

HOUSE BILL 233

M1

(PRE-FILED)

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CF SB 306

By: **Chair, Environment and Transportation Committee (By Request – Critical Area Commission)**

Requested: September 15, 2023

Introduced and read first time: January 10, 2024

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 2, 2024

CHAPTER _____

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program**
3 **– Climate, Equity, and Administrative Provisions**

4 FOR the purpose of altering the standards for membership on the Critical Area
5 Commission; repealing a certain advisory committee on the Atlantic Coastal Bays
6 Critical Area Program; authorizing the Commission to adopt regulations governing
7 the transfer of development rights, fee in lieu payments, the assessment of and
8 adaption to climate change relevant to the critical area, enhancing resilience in the
9 critical area, and environmental justice and equity initiatives; establishing certain
10 considerations of climate change, resiliency, and equity as general principles and
11 minimum elements of local programs; requiring a local program to give consideration
12 to underserved communities when assessing the suitability of critical areas for
13 certain recreation; requiring local jurisdictions to consider climate change when
14 approving growth allocation decisions; requiring the Commission to consider
15 environmental impacts on underserved or overburdened communities when
16 reviewing growth allocation map amendments; altering certain resource
17 conservation area density standards and requirements; authorizing the purchase of
18 transferable development rights for certain intrafamily transfers; authorizing a
19 certain increase in lot coverage limits under certain circumstances; altering the
20 process for performing the required local jurisdiction comprehensive reviews of
21 critical area programs; establishing standards under which a critical area
22 designation may be changed on proof of mistake and under which a zoning map
23 amendment may be granted; authorizing the Commission to direct a local

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 jurisdiction to correct a program deficiency; establishing a certain remedial process
2 if a local jurisdiction fails to update its critical area program; repealing certain
3 requirements on oil or natural gas production or exploration in the critical area;
4 establishing a process for the preparation, distribution, review, refinement, and
5 formal adoption of the periodic update of statewide base maps; and generally relating
6 to the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

7 BY repealing and reenacting, without amendments,
8 Article – Business Regulation
9 Section 19–106(a)(1) and (5)
10 Annotated Code of Maryland
11 (2015 Replacement Volume and 2023 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – Environment
14 Section 1–701(a)(1), (5), (7), and (8)
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2023 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Natural Resources
19 Section 8–1801, 8–1802(a), 8–1804(a)(1) and (c), 8–1805(b)(1) and (2) and (c),
20 8–1806(a) and (b)(1)(ii), (iii), (x), (xiv)4., (xv), and (xvi)6., 8–1808(a), (b), and
21 (c)(1)(iii)3., 6., 8., 13., 14., and 15. and (4), 8–1808.1(c)(2) and (4)(vi) and (vii)
22 and (e), 8–1808.2(f), 8–1808.3(b) and (f), 8–1808.10(b)(1), 8–1809(g) through
23 (j) and (l) through (s), 8–1811(b)(2), 8–1812, 8–1813.1(d)(5), 8–1814(a) and (b),
24 8–1815(a)(2)(i)1. and (3)(ii), (b), and (e), and 8–1815.1(b) through (e)
25 Annotated Code of Maryland
26 (2023 Replacement Volume and 2023 Supplement)

27 BY adding to
28 Article – Natural Resources
29 Section 8–1806(b)(1)(xvii), (xviii), and (xix), 8–1808(c)(1)(iii)16. through 19.,
30 8–1808.1(c)(4)(viii), 8–1809(h), (i), and (k), and 8–1810(e)
31 Annotated Code of Maryland
32 (2023 Replacement Volume and 2023 Supplement)

33 BY repealing
34 Article – Natural Resources
35 Section 8–1806(c), 8–1809(k), and 8–1817
36 Annotated Code of Maryland
37 (2023 Replacement Volume and 2023 Supplement)

38 Preamble

39 WHEREAS, Following extensive research and the issuance of a report by the U.S.
40 Environmental Protection Agency that clearly demonstrated the alarming extent of

1 degradation of the Chesapeake Bay, in significant part because of prominent land use and
2 growth patterns, the Critical Area Commission was created in 1984 in order to preserve
3 and restore water quality in the State, to maintain valued wildlife habitat, and to
4 accommodate inevitable growth, and these same legislative concerns were addressed in
5 2002 when the protections of the Critical Area Program were expanded to include the
6 Atlantic Coastal Bays and in 2008 with the comprehensive update to the Critical Area
7 Program; and

8 WHEREAS, The critical area, which comprises approximately 11% of Maryland's
9 land mass, includes the majority of the State's most ecologically fragile and valuable
10 properties; and

11 WHEREAS, From its inception, partnership between State and local government
12 has been a cornerstone of the Critical Area Program; and

13 WHEREAS, To date local critical area programs are operative in Baltimore City, 16
14 counties, and 47 other municipalities, and critical area issues directly impact at least seven
15 State departments; and

16 WHEREAS, After nearly 40 years of operation, the Critical Area Program has
17 effectively influenced thousands of land use decisions, addressed and minimized the
18 adverse impacts of growth associated with hundreds of requests for growth allocation, and
19 represented a comprehensive effort between the State and local governments to enforce a
20 variety of water quality and habitat protection standards; and

21 WHEREAS, Despite these efforts, additional measures are necessary to enhance a
22 cooperative land use and natural resource management program that will restore the
23 quality and productivity of the Chesapeake Bay, the Atlantic Coastal Bays, their tidal
24 tributaries, and associated land-based ecosystems; and

25 WHEREAS, As a member of the Maryland Commission on Climate Change, the
26 Critical Area Commission is charged with recommending short and long-term strategies
27 and initiatives to better mitigate, prepare for, and adapt to the consequences of climate
28 change; and

29 WHEREAS, Particularly in light of the ongoing, accelerating decline of the State's
30 water quality resources and the loss of valuable shoreline areas due to erosion, sea level
31 rise, and climate change, the Critical Area Commission has a significant role in ensuring
32 the adaptation of Maryland's tidal waters, developed shorelines, and their adjacent
33 resource lands and wildlife habitats to the rapidly evolving climate realities; and

34 WHEREAS, To address the increasing effects on water quality from more frequent
35 and higher-intensity storms, to adjust conservation programs and techniques to the
36 shifting realities of species and habitats, and to accommodate appropriate levels and
37 locations for growth within the critical area, improvements to the Critical Area Program
38 are in order at this time; and

1 WHEREAS, It is in the interest of the citizens of Maryland that the Critical Area
2 Commission ensure the equitable distribution of the environmental benefits and burdens
3 of development, restoration, and mitigation within the critical area and, in doing so, the
4 Commission must also ensure equitable representation and participation in its processes;
5 now, therefore,

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

8 Article – Business Regulation

9 19–106.

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

11 (5) “Underrepresented community” means a community whose members
12 self-identify:

13 (i) as Black, African American, Hispanic, Latino, Asian, Pacific
14 Islander, Native American, Native Hawaiian, or Alaska Native; or

15 (ii) with one or more of the racial or ethnic groups listed in item (i)
16 of this paragraph.

17 Article – Environment

18 1–701.

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

20 (5) “Environmental justice” means equal protection from environmental
21 and public health hazards for all people regardless of race, income, culture, and social
22 status.

23 (7) “Overburdened community” means any census tract for which three or
24 more of the following environmental health indicators are above the 75th percentile
25 statewide:

26 (i) Particulate matter (PM) 2.5;

27 (ii) Ozone;

28 (iii) National Air Toxics Assessment (NATA) diesel PM;

29 (iv) NATA cancer risk;

30 (v) NATA respiratory hazard index;

- 1 (vi) Traffic proximity;
- 2 (vii) Lead paint indicator;
- 3 (viii) National Priorities List Superfund site proximity;
- 4 (ix) Risk Management Plan facility proximity;
- 5 (x) Hazardous waste proximity;
- 6 (xi) Wastewater discharge indicator;
- 7 (xii) Proximity to a Concentrated Animal Feeding Operation (CAFO);
- 8 (xiii) Percent of the population lacking broadband coverage;
- 9 (xiv) Asthma emergency room discharges;
- 10 (xv) Myocardial infarction discharges;
- 11 (xvi) Low-birth-weight infants;
- 12 (xvii) Proximity to emitting power plants;
- 13 (xviii) Proximity to a Toxic Release Inventory (TRI) facility;
- 14 (xix) Proximity to a brownfields site;
- 15 (xx) Proximity to mining operations; and
- 16 (xxi) Proximity to a hazardous waste landfill.

17 (8) "Underserved community" means any census tract in which, according
 18 to the most recent U.S. Census Bureau Survey:

- 19 (i) At least 25% of the residents qualify as low-income;
- 20 (ii) At least 50% of the residents identify as nonwhite; or
- 21 (iii) At least 15% of the residents have limited English proficiency.

22 **Article – Natural Resources**

23 8-1801.

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

1 (1) The Chesapeake and the Atlantic Coastal Bays and their tributaries
2 are natural resources of great significance to the State and the nation, and their beauty,
3 their ecological value, and their economic impact all reach far beyond any one local
4 jurisdiction;

5 (2) The shoreline and adjacent lands, particularly the buffer areas,
6 constitute a valuable, fragile, and sensitive part of this estuarine system, where human
7 activity can have a particularly immediate and adverse impact on water quality and
8 natural habitats;

9 (3) The capacity of these shoreline and adjacent lands to withstand
10 continuing demands, **INCLUDING CLIMATE CHANGE**, without further degradation to
11 water quality and natural habitats is limited;

12 (4) Human activity is harmful in these shoreline areas, where the new
13 development of nonwater-dependent structures **AND USES** or an increase in lot coverage
14 is presumed to be contrary to the purpose of this subtitle, because these activities may
15 cause **OR AMPLIFY** adverse impacts, of both an immediate and a long-term nature, to the
16 Chesapeake and the Atlantic Coastal Bays, and thus it is necessary ~~to~~ **to**
17 maintain a buffer of at least 100 feet landward from the mean high water line of tidal
18 waters, tributary streams, and tidal wetlands;

19 (5) National studies have documented that the quality and productivity of
20 the waters of the Chesapeake Bay and its tributaries have declined due to the cumulative
21 effects of human activity that have caused increased levels of pollutants, nutrients, and
22 toxics in the Bay system and declines in more protective land uses such as forestland and
23 agricultural land in the Bay region;

24 (6) Those portions of the Chesapeake and the Atlantic Coastal Bays and
25 their tributaries within Maryland are particularly stressed by the continuing population
26 growth and development activity concentrated in the Baltimore–Washington metropolitan
27 corridor and along the Atlantic Coast;

28 (7) The quality of life for the citizens of Maryland is enhanced through the
29 restoration of the quality and productivity of the waters of the Chesapeake and the Atlantic
30 Coastal Bays[,] and their tributaries **IN A MANNER IN WHICH BURDENS AND BENEFITS**
31 **ARE DISTRIBUTED EQUITABLY**;

32 (8) The restoration of the Chesapeake and the Atlantic Coastal Bays and
33 their tributaries is dependent, in part, on minimizing further adverse impacts to the water
34 quality and natural habitats of the shoreline and adjacent lands, **AND ENHANCING THE**
35 **RESILIENCY OF NATURAL RESOURCES IN THE CRITICAL AREA**, particularly in the
36 buffer;

1 (9) The cumulative impact of current development and of each new
2 development activity in the buffer is inimical to these purposes, and it is therefore
3 imperative that State law protect irreplaceable State buffer resources from unpermitted
4 activity; [and]

5 (10) There is a critical and substantial State interest for the benefit of
6 current and future generations in fostering more sensitive development and more effective
7 enforcement in a consistent and uniform manner along shoreline areas of the Chesapeake
8 and the Atlantic Coastal Bays and their tributaries so as to minimize damage to water
9 quality and natural habitats;

10 **(11) THERE IS A CRITICAL AND SUBSTANTIAL STATE INTEREST IN**
11 **DEVELOPING POLICIES AND STRATEGIES TO BETTER MITIGATE, PREPARE FOR, AND**
12 **ADAPT TO THE CONSEQUENCES OF CLIMATE CHANGE ALONG THE STATE'S**
13 **SHORELINES, INCLUDING SEA LEVEL RISE, STORM SURGE,**
14 **PRECIPITATION-INDUCED FLOODING, AND OTHER EXTREME WEATHER EVENTS AND**
15 **TO ENHANCE THE RESILIENCE OF THE STATE'S SHORELINES BY IDENTIFYING,**
16 **RESTORING, CREATING, AND CONSERVING EXISTING NATURAL AND NATURE-BASED**
17 **FEATURES;**

18 **(12) THERE IS A CRITICAL AND SUBSTANTIAL STATE INTEREST IN**
19 **ENSURING THE EQUITABLE DISTRIBUTION OF THE BENEFITS AND BURDENS OF**
20 **DEVELOPMENT, RESTORATION, MITIGATION, AND CONSERVATION ALONG THE**
21 **STATE'S SHORELINES AND IN ENSURING EQUITABLE REPRESENTATION AND**
22 **PARTICIPATION IN THESE PROCESSES; AND**

23 **(13) THE INCLUSION OF INCENTIVE-BASED PROGRAMS TO ENSURE**
24 **DEVELOPMENT IS COMPATIBLE WITH PROJECTED CLIMATE IMPACTS AND COASTAL**
25 **HAZARDS IS VITAL TO THE STATE'S GOAL OF ADDRESSING CLIMATE RESILIENCY.**

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

27 (1) To establish a Resource Protection Program for the Chesapeake and the
28 Atlantic Coastal Bays and their tributaries by fostering more sensitive development
29 activity for certain shoreline areas so as to minimize damage to water quality and natural
30 habitats; and

31 (2) To implement the Resource Protection Program on a cooperative basis
32 between the State and affected local governments, with local governments establishing and
33 implementing their programs in a [consistent and] **CONSISTENT**, uniform, **AND**
34 **EQUITABLE** manner subject to State and local leadership, criteria, and oversight.

35 8-1802.

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

1 (2) “Atlantic Coastal Bays” means the Assawoman, Isle of Wight,
2 Sinepuxent, Newport, and Chincoteague Bays.

3 (3) “Atlantic Coastal Bays Critical Area” means the initial planning area
4 identified under § 8–1807 of this subtitle.

5 (4) “Buffer” means an existing, naturally vegetated area, or an area
6 established in vegetation and managed to protect aquatic, wetlands, shoreline, and
7 terrestrial environments from manmade disturbances.

8 (5) “Chesapeake Bay Critical Area” means the initial planning area
9 identified under § 8–1807 of this subtitle.

10 (6) **“CLIMATE RESILIENCY” MEANS THE CAPACITY OF A NATURAL**
11 **SYSTEM TO MAINTAIN FUNCTION IN THE FACE OF STRESSES IMPOSED BY CLIMATE**
12 **CHANGE AND TO ADAPT THE NATURAL SYSTEM TO BE BETTER PREPARED FOR**
13 **FUTURE CLIMATE IMPACTS.**

14 (7) “Commission” means the Critical Area Commission for the Chesapeake
15 and Atlantic Coastal Bays established in this subtitle.

16 [(7)] (8) “Critical Area” means the Chesapeake Bay Critical Area and the
17 Atlantic Coastal Bays Critical Area.

18 [(8)] (9) “Developer” means:

19 (i) A person who undertakes development as defined in this section;
20 or

21 (ii) A person who undertakes development activities as defined in
22 the criteria of the Commission.

23 [(9)] (10) “Development” means any activity that materially affects the
24 condition or use of dry land, land under water, or any structure.

25 [(10)] (11) (i) “Dwelling unit” means a single unit providing complete,
26 independent living facilities for at least one person, including ~~permanent~~ provisions for
27 sanitation, cooking, eating, sleeping, and other activities routinely associated with daily
28 life.

29 (ii) “Dwelling unit” includes a living quarters for a domestic or other
30 employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker
31 residence.

1 **(12) “ENVIRONMENTAL JUSTICE” HAS THE MEANING STATED IN §**
2 **1–701 OF THE ENVIRONMENT ARTICLE.**

3 **(13) “EQUITY” MEANS PROMOTION OF JUSTICE, IMPARTIALITY, AND**
4 **FAIRNESS WITHIN THE PROCEDURES, PROCESSES, AND DISTRIBUTION OF**
5 **RESOURCES BY INSTITUTIONS OR SYSTEMS.**

6 **[(11)] (14) “Growth allocation” means the number of acres of land in the**
7 **Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local**
8 **jurisdiction may use to create new intensely developed areas and new limited development**
9 **areas.**

10 **[(12)] (15) “Includes” means includes or including by way of illustration and**
11 **not by way of limitation.**

12 **[(13)] (16) (i) “Intensely developed area” means an area of at least 20**
13 **acres or the entire upland portion of the critical area within a municipal corporation,**
14 **whichever is less, where:**

15 1. Residential, commercial, institutional, or industrial
16 developed land uses predominate; and

17 2. A relatively small amount of natural habitat occurs.

18 (ii) “Intensely developed area” includes:

19 1. An area with a housing density of at least four dwelling
20 units per acre;

21 2. An area with public water and sewer systems with a
22 housing density of more than three dwelling units per acre; or

23 3. A commercial marina redesignated by a local jurisdiction
24 from a resource conservation area or limited development area to an intensely developed
25 area through a mapping correction that occurred before January 1, 2006.

26 **[(14)] (17) “Land classification” means the designation of land in the**
27 **Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance with**
28 **the criteria adopted by the Commission as an intensely developed area or district, a limited**
29 **development area or district, or a resource conservation area or district.**

30 **[(15)] (18) (i) “Limited development area” means an area:**

31 1. That is developed in low or moderate intensity uses and
32 contains areas of natural plant and animal habitat; and

1 **(21) “NATURAL FEATURES” MEANS COMPONENTS AND PROCESSES**
2 **PRESENT IN OR PRODUCED BY NATURE, INCLUDING SOIL TYPES, GEOLOGY, SLOPES,**
3 **VEGETATION, SURFACE WATER, DRAINAGE PATTERNS, AQUIFERS, RECHARGE**
4 **AREAS, CLIMATE, FLOODPLAINS, AQUATIC LIFE, AND WILDLIFE.**

5 **(22) (I) “NATURE–BASED FEATURES” MEANS THOSE SMALL–SCALE**
6 **NONSTRUCTURAL FEATURES THAT MIMIC CHARACTERISTICS OF NATURAL**
7 **FEATURES AND ARE CREATED BY HUMAN DESIGN, ENGINEERING, AND**
8 **CONSTRUCTION TO PROVIDE SPECIFIC SERVICES, INCLUDING COASTAL RISK**
9 **REDUCTION.**

10 **(II) “NATURE–BASED FEATURES” INCLUDES LIVING**
11 **SHORELINES, OYSTER REEFS, MARSH RESTORATION, AND BUFFERS.**

12 **(23) “OVERBURDENED COMMUNITY” HAS THE MEANING STATED IN §**
13 **1–701 OF THE ENVIRONMENT ARTICLE.**

14 **[(18)] (24) (i) “Program” means the critical area protection program of a**
15 **local jurisdiction.**

16 (ii) “Program” includes any amendments to the program.

17 **[(19)] (25) (i) “Program amendment” means any change or proposed**
18 **change to an adopted program that is not determined by the Commission [chairman]**
19 **CHAIR to be a program refinement.**

20 (ii) “Program amendment” includes a change to a zoning map that is
21 not consistent with the method for using the growth allocation contained in an adopted
22 program.

23 **[(20)] (26) (i) “Program refinement” means any change or proposed**
24 **change to an adopted program that the Commission [chairman] CHAIR determines will**
25 **result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal**
26 **Bays Critical Area in a manner consistent with the adopted program, or that will not**
27 **significantly affect the use of land or water in the critical area.**

28 (ii) “Program refinement” may include:

29 1. A change to an adopted program that results from State
30 law;

31 2. A change to an adopted program that affects local
32 processes and procedures;

1 3. A change to a local ordinance or code that clarifies an
2 existing provision; and

3 4. A minor change to an element of an adopted program that
4 is clearly consistent with the provisions of this subtitle and all of the criteria of the
5 Commission.

6 **[(21)] (27)** (i) “Project approval” means the approval of development,
7 other than development by a State or local government agency, in the Chesapeake Bay
8 Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local approval
9 authority.

10 (ii) “Project approval” includes:

11 1. Approval of **PRELIMINARY AND FINAL** subdivision plats
12 and site plans;

13 2. Inclusion of areas within floating zones;

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

16 4. Approval of rezoning.

17 (iii) “Project approval” does not include building permits.

18 **(28) “RESILIENCY” MEANS THE ABILITY TO ADAPT TO CHANGING**
19 **CONDITIONS AND WITHSTAND AND RAPIDLY RECOVER FROM DISRUPTION DUE TO**
20 **EMERGENCIES.**

21 **[(22)] (29)** (i) “Resource conservation area” means an area that is
22 characterized by:

23 1. Nature dominated environments, such as wetlands,
24 surface water, forests, and open space; and

25 2. Resource-based activities, such as agriculture, forestry,
26 fisheries, or aquaculture.

27 (ii) “Resource conservation area” includes an area with a housing
28 density of less than one dwelling per five acres.

29 **[(23)] (30)** “Tributary stream” means a perennial stream or an intermittent
30 stream within the critical area that has been identified by site inspection or in accordance
31 with local program procedures approved by the Commission.

1 **(31) “UNDERREPRESENTED COMMUNITY” HAS THE MEANING STATED**
2 **IN § 19–106 OF THE BUSINESS REGULATION ARTICLE.**

3 **(32) “UNDERSERVED COMMUNITY” HAS THE MEANING STATED IN §**
4 **1–701 OF THE ENVIRONMENT ARTICLE.**

5 8–1804.

6 (a) (1) The Commission consists of 29 voting members who **REFLECT THE**
7 **DIVERSITY OF THE STATE AND** are appointed by the Governor, as follows:

8 (i) A full–time [chairman] **CHAIR**, appointed with the advice and
9 consent of the Senate, who shall serve at the pleasure of the Governor;

10 (ii) 13 individuals, appointed with the advice and consent of the
11 Senate, each of whom is a resident and an elected or appointed official of a local jurisdiction.
12 At least 1 of these 13 individuals must be an elected or appointed official of a municipality.
13 These individuals shall serve on the Commission only while they hold local office. Each
14 shall be selected from certain counties or from municipalities within the counties as follows,
15 and only after the Governor has consulted with elected county and municipal officials:

16 1. 1 from each of Baltimore City and Anne Arundel,
17 Baltimore, and Prince George’s counties;

18 2. 1 from Harford County or Cecil County;

19 3. 1 from Kent County or Queen Anne’s County;

20 4. 1 from Caroline County;

21 5. 1 from Talbot County or Dorchester County;

22 6. 1 from Wicomico County or Somerset County;

23 7. 2 from Calvert County, Charles County, or St. Mary’s
24 County, both of whom may not be from the same county; and

25 8. 2 from Worcester County, 1 of whom shall be a resident of
26 the Chesapeake Bay Watershed and the other of whom shall be a resident of the Atlantic
27 Coastal Bays Watershed;

28 (iii) 8 individuals, appointed with the advice and consent of the
29 Senate, who shall represent diverse interests, **INCLUDING UNDERREPRESENTED**
30 **COMMUNITIES**, and among whom shall be a resident from each of the 5 counties that are
31 listed and from which an appointment has not been made under item (ii) of this paragraph

1 and 3 of the 8 members appointed under this item shall be at large members, 1 of whom
2 shall be a private citizen and resident of the Atlantic Coastal Bays Watershed; and

3 (iv) The Secretaries of Agriculture, Commerce, Housing and
4 Community Development, the Environment, Transportation, Natural Resources, and
5 Planning, ex officio, or the designee of the Secretaries.

6 (c) Except for the [chairman] CHAIR and ex officio State officers or their
7 representatives:

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

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

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

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

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

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

24 8-1805.

25 (b) (1) The [chairman] CHAIR with the approval of the Commission shall
26 appoint an Executive Director for the Commission.

27 (2) The Executive Director serves at the pleasure of the [chairman] CHAIR
28 and is entitled to the salary provided in the State budget.

29 (c) The Attorney General shall designate an assistant Attorney General to advise
30 and represent the [chairman] CHAIR and the Commission.

31 8-1806.

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

1 (1) In accordance with Title 2, Subtitle 5 (Joint Committee on
2 Administrative, Executive and Legislative Review) and Title 10, Subtitle 1 (Administrative
3 Procedure Act) of the State Government Article, to adopt and amend regulations as
4 authorized under this subtitle for the administration and enforcement of the State and local
5 programs;

6 (2) To conduct hearings in connection with policies, proposed programs,
7 and proposed regulations or amendments to regulations; **AND**

8 (3) To contract for consultant or other services[]; and

9 (4) To establish an advisory committee, composed of members of the
10 Commission and local citizens and local stakeholder groups, to make recommendations to
11 the Commission with respect to Atlantic Coastal Bays Critical Area programs].

12 (b) Regulations adopted or amended under subsection (a)(1) of this section shall:

13 (1) Establish comprehensive standards and procedures for:

14 (ii) [Buffer exemption areas] **MODIFIED BUFFER AREAS;**

15 (iii) Impacts of [shore erosion control] **SHORELINE STABILIZATION**
16 activities on the buffer;

17 (x) Development in the critical area, with respect to:

18 1. Clearing, grading, and construction activity;

19 2. Clustering to promote conservation of natural site
20 features;

21 3. **THE TRANSFER OF DEVELOPMENT RIGHTS;**

22 4. Flexibility for redevelopment;

23 [4.] **5.** Stormwater management;

24 [5.] **6.** Application of the 10% pollutant reduction rule;

25 [6.] **7.** Forest and developed woodlands protections;

26 [7.] **8.** Clearing of natural vegetation;

27 [8.] **9.** Lot coverage standards;

1 [9.] 10. Commission review of local provisions for lot
2 consolidation; and

3 [10.] 11. The exclusion of State tidal wetlands from
4 calculations of density, forest and developed woodlands protections, limitations on clearing
5 natural vegetation, and lot coverage standards;

6 (xiv) Directives for local program development and implementation,
7 with respect to:

8 4. Reporting requirements, **INCLUDING ACCOUNTING OF**
9 **FEE IN LIEU FUNDS;**

10 (xv) In consultation with the Department of the Environment,
11 surface mining in the critical area; [and]

12 (xvi) The application for and processing of a variance, with respect to:

13 6. Notice of a variance decision; [and]

14 **(XVII) ASSESSING AND ADAPTING THE CRITICAL AREA TO**
15 **CLIMATE-RELATED CHANGES INCLUDING SEA LEVEL RISE, WETLAND MIGRATION,**
16 **STORM SURGE, PRECIPITATION-INDUCED FLOODING, AND OTHER EXTREME**
17 **WEATHER EVENTS;**

18 **(XVIII) ENHANCING THE RESILIENCE OF THE CRITICAL AREA**
19 **BY PROTECTING, CREATING, AND RESTORING NATURAL AND NATURE-BASED**
20 **FEATURES; AND**

21 **(XIX) ENVIRONMENTAL JUSTICE AND EQUITY INITIATIVES THAT:**

22 1. **ADDRESS DISPARATE IMPACTS OF DEVELOPMENT;**

23 **AND**

24 2. **ENSURE THE BENEFITS OF DEVELOPMENT,**
25 **RESTORATION, MITIGATION, AND CONSERVATION ARE SHARED EQUITABLY; AND**

26 [(c) The members of the Commission who reside in the Atlantic Coastal Bays
27 Watershed shall serve on any committee established under subsection (a)(4) of this section.]

28 8-1808.

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

1 (2) [(i) The Governor shall include in the budget a sum of money to be
2 used for grants to reimburse local jurisdictions for the reasonable costs of developing a
3 program under this section.

4 (ii) Each local jurisdiction shall submit to the Governor a detailed
5 request for funds that are equivalent to the additional costs incurred in developing the
6 program under this section.

7 (iii) The Governor shall include in the fiscal year 2003 budget a sum
8 of money to be used for grants to reimburse local jurisdictions in the Atlantic Coastal Bays
9 Critical Area for the reasonable costs of developing a program under this section.

10 (3)] The Governor shall include in the budget annually a sum of money to
11 be used for grants to assist local jurisdictions with the reasonable costs of implementing
12 **AND UPDATING** a program under this section. Each local jurisdiction shall submit to the
13 Governor by May 1 of each year a detailed request for funds to assist in the implementation
14 **AND UPDATING** of a program under this section.

15 **(3) (I) FOR EACH FISCAL YEAR, THE GOVERNOR SHALL INCLUDE**
16 **IN THE ANNUAL BUDGET BILL AN APPROPRIATION TO PROVIDE GRANTS TO ASSIST**
17 **LOCAL JURISDICTIONS TO INCORPORATE CLIMATE RESILIENCY AND EQUITABLE**
18 **PLANNING INTO AN UPDATED LOCAL PROGRAM.**

19 **(II) BY MAY 1 OF EACH YEAR, A LOCAL JURISDICTION SHALL**
20 **SUBMIT TO THE COMMISSION A DETAILED REQUEST FOR FUNDING UNDER THIS**
21 **PARAGRAPH.**

22 **(III) ON THE REQUEST OF A LOCAL JURISDICTION, THE CHAIR**
23 **MAY EXTEND THE DEADLINE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.**

24 (b) A program shall consist of those elements which are necessary or appropriate
25 **TO:**

26 (1) **[To minimize] MINIMIZE** adverse impacts on water quality that result
27 from pollutants that are discharged from structures or conveyances or that have run off
28 from surrounding lands;

29 (2) **[To conserve] CONSERVE** fish, wildlife, and plant habitat; **[and]**

30 (3) **[To establish] ESTABLISH** land use policies for development in the
31 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which
32 accommodate growth and also address the fact that, even if pollution is controlled, the
33 number, movement, and activities of persons in that area can create adverse environmental
34 impacts;

1 this subtitle or of a program, including a contractor, property owner, or any other person
2 who committed, assisted, authorized, or participated in the violation is subject to a fine not
3 exceeding \$10,000; [and]

4 15. Administrative enforcement procedures in accordance
5 with due process principles, including notice and an opportunity to be heard, and
6 establishing that:

7 A. Each violation of this subtitle or of a regulation, rule,
8 order, program, or other requirement adopted under the authority of this subtitle
9 constitutes a separate offense;

10 B. Each calendar day that a violation continues constitutes a
11 separate offense;

12 C. For each offense, a person shall be subject to separate
13 fines, orders, sanctions, and other penalties;

14 D. Civil penalties for continuing violations shall accrue
15 without a requirement for an additional assessment, notice, or opportunity for hearing for
16 each separate offense;

17 E. On consideration of all the factors included under this
18 subsection and any other factors in the local jurisdiction's approved program, the local
19 jurisdiction shall impose the amount of the penalty;

20 F. Satisfaction of all conditions specified under paragraph (4)
21 of this subsection shall be a condition precedent to the issuance of any permit, approval,
22 variance, or special exception for the affected property; and

23 G. Unless an extension of time is appropriate because of
24 adverse planting conditions, within 90 days of the issuance of a permit, approval, variance,
25 or special exception for the affected property, any additional mitigation required as a
26 condition of approval for the permit, approval, variance, or special exception shall be
27 completed;

28 **16. PROVISIONS FOR:**

29 **A. IDENTIFYING AREAS VULNERABLE TO CLIMATE**
30 **CHANGE;**

31 **B. MITIGATION AND ADAPTATION MEASURES THAT**
32 **ADDRESS SEA LEVEL RISE, STORM SURGE, PRECIPITATION-INDUCED FLOODING,**
33 **OTHER EXTREME WEATHER EVENTS, MIGRATING WETLANDS, AND COASTAL**
34 **FORESTS; AND**

1 **C. ENHANCING THE RESILIENCY OF THE CRITICAL AREA**
2 **BY IDENTIFYING, RESTORING, AND CREATING AND CONSERVING EXISTING AND**
3 **PROJECTED FUTURE NATURAL AND NATURE-BASED FEATURES;**

4 **17. PROVISIONS FOR:**

5 **A. IDENTIFYING UNDERSERVED AND OVERBURDENED**
6 **COMMUNITIES WITHIN THE CRITICAL AREA;**

7 **B. MEASURES TO ENSURE THE EQUITABLE**
8 **DISTRIBUTION OF THE BENEFITS AND BURDENS OF DEVELOPMENT, RESTORATION,**
9 **AND MITIGATION WITHIN THE CRITICAL AREA; AND**

10 **C. ENSURING EQUITY IN THE PUBLIC PARTICIPATION**
11 **PROCESS;**

12 **18. PROVISIONS TO ENSURE PUBLIC ACCESS TO THE**
13 **WATER, SHORELINE, AND OTHER NATURAL AREAS FOR UNDERSERVED OR**
14 **OVERBURDENED COMMUNITIES; AND**

15 **19. METHODS TO ENSURE EFFECTIVE ALLOCATION,**
16 **ACCOUNTING, AND REPORTING OF FEE IN LIEU FUNDS.**

17 (4) A local jurisdiction may not issue a permit, approval, variance, or
18 special exception **THAT IS SUBJECT TO THE VIOLATION**, unless the person seeking the
19 permit, approval, variance, or special exception has:

20 (i) Fully paid all administrative, civil, and criminal penalties
21 imposed under paragraph (1)(iii)15 of this subsection;

22 (ii) Prepared a restoration or mitigation plan, approved by the local
23 jurisdiction, to abate impacts to water quality or natural resources as a result of the
24 violation; and

25 (iii) Performed the abatement measures in the approved plan in
26 accordance with the local critical area program.

27 8-1808.1.

28 (c) (2) When locating new intensely developed or limited development areas,
29 local jurisdictions shall use the following standards:

30 (i) Locate a new intensely developed area in a limited development
31 area or adjacent to an existing intensely developed area;

1 (ii) Locate a new limited development area adjacent to an existing
2 limited development area or an intensely developed area;

3 (iii) Locate a new limited development area or an intensely developed
4 area in a manner that minimizes impacts to a habitat protection area as defined in COMAR
5 27.01.09, and in an area and manner that optimizes benefits to water quality;

6 (iv) Locate a new intensely developed area or a limited development
7 area in a resource conservation area at least 300 feet beyond the landward edge of tidal
8 wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission
9 approves, alternative measures for enhancement of water quality and habitat that provide
10 greater benefits to the resources;

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

14 (vi) **LOCATE NEW INTENSELY DEVELOPED AREAS AND LIMITED
15 DEVELOPMENT AREAS OUTSIDE OF AREAS VULNERABLE TO CLIMATE CHANGE
16 UNLESS THE LOCAL JURISDICTION PROPOSES AND THE COMMISSION APPROVES:**

17 **1. AREAS IDENTIFIED BY THE LOCAL JURISDICTION AS
18 VULNERABLE TO CLIMATE CHANGE AS REQUIRED UNDER § 8-1808(C)(1)(III)16 OF
19 THIS SUBTITLE; AND**

20 **2. MEASURES THAT:**

21 **A. ASSESS CLIMATE RESILIENCY AND VULNERABILITY;
22 AND**

23 **B. INCORPORATE SITING, DESIGN, CONSTRUCTION, AND
24 OTHER NATURAL FEATURES TO SIGNIFICANTLY ENHANCE RESILIENCY AND REDUCE
25 VULNERABILITY;**

26 **(VII)** Except as provided in item [(viii)] **(IX)** of this paragraph, no more
27 than one-half of the expansion allocated in the criteria of the Commission may be located
28 in resource conservation areas;

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

34 [(viii)] **(IX)** In Calvert, Caroline, Cecil, Charles, Dorchester, Kent,
35 Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, if the

1 county is unable to utilize a portion of the growth allocated to the county in items (i) and
 2 (ii) of this paragraph within or adjacent to existing intensely developed or limited
 3 development areas as demonstrated in the local plan approved by the Commission, then
 4 that portion of the allocated expansion which cannot be so located may be located in the
 5 resource conservation area in addition to the expansion allocated in item [(vi)] **(VII)** of this
 6 paragraph. A developer shall be required to cluster any development in an area of
 7 expansion authorized under this paragraph.

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

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

13 (vii) Environmental impacts associated with location in a coastal
 14 hazard area or an increased risk of severe flooding attributable to the proposed
 15 development; **AND**

16 **(VIII) ENVIRONMENTAL IMPACTS ON UNDERSERVED OR**
 17 **OVERBURDENED COMMUNITIES.**

18 (e) (1) Except as authorized under paragraph (2) of this subsection, in
 19 calculating the 1-in-20 acre density of development that is permitted on a parcel located
 20 within the resource conservation area, a local jurisdiction:

21 (i) Shall count each dwelling unit; and

22 (ii) May permit the area of any private wetlands located on the
 23 property to be included, under the following conditions:

24 1. [The density of development on the upland portion of the
 25 parcel may not exceed one dwelling unit per 8 acres] **ONLY WHEN USING TRANSFER OF**
 26 **DEVELOPMENT RIGHTS; and**

27 2. The area of private wetlands shall be [estimated on the
 28 basis of vegetative information as designated on the State wetlands maps] **FIELD**
 29 **DELINEATED WHEN CERTIFYING DEVELOPMENT RIGHTS FOR TRANSFER.**

30 (2) (i) Within a resource conservation area, a local jurisdiction may
 31 consider one additional dwelling unit per lot or parcel as part of a primary dwelling unit
 32 for the purpose of the density calculation under this subsection if the additional dwelling
 33 unit:

34 1. **DOES NOT REQUIRE A VARIANCE TO ANY CRITICAL**
 35 **AREA DEVELOPMENT STANDARDS; AND**

1 2. A. I. Is located within the primary dwelling unit
2 or its entire perimeter is within 100 feet of the primary dwelling unit; AND

3 [B.] II. Does not exceed 900 square feet in total enclosed
4 area; ~~and~~ OR

5 ~~[C.] III. Is served by the same sewage disposal system as the~~
6 ~~primary dwelling unit; or~~

7 [2. A.] B. I. Is located within the primary dwelling
8 unit; OR

9 [B.] II. By its construction, does not increase the amount of
10 lot coverage already attributed to the primary dwelling unit **BY GREATER THAN 900**
11 **SQUARE FEET**; ~~and~~

12 ~~[C.] III. Is served by the same sewage disposal system as the~~
13 ~~primary dwelling unit.~~

14 (ii) The provisions of this paragraph may not be construed to require
15 a local jurisdiction to consider an additional dwelling unit as part of a primary dwelling
16 unit for the purpose of the density calculation under this subsection.

17 (iii) An additional dwelling unit meeting all the criteria under
18 subparagraph (i) of this paragraph that is separate from the primary dwelling unit may not
19 be subdivided or conveyed separately from the primary dwelling unit.

20 (3) [The provisions of this subsection:

21 (i) Apply to density calculations only; and

22 (ii) May not be construed to authorize a local jurisdiction to grant a
23 variance, unless the variance is granted in accordance with the requirements of § 8–1808(d)
24 of this subtitle] **AN ADDITIONAL DWELLING UNIT THAT EXCEEDS 900 SQUARE FEET**
25 **SHALL COUNT TOWARDS THE DENSITY CALCULATION.**

26 8–1808.2.

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

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

1 (ii) A lot created by a bona fide intrafamily transfer may not be
2 conveyed subsequently to any person other than a member of the owner's immediate family,
3 except under procedures established pursuant to subsection (g) of this section **OR**
4 **THROUGH THE PURCHASE OF A TRANSFERABLE DEVELOPMENT RIGHT.**

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

7 8-1808.3.

8 (b) Lot coverage in the buffer may not exceed the minimum amount necessary for
9 water-dependent [facilities] **USES**, regardless of the critical area classification or the size
10 of the parcel or lot, except:

11 (1) For a [buffer exemption area] **MODIFIED BUFFER AREA**, as mapped
12 or established under an approved local program;

13 (2) For a variance granted in accordance with this subtitle; or

14 (3) As provided in a waterfront revitalization area or a waterfront
15 industrial area under a local program.

16 (f) A local jurisdiction may allow a property owner to exceed the lot coverage
17 limits provided in subsection (d)(2) and (3) of this section if the following conditions exist:

18 (1) Lot coverage associated with new development activities on the
19 property has been minimized;

20 (2) For a lot or parcel one-half acre or less in size, total lot coverage does
21 not exceed lot coverage limits in subsection (d)(2) of this section by more than 25% or 500
22 square feet, whichever is greater;

23 (3) For a lot or parcel greater than one-half acre and less than one acre in
24 size, total lot coverage does not exceed lot coverage limits in subsection (d)(3) of this section
25 or 5,445 square feet, whichever is greater;

26 (4) Water quality impacts associated with runoff from new development
27 activities that contribute to lot coverage can be and have been minimized through site
28 design considerations or use of best management practices approved by the local
29 jurisdiction to improve water quality; [and]

30 (5) The property owner performs on-site mitigation as required by the local
31 jurisdiction to offset potential adverse water quality impacts from the new development
32 activities that contribute to lot coverage, or the property owner pays a fee to the local
33 jurisdiction in lieu of performing the on-site mitigation; **AND**

1 **(6) FOR DEVELOPMENT THAT USES PERVIOUS MATERIALS THAT**
2 **HAVE BEEN APPROVED BY THE COMMISSION AS PART OF A LOCAL PROGRAM, THE**
3 **LIMITS ESTABLISHED IN ITEMS (2) AND (3) OF THIS SUBSECTION MAY BE EXCEEDED**
4 **BY UP TO 500 SQUARE FEET.**

5 8-1808.10.

6 (b) (1) Except as provided under subsection (c) of this section, the minimum
7 buffer shall be:

8 (i) 200 feet **LANDWARD** from tidal waters or a tidal wetland; and

9 (ii) 100 feet **LANDWARD** from a tributary stream.

10 8-1809.

11 (g) Each local jurisdiction shall [review]:

12 **(1) REVIEW** its entire program and propose any necessary amendments to
13 its entire program, including local zoning maps, at least every [6 years. Each local
14 jurisdiction shall send] **10 YEARS; AND**

15 **(2) SEND** in writing to the Commission, within 60 days after the
16 completion of its review, the following information:

17 [[1]] **(I)** A statement certifying that the required review has been
18 accomplished;

19 [[2]] **(II)** Any necessary requests for program amendments, program
20 refinements, or other matters that the local jurisdiction wishes the Commission to consider;

21 [[3]] **(III)** An updated resource inventory; and

22 [[4]] **(IV)** A statement quantifying acreages within each land
23 classification, the growth allocation used, and the growth allocation remaining.

24 **(H) ON REQUEST OF A LOCAL JURISDICTION ~~AND FOR GOOD CAUSE~~, THE**
25 **COMMISSION ~~MAY~~ SHALL EXTEND THE DEADLINE UNDER SUBSECTION (G) OF THIS**
26 **SECTION FOR THAT LOCAL JURISDICTION BY ~~NOT MORE THAN TWO 6 MONTH~~**
27 **~~EXTENSIONS~~ 1 YEAR.**

28 **(I) ~~A~~ ON OR AFTER JANUARY 1, 2028, A LOCAL JURISDICTION THAT DOES**
29 **NOT MEET THE DEADLINE UNDER SUBSECTION (G)(1) OF THIS SECTION OR AFTER**
30 **THE EXPIRATION OF ANY EXTENSION GRANTED UNDER SUBSECTION (H) OF THIS**

1 SECTION MAY NOT PROPOSE AN AMENDMENT OR REFINEMENT UNDER SUBSECTION
2 (J) OF THIS SECTION.

3 [(h)] (J) (1) As often as necessary but not more than 4 times per calendar
4 year, each local jurisdiction may propose program amendments and program refinements
5 to its adopted program.

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

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

13 1. Are wholly consistent with the land classifications in the
14 adopted program; or

15 2. Propose the use of a part of the remaining growth
16 allocation in accordance with the adopted program] **A CHANGE TO A CRITICAL AREA
17 DESIGNATION MAY BE GRANTED BY A LOCAL APPROVING AUTHORITY ON PROOF OF
18 MISTAKE IF THE PROPOSED CRITICAL AREA CLASSIFICATION:**

19 (I) **CONFORMS TO THE STATE CRITICAL AREA MAPPING
20 CRITERIA;**

21 (II) 1. **IS BASED ON LAND USES OR NATURAL FEATURES IN
22 EXISTENCE AS OF DECEMBER 1, 1985; OR**

23 2. **FOR AREAS INCLUDED IN THE CRITICAL AREA DUE TO
24 REMAPPING, IS BASED ON LAND USES OR NATURAL FEATURES IN EXISTENCE AT THE
25 TIME OF THE REMAPPING; ~~AND~~**

26 (III) **FOLLOWS THE LOCAL JURISDICTION'S DOCUMENTED
27 MAPPING METHODOLOGY FOR CRITICAL AREA CLASSIFICATIONS AT THE TIME OF
28 ORIGINAL PROGRAM ADOPTION; AND**

29 (IV) **IS CONSISTENT WITH THE PURPOSES, POLICIES, AND GOALS
30 OF THIS SUBTITLE AND ALL CRITERIA OF THE COMMISSION.**

31 (K) **A ZONING MAP AMENDMENT MAY BE GRANTED IF THE ZONING MAP
32 AMENDMENT:**

1 **(1) IS WHOLLY CONSISTENT WITH THE LAND CLASSIFICATIONS IN**
2 **THE ADOPTED PROGRAM;**

3 **(2) PROPOSES THE USE OF A PART OF THE REMAINING GROWTH**
4 **ALLOCATION IN ACCORDANCE WITH THE ADOPTED PROGRAM; OR**

5 **(3) PROPOSES TO CHANGE THE LAND CLASSIFICATION FROM EITHER**
6 **AN INTENSELY DEVELOPED AREA TO A LIMITED DEVELOPMENT AREA OR A**
7 **RESOURCE CONSERVATION AREA, OR A LIMITED DEVELOPMENT AREA TO A**
8 **RESOURCE CONSERVATION AREA.**

9 **[(i)] (L)** A program may not be amended except with the approval of the
10 Commission.

11 **[(j)] (M)** The Commission shall approve programs and program amendments
12 that meet:

13 (1) The standards set forth in § 8–1808(b)(1) through **[(3)] (4)** of this
14 subtitle; and

15 (2) The criteria adopted by the Commission under § 8–1808 of this subtitle.

16 **[(k)]** Copies of each approved program, as the program is amended or refined from
17 time to time, shall be maintained by the local jurisdiction and the Commission in a form
18 available for public inspection.]

19 **[(l)] (N)** (1) If the Commission determines that an adopted program contains
20 a clear mistake, omission, or conflict with the criteria or law, the Commission may:

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

22 (ii) **[Request] DIRECT** that the jurisdiction submit a proposed
23 program amendment or program refinement to correct the deficiency.

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

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

31 **[(m)] (O)** (1) The Commission may adopt regulations that prescribe the
32 procedures and information requirements for program amendments and program
33 refinements.

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

4 (i) [Mail a notification to] **NOTIFY IN WRITING** the local
5 jurisdiction that the proposal has been accepted for processing; or

6 (ii) Return the proposal as incomplete.

7 **[(n)] (P)** A local jurisdiction may specify whether it intends a proposed change
8 to be a program amendment or program refinement. However, the Commission shall treat
9 a proposed change as a program amendment unless the [chairman] **CHAIR** determines that
10 the proposed change is a program refinement.

11 **[(o)] (Q)** (1) **(I)** For proposed program amendments, a Commission panel
12 shall hold a public hearing in the local jurisdiction, and the Commission shall act on the
13 proposed program amendment within 130 days of the Commission's acceptance of the
14 proposal **UNLESS THE LOCAL JURISDICTION REQUESTS, AND THE CHAIR APPROVES,**
15 **AN EXTENSION.**

16 **(II)** **[If] UNLESS THE LOCAL JURISDICTION REQUESTS, AND THE**
17 **CHAIR APPROVES, AN EXTENSION, IF** action by the Commission is not taken within 130
18 days, the proposed program amendment is deemed approved.

19 (2) The Commission shall determine if the proposed amendment is
20 consistent with the purposes, policies, goals, and the provisions of this subtitle, and all
21 criteria of the Commission.

22 (3) In accordance with the Commission's determination in paragraph (2) of
23 this subsection, the Commission shall:

24 (i) Approve the proposed program amendment and notify the local
25 jurisdiction;

26 (ii) Deny the proposed program amendment;

27 (iii) Approve the proposed program amendment subject to one or
28 more conditions; or

29 (iv) Return the proposed program amendment to the local
30 jurisdiction with a list of the changes to be made.

31 (4) If the Commission approves a proposed program amendment subject to
32 one or more conditions under item (3)(iii) of this subsection, the local jurisdiction shall
33 notify the Commission within 60 days of its intent to adopt the conditions.

1 (5) The local jurisdiction shall incorporate the approved program
2 amendment and any required conditions into the adopted program within 120 days of
3 receiving notice from the Commission that the program amendment has been approved.

4 ~~[(p)]~~ **(R)** (1) Proposed program refinements shall be determined as provided
5 in this subsection.

6 (2) (i) Within 30 days of the Commission's acceptance of a proposal to
7 change an adopted program, the ~~[chairman]~~ **CHAIR**, on behalf of the Commission, may
8 determine that the proposed change is a program refinement. ~~[Immediately upon making~~
9 ~~a determination under this paragraph, the chairman]~~

10 **(II) THE CHAIR shall notify the Commission of that determination**
11 **AT THE NEXT MEETING OR A SUBSEQUENT MEETING IF THE LOCAL JURISDICTION**
12 **REQUESTS, AND THE CHAIR APPROVES, AN EXTENSION.**

13 ~~[(ii)]~~ **(III)** If a proposed change that was specifically submitted as a
14 program refinement is not acted on by the ~~[chairman]~~ **CHAIR** within the 30-day period,
15 the Commission shall notify the appropriate local jurisdiction that the proposed change has
16 been deemed to be a program amendment.

17 (3) (i) The Commission may vote to override the ~~[chairman's]~~ **CHAIR'S**
18 determination only at the first Commission meeting where a quorum is present following
19 the ~~[chairman's determination]~~ **CHAIR'S NOTIFICATION TO THE COMMISSION.**

20 (ii) If the ~~[chairman's]~~ **CHAIR'S** determination is overridden, the
21 proposed change is deemed a program amendment, which shall be decided by the
22 Commission in accordance with the procedures for program amendments provided in this
23 section, except that the Commission shall act on the program amendment within ~~[60]~~ **90**
24 days after a vote to override the ~~[chairman]~~ **CHAIR.**

25 (iii) If the ~~[chairman's]~~ **CHAIR'S** determination is not overridden,
26 within 10 working days after the opportunity to override the ~~[chairman's]~~ **CHAIR'S** decision
27 under item (i) of this paragraph, the ~~[chairman, on behalf of the Commission,]~~ **CHAIR** shall:

28 1. Determine if the program refinement is consistent with
29 the purposes, policies, goals, and provisions of this subtitle, and all criteria of the
30 Commission; and

31 2. A. Approve the proposed program refinement and
32 notify the local jurisdiction;

33 B. Deny the program refinement;

1 C. Approve the proposed program refinement subject to one
2 or more conditions; or

3 D. Return the proposed program refinement back to the local
4 jurisdiction with a list of the changes to be made.

5 (iv) If the [Commission] CHAIR approves a proposed program
6 refinement subject to one or more conditions under item (iii)3 of this paragraph, the local
7 jurisdiction shall notify the Commission within 60 days of its intent to adopt the conditions.

8 (4) A local jurisdiction shall incorporate an approved program refinement
9 and any required conditions into its adopted program within 120 days of receiving notice
10 from the [chairman] CHAIR that the program refinement has been approved.

11 [(q)] (S) (1) (i) As necessary, a local jurisdiction may combine any or all
12 proposed program amendments or program refinements required for a specific project
13 approval into a single request to the Commission for program amendment, program
14 refinement, or both.

15 (ii) The Commission shall ensure that any requests received in
16 accordance with this paragraph are consistent with the purposes, policies, goals, and
17 provisions of this subtitle, and all criteria of the Commission.

18 (2) A project for which a local jurisdiction requests growth allocation may
19 be submitted as a proposed program amendment, program refinement, or both.

20 (3) Approval by the Commission of a program amendment, program
21 refinement, or both does not affect the Commission's authority to receive notice of or
22 intervene in a project approval that was not specifically approved by the Commission as
23 part of its approval of a program amendment or program refinement.

24 [(r)] (T) Within 6 months after the adoption of amended criteria, a local
25 jurisdiction shall send to the Commission:

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

28 (2) A statement describing how the adopted program conforms to the
29 amended criteria and certifying that the adopted program is consistent with the amended
30 criteria.

31 [(s)] (U) If the Commission adopts a regulation concerning the use of the growth
32 allocation, any use of the growth allocation must be in accordance with that regulation for
33 the change to be considered a program refinement.

1 (E) ~~IF A LOCAL JURISDICTION HAS FAILED TO UPDATE AN ADOPTED~~
 2 ~~PROGRAM IN ACCORDANCE WITH § 8-1809(G) OF THIS SUBTITLE:~~

3 ~~(1) THE LOCAL JURISDICTION SHALL ADOPT AN UPDATE TO THE~~
 4 ~~LOCAL PROGRAM WITHIN 1 YEAR OF NOTICE FROM THE COMMISSION; OR~~

5 ~~(2) (1) THE COMMISSION MAY UPDATE THE LOCAL PROGRAM IF A~~
 6 LOCAL JURISDICTION FAILS TO UPDATE AN ADOPTED PROGRAM AFTER THE
 7 DEADLINE UNDER § 8-1809(G)(1) OF THIS SUBTITLE OR AFTER THE EXPIRATION OF
 8 AN EXTENSION GRANTED UNDER § 8-1809(H) OF THIS SUBTITLE, THE COMMISSION
 9 SHALL MAKE A GOOD FAITH EFFORT TO NOTIFY THE LOCAL JURISDICTION THAT ITS
 10 PROGRAM NEEDS TO BE UPDATED BY AT LEAST 4 DOCUMENTED NOTIFICATION
 11 ATTEMPTS OVER A 3-YEAR PERIOD.

12 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE
 13 LOCAL JURISDICTION SHALL ADOPT AN UPDATE TO THE PROGRAM WITHIN 2 YEARS
 14 OF THE LAST NOTICE FROM THE COMMISSION.

15 (II) THE COMMISSION MAY UPDATE THE PROGRAM IF THE
 16 LOCAL JURISDICTION FAILS TO UPDATE ITS PROGRAM WITHIN THE 2-YEAR PERIOD.

17 8-1811.

18 (b) (2) From the date designated by the Commission in approving or adopting
 19 a program, an applicant for project approval or the local agency authorized to grant project
 20 approval on an application in any of the identified classes shall send to the Commission in
 21 accordance with the regulations and any other instructions of the Commission, a copy of
 22 every pending or new application for approval that is in any of the identified classes. Before
 23 the close of the fifth business day after receipt of a copy of an application from [the applicant
 24 or] the local approving authority, the Commission shall send written notice of receipt to the
 25 applicant and to the local approving authority. A failure of the Commission to send a timely
 26 notice shall render paragraph (3) of this subsection inapplicable as to that application.

27 8-1812.

28 (a) After the Commission has approved or adopted a program, the [chairman]
 29 CHAIR of the Commission has standing and the right and authority to initiate or intervene
 30 in any administrative, judicial, or other original proceeding or appeal in this State
 31 concerning a project approval in the Chesapeake Bay Critical Area or the Atlantic Coastal
 32 Bays Critical Area. The [chairman] CHAIR may exercise this intervention authority
 33 without first obtaining approval from the Commission, but the [chairman] CHAIR shall
 34 send prompt written notice of any intervention or initiation of action under this section to
 35 each member of the Commission. The [chairman] CHAIR shall withdraw the intervention
 36 or action initiated if, within 35 days after the date of the [chairman's] CHAIR'S notice, at
 37 least 13 members indicate disapproval of the action, either in writing addressed to the

1 [chairman] CHAIR or by vote at a meeting of the Commission. A member representing the
2 local jurisdiction affected by the [chairman's] CHAIR'S intervention or action may request
3 a meeting of the Commission to vote on the [chairman's] CHAIR'S intervention or action.

4 (b) Except as stated in this subtitle, the [chairman] CHAIR is subject to general
5 laws and rules of procedure that govern the time within and manner in which the authority
6 granted in subsection (a) of this section may be exercised.

7 (c) The [chairman] CHAIR may appeal an action or decision even if the
8 [chairman] CHAIR was not a party to or is not specifically aggrieved by the action or
9 decision.

10 8-1813.1.

11 (d) A local jurisdiction may include in the jurisdiction's local critical area
12 protection program, to be approved by the Commission, an alternative buffer provision for
13 the development of a planned unit development in accordance with the planned unit
14 development's Step III approval, provided that:

15 (5) At least 75% of the dwelling units in the planned unit development
16 comply with the buffer requirements in COMAR 27.01.09.01 and no dwelling unit has a
17 buffer of less than 50 feet LANDWARD from existing or proposed tidal waters, tidal
18 wetlands, or tributary streams.

19 8-1814.

20 (a) After 760 days have elapsed from the date upon which criteria adopted by the
21 Commission become effective, any State or local agency that proposes development which
22 has not been subject to project approval by the local jurisdiction under an approved
23 program, including buildings, treatment plants, roads, railroads, and airports, in the
24 Chesapeake Bay Critical Area AND ATLANTIC COASTAL BAYS CRITICAL AREA shall,
25 before the State or local agency begins the development, receive the approval of the
26 Commission in accordance with procedures or exceptions set forth in regulations adopted
27 by the Commission using the standards set forth in § 8-1808(b)(1) through (3) of this
28 subtitle. These regulations shall be adopted on or before September 1, 1987, and only after
29 consultation with affected State and local agencies.

30 (b) The Secretary ~~AND THE SECRETARY OF THE ENVIRONMENT~~ shall consult
31 with the Commission in making consistency determinations under the Federal Coastal
32 Zone Management Program.

33 8-1815.

34 (a) (2) (i) A person who violates a provision of an order, permit, plan, local
35 program, this subtitle, or regulations adopted, approved, or issued under the authority of
36 this subtitle shall be:

1 1. Subject to prosecution or suit in circuit court or District
2 Court by the [chairman] CHAIR or local authorities, who may invoke the sanctions and
3 remedies afforded by State or local law;

4 (3) A local authority may request:

5 (ii) That the [chairman] CHAIR refer an enforcement action to the
6 Attorney General.

7 (b) Whenever the [chairman] CHAIR has reason to believe that a local jurisdiction
8 is failing to enforce the requirements of a program applicable to a particular development,
9 the [chairman] CHAIR shall serve notice upon the local enforcement authorities. If within
10 30 days after service of the notice, the local authorities have failed to initiate an action to
11 remedy or punish the violation, the [chairman] CHAIR may refer the matter to the Attorney
12 General.

13 (e) Notwithstanding any other provision of this section, whenever a development
14 in the **CHESAPEAKE BAY CRITICAL AREA OR ATLANTIC COASTAL BAYS** Critical Area
15 is proceeding in violation of approved project plans and threatens to immediately and
16 irreparably degrade the quality of tidal waters or fish, wildlife, or plant habitat, the
17 Attorney General, upon request of the [chairman] CHAIR, may bring an action to restrain
18 the violation and, as appropriate, to compel restoration of any land or water areas affected
19 by the development.

20 8-1815.1.

21 (b) If a person cuts or clears or plans to cut or clear trees within the Chesapeake
22 Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of an approved local
23 critical area program or of regulations adopted by the Commission, the [chairman] CHAIR
24 may bring an action, or the local jurisdiction may bring an action or request that the
25 [chairman] CHAIR of the Commission refer the matter to the Attorney General to bring an
26 action:

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

30 (2) To restrain the planned violation; or

31 (3) For damages:

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

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

3 (c) If the [chairman] CHAIR of the Commission has reason to believe that the
4 local jurisdiction is failing to enforce the requirements of subsection (b) of this section, the
5 [chairman] CHAIR shall refer the matter to the Attorney General as provided under §
6 8–1815(b) of this subtitle.

7 (d) On the [chairman] CHAIR of the Commission's referral of an alleged violation
8 under subsection (c) of this section to the Attorney General, the Attorney General may
9 invoke the remedies available to the local jurisdiction under subsection (b) of this section
10 in any court of competent jurisdiction in which the local jurisdiction would be authorized to
11 prosecute or sue.

12 (e) On the request of a local jurisdiction or the [chairman] CHAIR of the
13 Commission, the State Forester, a registered professional forester, or a registered
14 landscape architect may prepare, oversee, and approve the final implementation of a plan
15 to:

16 (1) Replant trees in any part of the Chesapeake Bay Critical Area where
17 trees in the Chesapeake Bay Critical Area are cut or cleared in violation of subsection (b)
18 of this section; and

19 (2) Replant trees in any part of the Atlantic Coastal Bays Critical Area
20 where trees in the Atlantic Coastal Bays Critical Area are cut or cleared in violation of
21 subsection (b) of this section.

22 [8–1817.

23 (a) By January 1, 1994, the Commission shall adopt criteria that assure the
24 protection of land and water resources in the Critical Area and that shall apply throughout
25 the Critical Area for:

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

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

30 (b) (1) In addition to other applicable provisions of law, an applicant for any
31 production or exploratory drilling that will occur on, in, under, or through the Critical Area,
32 including wells drilled outside the Critical Area by a method known as slant drilling that
33 will pass through the Critical Area, shall complete and submit with the application an
34 environmental impact study that addresses the potential for any adverse environmental
35 effects on the Critical Area as a result of the drilling.

1 (2) (i) The Department shall forward a copy of the permit application
2 and the environmental impact study referred to in paragraph (1) of this subsection to the
3 Commission for its review and comment.

4 (ii) The Department shall consider and comment in writing on the
5 objections and concerns of the Commission before issuing a permit under this subsection.]

6 SECTION 2. AND BE IT FURTHER ENACTED, That on completion of the statewide
7 base map project, as specified under Section 3 of Chapter 119 of the Acts of the General
8 Assembly of 2008, the process for updating the map shall proceed as follows:

9 (1) in accordance with the following requirements and conditions, the
10 Critical Area Commission, with the assistance of the Department of Natural Resources and
11 the Department of the Environment, shall prepare an update to the statewide base map at
12 appropriate intervals, but not less than every 8 years, that includes a State–determined
13 shoreline and landward boundary of tidal wetlands and a digitally generated, georeferenced
14 1,000–foot critical area boundary, as appropriate for integration into a Geographic
15 Information System, under the following standards:

16 (i) the best available imagery of comparable scale shall be used to
17 identify the shoreline and landward boundary of tidal wetlands as part of the map update;

18 (ii) the boundary shall be accurate to a scale of 1:1200; and

19 (iii) the mapped shoreline and landward boundary of tidal wetlands
20 may not be construed to represent an official wetland delineation or to change in any way
21 any statutory provision under Title 16 of the Environment Article, any regulatory provision
22 under Title 26, Subtitle 24 of the Code of Maryland Regulations, or any other provision
23 related to a project–specific wetland delineation that may be necessary and appropriate;

24 (2) a local jurisdiction shall formally adopt its updated critical area map
25 based on the statewide base map within 6 months of its receipt from the Department of
26 Natural Resources and the Commission and may request an extension of time for an
27 additional 6 months if evidence of reasonable progress has been made and is satisfactory
28 to the Commission;

29 (3) the Commission, with the assistance of each local jurisdiction, shall:

30 (i) designate unclassified areas that were not within the original
31 critical area boundary in accordance with the mapping standards set forth under COMAR
32 27.01.02.03 through 27.01.02.05 and COMAR 27.01.11.05; and

33 (ii) identify areas where there appear to be inconsistencies between
34 the statewide base map and the local jurisdiction’s critical area map;

35 (4) a local jurisdiction shall apply the updated State–determined shoreline
36 and landward boundary of tidal wetlands and a digitally generated, georeferenced

1 1,000-foot critical area boundary once it is officially transferred from the Department of
2 Natural Resources and the Commission and shall apply the updates notwithstanding any
3 local approval process; and

4 (5) each local jurisdiction shall ensure that, where applicable, each project
5 submittal uses the updated digitally generated, georeferenced critical area boundary.

6 SECTION 3. AND BE IT FURTHER ENACTED, That:

7 (a) The Department of Natural Resources shall notify the Department of
8 Legislative Services in writing on the date of official completion of the statewide base map
9 project, as required under Section 3 of Chapter 119 of the Acts of the General Assembly of
10 2008.

11 (b) Section 2 of this Act shall take effect 7 days after the Department of Natural
12 Resources provides notice of the official completion of the statewide base map project under
13 subsection (a) of this section.

14 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
15 3 of this Act, this Act shall take effect October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.