

HOUSE BILL 301

Unofficial Copy
M1

2002 Regular Session
(2r0186)

ENROLLED BILL

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

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

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

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

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Atlantic Coastal Bays Protection Act**

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

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

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

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

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

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

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

23 **Article - Natural Resources**

24 8-1801.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 8-1802.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) "Program refinement" includes:

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

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

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

10 (ii) "Project approval" includes:

11 1. Approval of subdivision plats and site plans;

12 2. Inclusion of areas within floating zones;

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

15 4. Approval of rezoning.

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

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

22 8-1803.

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

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

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

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

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

31 8-1804.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (i) A quorum is present; and

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

32 8-1806.

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

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

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

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

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

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

14 8-1807.

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

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

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

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

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

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

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

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

1 program would not substantially improve protection of tidal water quality or
2 conservation of fish, wildlife, or plant habitats; or

3 2. Located at least 1,000 feet from open water and separated
4 from open water by an area of wetlands which it is found will serve to protect tidal
5 water quality and fish, wildlife, or plant habitats from adverse impacts of
6 development in the excluded area.

7 (ii) A portion of urban area to be excluded shall be at least 50%
8 developed and may not be less than 2,640,000 square feet in contiguous area or the
9 entire initial planning area located within the boundaries of a municipality,
10 whichever is less.

11 (2) A local jurisdiction shall include in any program submitted to the
12 Commission under § 8-1809 of this subtitle a designation of those portions of the
13 Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA proposed
14 for exclusion under paragraph (1) of this subsection, together with all factual
15 information and expert opinion supporting its findings under this subsection.

16 (3) The Commission shall approve a local jurisdiction's designation of
17 portions to be excluded unless the Commission finds, based on stated reasons, that
18 the decision of the local jurisdiction was:

19 (i) Not supported by competent and material evidence; or

20 (ii) Arbitrary or capricious.

21 (4) If the Commission develops the program to be applied in a local
22 jurisdiction, the Commission shall exclude areas as appropriate to meet the intent of
23 paragraph (1) of this subsection.

24 [(c)] (D) The Chesapeake Bay Critical Area shall consist of:

25 (1) Those areas designated in subsection (a) of this section, except any
26 areas excluded in accordance with subsection [(b)] (C) of this section; and

27 (2) Additional areas proposed for inclusion by local jurisdictions and
28 approved by the Commission.

29 (E) THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL CONSIST OF:

30 (1) THOSE AREAS DESIGNATED IN SUBSECTION (B) OF THIS SECTION,
31 EXCEPT ANY AREAS EXCLUDED IN ACCORDANCE WITH SUBSECTION (C) OF THIS
32 SECTION; AND

33 (2) ADDITIONAL AREAS PROPOSED FOR INCLUSION BY LOCAL
34 JURISDICTIONS AND APPROVED BY THE COMMISSION.

1 8-1808.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) Subdivision regulations;

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

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

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

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

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

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

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

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

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

25 8-1808.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 8-1808.2.

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

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

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

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

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

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

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

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

5 (e) (1) A local jurisdiction:

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

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

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

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

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

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

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

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

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

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

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

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

1 8-1808.3.

2 (a) This section applies notwithstanding:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 8-1808.8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 8-1808.9.

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

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

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

31 (2) NOT TO ADOPT THE PROVISIONS.

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

1 8-1809.

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

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

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

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

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

15 (II) NOT TO DEVELOP SUCH A PROGRAM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) An updated resource inventory; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (ii) Return the proposal as incomplete.

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

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

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

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

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

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

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

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

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

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

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

20 2. Deny the program refinement; or

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

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

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

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

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

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

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

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

9 8-1810.

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

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

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

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

36 8-1811.

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

1 8-1812.

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

16 8-1813.

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

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

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

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

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

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

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

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

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

15 8-1813.1.

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

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

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

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

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

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

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

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

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

7 1. ARE ESSENTIALLY UNDEVELOPED WITH PERMANENT
8 STRUCTURES;

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

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

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

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

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

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

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

30 (III) THE LAND:

31 1. IS DESIGNATED AS AN INTENSELY DEVELOPED AREA;

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

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

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

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

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

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

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

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

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

28 8-1815.1.

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

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

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

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

1 (2) To restrain the planned violation; or

2 (3) For damages:

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

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

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

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

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

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

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

25 8-1817.

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

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

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

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

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

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

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

10 **Article—Environment**

11 ~~16-201.~~

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

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

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

32 ~~16-304.~~

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

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

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

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

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

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

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

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

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

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

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

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

26 A. groundwater discharge or surface water discharge;

27 B. nontidal wetlands;

28 C. water quality certification; and

29 D. water appropriation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 1. groundwater discharge or surface water discharge;

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

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

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

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