
By: **Delegates Morhaim, Weir, and The Speaker (Administration)**

Introduced and read first time: January 23, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

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 the Critical Area Commission for the Chesapeake and Atlantic
11 Coastal Bays; authorizing the Commission to establish a certain Advisory
12 Committee; designating certain areas of lands and waters to be included in the
13 Atlantic Coastal Bays Critical Area, subject to exclusion of certain types of land
14 after certain findings are made; requiring that every part of the Atlantic Coastal
15 Bays Critical Area be subject to an approved critical area protection program by
16 a certain date; requiring the Governor of Maryland to include a certain amount
17 of funds in the budget for certain purposes of this Act; requiring each local
18 jurisdiction under this Act to submit certain information to the Commission on
19 or before a certain date; requiring certain public hearings during program
20 development by a local jurisdiction and during program development or
21 approval by the Commission; requiring that a local jurisdiction review its
22 program within a certain time period and providing that within that certain
23 time period, certain changes may only be made under certain circumstances;
24 requiring certain local authorities to make certain findings relative to certain
25 applications for certain land use approvals after a certain date and prior to an
26 approved program becoming effective; requiring certain local jurisdictions to
27 permit certain uses of land in the Atlantic Coastal Bay Critical Area under
28 certain circumstances; prohibiting certain extensions of improvements under
29 certain circumstances; requiring a certain local jurisdiction to include certain
30 provisions regarding land use in the critical area and certain tributaries of the
31 Atlantic Coastal Bays; and generally relating to establishment and enforcement
32 of a comprehensive State and local resource management program for certain
33 land areas critical to the quality and productivity of the tidal waters of the
34 Atlantic Coastal Bays and its tributaries.

35 BY repealing and reenacting, with amendments,

1 Article - Natural Resources
2 Section 8-1801, 8-1802, 8-1803, 8-1804, 8-1806, 8-1807, 8-1808, 8-1808.1,
3 8-1808.2, 8-1808.3, 8-1809, 8-1810, 8-1811(a), 8-1812(a), 8-1813,
4 8-1815.1, and 8-1817
5 Annotated Code of Maryland
6 (2000 Replacement Volume and 2001 Supplement)

7 BY adding to
8 Article - Natural Resources
9 Section 8-1808.8 and 8-1813.1
10 Annotated Code of Maryland
11 (2000 Replacement Volume and 2001 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - Environment
14 Section 16-201 and 16-304
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 2001 Supplement)

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

19 **Article - Natural Resources**

20 8-1801.

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

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

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

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

31 (4) National studies have documented that the quality and productivity
32 of the waters of the Chesapeake Bay and its tributaries have declined due to the
33 cumulative effects of human activity that have caused increased levels of pollutants,
34 nutrients, and toxics in the Bay System and declines in more protective land uses
35 such as forestland and agricultural land in the Bay region;

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

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

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

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

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

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

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

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

28 8-1802.

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

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

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

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

1 [(2)] (5) "Commission" means the [Chesapeake Bay] Critical Area
2 Commission FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS established in this
3 subtitle.

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

6 [(3)] (7) "Development" means any activity that materially affects the
7 condition or use of dry land, land under water, or any structure.

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

12 [(5)] (9) "Includes" means includes or including by way of illustration
13 and not by way of limitation.

14 [(6)] (10) "Land classification" means the designation of land in the
15 Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA in
16 accordance with the criteria adopted by the Commission as an intensely developed
17 area or district, a limited development area or district, or a resource conservation
18 area or district.

19 [(7)] (11) "Local jurisdiction" means a county, or a municipal corporation
20 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
21 Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA, as defined in this subtitle, is
22 located.

23 [(8)] (12) (i) "Program" means the critical area protection program of a
24 local jurisdiction.

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

26 [(9)] (13) (i) "Program amendment" means any change to an adopted
27 program that the Commission determines will result in a use of land or water in the
28 Chesapeake Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA in a
29 manner not provided for in the adopted program.

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

33 [(10)] (14) (i) "Program refinement" means any change to an adopted
34 program that the Commission determines will result in a use of land or water in the
35 Chesapeake Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA in a
36 manner consistent with the adopted program.

37 (ii) "Program refinement" includes:

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

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

5 [(11)] (15) (i) "Project approval" means the approval of development,
6 other than development by a State or local government agency, in the Chesapeake
7 Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA by the
8 appropriate local approval authority.

9 (ii) "Project approval" includes:

10 1. Approval of subdivision plats and site plans;

11 2. Inclusion of areas within floating zones;

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

14 4. Approval of rezoning.

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

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

21 8-1803.

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

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

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

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

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

30 8-1804.

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

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

3 (2) [11] 13 individuals, appointed with the advice and consent of the
4 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 (i) 1 from each of Baltimore City and Anne Arundel, Baltimore,
11 and Prince George's counties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) A quorum is present; and

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

30 8-1806.

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

33 (1) To adopt regulations and criteria in accordance with Title 2, Subtitle
34 5 (Joint Committee on Administrative, Executive and Legislative Review) and Title
35 10, Subtitle 1 (Administrative Procedure Act) of the State Government Article;

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

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

4 (4) TO ESTABLISH AN ADVISORY COMMITTEE TO MAKE
5 RECOMMENDATIONS TO THE COMMISSION WITH RESPECT TO ATLANTIC COASTAL
6 BAYS CRITICAL AREA PROGRAMS.

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

10 8-1807.

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

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

16 (2) All land and water areas within 1,000 feet beyond the landward
17 boundaries of State or private wetlands and the heads of tides designated under Title
18 [9] 16 of the Environment Article.

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

21 (1) ALL WATERS OF AND LANDS UNDER THE COASTAL BAYS AND THEIR
22 TRIBUTARIES TO THE HEAD OF TIDE AS INDICATED ON THE STATE WETLANDS MAPS,
23 AND ALL STATE AND PRIVATE WETLANDS DESIGNATED UNDER TITLE 16 OF THE
24 ENVIRONMENT ARTICLE; AND

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

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

32 1. Part of a developed, urban area in which, in view of
33 available public facilities and applicable laws and restrictions, the imposition of a
34 program would not substantially improve protection of tidal water quality or
35 conservation of fish, wildlife, or plant habitats; or

36 2. Located at least 1,000 feet from open water and separated
37 from open water by an area of wetlands which it is found will serve to protect tidal

1 water quality and fish, wildlife, or plant habitats from adverse impacts of
2 development in the excluded area.

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

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

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

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

16 (ii) Arbitrary or capricious.

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

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

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

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

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

26 (1) THOSE AREAS DESIGNATED IN SUBSECTION (B) OF THIS SECTION,
27 EXCEPT ANY AREAS EXCLUDED IN ACCORDANCE WITH SUBSECTION (C) OF THIS
28 SECTION; AND

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

31 8-1808.

32 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
33 primary responsibility for developing and implementing a program, subject to review
34 and 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
3 a program under this section.

4 (II) Each local jurisdiction shall submit to the Governor by October
5 31, 1984 a detailed request for funds that are equivalent to the additional costs
6 incurred in developing the program under this section.

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

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

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

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

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

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

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

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

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

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

32 (i) Subdivision regulations;

33 (ii) Comprehensive or master plan;

34 (iii) Zoning ordinances or regulations;

35 (iv) Provisions relating to enforcement; and

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

- 1 (iii) Dorchester, Somerset, and Wicomico counties;
- 2 (iv) Baltimore City and Baltimore County;
- 3 (v) Charles, Calvert, and St. Mary's counties; and
- 4 (vi) Anne Arundel and Prince George's counties.

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

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

10 (F) THE PROVISIONS OF THIS SUBTITLE AND TITLE 27 OF THE CODE OF
11 MARYLAND REGULATIONS APPLY TO THE ATLANTIC COASTAL BAYS CRITICAL AREA.

12 8-1808.1.

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

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

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

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

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

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

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

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

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

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

16 (D) (1) THE GROWTH ALLOCATION FOR A LOCAL JURISDICTION BASED ON
17 5% OF THE TOTAL RESOURCE CONSERVATION AREA IN THE CHESAPEAKE BAY
18 CRITICAL AREA IN A LOCAL JURISDICTION IN THE CHESAPEAKE BAY CRITICAL AREA
19 UNDER SUBSECTION (C)(5) OF THIS SECTION SHALL BE UTILIZED WITHIN THE
20 CHESAPEAKE BAY CRITICAL AREA.

21 (2) THE GROWTH ALLOCATION FOR A LOCAL JURISDICTION BASED ON
22 5% OF THE TOTAL RESOURCE CONSERVATION AREA IN THE ATLANTIC COASTAL BAYS
23 CRITICAL AREA IN A LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS
24 CRITICAL AREA UNDER (C)(5) OF THIS SECTION SHALL BE UTILIZED WITHIN THE
25 ATLANTIC COASTAL BAYS CRITICAL AREA.

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

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

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

34 8-1808.2.

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

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

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

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

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

8 (1) Were of record on March 1, 1986 IN THE CHESAPEAKE BAY CRITICAL
9 AREA OR ON APRIL 17, 2001 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA; and

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

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

15 (e) (1) A local jurisdiction:

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

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

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

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

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

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

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

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

33 (g) If a local jurisdiction includes provisions for bona fide intrafamily transfers
34 as part of the local jurisdiction's local program, the local jurisdiction shall establish
35 standards and procedures, subject to the approval of the Commission, by which the

1 local jurisdiction will permit the subsequent conveyance of lots to persons other than
2 immediate family members. The standards and procedures shall assure that:

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

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

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

13 8-1808.3.

14 (a) This section applies notwithstanding:

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

16 (2) Any criteria or guideline of the Commission adopted under this
17 subtitle.

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

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

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

25 (2) If a parcel or lot one-half acre or less in size existed on or before
26 December 1, 1985 IN THE CHESAPEAKE BAY CRITICAL AREA OR ON OR BEFORE APRIL
27 17, 2001 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA, then man-made
28 impervious surfaces are limited to 25% of the parcel or lot.

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

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

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

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

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

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

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

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

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

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

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

29 8-1808.8.

30 (A) EACH LOCAL JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL
31 AREA SHALL INCLUDE THE FOLLOWING ELEMENTS IN THE JURISDICTION'S LOCAL
32 CRITICAL AREA PROTECTION PROGRAM:

33 (1) A PROVISION REQUIRING THE USE OF BIORETENTION AND OTHER
34 NONSTRUCTURAL STORMWATER BEST MANAGEMENT PRACTICES FOR
35 REDEVELOPMENT IN INTENSELY DEVELOPED AREAS WHERE THE COST OF
36 REDEVELOPMENT EXCEEDS 50% OF THE ASSESSED VALUE OF THE PROPERTY,
37 UNLESS THE APPLICANT FOR PROJECT APPROVAL DEMONSTRATES THAT USE OF
38 SUCH MEASURES IS NOT FEASIBLE;

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

7 (3) PROVISIONS REQUIRING PROPOSED DEVELOPMENT SITES IN
8 INTENSELY DEVELOPED AREAS TO PROVIDE A FOREST OR DEVELOPED WOODLAND
9 COVER OF AT LEAST 15% AFTER DEVELOPMENT OR A FEE-IN-LIEU PAYMENT IF THE
10 FEE IS ADEQUATE TO ENSURE THE RESTORATION OR ESTABLISHMENT OF AN
11 EQUIVALENT FOREST AREA; AND

12 (4) A PROVISION APPLYING THE BUFFER REQUIREMENTS OF TITLE 27 OF
13 THE CODE OF MARYLAND REGULATIONS TO TRIBUTARY STREAMS LOCATED
14 OUTSIDE THE CRITICAL AREA AND WITHIN THE ATLANTIC COASTAL BAYS
15 WATERSHED THAT ARE NOTED AS PERENNIAL AND INTERMITTENT STREAMS IN THE
16 ATLANTIC COASTAL BAYS WATERSHED WHICH ARE SO NOTED ON THE MOST RECENT
17 U.S. GEOLOGICAL SURVEY 7-1/2 MINUTE TOPOGRAPHIC QUADRANGLE MAPS (SCALE
18 1:24,000) OR ON MORE DETAILED MAPS OR STUDIES AT THE DISCRETION OF THE
19 LOCAL JURISDICTIONS.

20 (B) THE PROVISIONS UNDER SUBSECTION (A) OF THIS SECTION SHALL BE IN
21 ADDITION TO THE STORMWATER MANAGEMENT REQUIREMENTS OF TITLE 27 OF THE
22 CODE OF MARYLAND REGULATIONS AND TITLE 4, SUBTITLE 2 OF THE ENVIRONMENT
23 ARTICLE.

24 8-1809.

25 (a) (1) Within 45 days after the criteria adopted by the Commission under §
26 8-1808 of this subtitle become effective, each local jurisdiction shall submit to the
27 Commission a written statement of its intent either:

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

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

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

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

38 (II) NOT TO DEVELOP SUCH A PROGRAM.

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

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

16 (2) IF A LOCAL JURISDICTION STATES THE LOCAL JURISDICTION'S
17 INTENT TO DEVELOP AN ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM, THE
18 LOCAL JURISDICTION SHALL PREPARE A PROPOSED PROGRAM MEETING THE
19 REQUIREMENTS OF THE CRITERIA ADOPTED UNDER § 8-1808 OF THIS SUBTITLE AND
20 SUBMIT THE PROGRAM TO THE COMMISSION ON OR BEFORE JANUARY 1, 2003.
21 HOWEVER, IF THE LOCAL JURISDICTION SUBMITS EVIDENCE SATISFACTORY TO THE
22 COMMISSION THAT THE LOCAL JURISDICTION IS MAKING REASONABLE PROGRESS
23 IN THE DEVELOPMENT OF A PROGRAM, THE COMMISSION MAY EXTEND THIS PERIOD
24 FOR UP TO AN ADDITIONAL 30 DAYS. BEFORE SUBMISSION OF A PROGRAM TO THE
25 COMMISSION WITHIN THE TIME ALLOWED BY THIS SUBSECTION, A LOCAL
26 JURISDICTION SHALL HOLD AT LEAST 1 PUBLIC HEARING ON THE PROPOSED
27 PROGRAM, FOR WHICH 2 WEEKS' NOTICE SHALL BE PUBLISHED IN A NEWSPAPER OF
28 GENERAL CIRCULATION IN THE LOCAL JURISDICTION.

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

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

37 (II) WITHIN 60 DAYS AFTER THE COMMISSION RECEIVES A
38 PROPOSED ATLANTIC COASTAL BAYS CRITICAL AREA PROGRAM FROM A LOCAL
39 JURISDICTION, THE COMMISSION SHALL APPROVE THE PROPOSAL OR NOTIFY THE
40 LOCAL JURISDICTION OF SPECIFIC CHANGES THAT MUST BE MADE IN ORDER FOR
41 THE PROPOSAL TO BE APPROVED. IF THE COMMISSION DOES NEITHER, THE
42 PROPOSAL SHALL BE DEEMED APPROVED.

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

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

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

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

22 (g) Each local jurisdiction shall review its entire program and propose any
23 necessary amendments to its entire program, including local zoning maps, at least
24 every 4 years beginning with the 4-year anniversary of the date that the program
25 became effective and every 4 years after that date. Each local jurisdiction shall send
26 in writing to the Commission, within 60 days after each 4-year anniversary, the
27 following information:

28 (1) A statement certifying that the required review has been
29 accomplished;

30 (2) Any necessary requests for program amendments, program
31 refinements, or other matters that the local jurisdiction wishes the Commission to
32 consider;

33 (3) An updated resource inventory; and

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

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

39 (2) (i) Except for program amendments or program refinements
40 developed during program review under subsection (g) of this section, a zoning map

1 amendment may be granted by a local approving authority only on proof of a mistake
2 in the existing zoning.

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

6 1. Are wholly consistent with the land classifications in the
7 adopted program; or

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

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

12 (j) The Commission shall approve programs and program amendments that
13 meet:

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

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

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

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

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

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

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

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

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

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

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

6 (ii) Return the proposal as incomplete.

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

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

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

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

21 (2) (i) Within 30 days of the Commission's acceptance of a proposal to
22 change an adopted program, the chairman, on behalf of the Commission, may
23 determine that the proposed change is a program refinement. Immediately upon
24 making a determination under this paragraph, the chairman shall notify the
25 Commission of that determination.

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

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

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

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

- 4 1. Approve the proposed program refinement and notify the
5 local jurisdiction;
- 6 2. Deny the program refinement; or
- 7 3. Send the proposed program refinement back to the local
8 jurisdiction with a list of specific changes to be made.

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

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

15 (q) As necessary, a local jurisdiction may combine any or all proposed program
16 amendments or program refinements required for a specific project approval into a
17 single request to the Commission for program amendment, program refinement, or
18 both. Approval by the Commission of a program amendment, program refinement, or
19 both does not affect the Commission's authority to receive notice of or intervene in a
20 project approval that was not specifically approved by the Commission as part of its
21 approval of a program amendment or program refinement.

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

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

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

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

32 8-1810.

33 (a) If a local jurisdiction fails to notify the Commission that the local
34 jurisdiction will develop a program, fails to submit a proposed program or changed
35 proposal on time, or fails to obtain Commission approval of a proposed program or
36 changed proposal that is submitted, the Commission shall prepare and adopt a
37 program that satisfies the criteria adopted under § 8-1808 of this subtitle for the part

1 of the Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA in
2 that local jurisdiction.

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

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

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

22 8-1811.

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

27 8-1812.

28 (a) After the Commission has approved or adopted a program, the chairman of
29 the Commission has standing and the right and authority to initiate or intervene in
30 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
32 COASTAL BAYS CRITICAL AREA. The chairman may exercise this intervention
33 authority without first obtaining approval from the Commission, but the chairman
34 shall send prompt written notice of any intervention or initiation of action under this
35 section to each member of the Commission. The chairman shall withdraw the
36 intervention or action initiated if, within 35 days after the date of the chairman's
37 notice, at least 13 members indicate disapproval of the action, either in writing
38 addressed to the chairman or by vote at a meeting of the Commission. A member
39 representing the local jurisdiction affected by the chairman's intervention or action
40 may request a meeting of the Commission to vote on the chairman's intervention or
41 action.

1 8-1813.

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

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

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

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

24 (1) THE PROPOSED DEVELOPMENT WILL MINIMIZE ADVERSE IMPACTS
25 ON WATER QUALITY THAT RESULT FROM POLLUTANTS THAT ARE DISCHARGED
26 FROM STRUCTURES OR CONVEYANCES OR THAT HAVE RUN OFF FROM
27 SURROUNDING LANDS; AND

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

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

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

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

1 8-1813.1.

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A LOCAL
3 JURISDICTION IN THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL PERMIT A
4 SINGLE LOT OR PARCEL OF LAND THAT WAS LEGALLY OF RECORD ON THE DATE OF
5 PROGRAM APPROVAL TO BE DEVELOPED WITH A SINGLE FAMILY DWELLING, IF A
6 DWELLING IS NOT ALREADY PLACED THERE, NOTWITHSTANDING THAT SUCH
7 DEVELOPMENT MAY BE INCONSISTENT WITH THE APPROVED DENSITY PROVISIONS
8 OF THE APPROVED LOCAL PROGRAM, AND PROVIDED THAT THE LOCAL
9 JURISDICTION DEVELOPS, AS PART OF ITS PROGRAM, PROCEDURES TO BRING THESE
10 LANDS INTO CONFORMANCE WITH THE LOCAL CRITICAL AREA PROGRAM AS FAR AS
11 POSSIBLE, INCLUDING THE CONSOLIDATION OR RECONFIGURATION OF LOTS NOT
12 INDIVIDUALLY OWNED, AND THESE PROCEDURES ARE APPROVED BY THE
13 COMMISSION.

14 (B) LAND THAT WAS SUBDIVIDED INTO RECORDED AND LEGALLY BUILDABLE
15 LOTS FOR WHICH THE SUBDIVISION RECEIVED THE LOCAL JURISDICTION'S FINAL
16 APPROVAL AFTER APRIL 17, 2001 BUT PRIOR TO PROGRAM APPROVAL MAY BE
17 DEVELOPED WITH A SINGLE FAMILY DWELLING, IF A SINGLE FAMILY DWELLING IS
18 NOT ALREADY PLACED THERE, PROVIDED THAT:

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

21 (2) THE AREA OF LAND IS COUNTED BY THE LOCAL JURISDICTION
22 AGAINST THE GROWTH INCREMENT IN ACCORDANCE WITH § 8-1808.1(B) OF THIS
23 TITLE AND COMAR 27.01.02.06.

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

29 8-1815.1.

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

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

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

38 (1) To require the person to replant trees where the cutting or clearing
39 occurred in accordance with a plan prepared by the State Forester, a registered
40 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 this Act shall take effect
18 June 1, 2002.