

CHAPTER 180

(Senate Bill 280)

AN ACT concerning

Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009

FOR the purpose of defining a certain term applicable to the adoption of certain ordinances or regulations by a local jurisdiction and the exercise by a local jurisdiction ~~exercise by a local jurisdiction~~ certain governmental entities of certain land use ordinances and regulations, water and sewer plan review, growth allocation, and annexation powers to ~~require~~ clarify consistency with a local comprehensive plan is required under certain circumstances; altering the applicability of certain land use provisions to certain local jurisdictions; requiring a local jurisdiction to enact a certain land use plan; requiring a member of a local planning commission to complete a certain education course; requiring a member of a board of appeals to complete a certain education course; declaring the intent of the General Assembly; requiring a member of a local planning commission and a member of a board of appeals to complete a certain education course by a certain date; requiring the Task Force on the Future for Growth and Development to make certain recommendations; requiring the Department of Planning to develop a certain education course by a certain date; providing for the application of this Act; stating the General Assembly's intent to overturn the ruling in a certain court case; defining certain terms; and generally relating to land use.

BY renumbering

Article 66B – Land Use
Section 1.03(a) through (f)
to be Section 1.04(b) through (g)
Annotated Code of Maryland
(2003 Replacement Volume and 2008 Supplement)

BY adding to

Article 66B – Land Use
Section 1.04(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, without amendments,

Article 66B – Land Use
Section 1.00(a), 1.01, and 4.09
Annotated Code of Maryland

(2003 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,
Article 66B – Land Use
Section 1.00(h) and (k), 1.02, 2.13, 3.01, 3.02, and 4.07
Annotated Code of Maryland
(2003 Replacement Volume and 2008 Supplement)

BY adding to
Article 66B – Land Use
Section 1.02
Annotated Code of Maryland
(2003 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, ~~without~~ with amendments,
Article 66B – Land Use
Section ~~1.04(e)~~ 1.04(d), (e), and (f)
Annotated Code of Maryland
(2003 Replacement Volume and 2008 Supplement)
(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 8–1808.1(c)
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)
(As ~~enacting~~ enacted by Chapter 119 of the Acts of the General Assembly of
2008)

Preamble

WHEREAS, Land use planning in the State of Maryland has revolved around comprehensive plans enacted by local governments, following the eight visions established in the Economic Growth, Resource Protection, and Planning Act of 1992; and

WHEREAS, The decision of the Maryland Court of Appeals in David Trail, et al. v. Terrapin Run, LLC et al., 403 Md. 523 (2008) held that a special exception could be granted even if it did not strictly conform to the comprehensive plan; and

WHEREAS, While the holding of the Terrapin Run decision could be narrow and confined to the granting of special exceptions, the General Assembly is concerned that a broader interpretation of the decision could undermine the importance of making land use decisions that are consistent with the comprehensive plan; and

WHEREAS, Article 66B, § 4.09 of the Annotated Code of Maryland requires a local jurisdiction to implement the provisions of its local comprehensive plan through “the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan;” and

WHEREAS, Citizens invest countless hours in determining the future direction of their jurisdiction through local comprehensive plans; and

WHEREAS, The people of Maryland are best served if land use decisions are consistent with locally adopted comprehensive plans; and

WHEREAS, It is the intent of the General Assembly to encourage the development of ordinances and regulations that apply to locally designated priority funding areas and allow for mixed uses and bonus densities beyond those specified in the local comprehensive plan by excluding land uses and densities or intensities in the definition of “consistency” for priority funding areas; and

WHEREAS, It is the intent of the General Assembly, as evidenced in Article 66B, §§ 1.03(e) and 4.09, that comprehensive plans should be followed as closely as possible while not being elevated to the status of an ordinance and that deviations from the plan should be rare; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 1.03(a) through (f) of Article 66B – Land Use of the Annotated Code of Maryland be renumbered to be Section(s) 1.04(b) through (g).

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article 66B – Land Use

1.00.

(a) In this article the following words have the meanings indicated, except where the context clearly indicates otherwise.

(h) (1) “Plan” means the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the area’s future development.

(2) “Plan” includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with §§ ~~1.03~~ **1.04** AND 3.01 through 3.09 of this article.

(k) "Special exception" means a grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in the zoning ordinance exist, that the use [conforms to] **IS CONSISTENT WITH** the plan and is compatible with the existing neighborhood.

1.01.

In addition to the requirements of § 3.05(c) of this article, a commission shall implement the following visions through the plan described in § 3.05 of this article:

- (1) Development is concentrated in suitable areas.
- (2) Sensitive areas are protected.
- (3) In rural areas, growth is directed to existing population centers and resource areas are protected.
- (4) Stewardship of the Chesapeake Bay and the land is a universal ethic.
- (5) Conservation of resources, including a reduction in resource consumption, is practiced.
- (6) To assure the achievement of items (1) through (5) of this section, economic growth is encouraged and regulatory mechanisms are streamlined.
- (7) Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.
- (8) Funding mechanisms are addressed to achieve these visions.

1.02.

~~WHEN A PROVISION IN A STATUTE LISTED IN ITEMS (1) THROUGH (4) OF THIS SECTION REQUIRES THAT AN ACTION OF A LOCAL GOVERNMENT BE "CONSISTENT WITH" OR HAVE "CONSISTENCY WITH" A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE POLICIES, TIMING, DEVELOPMENT PATTERNS, LAND USES, AND DENSITIES OR INTENSITIES IN THE PLAN;~~

- ~~(1) §§ 1.00(k), 1.04(e), AND 4.09 OF THIS ARTICLE;~~

~~(2) §§ 9-505(A)(1), 9-506(A)(1), AND 9-507(B)(2) OF THE ENVIRONMENT ARTICLE (WATER AND SEWER PLAN REVIEW);~~

~~(3) § 8-1808.1(C)(2)(I) OF THE NATURAL RESOURCES ARTICLE (CRITICAL AREA COMMISSION REVIEW OF GROWTH ALLOCATION); AND~~

~~(4) ARTICLE 23A, § 19(O)(3)(III) (ANNEXATION PLAN) OF THE CODE.~~

(A) IN THIS SECTION, "ACTION" MEANS:

(1) THE ADOPTION OF AN ORDINANCE OR REGULATION UNDER:

(I) § 1.00(K) OF THIS ARTICLE;

(II) § 1.04(F) OF THIS ARTICLE; OR

(III) § 4.09 OF THIS ARTICLE;

(2) A REQUIREMENT UNDER § 9-505(A)(1) OF THE ENVIRONMENT ARTICLE AND § 19(O)(3)(III) OF ARTICLE 23A OF THE CODE; AND

(3) A REQUIRED FINDING UNDER §§ 9-506(A)(1) AND 9-507(B)(2) OF THE ENVIRONMENT ARTICLE.

(B) THIS SECTION APPLIES TO THE FOLLOWING:

(1) §§ 1.00(K), 1.04(F), AND 4.09 OF THIS ARTICLE;

(2) §§ 9-505(A)(1), 9-506(A)(1), AND 9-507(B)(2) OF THE ENVIRONMENT ARTICLE (WATER AND SEWER PLAN REVIEW); AND

(3) § 19(O)(3)(III) OF ARTICLE 23A OF THE CODE (ANNEXATION PLAN).

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, WHEN A PROVISION IN A STATUTE LISTED UNDER SUBSECTION (B) OF THIS SECTION REQUIRES THAT AN ACTION BE "CONSISTENT WITH" OR HAVE "CONSISTENCY WITH" A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN:

(1) POLICIES;

(2) TIMING OF THE IMPLEMENTATION OF THE PLAN;

(3) TIMING OF DEVELOPMENT;

(4) TIMING OF REZONING;

(5) DEVELOPMENT PATTERNS;

(6) LAND USES; AND

(7) DENSITIES OR INTENSITIES.

(D) (1) IN THIS SUBSECTION, “PRIORITY FUNDING AREA” HAS THE MEANING STATED IN § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THIS SUBSECTION APPLIES TO AN ACTION UNDER SUBSECTION (A)(1)(II) AND (III) OF THIS SECTION.

(3) WITHIN A PRIORITY FUNDING AREA, WHEN THE PROVISIONS IN SUBSECTION (A)(1)(II) AND (III) OF THIS SECTION REQUIRE THAT AN ACTION BE “CONSISTENT WITH” OR HAVE “CONSISTENCY WITH” A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN:

(I) POLICIES;

(II) TIMING OF THE IMPLEMENTATION OF THE PLAN;

(III) TIMING OF DEVELOPMENT;

(IV) TIMING OF REZONING; AND

(V) DEVELOPMENT PATTERNS.

[1.02.] 1.03.

(a) Except as provided in this section, this article does not apply to charter counties.

(b) The following sections of this article apply to a charter county:

(1) § 1.00(j) (Definition of “sensitive areas”);

(2) § 1.01 (Visions);

(3) § 1.02 (CONSISTENCY WITH PLANS);

[(3)] (4) § 1.03 (Charter county – Comprehensive plans);

(5) § 3.02(H) (PLANNING COMMISSION – EDUCATION);

[(4)] (6) § 4.01(b)(2) (Regulation of bicycle parking);

(7) § ~~4.07(A)-(10)~~ 4.07(I) (BOARD OF APPEALS – EDUCATION);

[(5)] (8) § 5.03(d) (Easements for burial sites);

[(6)] (9) § 7.02 (Civil penalty for zoning violation);

[(7)] (10) § 10.01 (Adequate Public Facilities Ordinances);

[(8)] (11) § 11.01 (Transfer of Development Rights);

[(9)] (12) § 12.01 (Inclusionary Zoning);

[(10)] (13) Except in Montgomery County or Prince George’s County, § 13.01 (Development rights and responsibilities agreements);

[(11)] (14) For Baltimore County only, § 14.02; and

[(12)] (15) For Howard County only, § 14.06.1.

(c) This section supersedes any inconsistent provision of Article 28 of the Code.

1.04.

(A) A CHARTER COUNTY SHALL ENACT, ADOPT, AMEND, AND EXECUTE A PLAN AS PROVIDED IN THIS SECTION.

(d) (1) A planning commission shall include in its comprehensive plan:

(i) All elements required in subsection [(a)](B) of this section and the visions set forth in § 1.01 of this article; and

(ii) If the chosen under subsection [(b)](C) of this section, its priority preservation area element.

(2) At least once every 6 years, the planning commission shall review and if necessary, revise or amend a comprehensive plan to include:

(i) All elements required in subsection [(a)](B) of this section and the visions set forth in § 1.01 of this article; and

(ii) If chosen under subsection [(b)](C) of this section, its priority preservation area element.

(3) If the comprehensive plan for each geographic section or division is reviewed and, if necessary, revised or amended at least once every 6 years, the planning commission may prepare comprehensive plans for one or more major geographic sections or divisions of the local jurisdiction.

(e) (1) A planning commission shall implement the visions set forth in § 1.01 of this article through the comprehensive plan elements required under subsection [(a)](B) of this section.

(2) A local legislative body that has adopted a comprehensive plan may adopt regulations implementing the visions stated in § 1.01 of this article in a comprehensive plan.

~~(e)~~ (f) On or before July 1, 1997, and subsequently at intervals of not more than 6 years which correspond to the comprehensive plan revision under subsection ~~(e)~~ (D) of this section, a charter county shall ensure that the implementation of the provisions of the comprehensive plan that comply with § 1.01 of this article and subsection ~~(a)(1)(iii)~~ **(B)(1)(III)** and (iv) of this section are achieved through the adoption of:

(1) Applicable zoning ordinances and regulations;

(2) Planned development ordinances and regulations;

(3) Subdivision ordinances and regulations; and

(4) Other land use ordinances and regulations that are consistent with the comprehensive plan.

2.13.

(a) Except as provided in subsection (b) of this section, §§ 3.01 through 8.15 of this article do not apply in Baltimore City.

(b) The following sections of this article apply to Baltimore City:

(1) § 1.00(j) (Definition of “sensitive areas”);

(2) § 1.01 (Visions);

(3) § **1.02 (CONSISTENCY WITH PLANS);**

[(3)] (4) § 1.03 (Charter county – Comprehensive plans);

(5) § **3.02(H) (PLANNING COMMISSION – EDUCATION);**

[(4)] (6) § 4.01(b)(2) (Regulation of bicycle parking);

(7) § ~~4.07(A)-(10)~~ **4.07(I) (BOARD OF APPEALS – EDUCATION);**

[(5)] (8) § 5.03(d) (Easements for burial sites);

[(6)] (9) § 7.02 (Civil penalty for zoning violation);

[(7)] (10) § 10.01 (Adequate Public Facilities Ordinances);

[(8)] (11) § 11.01 (Transfer of Development Rights);

[(9)] (12) § 12.01 (Inclusionary Zoning); and

[(10)] (13) § 13.01 (Development Rights and Responsibilities Agreements).

3.01.

(a) A local jurisdiction [may] **SHALL** enact, adopt, amend, and execute a plan as provided in this article and **MAY** create by ordinance a planning commission with the powers and duties set forth in this article.

(b) A municipal corporation may be included as part of a county plan under this article if:

(1) The legislative body of the municipal corporation, by a resolution directed to the legislative body of the county in which the municipal corporation is located, indicates the intention to participate in the county plan; and

(2) The legislative body of the county approves the resolution.

3.02.

(a) (1) Except as otherwise provided in this article, a planning commission created under this subtitle shall consist of three, five or seven members.

(2) One of the members may be a member of the local legislative body, serving in an ex officio capacity concurrent with the member's official term.

(b) (1) The members of a planning commission shall be appointed by the local legislative body or by the person designated as the appointing power in the ordinance creating the commission.

(2) Where there is a single local elected executive, the members of a planning commission shall be appointed by the local executive and confirmed by the local legislative body.

(c) Each member of a planning commission is entitled to the compensation that the local legislative body considers appropriate.

(d) (1) The term of each member is 5 years or until the member's successor takes office.

(2) The terms of the members of a planning commission shall be staggered.

(e) (1) After a public hearing, the local legislative body may remove the members of a planning commission for inefficiency, neglect of duty, or malfeasance in office.

(2) The local legislative body that removes a member of a planning commission shall file a written statement of reasons for the removal.

(f) Vacancies occurring other than through the expiration of a term shall be filled for the unexpired term by the local legislative body or by the person designated in the ordinance as the appointing power.

(g) In a municipal corporation, the local legislative body may designate one alternate member of the commission who may sit on the commission in the absence of any member of the commission. When the alternate is absent, the local legislative body may designate a temporary alternate to sit on the commission.

(H) (1) IN THIS SUBSECTION, "PLANNING COMMISSION" INCLUDES A PLANNING COMMISSION OR BOARD ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF THE CODE.

(2) WITHIN 6 MONTHS AFTER APPOINTMENT TO A PLANNING COMMISSION, A MEMBER SHALL COMPLETE AN EDUCATION COURSE THAT INCLUDES EDUCATION ON:

(I) **THE ROLE OF THE COMPREHENSIVE PLAN;**

(II) **~~PROPER~~ IF APPLICABLE, PROPER STANDARDS FOR SPECIAL EXCEPTIONS AND VARIANCES; AND**

(III) **THE JURISDICTION'S ZONING ORDINANCES AND REGULATIONS, PLANNED DEVELOPMENT ORDINANCES AND REGULATIONS, SUBDIVISION ORDINANCES AND REGULATIONS, AND OTHER LAND USE ORDINANCES AND REGULATIONS.**

(3) **THE FAILURE OF A MEMBER TO COMPLETE AN EDUCATION COURSE MAY NOT:**

(I) **INVALIDATE A DECISION OF THE COMMISSION; OR**

(II) **BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION BY ANY PERSON.**

4.07.

(a) (1) Each local legislative body shall provide for the appointment of a board of appeals.

(2) A board of appeals consists of at least three members.

(3) The terms of office of the members of a board of appeals are 3 years.

(4) A member of a board of appeals shall be appointed by the local executive and confirmed by the local legislative body.

(5) A member of a board of appeals may be removed:

(i) For cause;

(ii) On written charges; and

(iii) After a public hearing.

(6) The appointing authority shall appoint a new member to fill the unexpired term of any member who leaves a board of appeals.

(7) A member of a board of appeals may receive the compensation that the local legislative body considers appropriate.

(8) A local legislative body may not serve as a board of appeals.

(9) A member of the board of appeals shall recuse himself or herself from participating in a matter in which the member may have a conflict of interest or an appearance of a conflict of interest.

(b) (1) Each local legislative body shall designate one alternate member for the board of appeals who may sit on the board when any other member of the board is absent.

(2) When the alternate member is absent, the local legislative body may designate a temporary alternate.

(c) (1) A board of appeals shall adopt rules in accordance with the provisions of any ordinance adopted under this article.

(2) The meetings of a board of appeals shall be held at the call of the chairman and at other times determined by the board.

(3) The chairman of a board of appeals or the acting chairman may administer oaths and compel the attendance of witnesses.

(4) All meetings of a board of appeals shall be open to the public.

(5) (i) A board of appeals shall make a transcript of all proceedings, showing the vote of each member on each question, or the member's absence or failure to vote.

(ii) 1. A board of appeals shall immediately file the transcript of its proceedings in the office of the board.

2. A transcript shall be a public record.

(6) If a recording or a transcript of a recording is not prepared in the normal course of the board's proceedings, the party who requests a copy of the recording or its transcript shall pay the cost of preparing the recording or transcript.

(d) A board of appeals shall have the following powers:

(1) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of this article or of any ordinance adopted under this article;

(2) Hear and decide special exceptions to the terms of an ordinance on which the board is required to pass under the ordinance; and

(3) Authorize on appeal in specific cases a variance from the terms of an ordinance.

(e) (1) An appeal to the board of appeals may be filed by:

(i) Any person aggrieved by any decision of the administrative officer; or

(ii) Any officer, department, board, or bureau of the jurisdiction affected by any decision of the administrative officer.

(2) An appeal shall be taken within a reasonable time, as provided by the rules of the board of appeals, by filing with the administrative officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds of the appeal.

(3) The officer from whom the appeal is taken shall promptly transmit to the board all papers constituting the record on which the action appealed was based.

(f) (1) Except as provided in paragraph (2) of this subsection, an appeal to a board of appeals stays all proceedings in furtherance of the action appealed.

(2) If an administrative officer certifies to the board of appeals facts stated in the certificate that indicate to the administrative officer that a stay would cause imminent peril to life or property as provided in paragraph (1) of this subsection, the board of appeals or the court of record may stay the proceedings:

(i) Only for due cause shown; and

(ii) Through the issuance of a restraining order after notice is given to the administrative officer.

(g) (1) A board of appeals shall fix a reasonable time for the hearing of an appeal, give public notice of the hearing and due notice to the parties in interest, and decide the appeal within a reasonable time.

(2) At a hearing, a party may appear in person or be represented by an agent or attorney.

(h) (1) In exercising its powers, a board of appeals may, in conformity with the provisions of this article:

(i) Wholly or partly reverse the order, requirement, decision, or determination from which the appeal is taken;

(ii) Wholly or partly affirm the order, requirement, decision, or determination from which the appeal is taken;

(iii) Modify the order, requirement, decision, or determination from which the appeal is taken; or

(iv) Issue a new order, requirement, decision, or determination.

(2) The board shall have all the powers of the administrative officer from whom the appeal is taken.

(I) (1) IN THIS SUBSECTION, "BOARD OF APPEALS" INCLUDES A BOARD OF APPEALS ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF THE CODE OR § 2.08 OF THIS ARTICLE.

(2) WITHIN 6 MONTHS AFTER APPOINTMENT TO A BOARD OF APPEALS, A MEMBER SHALL COMPLETE AN EDUCATION COURSE THAT INCLUDES EDUCATION ON:

(I) THE ROLE OF THE COMPREHENSIVE PLAN;

(II) PROPER STANDARDS FOR SPECIAL EXCEPTIONS AND VARIANCES; AND

(III) THE JURISDICTION'S ZONING ORDINANCES AND REGULATIONS, PLANNED DEVELOPMENT ORDINANCES AND REGULATIONS, SUBDIVISION ORDINANCES AND REGULATIONS, AND OTHER LAND USE ORDINANCES AND REGULATIONS.

(3) THE FAILURE OF A MEMBER TO COMPLETE AN EDUCATION COURSE MAY NOT:

(I) INVALIDATE A DECISION OF THE BOARD; OR

(II) BE CONSTRUED TO CREATE A PRIVATE CAUSE OF ACTION BY ANY PERSON.

4.09.

On or before July 1, 1997, and subsequently at intervals of no more than 6 years which correspond to the plan revision under § 3.05(b) of this article, a local jurisdiction shall ensure that the implementation of the provisions of the plan that comply with §§ 1.01 and 3.05(a)(4)(vii) and (ix) of this article are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and

regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan.

Article - Natural Resources

8-1808.1.

(c) (1) IN PARAGRAPHS (3)(I) AND (4)(I) OF THIS SUBSECTION, “CONSISTENT WITH” OR “CONSISTENCY WITH” A JURISDICTION’S COMPREHENSIVE PLAN MEANS THAT A STANDARD OR FACTOR WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN:

- (I) POLICIES;**
- (II) TIMING OF THE IMPLEMENTATION OF THE PLAN;**
- (III) TIMING OF DEVELOPMENT;**
- (IV) TIMING OF REZONING;**
- (V) DEVELOPMENT PATTERNS;**
- (VI) LAND USES; AND**
- (VII) DENSITIES OR INTENSITIES.**

[(1)] (2) When locating new intensely developed or limited development areas, local jurisdictions shall use the following standards:

- (i) Locate a new intensely developed area in a limited development area or adjacent to an existing intensely developed area;**
- (ii) Locate a new limited development area adjacent to an existing limited development area or an intensely developed area;**
- (iii) Locate a new limited development area or an intensely developed area in a manner that minimizes impacts to a habitat protection area as defined in COMAR 27.01.09, and in an area and manner that optimizes benefits to water quality;**
- (iv) Locate a new intensely developed area or a limited development area in a resource conservation area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources;**

(v) Locate new intensely developed areas and limited development areas in a manner that minimizes their impacts to the defined land uses of the resource conservation area;

(vi) Except as provided in item (viii) of this paragraph, no more than one-half of the expansion allocated in the criteria of the Commission may be located in resource conservation areas;

(vii) New intensely developed or limited development areas involving the use of growth allocation shall conform to all criteria of the Commission and shall be designated on the comprehensive zoning map submitted by the local jurisdiction as part of its application to the Commission for program approval or at a later date in compliance with § 8-1809(g) of this subtitle; and

(viii) In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the county is unable to utilize a portion of the growth allocated to the county in items (i) and (ii) of this paragraph within or adjacent to existing intensely developed or limited development areas as demonstrated in the local plan approved by the Commission, then that portion of the allocated expansion which cannot be so located may be located in the resource conservation area in addition to the expansion allocated in item (vi) of this paragraph. A developer shall be required to cluster any development in an area of expansion authorized under this paragraph.

[(2)] (3) A local jurisdiction may use a standard that varies from the standards required under paragraph [(1)(i)] (2)(I) and (ii) of this subsection if:

(i) The alternative standard is consistent with the jurisdiction's adopted comprehensive plan; and

(ii) The Commission has approved the alternative standard as part of the local program.

[(3)] (4) In reviewing map amendments or refinements involving the use of growth allocation, the Commission shall consider the following factors:

(i) Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan;

(ii) 1. For a map amendment or refinement involving a new intensely developed area, whether the development is:

A. To be served by a public wastewater system;

B. To have an allowed average density of at least 3.5 units per acre, as calculated under § 5-7B-03(h) of the State Finance and Procurement Article;

C. For a new intensely developed area that is greater than 20 acres, to be located in a priority funding area, as described under §§ 5-7B-02(1) and 5-7B-03 of the State Finance and Procurement Article; and

D. To have a demonstrable economic benefit to the area;
and

2. For a map amendment or refinement involving a new limited development area, whether the development is:

A. To be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;

B. A completion of an existing subdivision;

C. An expansion of an existing business; or

D. To be clustered;

(iii) The use of existing public infrastructure, where practical;

(iv) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site;

(v) Impacts on a priority preservation area, as defined under § 2-518 of the Agriculture Article;

(vi) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and

(vii) Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

[(4)] (5) The Commission shall ensure that the standards and factors in paragraphs [(1), (2), and (3)] (2), (3), AND (4) of this subsection have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of this subtitle, and all criteria of the Commission.

SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that this Act overturn the Court of Appeals ruling in David Trail, et al. v. Terrapin Run, LLC et al., 403 Md. 523 (2007).

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) Members of a local jurisdiction's planning commission and board of appeals shall complete an education course in accordance with Article 66B, §§ 3.02(h)(10) and 4.07(i) of the Code, as enacted by Section 2 of this Act, on or before July 1, 2010;

(b) The Task Force on the Future for Growth and Development, as established by Chapter 381 of the Acts of 2006, as amended by Chapter 626 of the Acts of 2007, shall make recommendations on the education course for members of a local jurisdiction's planning commission and board of appeals by July 1, 2009;

(c) The Department of Planning, in consultation with the Task Force on the Future for Growth and Development, shall develop an online education course for members of planning commissions and boards of appeals. Completion of the Department's training program shall meet the requirements of Article 66B, §§ 3.02(h) and 4.07(b) of the Code, as enacted by Section 2 of this Act. The online education course shall be available by January 1, 2010; and

(d) A local jurisdiction may develop an education course for members of the local jurisdiction's planning commission and board of appeals in lieu of the Department's education course.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any action covered under Article 66B, § 1.02(1) of the Code, as enacted by Section 2 of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That consistency with a local jurisdiction's comprehensive plan, as determined in accordance with § 8-1808.1(c)(3)(i) and (4)(i) of the Natural Resources Article of the Code, as enacted by Section 2 of this Act:

(1) Shall be a part of each determination made by the Critical Area Commission at a formal meeting of the Commission occurring on or after July 1, 2009, regarding a text amendment related to an alternative standard for the location of a new intensely developed or limited development area and an award of growth allocation; and

(2) May not be applied to an alternative standard text amendment or growth allocation approved by the Critical Area Commission before July 1, 2009.

SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2009.

Approved by the Governor, May 7, 2009.