL BE UTILIZED WITHIN THE~~  
38 ~~ATLANTIC COASTAL BAYS CRITICAL AREA.~~

39 (D) (1) SUBJECT TO THE CONDITIONS UNDER PARAGRAPHS (2) AND (3) OF  
40 THIS SUBSECTION, IF A JURISDICTION HAS WITHIN ITS TERRITORIAL LIMITS AN  
41 AREA THAT IS SUBJECT TO THE CHESAPEAKE BAY CRITICAL AREA PROGRAM AND AN

1 AREA THAT IS SUBJECT TO THE ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM,  
2 THE GROWTH ALLOCATION FOR THAT JURISDICTION MAY BE UTILIZED WITHIN  
3 EITHER CRITICAL AREA, AS THE JURISDICTION'S LOCAL PROGRAM CONSIDERS  
4 APPROPRIATE.

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

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

12 [(d)] (E) In calculating the 1-in-20 acre density of development that is  
13 permitted on a parcel located within the resource conservation area, a local  
14 jurisdiction may permit the area of any private wetlands located on the property to be  
15 included, under the following conditions:

16 (1) The density of development on the upland portion of the parcel may  
17 not exceed 1 dwelling unit per 8 acres; and

18 (2) The area of private wetlands shall be estimated on the basis of  
19 vegetative information as designated on the State wetlands maps.

20 8-1808.2.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) "Bona fide intrafamily transfer" means a transfer to a member of the  
23 owner's immediate family of a portion of the owner's property for the purpose of  
24 establishing a residence for that family member.

25 (3) "Immediate family" means a father, mother, son, daughter,  
26 grandfather, grandmother, grandson, or granddaughter.

27 (b) Notwithstanding density limitations established in criteria of the  
28 Commission, as part of its local program, a local jurisdiction may submit provisions by  
29 which an owner of a parcel of land in the resource conservation area may be permitted  
30 to make bona fide intrafamily transfers.

31 (c) If a local jurisdiction includes provisions for bona fide intrafamily transfers  
32 as part of its local program, the local jurisdiction shall permit a bona fide intrafamily  
33 transfer to be made only from parcels of land that:

34 (1) Were of record on March 1, 1986 IN THE CHESAPEAKE BAY CRITICAL  
35 AREA OR ON ~~APRIL 17, 2001~~ JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL  
36 AREA; and

37 (2) Are 7 acres or more and less than 60 acres in size.

1 (d) A bona fide intrafamily transfer from a parcel of land shall be a  
2 subdivision of the parcel of land that is subject to local approval under the  
3 "Subdivision Control" subtitle of Article 66B of the Code, under Title 7 of Article 28 of  
4 the Code, or under any subdivision control provisions of a charter county.

5 (e) (1) A local jurisdiction:

6 (i) May approve the subdivision of a parcel of land into the number  
7 of lots indicated in this subsection by means of a bona fide intrafamily transfer; and

8 (ii) May not approve any greater subdivision of the parcel of land or  
9 any portion of the parcel of land.

10 (2) A parcel that is 7 acres or more and less than 12 acres in size may be  
11 subdivided into 2 lots.

12 (3) A parcel that is 12 acres or more and less than 60 acres in size may be  
13 subdivided into 3 lots. The lots may be created at different times.

14 (f) (1) As a condition of approval, a local jurisdiction shall require that:

15 (i) Any deed for a lot that is created by a bona fide intrafamily  
16 transfer shall contain a covenant stating that the lot is created subject to the  
17 provisions of this section; and

18 (ii) A lot created by a bona fide intrafamily transfer may not be  
19 conveyed subsequently to any person other than a member of the owner's immediate  
20 family, except under procedures established pursuant to subsection (g) of this section.

21 (2) This subsection does not prevent the conveyance of the lot to a third  
22 party as security for a mortgage or deed of trust.

23 (g) If a local jurisdiction includes provisions for bona fide intrafamily transfers  
24 as part of the local jurisdiction's local program, the local jurisdiction shall establish  
25 standards and procedures, subject to the approval of the Commission, by which the  
26 local jurisdiction will permit the subsequent conveyance of lots to persons other than  
27 immediate family members. The standards and procedures shall assure that:

28 (1) The lot was created as part of a bona fide intrafamily transfer and  
29 not with the intent of subdividing the original parcel of land for purposes of ultimate  
30 commercial sale; and

31 (2) (i) A change in circumstances has occurred since the original  
32 transfer was made that is not inconsistent with this subtitle and that warrants an  
33 exception; or

34 (ii) Other circumstances that are consistent with this subtitle and  
35 with the Commission's criteria to maintain land areas necessary to support the  
36 protective uses of agriculture, forestry, open space, and natural habitats in resource  
37 conservation areas warrant an exception.

1 8-1808.3.

2 (a) This section applies notwithstanding:

3 (1) Any other provision of this subtitle; or

4 (2) Any criteria or guideline of the Commission adopted under this  
5 subtitle.

6 (b) This section controls over any other requirement concerning impervious  
7 surfaces limitations in limited development areas and resource conservation areas in  
8 the critical area.

9 (c) On or before December 31, 1996, a local jurisdiction shall amend its local  
10 critical area protection program to meet the provisions of this section.

11 (d) (1) Except as otherwise provided in this subsection for stormwater  
12 runoff, man-made impervious surfaces are limited to 15% of a parcel or lot.

13 (2) If a parcel or lot one-half acre or less in size existed on or before  
14 December 1, 1985 ~~IN THE CHESAPEAKE BAY CRITICAL AREA OR ON OR BEFORE APRIL~~  
15 ~~17, 2001~~ JUNE 1, 2002 ~~IN THE ATLANTIC COASTAL BAYS CRITICAL AREA~~, then  
16 man-made impervious surfaces are limited to 25% of the parcel or lot.

17 (3) If a parcel or lot greater than one-half acre and less than one acre in  
18 size existed on or before December 1, 1985 ~~IN THE CHESAPEAKE BAY CRITICAL AREA~~  
19 ~~OR ON OR BEFORE APRIL 17, 2001~~ JUNE 1, 2002 ~~IN THE ATLANTIC COASTAL BAYS~~  
20 ~~CRITICAL AREA~~, then man-made impervious surfaces are limited to 15% of the parcel  
21 or lot.

22 (4) If an individual lot 1 acre or less in size is part of a subdivision  
23 approved after December 1, 1985 ~~IN THE CHESAPEAKE BAY CRITICAL AREA OR~~  
24 ~~AFTER APRIL 17, 2001~~ JUNE 1, 2002 ~~IN THE ATLANTIC COASTAL BAYS CRITICAL AREA~~,  
25 then man-made impervious surfaces of the lot may not exceed 25% of the lot.  
26 However, the total of the impervious surfaces over the entire subdivision may not  
27 exceed 15%.

28 (e) This section does not apply to a trailer park that was in residential use on  
29 or before December 1, 1985 ~~IN THE CHESAPEAKE BAY CRITICAL AREA OR ON OR~~  
30 ~~BEFORE APRIL 17, 2001~~ JUNE 1, 2002 ~~IN THE ATLANTIC COASTAL BAYS CRITICAL AREA~~.

31 (f) A local jurisdiction may allow a property owner to exceed the impervious  
32 surface limits provided in subsection (d)(2) and (3) of this section if the following  
33 conditions exist:

34 (1) New impervious surfaces on the property have been minimized;

35 (2) For a lot or parcel one-half acre or less in size, total impervious  
36 surfaces do not exceed impervious surface limits in subsection (d)(2) of this section by  
37 more than 25% or 500 square feet, whichever is greater;

1 (3) For a lot or parcel greater than one-half acre and less than one acre  
 2 in size, total impervious surfaces do not exceed impervious surface limits in  
 3 subsection (d)(3) of this section or 5,445 square feet, whichever is greater;

4 (4) Water quality impacts associated with runoff from the new  
 5 impervious surfaces can be and have been minimized through site design  
 6 considerations or use of best management practices approved by the local jurisdiction  
 7 to improve water quality; and

8 (5) The property owner performs on-site mitigation as required by the  
 9 local jurisdiction to offset potential adverse water quality impacts from the new  
 10 impervious surfaces, or the property owner pays a fee to the local jurisdiction in lieu  
 11 of performing the on-site mitigation.

12 (g) All fees collected by a local jurisdiction under subsection (f)(5) of this  
 13 section must be used to fund projects that improve water quality within the critical  
 14 area consistent with the jurisdiction's local critical area protection program.

15 (h) A local jurisdiction may grant a variance from the provisions of this section  
 16 in accordance with regulations adopted by the Commission concerning variances as  
 17 part of local program development set forth in COMAR 27.01.11 and notification of  
 18 project applications set forth in COMAR 27.03.01.

19 8-1808.8.

20 ~~(A) EACH LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL~~  
 21 ~~AREA SHALL INCLUDE THE FOLLOWING ELEMENTS IN THE JURISDICTION'S LOCAL~~  
 22 ~~CRITICAL AREA PROTECTION PROGRAM:~~

23 ~~(1) A PROVISION REQUIRING THE USE OF BIORETENTION AND OTHER~~  
 24 ~~NONSTRUCTURAL STORMWATER BEST MANAGEMENT PRACTICES FOR~~  
 25 ~~REDEVELOPMENT IN INTENSELY DEVELOPED AREAS WHERE THE COST OF~~  
 26 ~~REDEVELOPMENT EXCEEDS 50% OF THE ASSESSED VALUE OF THE PROPERTY,~~  
 27 ~~UNLESS THE APPLICANT FOR PROJECT APPROVAL DEMONSTRATES THAT USE OF~~  
 28 ~~SUCH MEASURES IS NOT FEASIBLE;~~

29 ~~(2) A PROVISION REQUIRING AN APPLICANT FOR PROJECT APPROVAL~~  
 30 ~~WHO IS NOT SUBJECT TO THE PROVISIONS OF ITEM (1) OF THIS SUBSECTION OR WHO~~  
 31 ~~DEMONSTRATES THAT USE OF THE MEASURES SPECIFIED IN ITEM (1) OF THIS~~  
 32 ~~SECTION ARE NOT FEASIBLE SHALL COMPLY WITH THE STORMWATER~~  
 33 ~~MANAGEMENT PROVISIONS OF TITLE 27 OF THE CODE OF MARYLAND REGULATIONS~~  
 34 ~~AND TITLE 4, SUBTITLE 2 OF THE ENVIRONMENT ARTICLE;~~

35 ~~(3) (A) EXCEPT AS PROVIDED IN SUBSECTION (B)(2) OF THIS SECTION,~~  
 36 ~~EACH LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL~~  
 37 ~~INCLUDE IN ITS LOCAL CRITICAL AREA PROTECTION PROGRAM PROVISIONS~~  
 38 ~~REQUIRING PROPOSED DEVELOPMENT SITES IN INTENSELY DEVELOPED AREAS TO~~  
 39 ~~PROVIDE A FOREST OR DEVELOPED WOODLAND COVER OF AT LEAST 15% AFTER~~  
 40 ~~DEVELOPMENT OR A FEE-IN-LIEU PAYMENT IF THE FEE IS ADEQUATE TO ENSURE~~  
 41 ~~THE RESTORATION OR ESTABLISHMENT OF AN EQUIVALENT FOREST AREA; AND~~

1           (4)     ~~A PROVISION APPLYING THE BUFFER REQUIREMENTS OF TITLE 27 OF~~  
2 ~~THE CODE OF MARYLAND REGULATIONS TO TRIBUTARY STREAMS LOCATED~~  
3 ~~OUTSIDE THE CRITICAL AREA AND WITHIN THE ATLANTIC COASTAL BAYS~~  
4 ~~WATERSHED THAT ARE NOTED AS PERENNIAL AND INTERMITTENT STREAMS IN THE~~  
5 ~~ATLANTIC COASTAL BAYS WATERSHED WHICH ARE SO NOTED ON THE MOST RECENT~~  
6 ~~U.S. GEOLOGICAL SURVEY 7 1/2 MINUTE TOPOGRAPHIC QUADRANGLE MAPS (SCALE~~  
7 ~~1:24,000) OR ON MORE DETAILED MAPS OR STUDIES AT THE DISCRETION OF THE~~  
8 ~~LOCAL JURISDICTIONS.~~

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

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

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

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

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

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

27           (1)     AS PART OF COMPLIANCE WITH THE STORMWATER MANAGEMENT  
28 REQUIREMENTS OF TITLE 27 OF THE CODE OF MARYLAND REGULATIONS AND TITLE  
29 4, SUBTITLE 2 OF THE ENVIRONMENT ARTICLE, A PROVISION ENCOURAGING THE  
30 USE OF BIORETENTION FOR REDEVELOPMENT IN INTENSELY DEVELOPED AREAS;

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

38           (3)     TO THE EXTENT OTHERWISE PERMITTED BY LAW, A PROVISION  
39 REGARDING IMPROVEMENTS OVER STATE OR PRIVATE WETLANDS, INCLUDING  
40 CRITERIA FOR THE PROTECTION OF WATER QUALITY AND FISH, WILDLIFE, AND

1 PLANT HABITATS, AND THE USE AND CONSTRUCTION OF PRIVATE AND COMMUNITY  
2 PIERS IN THE LOCAL JURISDICTION.

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

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

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

9 (E) IF A LOCAL JURISDICTION ADOPTS PROVISIONS CONSISTENT WITH  
10 SUBSECTION (C)(2) OF THIS SECTION, AGRICULTURAL ACTIVITIES ARE PERMITTED IN  
11 THE BUFFER OUTSIDE THE CRITICAL AREA AND IN THE ATLANTIC COASTAL BAYS  
12 WATERSHED THAT ARE IN ACCORDANCE WITH TITLE 27 OF THE CODE OF MARYLAND  
13 REGULATIONS UNDER AN APPROVED SOIL CONSERVATION AND WATER QUALITY  
14 PLAN.

15 ~~(B) THE PROVISIONS UNDER SUBSECTION (A) OF THIS SECTION SHALL BE IN~~  
16 ~~ADDITION TO THE STORMWATER MANAGEMENT REQUIREMENTS OF TITLE 27 OF THE~~  
17 ~~CODE OF MARYLAND REGULATIONS AND TITLE 4, SUBTITLE 2 OF THE ENVIRONMENT~~  
18 ~~ARTICLE.~~

19 8-1808.9.

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

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

26 (1) TO ADOPT PROVISIONS APPLYING A BUFFER TO PERENNIAL AND  
27 INTERMITTENT STREAMS THAT ARE WITHIN THE BOUNDARIES OF THE LOCAL  
28 JURISDICTION AND ARE NOTED ON THE MOST RECENT U.S. GEOLOGICAL SURVEY  
29 7-1/2 MINUTE TOPOGRAPHIC QUADRANGLE MAPS (SCALE 1:24,000) OR ON MORE  
30 DETAILED MAPS OR STUDIES AT THE DISCRETION OF THE LOCAL JURISDICTION; OR

31 (2) NOT TO ADOPT THE PROVISIONS.

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

1 8-1809.

2 (a) (1) Within 45 days after the criteria adopted by the Commission under §  
3 8-1808 of this subtitle become effective, each local jurisdiction shall submit to the  
4 Commission a written statement of its intent either:

5 [(1)] (I) To develop a critical area protection program to control the use  
6 and development of that part of the Chesapeake Bay Critical Area located within its  
7 territorial limits; or

8 [(2)] (II) Not to develop such a program.

9 (2) ON OR BEFORE JULY 15, 2002, EACH LOCAL JURISDICTION IN THE  
10 ATLANTIC COASTAL BAYS CRITICAL AREA SHALL SUBMIT TO THE COMMISSION A  
11 WRITTEN STATEMENT OF ITS INTENT EITHER:

12 (I) TO DEVELOP A CRITICAL AREA PROTECTION PROGRAM TO  
13 CONTROL THE USE AND DEVELOPMENT OF THAT PART OF THE ATLANTIC COASTAL  
14 BAYS CRITICAL AREA LOCATED WITHIN ITS TERRITORIAL LIMITS; OR

15 (II) NOT TO DEVELOP SUCH A PROGRAM.

16 (b) If a local jurisdiction states the local jurisdiction's intent not to develop a  
17 program or fails to submit a timely statement of intent, the Commission shall prepare  
18 and adopt a program for the part of the Chesapeake Bay Critical Area OR ATLANTIC  
19 COASTAL BAYS CRITICAL AREA in that local jurisdiction.

20 (c) (1) If a local jurisdiction states the local jurisdiction's intent to develop a  
21 CHESAPEAKE BAY CRITICAL AREA program, the local jurisdiction shall prepare a  
22 proposed program and submit the program to the Commission within 270 days after  
23 the effective date of the criteria adopted under § 8-1808 of this subtitle. However, if  
24 the local jurisdiction submits evidence satisfactory to the Commission that the local  
25 jurisdiction is making reasonable progress in the development of a program, the  
26 Commission may extend this period for up to an additional 180 days. Before  
27 submission of a program to the Commission within the time allowed by this  
28 subsection, a local jurisdiction shall hold at least 1 public hearing on the proposed  
29 program, for which 2 weeks notice shall be published in a newspaper of general  
30 circulation in the local jurisdiction.

31 (2) IF A LOCAL JURISDICTION STATES THE LOCAL JURISDICTION'S  
32 INTENT TO DEVELOP AN ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM, THE  
33 LOCAL JURISDICTION SHALL PREPARE A PROPOSED PROGRAM MEETING THE  
34 REQUIREMENTS OF THE CRITERIA ADOPTED UNDER § 8-1808 OF THIS SUBTITLE AND  
35 SUBMIT THE PROGRAM TO THE COMMISSION ON OR BEFORE JANUARY 1, 2003.  
36 HOWEVER, IF THE LOCAL JURISDICTION SUBMITS EVIDENCE SATISFACTORY TO THE  
37 COMMISSION THAT THE LOCAL JURISDICTION IS MAKING REASONABLE PROGRESS  
38 IN THE DEVELOPMENT OF A PROGRAM, THE COMMISSION MAY EXTEND THIS PERIOD  
39 FOR UP TO AN ADDITIONAL 30 DAYS. BEFORE SUBMISSION OF A PROGRAM TO THE  
40 COMMISSION WITHIN THE TIME ALLOWED BY THIS SUBSECTION, A LOCAL  
41 JURISDICTION SHALL HOLD AT LEAST 1 PUBLIC HEARING ON THE PROPOSED

1 PROGRAM, FOR WHICH 2 WEEKS' NOTICE SHALL BE PUBLISHED IN A NEWSPAPER OF  
2 GENERAL CIRCULATION IN THE LOCAL JURISDICTION.

3 (d) (1) Within 30 days after a program is submitted, the Commission shall  
4 appoint a panel of 5 of its members to conduct, in the affected jurisdiction, a public  
5 hearing on the proposed program.

6 (2) (I) Within 90 days after the Commission receives a proposed  
7 CHESAPEAKE BAY CRITICAL AREA program from a local jurisdiction, the Commission  
8 shall approve the proposal or notify the local jurisdiction of specific changes that must  
9 be made in order for the proposal to be approved. If the Commission does neither, the  
10 proposal shall be deemed approved.

11 (II) WITHIN 60 DAYS AFTER THE COMMISSION RECEIVES A  
12 PROPOSED ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM FROM A LOCAL  
13 JURISDICTION, THE COMMISSION SHALL APPROVE THE PROPOSAL OR NOTIFY THE  
14 LOCAL JURISDICTION OF SPECIFIC CHANGES THAT MUST BE MADE IN ORDER FOR  
15 THE PROPOSAL TO BE APPROVED. IF THE COMMISSION DOES NEITHER, THE  
16 PROPOSAL SHALL BE DEEMED APPROVED.

17 (3) A changed proposal shall be submitted to the Commission in the  
18 same manner as the original proposal, within 40 days after the Commission's notice.  
19 Unless the Commission approves a changed proposal or disapproves a changed  
20 proposal and states in writing the reasons for the Commission's disapproval within 40  
21 days, the changed proposal shall be deemed approved.

22 (e) Within 90 days after the Commission approves a proposed CHESAPEAKE  
23 BAY CRITICAL AREA program OR A PROPOSED ATLANTIC COASTAL BAYS CRITICAL  
24 AREA PROGRAM, the local jurisdiction shall hold hearings and adopt the program in  
25 accordance with legislative procedures for enacting ordinances. If the governing body  
26 of the local jurisdiction wishes to change any part of the approved proposal before  
27 adoption, the governing body shall submit the proposed change to the Commission for  
28 approval. Unless the Commission approves the change or disapproves the change and  
29 states in writing the reasons for the Commission's disapproval within 30 days after  
30 the Commission receives the change, the change shall be deemed approved. A changed  
31 part may not be adopted until the changed part is approved by the Commission.

32 (f) (1) Within 760 days after criteria adopted by the Commission become  
33 effective, there shall be in effect throughout the Chesapeake Bay Critical Area  
34 programs approved or adopted by the Commission.

35 (2) ON OR BEFORE SEPTEMBER 29, 2003, THERE SHALL BE IN EFFECT  
36 THROUGHOUT THE ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAMS APPROVED  
37 OR ADOPTED BY THE COMMISSION.

38 (g) Each local jurisdiction shall review its entire program and propose any  
39 necessary amendments to its entire program, including local zoning maps, at least  
40 every 4 years beginning with the 4-year anniversary of the date that the program  
41 became effective and every 4 years after that date. Each local jurisdiction shall send

1 in writing to the Commission, within 60 days after each 4-year anniversary, the  
2 following information:

3 (1) A statement certifying that the required review has been  
4 accomplished;

5 (2) Any necessary requests for program amendments, program  
6 refinements, or other matters that the local jurisdiction wishes the Commission to  
7 consider;

8 (3) An updated resource inventory; and

9 (4) A statement quantifying acreages within each land classification, the  
10 growth allocation used, and the growth allocation remaining.

11 (h) (1) As often as necessary but not more than 4 times per calendar year,  
12 each local jurisdiction may propose program amendments and program refinements  
13 to its adopted program.

14 (2) (i) Except for program amendments or program refinements  
15 developed during program review under subsection (g) of this section, a zoning map  
16 amendment may be granted by a local approving authority only on proof of a mistake  
17 in the existing zoning.

18 (ii) The requirement in paragraph (2)(i) of this subsection that a  
19 zoning map amendment may be granted only on proof of a mistake does not apply to  
20 proposed changes to a zoning map that:

21 1. Are wholly consistent with the land classifications in the  
22 adopted program; or

23 2. Propose the use of a part of the remaining growth  
24 allocation in accordance with the adopted program.

25 (i) A program may not be amended except with the approval of the  
26 Commission.

27 (j) The Commission shall approve programs and program amendments that  
28 meet:

29 (1) The standards set forth in § 8-1808(b)(1) through (3) of this subtitle;  
30 and

31 (2) The criteria adopted by the Commission under § 8-1808 of this  
32 subtitle.

33 (k) Copies of each approved program, as the program is amended or refined  
34 from time to time, shall be maintained by the local jurisdiction and the Commission  
35 in a form available for public inspection.

1 (l) (1) If the Commission determines that an adopted program contains a  
2 clear mistake, omission, or conflict with the criteria or law, the Commission may:

3 (i) Notify the local jurisdiction of the specific deficiency; and

4 (ii) Request that the jurisdiction submit a proposed program  
5 amendment or program refinement to correct the deficiency.

6 (2) Within 90 days after being notified of any deficiency under  
7 paragraph (1) of this subsection, the local jurisdiction shall submit to the  
8 Commission, as program amendments or program refinements, any proposed changes  
9 that are necessary to correct those deficiencies.

10 (3) Local project approvals granted under a part of a program that the  
11 Commission has determined to be deficient shall be null and void after notice of the  
12 deficiency.

13 (m) (1) The Commission may adopt regulations that prescribe the procedures  
14 and information requirements for program amendments and program refinements.

15 (2) In the absence of regulations under paragraph (1) of this subsection,  
16 a local jurisdiction may propose changes to adopted programs. Within 10 working  
17 days of receiving a proposal under this paragraph, the Commission shall:

18 (i) Mail a notification to the local jurisdiction that the proposal has  
19 been accepted for processing; or

20 (ii) Return the proposal as incomplete.

21 (n) A local jurisdiction may specify whether it intends a proposed change to be  
22 a program amendment or program refinement. However, the Commission shall treat  
23 a proposed change as a program amendment unless the chairman determines that the  
24 proposed change is a program refinement.

25 (o) (1) For proposed program amendments, a Commission panel shall hold a  
26 public hearing in the local jurisdiction, and the Commission shall act on the proposed  
27 program amendment within 90 days of the Commission's acceptance of the proposal.  
28 If action by the Commission is not taken within 90 days, the proposed program  
29 amendment is deemed approved.

30 (2) The local jurisdiction shall incorporate the approved program  
31 amendment into the adopted program within 120 days of receiving notice from the  
32 Commission that the program amendment has been approved.

33 (p) (1) Proposed program refinements shall be determined as provided in this  
34 subsection.

35 (2) (i) Within 30 days of the Commission's acceptance of a proposal to  
36 change an adopted program, the chairman, on behalf of the Commission, may  
37 determine that the proposed change is a program refinement. Immediately upon

1 making a determination under this paragraph, the chairman shall notify the  
2 Commission of that determination.

3 (ii) If a proposed change that was specifically submitted as a  
4 program refinement is not acted on by the chairman within the 30-day period, the  
5 Commission shall notify the appropriate local jurisdiction that the proposed change  
6 has been deemed to be a program amendment.

7 (3) (i) The Commission may vote to override the chairman's  
8 determination only at the first Commission meeting where a quorum is present  
9 following the chairman's determination.

10 (ii) If the chairman's determination is overridden, the proposed  
11 change is deemed a program amendment, which shall be decided by the Commission  
12 in accordance with the procedures for program amendments provided in this section,  
13 except that the Commission shall act on the program amendment within 60 days  
14 after a vote to override the chairman.

15 (iii) If the chairman's determination is not overridden, within 10  
16 working days after the opportunity to override the chairman's decision under item (i)  
17 of this paragraph, the chairman, on behalf of the Commission, shall:

18 1. Approve the proposed program refinement and notify the  
19 local jurisdiction;

20 2. Deny the program refinement; or

21 3. Send the proposed program refinement back to the local  
22 jurisdiction with a list of specific changes to be made.

23 (iv) Within 10 working days of receiving a changed program  
24 refinement changed in accordance with item (iii)3 of this paragraph, the chairman  
25 shall approve or deny the program refinement.

26 (4) A local jurisdiction shall incorporate an approved program  
27 refinement into its adopted program within 120 days of receiving notice from the  
28 chairman that the program refinement has been approved.

29 (q) As necessary, a local jurisdiction may combine any or all proposed program  
30 amendments or program refinements required for a specific project approval into a  
31 single request to the Commission for program amendment, program refinement, or  
32 both. Approval by the Commission of a program amendment, program refinement, or  
33 both does not affect the Commission's authority to receive notice of or intervene in a  
34 project approval that was not specifically approved by the Commission as part of its  
35 approval of a program amendment or program refinement.

36 (r) Within 6 months after the adoption of amended criteria, a local jurisdiction  
37 shall send to the Commission:

1 (1) Proposed program amendments or program refinements that address  
2 the amended criteria; or

3 (2) A statement describing how the adopted program conforms to the  
4 amended criteria and certifying that the adopted program is consistent with the  
5 amended criteria.

6 (s) If the Commission adopts a regulation concerning the use of the growth  
7 allocation, any use of the growth allocation must be in accordance with that  
8 regulation for the change to be considered a program refinement.

9 8-1810.

10 (a) If a local jurisdiction fails to notify the Commission that the local  
11 jurisdiction will develop a program, fails to submit a proposed program or changed  
12 proposal on time, or fails to obtain Commission approval of a proposed program or  
13 changed proposal that is submitted, the Commission shall prepare and adopt a  
14 program that satisfies the criteria adopted under § 8-1808 of this subtitle for the part  
15 of the Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA in  
16 that local jurisdiction.

17 (b) Where a local jurisdiction failed to adopt or obtain Commission approval of  
18 a program, the Commission shall adopt a program for that jurisdiction by adopting  
19 regulations in accordance with Title 2, Subtitle 5 (Joint Committee on Administrative,  
20 Executive, and Legislative Review) and Title 10, Subtitle 1 (Administrative Procedure  
21 Act) of the State Government article. Before the full Commission adopts a program  
22 under this subsection, the Commission shall appoint a panel of 3 of the Commission's  
23 members to conduct in the affected jurisdiction at least 2 public hearings at least 10  
24 days apart on the proposed program, for which 2 weeks notice shall be published in a  
25 newspaper of general circulation in the local jurisdiction. A program adopted by the  
26 Commission under this subsection shall supersede any inconsistent local laws,  
27 ordinances, or plans.

28 (c) If the Commission adopts a program for a local jurisdiction, the program  
29 shall be implemented and enforced by local authorities in the same manner as if the  
30 program had been adopted by the local jurisdiction itself.

31 (d) If, at any time after the Commission has adopted a program for a local  
32 jurisdiction, the local jurisdiction submits an alternative program of its own that  
33 satisfies the criteria adopted under § 8-1808 this subtitle and is approved by the  
34 Commission, the alternative program supersedes the program adopted by the  
35 Commission.

36 8-1811.

37 (a) From the effective date of a program approved or adopted by the  
38 Commission, a project approval that involves land located in the Chesapeake Bay  
39 Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA may not be granted  
40 unless the project approval is consistent and complies with the program.

1 8-1812.

2 (a) After the Commission has approved or adopted a program, the chairman of  
3 the Commission has standing and the right and authority to initiate or intervene in  
4 any administrative, judicial, or other original proceeding or appeal in this State  
5 concerning a project approval in the Chesapeake Bay Critical Area OR THE ATLANTIC  
6 COASTAL BAYS CRITICAL AREA. The chairman may exercise this intervention  
7 authority without first obtaining approval from the Commission, but the chairman  
8 shall send prompt written notice of any intervention or initiation of action under this  
9 section to each member of the Commission. The chairman shall withdraw the  
10 intervention or action initiated if, within 35 days after the date of the chairman's  
11 notice, at least 13 members indicate disapproval of the action, either in writing  
12 addressed to the chairman or by vote at a meeting of the Commission. A member  
13 representing the local jurisdiction affected by the chairman's intervention or action  
14 may request a meeting of the Commission to vote on the chairman's intervention or  
15 action.

16 8-1813.

17 (a) From June 1, 1984 with regard to any subdivision plat approval or  
18 approval of a zoning amendment, variance, special exemption, conditional use permit,  
19 or use of a floating zone, affecting any land or water area located within the initial  
20 planning area identified in § 8-1807(a) of this subtitle, for which application is  
21 completed after that date, the approving authority of the local jurisdiction in  
22 rendering its decision to approve an application shall make specific findings that:

23 (1) The proposed development will minimize adverse impacts on water  
24 quality that result from pollutants that are discharged from structures or  
25 conveyances or that have run off from surrounding lands; and

26 (2) The applicant has identified fish, wildlife, and plant habitat which  
27 may be adversely affected by the proposed development and has designed the  
28 development so as to protect those identified habitats whose loss would substantially  
29 diminish the continued ability of populations of affected species to sustain  
30 themselves.

31 (B) ON OR AFTER JUNE 1, 2002, WITH REGARD TO ANY SUBDIVISION PLAT  
32 APPROVAL OR APPROVAL OF A ZONING AMENDMENT, VARIANCE, SPECIAL  
33 EXEMPTION, CONDITIONAL USE PERMIT, OR USE OF A FLOATING ZONE, AFFECTING  
34 ANY LAND OR WATER AREA LOCATED WITHIN THE INITIAL PLANNING AREA  
35 IDENTIFIED IN § 8-1807(B) OF THIS SUBTITLE, FOR WHICH APPLICATION IS  
36 COMPLETED AFTER THAT DATE, THE APPROVING AUTHORITY OF THE LOCAL  
37 JURISDICTION IN RENDERING ITS DECISION TO APPROVE AN APPLICATION SHALL  
38 MAKE SPECIFIC FINDINGS THAT:

39 (1) THE PROPOSED DEVELOPMENT WILL MINIMIZE ADVERSE IMPACTS  
40 ON WATER QUALITY THAT RESULT FROM POLLUTANTS THAT ARE DISCHARGED  
41 FROM STRUCTURES OR CONVEYANCES OR THAT HAVE RUN OFF FROM  
42 SURROUNDING LANDS; AND

1 (2) THE APPLICANT HAS IDENTIFIED FISH, WILDLIFE, AND PLANT  
 2 HABITAT WHICH MAY BE ADVERSELY AFFECTED BY THE PROPOSED DEVELOPMENT  
 3 AND HAS DESIGNED THE DEVELOPMENT SO AS TO PROTECT THOSE IDENTIFIED  
 4 HABITATS WHOSE LOSS WOULD SUBSTANTIALLY DIMINISH THE CONTINUED ABILITY  
 5 OF POPULATIONS OF AFFECTED SPECIES TO SUSTAIN THEMSELVES.

6 [(b)] (C) With regard to any application for project approval described in  
 7 [subsection (a)] SUBSECTION (A) OR (B) of this section, a local approving authority  
 8 shall require any additional information from an applicant as is necessary in order to  
 9 make the findings required by [subsection (a)] SUBSECTION (A) OR (B) of this section.

10 [(c)] (D) This section shall remain in effect in a local jurisdiction until such  
 11 time as an approved program becomes effective.

12 [(d)] (E) This section does not apply to any application IN THE CHESAPEAKE  
 13 BAY CRITICAL AREA initially filed prior to March 1, 1984 OR ANY APPLICATION IN  
 14 THE ATLANTIC COASTAL BAYS CRITICAL AREA FILED PRIOR TO JUNE 1, 2002.

15 8-1813.1.

16 (A) EXCEPT AS PROVIDED IN ~~SUBSECTION (B)~~ SUBSECTIONS (B), (C), AND (D)  
 17 OF THIS SECTION, A LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS  
 18 CRITICAL AREA SHALL PERMIT A SINGLE LOT OR PARCEL OF LAND THAT WAS  
 19 LEGALLY OF RECORD ON THE DATE OF PROGRAM APPROVAL TO BE DEVELOPED  
 20 WITH A SINGLE FAMILY DWELLING, IF A DWELLING IS NOT ALREADY PLACED THERE,  
 21 NOTWITHSTANDING THAT SUCH DEVELOPMENT MAY BE INCONSISTENT WITH THE  
 22 APPROVED DENSITY PROVISIONS OF THE APPROVED LOCAL PROGRAM, ~~AND~~  
 23 PROVIDED THAT:

24 (1) THE LOCAL JURISDICTION DEVELOPS, AS PART OF ITS PROGRAM,  
 25 PROCEDURES TO BRING ~~THESE THE LOTS OR LANDS~~ INTO CONFORMANCE WITH THE  
 26 LOCAL CRITICAL AREA PROGRAM ~~AS FAR AS TO THE EXTENT~~ POSSIBLE, INCLUDING  
 27 THE CONSOLIDATION OR RECONFIGURATION OF LOTS NOT INDIVIDUALLY OWNED,  
 28 ~~AND THESE; AND~~

29 (2) THE PROCEDURES DEVELOPED IN ACCORDANCE WITH ITEM (1) OF  
 30 THIS SUBSECTION ARE APPROVED BY THE COMMISSION.

31 (B) LAND THAT WAS SUBDIVIDED INTO RECORDED AND LEGALLY BUILDABLE  
 32 LOTS FOR WHICH THE SUBDIVISION RECEIVED THE LOCAL JURISDICTION'S FINAL  
 33 APPROVAL AFTER ~~APRIL 17, 2001~~ JUNE 1, 2002 BUT PRIOR TO PROGRAM APPROVAL  
 34 MAY BE DEVELOPED WITH A SINGLE FAMILY DWELLING, IF A SINGLE FAMILY  
 35 DWELLING IS NOT ALREADY PLACED THERE, PROVIDED THAT:

36 (1) DEVELOPMENT OF THE LAND CONFORMS TO THE REQUIREMENTS  
 37 OF THIS TITLE AND TITLE 27 OF THE CODE OF MARYLAND REGULATIONS; OR

38 (2) THE AREA OF LAND IS ~~COUNTED BY~~ DEDUCTED FROM THE LOCAL  
 39 ~~JURISDICTION AGAINST THE GROWTH INCREMENT~~ JURISDICTION'S GROWTH

1 ALLOCATION IN ACCORDANCE WITH § 8-1808.1(B) OF THIS ~~TITLE~~ SUBTITLE AND  
2 COMAR 27.01.02.06.

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

5 (II) "BAYSIDE MIXED USE DISTRICT" MEANS A DISTRICT OF  
6 EXISTING LARGE BAYSIDE PARCELS THAT:

7 1. ARE ESSENTIALLY UNDEVELOPED WITH PERMANENT  
8 STRUCTURES;

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

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

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

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

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

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

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

30 (III) THE LAND:

31 1. IS DESIGNATED AS AN INTENSELY DEVELOPED AREA;

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

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

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

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

8 (2) THE PLANNED UNIT DEVELOPMENT HAS RECEIVED THE LOCAL  
 9 JURISDICTION'S FINAL SUBDIVISION APPROVAL AND IS LEGALLY BUILDABLE AFTER  
 10 ~~DECEMBER 1, 2001~~ JUNE 1, 2002 BUT PRIOR TO PROGRAM APPROVAL;

11 (3) THE AREA IS DEDUCTED FROM THE LOCAL JURISDICTION'S GROWTH  
 12 ALLOCATION IN ACCORDANCE WITH § 8-1808.1(B) OF THIS SUBTITLE AND COMAR  
 13 27.01.02.06, IF APPLICABLE;

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

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

22 ~~(C)~~ (E) FOR PURPOSES OF IMPLEMENTING THIS SUBTITLE, A LOCAL  
 23 JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL HAVE  
 24 DETERMINED, BASED ON LAND USES AND DEVELOPMENT IN EXISTENCE ON ~~APRIL~~  
 25 ~~17, 2001~~ JUNE 1, 2002, WHICH LAND AREAS FALL INTO THE THREE TYPES OF  
 26 DEVELOPMENT AREAS IN ACCORDANCE WITH TITLE 27 OF THE CODE OF MARYLAND  
 27 REGULATIONS.

28 8-1815.1.

29 (a) (1) The provisions of this section are in addition to any other sanction,  
 30 remedy, or penalty provided by law.

31 (2) This section does not apply to any cutting or clearing of trees that is  
 32 allowed under regulations adopted by the Commission under this subtitle.

33 (b) If a person cuts or clears or plans to cut or clear trees within the  
 34 Chesapeake Bay critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA in  
 35 violation of regulations adopted by the Commission, the local jurisdiction may bring  
 36 an action:

37 (1) To require the person to replant trees where the cutting or clearing  
 38 occurred in accordance with a plan prepared by the State Forester, a registered  
 39 professional forester, or a registered landscape architect;

1 (2) To restrain the planned violation; or

2 (3) For damages:

3 (i) To be assessed by a circuit court in an amount equal to the  
4 estimated cost of replanting trees; and

5 (ii) To be paid to the Department by the person found to have  
6 violated the provisions of this subsection.

7 (c) If the Chairman of the Commission has reason to believe that the local  
8 jurisdiction is failing to enforce the requirements of subsection (b) of this section, the  
9 Chairman shall refer the matter to the Attorney General as provided under § 8-1815  
10 (b) of this subtitle.

11 (d) On the Chairman of the Commission's referral of an alleged violation  
12 under subsection (c) of this section to the Attorney General, the Attorney General may  
13 invoke the remedies available to the local jurisdiction under subsection (b) of this  
14 section in any court of competent jurisdiction in which the local jurisdiction would be  
15 authorized to prosecute or sue.

16 (e) On the request of a local jurisdiction or the Chairman of the Commission,  
17 the State Forester, a registered professional forester, or a registered landscape  
18 architect may prepare, oversee, and approve the final implementation of a plan to:

19 (1) [replant] REPLANT trees in any part of the Chesapeake Bay Critical  
20 Area where trees IN THE CHESAPEAKE BAY CRITICAL AREA are cut or cleared in  
21 violation of subsection (b) of this section; AND

22 (2) REPLANT TREES IN ANY PART OF THE ATLANTIC COASTAL BAYS  
23 CRITICAL AREA WHERE TREES IN THE ATLANTIC COASTAL BAYS CRITICAL AREA ARE  
24 CUT OR CLEARED IN VIOLATION OF SUBSECTION (B) OF THIS SECTION.

25 8-1817.

26 (a) By January 1, 1994, the [Chesapeake Bay Critical Area] Commission  
27 shall adopt criteria that assure the protection of land and water resources in the  
28 Critical Area and that shall apply throughout the [Chesapeake Bay] Critical Area  
29 for:

30 (1) Production of oil or natural gas on lands or waters leased by the  
31 State; and

32 (2) Exploration or production of oil or natural gas on any lands in the  
33 Critical Area.

34 (b) (1) In addition to other applicable provisions of law, an applicant for any  
35 production or exploratory drilling that will occur on, in, under, or through the  
36 [Chesapeake Bay] Critical Area, including wells drilled outside the Critical Area by a  
37 method known as slant drilling that will pass through the Critical Area, shall

1 complete and submit with the application an environmental impact study that  
 2 addresses the potential for any adverse environmental effects on the Critical Area as  
 3 a result of the drilling.

4 (2) (i) The Department shall forward a copy of the permit application  
 5 and the environmental impact study referred to in paragraph (1) of this subsection to  
 6 the [Critical Area] Commission for its review and comment.

7 (ii) The Department shall consider and comment in writing on the  
 8 objections and concerns of the [Critical Area] Commission before issuing a permit  
 9 under this subsection.

10 **Article—Environment**

11 ~~16-201.~~

12 (a) (1) A person who is the owner of land bounding on navigable water is  
 13 entitled to any natural accretion to the person's land, to reclaim fast land lost by  
 14 erosion or avulsion during the person's ownership of the land to the extent of provable  
 15 existing boundaries. The person may make improvements into the water in front of  
 16 the land to preserve that person's access to the navigable water or protect the shore of  
 17 that person against erosion. After an improvement has been constructed, the  
 18 improvement is the property of the owner of the land to which the improvement is  
 19 attached. A right covered in this subtitle does not preclude the owner from developing  
 20 any other use approved by the Board. The right to reclaim lost fast land relates only  
 21 to fast land lost after January 1, 1972, and the burden of proof that the loss occurred  
 22 after this date is on the owner of the land.

23 (2) A PERSON EXERCISING THEIR RIGHT TO MAKE IMPROVEMENTS INTO  
 24 THE WATER IN FRONT OF THE LAND TO PRESERVE THAT PERSON'S ACCESS TO THE  
 25 NAVIGABLE WATER UNDER SUBSECTION (A)(1) OF THIS SECTION MAY NOT EXTEND  
 26 THE IMPROVEMENTS MORE THAN 25 FEET OVER VEGETATED STATE WETLANDS IN  
 27 THE ATLANTIC COASTAL BAYS CRITICAL AREA AS DEFINED UNDER TITLE 8,  
 28 SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.

29 (b) The rights of any person, as defined in this subtitle, which existed prior to  
 30 July 1, 1973 in relation to natural accretion of land are deemed to have continued to  
 31 be in existence subsequent to July 1, 1973 to July 1, 1978.

32 ~~16-304.~~

33 (A) Notwithstanding any regulation adopted by the Secretary to protect  
 34 private wetlands, the following uses are lawful on private wetlands:

35 (1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;

36 (2) Trapping, hunting, fishing, and catching shellfish, if otherwise  
 37 legally permitted;

1           (3)     Exercise of riparian rights to improve land bounding on navigable  
2 water, to preserve access to the navigable water, or to protect the shore against  
3 erosion;

4           (4)     Reclamation of fast land owned by a natural person and lost during  
5 the person's ownership of the land by erosion or avulsion to the extent of provable  
6 preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost  
7 after January 1, 1972. The burden of proof that the loss occurred after this date is on  
8 the owner of the land; and

9           (5)     Routine maintenance and repair of existing bulkheads, provided that  
10 there is no addition or channelward encroachment.

11        (B)     A PERSON EXERCISING THEIR RIGHT TO MAKE IMPROVEMENTS INTO THE  
12 WATER IN FRONT OF THE LAND TO PRESERVE THAT PERSON'S ACCESS TO THE  
13 NAVIGABLE WATER UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT EXTEND  
14 THE IMPROVEMENTS MORE THAN 25 FEET OVER VEGETATED PRIVATE WETLANDS IN  
15 THE ATLANTIC COASTAL BAYS CRITICAL AREA AS DEFINED UNDER TITLE 8,  
16 SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.

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

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

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

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

25                             2.     at least 3 of the following State permits:

26                                 A.     groundwater discharge or surface water discharge;

27                                 B.     nontidal wetlands;

28                                 C.     water quality certification; and

29                                 D.     water appropriation; and

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

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

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

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

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

8 (2) Paragraph (1) of this subsection may not apply to those dwelling  
9 units immediately adjacent to tidal waters in an inland marina built after April 8,  
10 2002.

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

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

15 (2) is used consistently with that special exception.

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

20 SECTION 5. AND BE IT FURTHER ENACTED, That this Act may not be  
21 construed to apply to the initial development of the Young Men's Christian  
22 Association facility located as follows: Starting at a point in Worcester County at the  
23 intersection of Gum Point Road and the Wilkerson-Steen property line, proceeding  
24 north to the Caffi-Steen line, following on to the Park-Steen line, on to the  
25 Chamberlain-Steen line, to the Parsons-Steen line, to the Wyatt-Steen line, at  
26 which point the line turns east on the Wyatt-Steen line, turning north at the  
27 Wyatt-Steen boundary line to the Ocean Pines Association-Steen southern boundary  
28 line with Ocean Pines, then turning east along the Ocean Pines-Steen line to the  
29 northern stream and ditch at Mud Creek, then follows the stream and ditch to Gum  
30 Point Road, then along Gum Point Road to the starting point.

31 SECTION 6. AND BE IT FURTHER ENACTED, That:

32 (1) Section 5 of this Act shall take effect only if, on or before July 1, 2003:

33 (i) the property described under Section 5 of this Act has been acquired  
34 by the Young Men's Christian Association; and

35 (ii) three of the four following State permits are issued to the YMCA:

36 1. groundwater discharge or surface water discharge;

- 1                    2.        nontidal wetlands;
- 2                    3.        water quality certification; and
- 3                    4.        water appropriation; and

4        (2)        If the events described under paragraph (1) of this section do not occur on  
5 or before July 1, 2003, with no further action required by the General Assembly,  
6 Section 5 of this Act shall be abrogated and of no further force and effect after July 1,  
7 2003.

8        (3)        If the events described under paragraph (1) of this section occur, the  
9 property remains subject to the growth allocation provisions of the Critical Area law  
10 and regulations.

11        SECTION ~~2~~ 5 ~~7~~ AND BE IT FURTHER ENACTED, That this Act shall take  
12 effect June 1, 2002.