

HOUSE BILL 1253

M1

8lr0266
CF SB 844

By: **The Speaker (By Request – Administration) and Delegates Ali, Beidle, Bobo, Bronrott, Cane, V. Clagett, Frush, Gaines, Gutierrez, Holmes, Kullen, Lafferty, Malone, McIntosh, Montgomery, Morhaim, Niemann, ~~Pena-Melnyk, and Rosenberg~~ Rosenberg, Stein, Hucker, and Glenn**

Introduced and read first time: February 8, 2008

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2008

CHAPTER _____

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program –**
3 **Administrative and Enforcement Provisions**

4 FOR the purpose of authorizing the Maryland Home Improvement Commission to
5 deny, reprimand, suspend, or revoke certain licenses for failure to comply with
6 certain legal terms or requirements in the Chesapeake and Atlantic Coastal
7 Bays Critical Area; authorizing the Home Builder Registration Unit to deny,
8 reprimand, suspend, or revoke a home builder's registration, or impose certain
9 civil penalties on a registrant, for failure to comply with certain critical area
10 legal terms and requirements; authorizing the Department of Natural
11 Resources to revoke or suspend the license of a licensed tree expert for failure to
12 comply with certain critical area legal terms and requirements; requiring the
13 Critical Area Commission for the Chesapeake and Atlantic Coastal Bays to
14 notify the Maryland Home Improvement Commission ~~on a contractor's failure,~~
15 the Home Builder Registration Unit, or the Department of Natural Resources
16 on the failure of certain contractors to comply with certain terms or
17 requirements in the Critical Area; authorizing the Critical Area Commission to
18 adopt and amend certain regulations regarding certain matters; requiring the
19 Critical Area Commission to adopt certain regulations; requiring that local
20 Critical Area programs contain certain procedures, penalty provisions, and
21 other elements; repealing a provision of law that allows for the omission of
22 certain runoff prevention measures on certain sites; requiring a local
23 jurisdiction to consider certain factors in the determination of certain penalties;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

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



1 requiring that the Critical Area Commission receive certain notice from a local
2 jurisdiction within a certain time; establishing that certain development
3 activities violate certain provisions of law; prohibiting a local jurisdiction from
4 accepting certain applications for a variance or issuing certain authorizations
5 unless certain conditions are satisfied; requiring a local jurisdiction to deny a
6 variance and order certain actions under certain circumstances, and authorizing
7 a local jurisdiction to grant proposed approval to a variance under certain
8 circumstances; ~~requiring the Critical Area Commission to review certain~~
9 ~~proposed variance approvals and issue certain decisions;~~ specifying the
10 applicability of certain standards under certain circumstances; requiring the
11 Critical Area Commission to consider certain factors when reviewing certain
12 map amendments or refinements; prohibiting lot coverage in the buffer in
13 excess of a certain amount, except under certain circumstances; specifying the
14 applicability of certain limitations to the extent of lot coverage, with certain
15 exceptions and subject to a certain construction; requiring the establishment of
16 a certain buffer in a certain area, and allowing for certain reductions under
17 certain circumstances; requiring that certain erosion protections consist of
18 nonstructural shoreline stabilization measures, except under certain
19 circumstances; ~~requiring that the Critical Area Commission consider a local~~
20 ~~jurisdiction's determination of a classification mistake and make a certain~~
21 ~~determination;~~ requiring the Department of the Environment to adopt certain
22 regulations to include a certain waiver process; authorizing a local authority to
23 obtain access and enter a certain property for certain purposes and under
24 certain circumstances; requiring a local authority to take certain actions under
25 certain circumstances related to certain violations; authorizing the Chairman of
26 the Critical Area Commission to invoke certain sanctions and remedies and
27 bring certain actions under certain circumstances; requiring that certain
28 criminal prosecutions and suits for civil penalties be instituted within a certain
29 time; modifying the initial planning areas for the determination of the
30 Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area by the
31 use of a certain map; providing for the preparation, distribution, review,
32 refinement, formal adoption, and periodic update of ~~a certain map~~ certain maps;
33 requiring the Department of Natural Resources to notify the Department of
34 Legislative Services regarding the date of completion of a certain mapping
35 project; clarifying the applicability of certain provisions of law; specifying
36 certain legislative findings; defining certain terms; requiring certain local
37 jurisdictions to report to the Critical Area Commission by a certain date
38 regarding certain procedures; prohibiting ~~a certain construction~~ certain
39 constructions of this Act; making the effective date of a certain provision of this
40 Act subject to a certain contingency; and generally relating to the Chesapeake
41 and Atlantic Coastal Bays Critical Area Protection Program.

42 BY repealing and reenacting, without amendments,
43 Article – Business Regulation
44 Section 8–101(a)
45 Annotated Code of Maryland
46 (2004 Replacement Volume and 2007 Supplement)

- 1 BY repealing and reenacting, with amendments,
 2 Article – Business Regulation
 3 Section ~~8–101(g)~~ 4.5–308(a), 8–101(g), and 8–311(a)
 4 Annotated Code of Maryland
 5 (2004 Replacement Volume and 2007 Supplement)
- 6 BY adding to
 7 Article – Business Regulation
 8 Section 8–506
 9 Annotated Code of Maryland
 10 (2004 Replacement Volume and 2007 Supplement)
- 11 BY repealing and reenacting, with amendments,
 12 Article – Natural Resources
 13 Section 5–421(a)
 14 Annotated Code of Maryland
 15 (2005 Replacement Volume and 2007 Supplement)
- 16 BY repealing and reenacting, with amendments,
 17 Article – Natural Resources
 18 Section 8–1801, ~~8–1802(a)(15) through (18)~~ 8–1802(a)(13) through (23), 8–1806,
 19 8–1807(a) and (b), 8–1808(c), (d), and (e), 8–1808.1(c) and (e)(2)(i),
 20 8–1808.3, ~~8–1809(h) and (e)(1)~~ 8–1809(o)(1), 8–1811(b)(2), 8–1815(a), and
 21 8–1815.1(b)
 22 Annotated Code of Maryland
 23 (2007 Replacement Volume)
- 24 BY repealing and reenacting, without amendments,
 25 Article – Natural Resources
 26 Section 8–1802(a)(1)
 27 Annotated Code of Maryland
 28 (2007 Replacement Volume)
- 29 BY adding to
 30 Article – Natural Resources
 31 Section 8–1802(a)(15), 8–1808.10, and 8–1808.11
 32 Annotated Code of Maryland
 33 (2007 Replacement Volume)

34 Preamble

35 WHEREAS, Following extensive research and the issuance of a report by the
 36 United States Environmental Protection Agency that clearly demonstrated an
 37 alarming extent of degradation of the Chesapeake Bay, in significant part because of
 38 prominent land use and growth patterns, the Critical Area Commission was created in
 39 1984 in order to preserve and restore water quality in the State, to maintain valued
 40 wildlife habitat, and to accommodate inevitable growth, and these same legislative

1 concerns were addressed in 2002 when the protections of the Critical Area Program
2 were expanded to include the Atlantic Coastal Bays; and

3 WHEREAS, The Critical Area, which comprises approximately 11% of
4 Maryland's land mass, includes the majority of the State's most ecologically fragile
5 and valuable properties; and

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

8 WHEREAS, To date local Critical Area programs are operative in Baltimore
9 City, 16 counties, and 47 other municipalities, and Critical Area issues directly impact
10 at least seven State departments; and

11 WHEREAS, After nearly a quarter-century of operation, the Critical Area
12 Program has effectively influenced thousands of land use decisions, addressed and
13 minimized the adverse impacts of growth associated with hundreds of requests for
14 growth allocation, and represented a comprehensive effort between the State and local
15 governments to enforce a variety of water quality and habitat protection standards;
16 and

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

21 WHEREAS, Particularly in light of the ongoing, accelerating decline of the
22 State's water quality resources and the loss of valuable shoreline areas due to erosion
23 and global warming, it is the view of the General Assembly that significant
24 improvements are in order at this time so as to accomplish Program preservation goals
25 more effectively while streamlining the Program and enhancing its efficiency and
26 predictability; and

27 WHEREAS, Experience has provided several strong indications of how to
28 ensure those Program improvements; and

29 WHEREAS, A key element that is fundamental to the ordinary business
30 operations of all other State agencies is the general authority to adopt regulations, but
31 the ability of the Critical Area Commission to do so was rendered unclear by the
32 March 10, 1987 Opinion of the Attorney General, 72 Md. Op. Atty. Gen. 14, 1987 WL
33 339797 (Md.A.G.), and it is the intent of this legislation to clarify and supersede that
34 Opinion; and

35 WHEREAS, It is likewise the intent of this legislation to strengthen and clarify
36 the reach of the Program where necessary to compensate for gaps in the current
37 structure, such as the institution of more meaningful enforcement mechanisms, and to
38 provide for fairer and more effective Program procedures around the State that will

1 continue to allow for flexibility in recognition of local partners' varying needs; now,
2 therefore,

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

5 **Article – Business Regulation**

6 4.5–308.

7 (a) (1) The Unit may deny registration to an applicant, reprimand a
8 registrant, suspend or revoke a registration, or impose a civil penalty on a registrant if
9 the Unit determines that the applicant or registrant:

10 [(1)] (I) fraudulently or deceptively obtained or attempted to obtain
11 a registration;

12 [(2)] (II) fraudulently or deceptively used a registration;

13 [(3)] (III) presented or attempted to present the home builder
14 registration number of another registrant as the applicant's or registrant's home
15 builder registration number;

16 [(4)] (IV) used or attempted to use an expired, suspended, or revoked
17 home builder registration number;

18 [(5)] (V) impersonated or falsely represented oneself as a registered
19 home builder;

20 [(6)] (VI) repeatedly violated this title;

21 [(7)] (VII) engaged in a pattern of unfair or deceptive trade practices
22 under the Consumer Protection Act, as determined by a final administrative order or
23 judicial decision;

24 [(8)] (VIII) repeatedly violated a local building, development, or zoning
25 permit law or regulations, or a State or federal law or regulation, including an
26 environmental protection law or regulation, that relates to the fitness and
27 qualification or ability of the applicant or registrant to build homes;

28 [(9)] (IX) engaged in a pattern of poor workmanship as evidenced by
29 one or more of the following:

30 [(i)] 1. repeated unresolved building code violations;

1 [(ii)] 2. repeated unsatisfied arbitration awards in favor of
 2 consumers against the applicant or registered home builder based on incomplete or
 3 substandard work; or

4 [(iii)] 3. an unsatisfied final judgment in favor of a consumer;

5 [(10)] (X) repeatedly engaged in fraud, deception, misrepresentation,
 6 or knowing omissions of material facts related to home building contracts;

7 [(11)] (XI) had a similar registration or license denied, suspended, or
 8 revoked in another state or jurisdiction; [or]

9 [(12)] (XII) had the renewal of a similar registration or license denied
 10 for any cause other than failure to pay a renewal fee; OR

11 (XIII) IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
 12 CRITICAL AREA, AS DEFINED UNDER § 8-1802 OF THE NATURAL RESOURCES
 13 ARTICLE, FAILED TO COMPLY WITH:

14 1. THE TERMS OF A STATE OR LOCAL PERMIT,
 15 LICENSE, OR APPROVAL; OR

16 2. ANY STATE OR LOCAL LAW, AN APPROVED PLAN,
 17 OR OTHER LEGAL REQUIREMENT.

18 (2) THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE
 19 AND ATLANTIC COASTAL BAYS, AS ESTABLISHED UNDER TITLE 8, SUBTITLE 18
 20 OF THE NATURAL RESOURCES ARTICLE, SHALL NOTIFY THE UNIT OF ANY
 21 APPLICANT OR REGISTRANT WHO FAILS TO COMPLY WITH ANY REQUIREMENT
 22 UNDER PARAGRAPH (1)(XIII) OF THIS SUBSECTION.

23 8-101.

24 (a) In this title the following words have the meanings indicated.

25 (g) (1) "Home improvement" means:

26 (i) the addition to or alteration, conversion, improvement,
 27 modernization, remodeling, repair, or replacement of a building or part of a building
 28 that is used or designed to be used as a residence or dwelling place or a structure
 29 adjacent to that building; or

30 (ii) an improvement to land adjacent to the building.

31 (2) "Home improvement" includes:

1 (i) construction, improvement, or replacement, on land adjacent
 2 to the building, of a driveway, fall-out shelter, fence, garage, landscaping, **DECK,**
 3 **PIER,** porch, or swimming pool;

4 (ii) **A SHORE EROSION CONTROL PROJECT, AS DEFINED**
 5 **UNDER § 8-1001 OF THE NATURAL RESOURCES ARTICLE, FOR A RESIDENTIAL**
 6 **PROPERTY;**

7 (iii) connection, installation, or replacement, in the building or
 8 structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing
 9 exposed household plumbing lines;

10 [(iii)] (iv) installation, in the building or structure, of an
 11 awning, fire alarm, or storm window; ~~and~~

12 [(iv)] (v) work done on individual condominium units; ~~AND~~

13 ~~(vi) CONSTRUCTION, IMPROVEMENT, ALTERATION, OR~~
 14 ~~REPLACEMENT OF LAND OR ANY STRUCTURE IN THE CHESAPEAKE AND~~
 15 ~~ATLANTIC COASTAL BAYS CRITICAL AREA, AS DEFINED UNDER § 8-1802 OF~~
 16 ~~THE NATURAL RESOURCES ARTICLE.~~

17 (3) "Home improvement" does not include:

18 (i) construction of a new home;

19 (ii) work done to comply with a guarantee of completion for a
 20 new building project;

21 (iii) connection, installation, or replacement of an appliance to
 22 existing exposed plumbing lines that requires alteration of the plumbing lines;

23 (iv) sale of materials, if the seller does not arrange to perform or
 24 does not perform directly or indirectly any work in connection with the installation or
 25 application of the materials;

26 (v) work done on apartment buildings that contain four or more
 27 single-family units; **OR**

28 (vi) work done on the commonly owned areas of condominiums[;
 29 or

30 (vii) a shore erosion control project, as defined in § 8-1001 of the
 31 Natural Resources Article, for a residential property].

32 8-311.

1 (a) Subject to the hearing provisions of § 8–312 of this subtitle, the
2 Commission may deny a license to an applicant, reprimand a licensee, or suspend or
3 revoke a license if the applicant or licensee or the management personnel of the
4 applicant or licensee:

5 (1) fraudulently or deceptively obtains or attempts to obtain a license
6 for the applicant or licensee or for another person;

7 (2) fraudulently or deceptively uses a license;

8 (3) fails to give the Commission information required by this subtitle
9 about an application for a license;

10 (4) fails to pass an examination required by this subtitle;

11 (5) under the laws of the United States or of any state, is convicted of
12 a:

13 (i) felony; or

14 (ii) misdemeanor that is directly related to the fitness and
15 qualification of the applicant or licensee to engage in home improvement services;

16 (6) often fails to perform home improvement contracts;

17 (7) falsifies an account;

18 (8) engages in fraud;

19 (9) as a contractor or subcontractor fails to show financial solvency,
20 based on the intended scope and size of the business in relation to total assets,
21 liabilities, credit rating, and net worth;

22 (10) as a contractor or subcontractor lacks competence, as shown by the
23 performance of an unworkmanlike, inadequate, or incomplete home improvement;

24 (11) violates this title;

25 (12) attempts to violate this title; [or]

26 (13) violates a regulation adopted under this title; **OR**

27 **(14) IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**
28 **CRITICAL AREA, AS DEFINED UNDER § 8–1802 OF THE NATURAL RESOURCES**
29 **ARTICLE, FAILS TO COMPLY WITH:**

1 (I) THE TERMS OF A STATE OR LOCAL PERMIT, LICENSE, OR
2 APPROVAL ISSUED FOR HOME IMPROVEMENT; OR

3 (II) ANY STATE OR LOCAL LAW, AN APPROVED PLAN, OR
4 OTHER LEGAL REQUIREMENT.

5 **8-506.**

6 (A) IN THIS SECTION, "CRITICAL AREA" HAS THE MEANING DESIGNATED
7 UNDER § 8-1802 OF THE NATURAL RESOURCES ARTICLE.

8 (B) THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND
9 ATLANTIC COASTAL BAYS, AS ESTABLISHED UNDER TITLE 8, SUBTITLE 18 OF
10 THE NATURAL RESOURCES ARTICLE, SHALL NOTIFY THE COMMISSION OF ANY
11 CONTRACTOR WHO, IN THE CRITICAL AREA, FAILS TO COMPLY WITH:

12 (1) THE TERMS OF A STATE OR LOCAL PERMIT, LICENSE, OR
13 APPROVAL ISSUED FOR HOME IMPROVEMENT; OR

14 (2) ANY STATE OR LOCAL LAW, APPROVED PLAN, OR OTHER
15 LEGAL REQUIREMENT.

16 **Article - Natural Resources**

17 5-421.

18 (a) (1) The Department may permanently revoke or temporarily suspend
19 the license of any licensed tree expert who [is]:

20 (I) IS found guilty of any fraud or deceit in obtaining the
21 license, or guilty of negligence of wrongful conduct in the practice of tree culture or
22 care; OR

23 (II) IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS
24 CRITICAL AREA, AS DEFINED UNDER § 8-1802 OF THIS ARTICLE, FAILS TO
25 COMPLY WITH:

26 1. THE TERMS OF A STATE OR LOCAL PERMIT,
27 LICENSE, OR APPROVAL; OR

28 2. ANY STATE OR LOCAL LAW, AN APPROVED PLAN,
29 OR OTHER LEGAL REQUIREMENT.

1 **(2) THE CRITICAL AREA COMMISSION SHALL NOTIFY THE**
2 **DEPARTMENT OF ANY TREE EXPERT WHO FAILS TO COMPLY WITH ANY**
3 **REQUIREMENT UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.**

4 8–1801.

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

6 (1) The Chesapeake and the Atlantic Coastal Bays and their
7 tributaries are natural resources of great significance to the State and the nation, **AND**
8 **THEIR BEAUTY, THEIR ECOLOGICAL VALUE, AND THEIR ECONOMIC IMPACT ALL**
9 **REACH FAR BEYOND ANY ONE LOCAL JURISDICTION;**

10 (2) The shoreline and adjacent lands, **PARTICULARLY THE BUFFER**
11 **AREAS**, constitute a valuable, fragile, and sensitive part of this estuarine system,
12 where human activity can have a particularly immediate and adverse impact on water
13 quality and natural habitats;

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

17 (4) Human activity is harmful in these shoreline areas, where the new
18 development of nonwater-dependent structures or [the addition of impervious
19 surfaces] **AN INCREASE IN LOT COVERAGE** is presumed to be contrary to the purpose
20 of this subtitle, because these activities may cause adverse impacts, of both an
21 immediate and a long-term nature, to the Chesapeake and Atlantic Coastal Bays, and
22 thus it is necessary wherever possible to maintain a buffer of at least 100 feet
23 landward from the mean high water line of tidal waters, tributary streams, and tidal
24 wetlands;

25 (5) National studies have documented that the quality and
26 productivity of the waters of the Chesapeake Bay and its tributaries have declined due
27 to the cumulative effects of human activity that have caused increased levels of
28 pollutants, nutrients, and toxics in the Bay System and declines in more protective
29 land uses such as forestland and agricultural land in the Bay region;

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

34 (7) The quality of life for the citizens of Maryland is enhanced through
35 the restoration of the quality and productivity of the waters of the Chesapeake and the
36 Atlantic Coastal Bays, and their tributaries;

1 (8) The restoration of the Chesapeake and the Atlantic Coastal Bays
2 and their tributaries is dependent, in part, on minimizing further adverse impacts to
3 the water quality and natural habitats of the shoreline and adjacent lands,
4 particularly in the buffer;

5 (9) The cumulative impact of current development and of each new
6 development activity in the buffer is inimical to these purposes, **AND IT IS**
7 **THEREFORE IMPERATIVE THAT STATE LAW ~~BE SUFFICIENT TO~~ PROTECT**
8 **IRREPLACEABLE STATE BUFFER RESOURCES FROM UNPERMITTED ACTIVITY;**
9 and

10 (10) There is a critical and substantial State interest for the benefit of
11 current and future generations in fostering more sensitive development [activity] **AND**
12 **MORE EFFECTIVE ENFORCEMENT** in a consistent and uniform manner along
13 shoreline areas of the Chesapeake and the Atlantic Coastal Bays and their tributaries
14 so as to minimize damage to water quality and natural habitats.

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

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

20 (2) To implement the Resource Protection Program on a cooperative
21 basis between the State and affected local governments, with local governments
22 establishing and implementing their programs in a consistent and uniform manner
23 subject to State **AND LOCAL LEADERSHIP**, [criteria] **CRITERIA**, and oversight.

24 8-1802.

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

26 (13) **(I) "INTENSELY DEVELOPED AREA" MEANS AN AREA OF AT**
27 **LEAST 20 ACRES OR THE ENTIRE UPLAND PORTION OF THE CRITICAL AREA**
28 **WITHIN A MUNICIPAL CORPORATION, WHICHEVER IS LESS, WHERE:**

29 **1. RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, OR**
30 **INDUSTRIAL DEVELOPED LAND USES PREDOMINATE; AND**

31 **2. A RELATIVELY SMALL AMOUNT OF NATURAL**
32 **HABITAT OCCURS.**

33 **(II) "INTENSELY DEVELOPED AREA" INCLUDES:**

1 **1. AN AREA WITH A HOUSING DENSITY OF AT LEAST**
2 **FOUR DWELLING UNITS PER ACRE;**

3 **2. AN AREA WITH PUBLIC WATER AND SEWER**
4 **SYSTEMS WITH A HOUSING DENSITY OF MORE THAN THREE DWELLING UNITS**
5 **PER ACRE; OR**

6 **3. A COMMERCIAL MARINA REDESIGNATED BY A**
7 **LOCAL JURISDICTION FROM A RESOURCE CONSERVATION AREA OR LIMITED**
8 **DEVELOPMENT AREA TO AN INTENSELY DEVELOPED AREA THROUGH A**
9 **MAPPING CORRECTION THAT OCCURRED BEFORE JANUARY 1, 2006.**

10 **(14) “Land classification” means the designation of land in the**
11 **Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance**
12 **with the criteria adopted by the Commission as an intensely developed area or district,**
13 **a limited development area or district, or a resource conservation area or district.**

14 **(15) (I) “LIMITED DEVELOPMENT AREA” MEANS AN AREA:**

15 **1. THAT IS DEVELOPED IN LOW OR MODERATE**
16 **INTENSITY USES AND CONTAINS AREAS OF NATURAL PLANT AND ANIMAL**
17 **HABITAT; AND**

18 **2. WHERE THE QUALITY OF RUNOFF HAS NOT BEEN**
19 **SUBSTANTIALLY ALTERED OR IMPAIRED.**

20 **(II) “LIMITED DEVELOPMENT AREA” INCLUDES AN AREA:**

21 **1. WITH A HOUSING DENSITY RANGING FROM ONE**
22 **DWELLING UNIT PER FIVE ACRES UP TO FOUR DWELLING UNITS PER ACRE;**

23 **2. WITH A PUBLIC WATER OR SEWER SYSTEM;**

24 **3. THAT IS NOT DOMINATED BY AGRICULTURAL**
25 **LAND, WETLAND, FORESTS, BARREN LAND, SURFACE WATER, OR OPEN SPACE;**
26 **OR**

27 **4. THAT IS LESS THAN 20 ACRES AND OTHERWISE**
28 **QUALIFIES AS AN INTENSELY DEVELOPED AREA UNDER PARAGRAPH (13) OF**
29 **THIS SUBSECTION.**

30 **[(14)] (16) “Local jurisdiction” means a county, or a municipal**
31 **corporation with planning and zoning powers, in which any part of the Chesapeake**
32 **Bay Critical Area or the Atlantic Coastal Bays Critical Area, as defined in this**
33 **subtitle, is located.**

1 ~~(15)~~ **(17)** (I) “LOT COVERAGE” MEANS THE PERCENTAGE OF A
2 TOTAL LOT OR PARCEL THAT IS:

3 1. OCCUPIED BY A STRUCTURE, ACCESSORY
4 STRUCTURE, PARKING AREA, DRIVEWAY, WALKWAY, OR ROADWAY; OR

5 2. COVERED WITH ~~A PAVER, WALKWAY GRAVEL,~~
6 STONE, SHELL, DECKING, A PAVER, PERMEABLE PAVEMENT, OR OTHER ANY
7 MANMADE MATERIAL.

8 (II) “LOT COVERAGE” INCLUDES THE ~~TOTAL~~ GROUND AREA
9 COVERED OR OCCUPIED, ~~INCLUDING ELEMENTS PROTRUDING FROM A~~
10 ~~BUILDING SUCH AS A STAIRWAY, CANTILEVERED DECK, CHIMNEY, OR~~
11 ~~OVERHANGING DECK OR BALCONY~~ BY A STAIRWAY OR DECK.

12 (III) “LOT COVERAGE” DOES NOT ~~INCLUDE~~ INCLUDE:

13 1. A FENCE OR WALL THAT IS LESS THAN 1 FOOT IN
14 WIDTH THAT HAS NOT BEEN CONSTRUCTED WITH A ~~FOOTER~~ FOOTER;

15 2. A WALKWAY IN THE BUFFER OR EXPANDED
16 BUFFER, INCLUDING A STAIRWAY, THAT PROVIDES DIRECT ACCESS TO A
17 COMMUNITY OR PRIVATE PIER; OR

18 3. A WOOD MULCH PATHWAY.

19 [(15)] ~~(16)~~ **(18)** (i) “Program” means the critical area protection
20 program of a local jurisdiction.

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

22 [(16)] ~~(17)~~ **(19)** (i) “Program amendment” means any change or
23 proposed change to an adopted program that is not determined by the Commission
24 chairman to be a program refinement.

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

28 [(17)] ~~(18)~~ **(20)** (i) “Program refinement” means any change or
29 proposed change to an adopted program that the Commission chairman determines
30 will result in a use of land or water in the Chesapeake Bay Critical Area or the
31 Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program,
32 or that will not significantly affect the use of land or water in the critical area.

- 1 (ii) "Program refinement" may include:
- 2 1. A change to an adopted program that results from
3 State law;
- 4 2. A change to an adopted program that affects local
5 processes and procedures;
- 6 3. A change to a local ordinance or code that clarifies an
7 existing provision; and
- 8 4. A minor change to an element of an adopted program
9 that is clearly consistent with the provisions of this subtitle and all of the criteria of
10 the Commission.

11 [(18)] ~~(19)~~ **(21)** (i) "Project approval" means the approval of
12 development, other than development by a State or local government agency, in the
13 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area by the
14 appropriate local approval authority.

- 15 (ii) "Project approval" includes:
- 16 1. Approval of subdivision plats and site plans;
- 17 2. Inclusion of areas within floating zones;
- 18 3. Issuance of variances, special exceptions, and
19 conditional use permits; and
- 20 4. Approval of rezoning.

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

22 **(22) (I) "RESOURCE CONSERVATION AREA" MEANS AN AREA**
23 **THAT IS CHARACTERIZED BY:**

24 **1. NATURE DOMINATED ENVIRONMENTS, SUCH AS**
25 **WETLANDS, SURFACE WATER, FORESTS, AND OPEN SPACE; AND**

26 **2. RESOURCE-BASED ACTIVITIES, SUCH AS**
27 **AGRICULTURE, FORESTRY, FISHERIES, OR AQUACULTURE.**

28 **(II) "RESOURCE CONSERVATION AREA" INCLUDES AN AREA**
29 **WITH A HOUSING DENSITY OF LESS THAN ONE DWELLING PER FIVE ACRES.**

30 **(23) "TRIBUTARY STREAM" MEANS A PERENNIAL STREAM OR AN**
31 **INTERMITTENT STREAM WITHIN THE CRITICAL AREA THAT HAS BEEN**

1 **IDENTIFIED BY SITE INSPECTION OR IN ACCORDANCE WITH LOCAL PROGRAM**
 2 **PROCEDURES APPROVED BY THE COMMISSION.**

3 8-1806.

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

6 (1) [To adopt regulations and criteria in] **IN** accordance with Title 2,
 7 Subtitle 5 (Joint Committee on Administrative, Executive and Legislative Review) and
 8 Title 10, Subtitle 1 (Administrative Procedure Act) of the State Government Article,
 9 **TO ADOPT AND AMEND REGULATIONS AS NECESSARY AND APPROPRIATE TO**
 10 **AUTHORIZED UNDER THIS SUBTITLE FOR THE ADMINISTRATION AND**
 11 **ENFORCEMENT OF THE STATE AND LOCAL PROGRAMS;**

12 (2) To conduct hearings in connection with policies, proposed
 13 programs, and proposed regulations or amendments to regulations;

14 (3) To contract for consultant or other services; and

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

18 (b) ~~AT A MINIMUM, REGULATIONS~~ **REGULATIONS** ADOPTED OR
 19 **AMENDED UNDER SUBSECTION (A)(1) OF THIS SECTION SHALL:**

20 (1) **ESTABLISH COMPREHENSIVE STANDARDS AND PROCEDURES**
 21 ~~FOR BUFFER ESTABLISHMENT, MAINTENANCE, AND LONG TERM PROTECTION~~
 22 ~~AND FOR BUFFER MITIGATION ACTIVITIES ASSOCIATED WITH VIOLATIONS,~~
 23 ~~VARIANCES, OR AUTHORIZED DEVELOPMENT ACTIVITIES, INCLUDING~~
 24 ~~PROVISIONS TO ENSURE THE:~~

25 (I) **BUFFER ESTABLISHMENT, MAINTENANCE,**
 26 **MEASUREMENT, MITIGATION, AND ENFORCEMENT;**

27 (II) **BUFFER EXEMPTION AREAS;**

28 (III) **IMPACTS OF SHORE EROSION CONTROL ACTIVITIES ON**
 29 **THE BUFFER;**

30 (IV) **COMMUNITY PIERS;**

31 (V) **COMMERCIAL MARINAS;**

32 (VI) **WATER DEPENDENT FACILITIES;**

1 **(VII) PUBLIC WATER ACCESS;**

2 **(VIII) THE PROTECTION AND CONSERVATION OF THE BUFFER**
3 **AS A STATE WATER QUALITY AND HABITAT RESOURCE ESSENTIAL TO THE**
4 **RESTORATION OF THE CHESAPEAKE AND ATLANTIC COASTAL BAYS; AND**

5 **(IX) MAPPING THE CRITICAL AREA, WITH RESPECT TO**
6 **REVISION OF THE 1,000 FOOT BOUNDARY AND VOLUNTARY ADDITIONS OF**
7 **PROPERTY TO THE CRITICAL AREA;**

8 **(X) DEVELOPMENT IN THE CRITICAL AREA, WITH RESPECT**
9 **TO:**

10 **1. CLEARING, GRADING, AND CONSTRUCTION**
11 **ACTIVITY;**

12 **2. CLUSTERING TO PROMOTE CONSERVATION OF**
13 **NATURAL SITE FEATURES;**

14 **3. FLEXIBILITY FOR REDEVELOPMENT;**

15 **4. STORMWATER MANAGEMENT;**

16 **5. APPLICATION OF THE 10% POLLUTANT**
17 **REDUCTION RULE;**

18 **6. FOREST AND DEVELOPED WOODLANDS**
19 **PROTECTIONS;**

20 **7. CLEARING OF NATURAL VEGETATION;**

21 **8. LOT COVERAGE STANDARDS;**

22 **9. COMMISSION REVIEW OF LOCAL PROVISIONS FOR**
23 **LOT CONSOLIDATION; AND**

24 **10. THE EXCLUSION OF STATE TIDAL WETLANDS**
25 **FROM CALCULATIONS OF DENSITY, FOREST AND DEVELOPED WOODLANDS**
26 **PROTECTIONS, LIMITATIONS ON CLEARING NATURAL VEGETATION, AND LOT**
27 **COVERAGE STANDARDS;**

28 **(XI) CONSISTENT ENFORCEMENT OF STATE AND LOCAL**
29 **CRITICAL AREA LAW, WITH RESPECT TO THE ESTABLISHMENT OF MINIMUM**
30 **PENALTIES AND MITIGATION REQUIREMENTS;**

1 **(XII) GROWTH ALLOCATION APPLICATIONS, WITH RESPECT**
2 **TO:**

3 **1. THE DEDUCTION OF GROWTH ALLOCATION**
4 **ACREAGE;**

5 **2. COMMISSION REVIEW AND DETERMINATIONS;**

6 **3. ACCOMMODATION OF VARIATIONS AMONG LOCAL**
7 **JURISDICTIONS CONCERNING LAND USES IN THE RESOURCE CONSERVATION**
8 **AREA THAT DO NOT REQUIRE GROWTH ALLOCATION;**

9 **4. THE LOCATION OF SEPTIC SYSTEMS;**

10 **5. GOLF COURSES; AND**

11 **6. THE COMMISSION'S EVALUATION OF A LOCAL**
12 **JURISDICTION'S USE OF CLUSTER DEVELOPMENT UNDER § 8-1808.1 OF THIS**
13 **SUBTITLE;**

14 **(XIII) IN CONSULTATION WITH APPROPRIATE STATE AND**
15 **FEDERAL AGENCIES, THE CONSERVATION AND PROTECTION OF:**

16 **1. HABITAT PROTECTION AREAS;**

17 **2. THREATENED AND ENDANGERED SPECIES;**

18 **3. SPECIES IN NEED OF CONSERVATION;**

19 **4. FOREST INTERIOR DWELLING BIRDS;**

20 **5. ANADROMOUS FISH PROPAGATION WATERS; AND**

21 **6. PLANT AND WILDLIFE HABITAT;**

22 **(XIV) DIRECTIVES FOR LOCAL PROGRAM DEVELOPMENT AND**
23 **IMPLEMENTATION, WITH RESPECT TO:**

24 **1. NOTIFICATION OF PROJECT APPLICATIONS;**

25 **2. THE 6-YEAR COMPREHENSIVE REVIEW OF A**
26 **LOCAL CRITICAL AREA PROGRAM;**

1 **3. PUBLIC NOTICE AND COMMENT FOR A STATE OR**
2 **LOCAL GOVERNMENT DEVELOPMENT ACTIVITY;**

3 **4. REPORTING REQUIREMENTS;**

4 **5. THE SUBMISSION AND PROCESSING OF A**
5 **PROPOSED PROGRAM AMENDMENT OR REFINEMENT; AND**

6 **6. PROVISIONS APPLICABLE TO AREAS REQUESTED**
7 **FOR EXCLUSION FROM THE CRITICAL AREA;**

8 **(XV) IN CONSULTATION WITH THE DEPARTMENT OF THE**
9 **ENVIRONMENT, SURFACE MINING IN THE CRITICAL AREA; AND**

10 **(XVI) THE APPLICATION FOR AND PROCESSING OF A**
11 **VARIANCE, WITH RESPECT TO:**

12 **1. AMENDING A VARIANCE APPLICATION;**

13 **2. ADVANCE NOTICE TO THE COMMISSION;**

14 **3. THE CONTENTS OF A COMPLETE VARIANCE**
15 **APPLICATION;**

16 **4. ENSURING THAT COMMISSION**
17 **RECOMMENDATIONS ARE MADE PART OF THE VARIANCE RECORD;**

18 **5. THE USE OF VARIANCE STANDARDS; AND**

19 **6. NOTICE OF A VARIANCE DECISION; AND**

20 **(2) PROVIDE FLEXIBILITY WHEREVER POSSIBLE IN ORDER TO**
21 **ACCOMMODATE VARIATIONS AMONG LOCAL PROGRAMS.**

22 **(C)** The members of the Commission who reside in the Atlantic Coastal Bays
23 Watershed shall serve on any committee established under subsection (a)(4) of this
24 section.

25 8-1808.

26 **(c) (1) (I) [At a minimum,] NOTWITHSTANDING ANY PROVISION IN**
27 **A LOCAL LAW OR ORDINANCE, OR THE LACK OF A PROVISION IN A LOCAL LAW**
28 **OR ORDINANCE, ALL OF THE REQUIREMENTS OF THIS SUBTITLE SHALL APPLY**
29 **TO, AND BE APPLIED BY, A LOCAL JURISDICTION AS MINIMUM STANDARDS FOR a**

1 program sufficient to meet the goals [stated in subsection (b) of this section includes]
 2 **OF THE CRITICAL AREA PROGRAM.**

3 **(II) WITH THE APPROVAL OF THE COMMISSION, A LOCAL**
 4 **JURISDICTION MAY ESTABLISH PROCEDURES FOR THE GRANTING OF AN**
 5 **ADMINISTRATIVE VARIANCE.**

6 **(III) AT A MINIMUM, A PROGRAM SHALL CONTAIN ALL OF**
 7 **THE FOLLOWING ELEMENTS, INCLUDING:**

8 [(i)] 1. A map designating the critical area in a local
 9 jurisdiction;

10 [(ii)] 2. A comprehensive zoning map for the critical area;

11 [(iii)] 3. As necessary, new or amended provisions of the
 12 jurisdiction's:

13 [1.] A. Subdivision regulations;

14 [2.] B. Comprehensive or master plan;

15 [3.] C. Zoning ordinances or regulations;

16 [4.] D. Provisions relating to enforcement; and

17 [5.] E. Provisions as appropriate relating to
 18 grandfathering of development at the time the program is adopted or approved by the
 19 Commission, **INCLUDING PROVISIONS FOR BRINGING LANDS INTO**
 20 **CONFORMANCE WITH THE PROGRAM AS REQUIRED UNDER ITEM ~~13~~ 12 OF THIS**
 21 **SUBPARAGRAPH;**

22 [(iv)] 4. Provisions requiring that ~~project:~~

23 **A. PROJECT** approvals shall be based on findings that
 24 projects are consistent with the standards stated in subsection (b) of this section; **AND**
 25 **~~THAT THE~~**

26 **B. THE COMMISSION SHALL RECEIVE WRITTEN**
 27 **NOTICE OF LOCAL DECISIONS ON REGARDING PROJECT APPROVALS WITHIN 10**
 28 **WORKING DAYS AFTER THE DATE OF ISSUANCE OR DENIALS IN ACCORDANCE**
 29 **WITH LOCAL PROCEDURES APPROVED BY THE COMMISSION;**

1 [(v)] 5. Provisions to limit [the amount of land covered by
2 buildings, roads, parking lots, or other impervious surfaces,] **LOT COVERAGE** and to
3 require or encourage cluster development, where necessary or appropriate;

4 [(vi)] 6. Establishment of buffer areas along shorelines within
5 which agriculture will be permitted only if best management practices are used,
6 provided that structures or any other use of land which is necessary for adjacent
7 agriculture shall also be permitted in any buffer area;

8 [(vii)] 7. Requirements for minimum setbacks for structures
9 and septic fields along shorelines, including the establishment of a minimum buffer
10 landward from the mean high water line of tidal waters, tributary streams, and tidal
11 wetlands;

12 [(viii)] 8. Designation of shoreline areas, if any, that are
13 suitable for parks, hiking, biking, wildlife refuges, scenic drives, public access or
14 assembly, and water-related recreation such as boat slips, piers, and beaches;

15 [(ix)] 9. Designation of shoreline areas, if any, that are
16 suitable for ports, marinas, and industries that use water for transportation or derive
17 economic benefits from shore access;

18 [(x)] 10. Provisions requiring that all harvesting of timber in
19 the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area be in
20 accordance with plans approved by the district forestry board;

21 [(xi)] 11. ~~Provisions establishing that the controls in a program~~
22 ~~which are designed to prevent runoff of pollutants will not be required on sites where~~
23 ~~the topography prevents runoff from directly or indirectly reaching tidal waters;~~

24 ~~[(xii)] 12.~~ Provisions for reasonable accommodations in policies
25 or procedures when the accommodations are necessary to avoid discrimination on the
26 basis of physical disability, including provisions that authorize a local jurisdiction to
27 require removal of a structure that was installed or built to accommodate a physical
28 disability and require restoration when the accommodation permitted by this
29 paragraph is no longer necessary;

30 ~~13.~~ **12. PROCEDURES, INCLUDING CONSOLIDATION**
31 **OR RECONFIGURATION OF LOTS, THAT SHALL BE APPROVED BY THE**
32 **COMMISSION AND ASSURE THAT THE FOLLOWING LOTS AND LANDS ARE**
33 **BROUGHT INTO CONFORMANCE WITH THE PROGRAM TO THE EXTENT POSSIBLE:**

34 **A. ANY IN THE CHESAPEAKE BAY CRITICAL AREA,**
35 **ANY LEGAL PARCEL OF LAND, NOT BEING PART OF A RECORDED OR APPROVED**
36 **SUBDIVISION, THAT WAS RECORDED AS OF DECEMBER 1, 1985; AND**

1 **B. ~~LAND~~ IN THE CHESAPEAKE BAY CRITICAL AREA,**
 2 **LAND THAT WAS SUBDIVIDED INTO RECORDED LEGALLY BUILDABLE LOTS,**
 3 **WHERE THE SUBDIVISION RECEIVED THE LOCAL JURISDICTION'S FINAL**
 4 **APPROVAL BEFORE JUNE 1, 1984;**

5 **C. IN THE ATLANTIC COASTAL BAYS CRITICAL AREA,**
 6 **ANY LEGAL PARCEL OF LAND, NOT BEING PART OF A RECORDED OR APPROVED**
 7 **SUBDIVISION, THAT WAS RECORDED AS OF JUNE 1, 2002; AND**

8 **D. IN THE ATLANTIC COASTAL BAYS CRITICAL AREA,**
 9 **LAND THAT WAS SUBDIVIDED INTO RECORDED LEGALLY BUILDABLE LOTS,**
 10 **WHERE THE SUBDIVISION RECEIVED THE LOCAL JURISDICTION'S FINAL**
 11 **APPROVAL BEFORE JUNE 1, 2002;**

12 [(xiii)] ~~14.~~ **13.** Except as provided in subsection (d) of this
 13 section, provisions for granting a variance to the local jurisdiction's critical area
 14 program, in accordance with regulations adopted by the Commission concerning
 15 variances set forth in COMAR 27.01.11; [and]

16 [(xiv)] ~~15.~~ **14.** Penalty provisions establishing that, in
 17 addition to any other penalty applicable under State or local law, ~~a~~ **EACH** person who
 18 violates a provision of this subtitle or of a program, **INCLUDING A CONTRACTOR,**
 19 **PROPERTY OWNER, OR ANY OTHER PERSON WHO COMMITTED, ASSISTED,**
 20 **AUTHORIZED, OR PARTICIPATED IN ~~A~~ THE VIOLATION;**

21 ~~A.~~ ~~[is]~~ **IS** subject to a fine not exceeding \$10,000; AND

22 ~~B.~~ ~~MAY BE HELD JOINTLY OR SEVERALLY~~
 23 ~~RESPONSIBLE FOR EACH VIOLATION; AND~~

24 ~~16.~~ **15.** ~~IN ACCORDANCE WITH REGULATIONS~~
 25 ~~ADOPTED BY THE COMMISSION, ADMINISTRATIVE~~ **ADMINISTRATIVE**
 26 **ENFORCEMENT PROCEDURES IN ACCORDANCE WITH DUE PROCESS PRINCIPLES,**
 27 **INCLUDING NOTICE AND AN OPPORTUNITY TO BE HEARD, AND ESTABLISHING**
 28 **THAT:**

29 **A. EACH VIOLATION OF THIS SUBTITLE OR OF A**
 30 **REGULATION, RULE, ORDER, PROGRAM, OR OTHER REQUIREMENT ADOPTED**
 31 **UNDER THE AUTHORITY OF THIS SUBTITLE CONSTITUTES A SEPARATE**
 32 **OFFENSE;**

33 **B. EACH CALENDAR DAY THAT A VIOLATION**
 34 **CONTINUES CONSTITUTES A SEPARATE OFFENSE;**

1 **C. FOR EACH OFFENSE, A PERSON SHALL BE**
 2 **SUBJECT TO SEPARATE FINES, ORDERS, SANCTIONS, AND OTHER PENALTIES;**

3 **D. CIVIL PENALTIES FOR CONTINUING VIOLATIONS**
 4 **SHALL ACCRUE WITHOUT A REQUIREMENT FOR AN ADDITIONAL ASSESSMENT,**
 5 **NOTICE, OR OPPORTUNITY FOR HEARING FOR EACH SEPARATE OFFENSE;**

6 **E. ON CONSIDERATION OF ALL THE FACTORS**
 7 **INCLUDED UNDER THIS SUBSECTION AND ANY OTHER FACTORS IN THE LOCAL**
 8 **JURISDICTION'S APPROVED PROGRAM, THE LOCAL ~~JURISDICTION'S CODE~~**
 9 **~~ENFORCEMENT PERSONNEL JURISDICTION~~ SHALL IMPOSE THE AMOUNT OF THE**
 10 **PENALTY; ~~AND~~**

11 **F. ~~PAYMENT OF ALL CIVIL PENALTIES AND~~**
 12 **~~CORRECTION OF THE VIOLATION~~ SATISFACTION OF ALL CONDITIONS SPECIFIED**
 13 **UNDER PARAGRAPH (4) OF THIS SUBSECTION SHALL BE A CONDITION**
 14 **PRECEDENT TO THE ISSUANCE OF ANY PERMIT, APPROVAL, VARIANCE, OR**
 15 **SPECIAL EXCEPTION FOR THE AFFECTED PROPERTY; AND**

16 **G. UNLESS AN EXTENSION OF TIME IS APPROPRIATE**
 17 **BECAUSE OF ADVERSE PLANTING CONDITIONS, WITHIN 60 DAYS OF THE**
 18 **ISSUANCE OF A PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION FOR**
 19 **THE AFFECTED PROPERTY, ANY ADDITIONAL MITIGATION REQUIRED AS A**
 20 **CONDITION OF APPROVAL FOR THE PERMIT, APPROVAL, VARIANCE, OR SPECIAL**
 21 **EXCEPTION SHALL BE COMPLETED.**

22 (2) **(I)** In determining the amount of the penalty to be assessed
 23 under paragraph [(1)(xiv)] ~~(1)(ii)15~~ **(1)(ii)14** of this subsection, a local jurisdiction
 24 [may] **SHALL** consider:

25 ~~(i)~~ **1.** The gravity of the violation;
 26 ~~(ii)~~ **2.** Any willfulness or negligence involved in the
 27 violation; [and]

28 ~~(iii)~~ **3.** The environmental impact of the violation; **AND**

29 ~~(iv)~~ **4.** **THE COST OF RESTORATION OF THE RESOURCE**
 30 **AFFECTED BY THE VIOLATION AND MITIGATION FOR DAMAGE TO THAT**
 31 **RESOURCE, INCLUDING THE COST TO THE STATE OR LOCAL AUTHORITIES FOR**
 32 **PERFORMING, SUPERVISING, OR RENDERING ASSISTANCE TO THE**
 33 **RESTORATION AND MITIGATION.**

1 **(II) IN PARAGRAPH (1)(II)15 OF THIS SUBSECTION,**
2 **“PROPERTY OWNER” INCLUDES TWO OR MORE PERSONS HOLDING TITLE TO THE**
3 **PROPERTY UNDER ANY FORM OF JOINT OWNERSHIP.**

4 **(3) REGULATIONS ADOPTED UNDER PARAGRAPH ~~(1)(II)16~~**
5 **(1)(II)15 OF THIS SUBSECTION SHALL PROVIDE FOR THE COMMISSION’S**
6 **CONSIDERATION OF ENFORCEMENT PROVISIONS SUBMITTED BY A LOCAL**
7 **JURISDICTION THAT ARE AT LEAST AS EFFECTIVE AS ENFORCEMENT**
8 **REQUIREMENTS UNDER THIS SUBTITLE AND REGULATIONS ADOPTED UNDER**
9 **THE AUTHORITY OF THIS SUBTITLE.**

10 **(4) A LOCAL JURISDICTION MAY NOT ISSUE A PERMIT, APPROVAL,**
11 **VARIANCE, OR SPECIAL EXCEPTION UNLESS THE PERSON SEEKING THE PERMIT,**
12 **APPROVAL, VARIANCE, OR SPECIAL EXCEPTION HAS:**

13 **(I) FULLY PAID ALL ADMINISTRATIVE, CIVIL, AND**
14 **CRIMINAL PENALTIES IMPOSED UNDER PARAGRAPH (1)(III)16 OF THIS**
15 **SUBSECTION;**

16 **(II) PREPARED A RESTORATION OR MITIGATION PLAN,**
17 **APPROVED BY THE LOCAL JURISDICTION, TO ABATE IMPACTS TO WATER**
18 **QUALITY OR NATURAL RESOURCES AS A RESULT OF THE VIOLATION; AND**

19 **(III) PERFORMED THE ABATEMENT MEASURES IN THE**
20 **APPROVED PLAN IN ACCORDANCE WITH THE LOCAL CRITICAL AREA PROGRAM.**

21 (d) (1) In this subsection, “unwarranted hardship” means that, without a
22 variance, an applicant would be denied reasonable and significant use of the entire
23 parcel or lot for which the variance is requested.

24 (2) (i) **A LOCAL JURISDICTION SHALL PROCESS AN**
25 **APPLICATION FOR A VARIANCE REGARDING A PARCEL OR LOT THAT IS SUBJECT**
26 **TO A CURRENT VIOLATION OF THIS SUBTITLE, A REGULATION ADOPTED UNDER**
27 **THE AUTHORITY OF THIS SUBTITLE, OR ANY PROVISION OF AN ORDER, PERMIT,**
28 **PLAN, OR LOCAL PROGRAM IN ACCORDANCE WITH SUBSECTION (C)(1)(III)15 OF**
29 **THIS SECTION.**

30 **(II)** In considering an application for a variance, a local
31 jurisdiction shall presume that the specific development activity in the critical area
32 that is subject to the application and for which a variance is required does not conform
33 with the general purpose and intent of this subtitle, regulations adopted under this
34 subtitle, and the requirements of the local jurisdiction’s program.

35 ~~(ii)~~ **(III)** If the variance request is based on conditions or
36 circumstances that are the result of actions by the applicant[, including the

1 commencement of development activity before an application for a variance has been
2 filed], a local jurisdiction ~~may~~ **SHALL** consider that fact.

3 (3) (i) An applicant has the burden of proof and the burden of
4 persuasion to overcome the presumption established under paragraph ~~(2)(i)~~ **(2)(II)** of
5 this subsection.

6 (ii) 1. Based on competent and substantial evidence, a local
7 jurisdiction shall make written findings as to whether the applicant has overcome the
8 presumption established under paragraph (2)(i) of this subsection.

9 2. With due regard for the person's experience, technical
10 competence, and specialized knowledge, the written findings may be based on evidence
11 introduced and testimony presented by:

12 A. The applicant;

13 B. The local jurisdiction or any other government
14 agency; or

15 C. Any other person deemed appropriate by the local
16 jurisdiction.

17 (4) A variance to a local jurisdiction's critical area program may not be
18 granted unless:

19 (i) Due to special features of a site, or special conditions or
20 circumstances peculiar to the applicant's land or structure, a literal enforcement of the
21 critical area program would result in unwarranted hardship to the applicant;

22 (ii) The local jurisdiction finds that the applicant has satisfied
23 each one of the variance provisions; and

24 (iii) Without the variance, the applicant would be deprived of a
25 use of land or a structure permitted to others in accordance with the provisions of the
26 critical area program.

27 **(5) (I) WITHIN 10 WORKING DAYS AFTER ISSUANCE A WRITTEN**
28 **DECISION REGARDING A VARIANCE APPLICATION IS ISSUED, THE COMMISSION**
29 **SHALL RECEIVE ~~WRITTEN NOTICE~~ A COPY OF THE DECISION FROM A LOCAL**
30 **JURISDICTION ~~REGARDING ITS DECISION ON EACH VARIANCE APPLICATION.~~**

31 **(II) A LOCAL JURISDICTION MAY NOT ISSUE A PERMIT FOR**
32 **THE ACTIVITY THAT WAS THE SUBJECT OF THE VARIANCE APPLICATION UNTIL**
33 **THE APPLICABLE 30-DAY APPEAL PERIOD HAS ELAPSED.**

1 (6) (I) A DEVELOPMENT ACTIVITY COMMENCED WITHOUT A
2 REQUIRED PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION IS A
3 VIOLATION OF THIS SUBTITLE.

4 (II) A LOCAL JURISDICTION MAY NOT ACCEPT AN
5 APPLICATION FOR A VARIANCE TO LEGALIZE A VIOLATION OF THIS SUBTITLE,
6 INCLUDING AN UNPERMITTED STRUCTURE OR DEVELOPMENT ACTIVITY,
7 UNLESS THE LOCAL JURISDICTION ~~FIRST:~~

8 ~~1. ISSUES FIRST ISSUES~~ A NOTICE OF VIOLATION,
9 INCLUDING ASSESSMENT OF AN ADMINISTRATIVE OR CIVIL PENALTY, FOR THE
10 VIOLATION;~~AND~~

11 ~~2. VERIFIES, THROUGH ON SITE INSPECTION OR~~
12 ~~OTHER RELIABLE MEANS, THAT:~~

13 ~~A. FULL COMPLIANCE WITH THE TERMS OF THE~~
14 ~~NOTICE OF VIOLATION HAS BEEN ACHIEVED, INCLUDING PAYMENT OF ALL~~
15 ~~ASSESSED FINES AND COMPLETION OF ANY REQUIRED MITIGATION; OR~~

16 ~~B. A FINAL ADJUDICATION ON THE MERITS OF THE~~
17 ~~NOTICE OF VIOLATION HAS DETERMINED THAT A VIOLATION HAS NOT~~
18 ~~OCCURRED OR THAT THE FINAL ADJUDICATION HAS DETERMINED THAT A~~
19 ~~VIOLATION DID OCCUR AND THE PERSON HAS FULLY COMPLIED WITH THE~~
20 ~~TERMS OF THAT ADJUDICATION, INCLUDING FULL PAYMENT OF ANY PENALTIES~~
21 ~~AND COSTS THAT MAY BE ASSESSED.~~

22 (III) IF ~~THE~~ A FINAL ADJUDICATION OF A NOTICE OF
23 VIOLATION RESULTS IN A DETERMINATION THAT A VIOLATION HAS OCCURRED,
24 THE PERSON SHALL BE LIABLE FOR A PENALTY THAT IS TWICE THE AMOUNT OF
25 THE ASSESSMENT IN THE NOTICE OF VIOLATION, IN ADDITION TO THE COST OF
26 THE HEARING AND ANY APPLICABLE MITIGATION COSTS.

27 (IV) APPLICATION FOR A VARIANCE UNDER THIS
28 PARAGRAPH CONSTITUTES A WAIVER OF THE RIGHT TO APPEAL THE TERMS OF
29 A NOTICE OF VIOLATION AND ITS FINAL ADJUDICATION, INCLUDING THE
30 PAYMENT OF ANY PENALTIES AND COSTS ASSESSED.

31 (V) IF THE LOCAL JURISDICTION FINDS THAT THE ACTIVITY
32 OR STRUCTURE FOR WHICH A VARIANCE IS REQUESTED COMMENCED WITHOUT
33 PERMITS OR APPROVALS AND:

34 1. DOES NOT MEET EACH OF THE VARIANCE
35 CRITERIA UNDER THIS SUBSECTION, THE LOCAL JURISDICTION SHALL DENY

1 THE REQUESTED VARIANCE AND ORDER REMOVAL OR RELOCATION OF ANY
2 STRUCTURE AND RESTORATION OF THE AFFECTED RESOURCES; OR

3 2. DOES MEET EACH OF THE VARIANCE CRITERIA
4 UNDER THIS SUBSECTION, THE LOCAL JURISDICTION MAY GRANT ~~PROPOSED~~
5 APPROVAL TO THE REQUESTED VARIANCE.

6 ~~(VI) 1. WITHIN 10 WORKING DAYS AFTER ISSUANCE OF A~~
7 ~~PROPOSED APPROVAL OF A VARIANCE UNDER SUBPARAGRAPH (V)2 OF THIS~~
8 ~~PARAGRAPH, THE LOCAL JURISDICTION SHALL SUBMIT THE PROPOSED~~
9 ~~APPROVAL TO THE COMMISSION FOR THE COMMISSION'S REVIEW AND FINAL~~
10 ~~APPROVAL.~~

11 ~~2. THE COMMISSION SHALL REVIEW AND ISSUE A~~
12 ~~FINAL DECISION ON A PROPOSED LOCAL APPROVAL IN ACCORDANCE WITH~~
13 ~~PROCEDURES ESTABLISHED IN REGULATIONS ADOPTED BY THE COMMISSION.~~

14 [(5)] (7) This subsection does not apply to building permits or
15 activities that comply with a buffer exemption plan or buffer management plan of a
16 local jurisdiction which has been approved by the Commission.

17 [(6)] (8) Notwithstanding any provision of a local law or ordinance,
18 or the lack of a provision in a local law or ordinance, all of the provisions of this
19 subsection shall apply to, and shall be applied by, a local jurisdiction in the
20 consideration, processing, and decision on an application for a variance.

21 (e) (1) The Commission shall adopt by regulation on or before December
22 1, 1985 criteria for program development and approval, which are necessary or
23 appropriate to achieve the standards stated in subsection (b) of this section. Prior to
24 developing its criteria and also prior to adopting its criteria, the Commission shall
25 hold at least 6 regional public hearings, 1 in each of the following areas:

- 26 (i) Harford, Cecil, and Kent counties;
- 27 (ii) Queen Anne's, Talbot, and Caroline counties;
- 28 (iii) Dorchester, Somerset, and Wicomico counties;
- 29 (iv) Baltimore City and Baltimore County;
- 30 (v) Charles, Calvert, and St. Mary's counties; and
- 31 (vi) Anne Arundel and Prince George's counties.

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

1 **(3) IN ACCORDANCE WITH ITS POWERS UNDER § 8-1806(A) OF**
2 **THIS SUBTITLE, THE COMMISSION MAY AMEND THE CRITERIA FOR PROGRAM**
3 **DEVELOPMENT AND APPROVAL ADOPTED UNDER PARAGRAPH (1) OF THIS**
4 **SUBSECTION.**

5 8-1808.1.

6 (c) (1) When locating new intensely developed or limited development
7 areas, local jurisdictions shall use the following [guidelines] **STANDARDS:**

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

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

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

16 (iv) Locate a new intensely developed area or a limited
17 development area in a resource conservation area at least 300 feet beyond the
18 landward edge of tidal wetlands or tidal waters, **UNLESS THE LOCAL JURISDICTION**
19 **PROPOSES, AND THE COMMISSION APPROVES, ALTERNATIVE MEASURES FOR**
20 **ENHANCEMENT OF WATER QUALITY AND HABITAT THAT PROVIDE GREATER**
21 **BENEFITS TO THE RESOURCES;**

22 **(V) LOCATE NEW INTENSELY DEVELOPED AREAS AND**
23 **LIMITED DEVELOPMENT AREAS IN A MANNER THAT MINIMIZES THEIR IMPACTS**
24 **TO THE DEFINED LAND USES OF THE RESOURCE CONSERVATION AREA;**

25 [(v)] **(VI)** Except as provided in item [(vii)] **(VIII)** of this
26 paragraph, no more than one-half of the expansion allocated in the criteria of the
27 Commission may be located in resource conservation areas;

28 [(vi)] **(VII)** New intensely developed or limited development
29 areas [to be located in the resource conservation area] **INVOLVING THE USE OF**
30 **GROWTH ALLOCATION** shall conform to all criteria of the Commission and shall be
31 designated on the comprehensive zoning map submitted by the local jurisdiction as
32 part of its application to the Commission for program approval or at a later date in
33 compliance with § 8-1809(g) of this subtitle; and

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

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

8 **(2) A LOCAL JURISDICTION MAY USE A STANDARD THAT VARIES**
 9 **FROM THE STANDARDS REQUIRED UNDER PARAGRAPH (1)(I) AND (II) OF THIS**
 10 **SUBSECTION IF:**

11 **(I) THE ALTERNATIVE STANDARD IS CONSISTENT WITH**
 12 **THE JURISDICTION'S ADOPTED COMPREHENSIVE PLAN; AND**

13 **(II) THE COMMISSION HAS APPROVED THE ALTERNATIVE**
 14 **STANDARD AS PART OF THE LOCAL PROGRAM.**

15 **(3) IN REVIEWING MAP AMENDMENTS OR REFINEMENTS**
 16 **INVOLVING THE USE OF GROWTH ALLOCATION, THE COMMISSION SHALL**
 17 **CONSIDER THE FOLLOWING FACTORS:**

18 **(I) CONSISTENCY WITH THE JURISDICTION'S ADOPTED**
 19 **COMPREHENSIVE PLAN AND WHETHER THE GROWTH ALLOCATION WOULD**
 20 **IMPLEMENT THE GOALS AND OBJECTIVES OF THE ADOPTED PLAN;**

21 **(II) ~~CONSISTENCY WITH SMART GROWTH PRINCIPLES~~**
 22 **~~UNDER TITLE 5, SUBTITLES 7A AND 7B OF THE STATE FINANCE AND~~**
 23 **~~PROCUREMENT ARTICLE AND OTHER STATE GROWTH POLICIES, INCLUDING:~~**

24 **~~1. CERTIFIED PRIORITY FUNDING AREAS UNDER §~~**
 25 **~~5-7B-08 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND~~**

26 **~~2. MAXIMIZATION OF STATE INVESTMENT IN~~**
 27 **~~EXISTING PUBLIC INFRASTRUCTURE~~**

28 **1. FOR A MAP AMENDMENT OR REFINEMENT**
 29 **INVOLVING A NEW INTENSELY DEVELOPED AREA, WHETHER THE DEVELOPMENT**
 30 **IS:**

31 **A. TO BE SERVED BY A PUBLIC WASTEWATER**
 32 **SYSTEM;**

1 **B. TO HAVE AN ALLOWED AVERAGE DENSITY OF AT**
2 **LEAST 3.5 UNITS PER ACRE, AS CALCULATED UNDER § 5-7B-03(H) OF THE**
3 **STATE FINANCE AND PROCUREMENT ARTICLE; AND**

4 **C. FOR A NEW INTENSELY DEVELOPED AREA THAT IS**
5 **GREATER THAN 20 ACRES, TO BE LOCATED IN A PRIORITY FUNDING AREA, AS**
6 **DESCRIBED UNDER §§ 5-7B-02(1) AND 5-7B-03 OF THE STATE FINANCE AND**
7 **PROCUREMENT ARTICLE; AND**

8 **2. FOR A MAP AMENDMENT OR REFINEMENT**
9 **INVOLVING A NEW LIMITED DEVELOPMENT AREA, WHETHER THE**
10 **DEVELOPMENT IS:**

11 **A. TO BE SERVED BY A PUBLIC WASTEWATER**
12 **SYSTEM OR SEPTIC SYSTEM THAT USES THE BEST AVAILABLE NITROGEN**
13 **REMOVAL TECHNOLOGY;**

14 **B. A COMPLETION OF AN EXISTING SUBDIVISION;**

15 **C. AN EXPANSION OF AN EXISTING BUSINESS; OR**

16 **D. TO BE CLUSTERED;**

17 **(III) THE USE OF EXISTING PUBLIC INFRASTRUCTURE,**
18 **WHERE PRACTICAL;**

19 **(IV) CONSISTENCY WITH STATE AND REGIONAL**
20 **ENVIRONMENTAL PROTECTION POLICIES AND MEASURES, INCLUDING THOSE**
21 **THAT PROTECT CONCERNING THE PROTECTION OF THREATENED AND**
22 **ENDANGERED SPECIES AND SPECIES IN NEED OF CONSERVATION THAT MAY BE**
23 **LOCATED ON- OR OFF-SITE;**

24 ~~**(IV) LOCATION IN OR NEAR**~~

25 **(V) IMPACTS ON A PRIORITY PRESERVATION AREA, AS**
26 **DEFINED UNDER § 2-518 OF THE AGRICULTURE ARTICLE;**

27 ~~**(V) ENVIRONMENTAL IMPACTS ASSOCIATED WITH**~~
28 ~~**TREATMENT OF WASTE;**~~

29 **(VI) ENVIRONMENTAL IMPACTS ASSOCIATED WITH**
30 **WASTEWATER AND STORMWATER MANAGEMENT PRACTICES AND WASTEWATER**
31 **AND STORMWATER DISCHARGES TO TIDAL WATERS, TIDAL WETLANDS, AND**
32 **TRIBUTARY STREAMS; AND**

1 (VII) ENVIRONMENTAL IMPACTS ASSOCIATED WITH
 2 LOCATION IN A COASTAL HAZARD AREA OR AN INCREASED RISK OF SEVERE
 3 FLOODING ATTRIBUTABLE TO THE PROPOSED DEVELOPMENT; AND

4 ~~(VIII) THE OVERALL SUITABILITY OF THE PROJECT SITE FOR~~
 5 ~~MORE INTENSE DEVELOPMENT IN A REGIONAL CONTEXT DEVELOPMENT.~~

6 [(2)] ~~(3)~~ (4) The Commission shall ensure that the [guidelines]
 7 STANDARDS AND FACTORS in [paragraph (1)] PARAGRAPHS (1) ~~AND (2)~~, (2), AND
 8 (3) of this subsection have been applied in a manner that is consistent with the
 9 purposes, policies, goals, and provisions of this subtitle, and all criteria of the
 10 Commission.

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

15 1. A. Is located within the primary dwelling unit or
 16 its entire perimeter is within 100 feet of the primary dwelling unit;

17 B. Does not exceed 900 square feet in total enclosed area;
 18 and

19 C. Is served by the same sewage disposal system as the
 20 primary dwelling unit; or

21 2. A. Is located within the primary dwelling unit;

22 B. By its construction, does not increase the amount of
 23 [impervious surface] LOT COVERAGE already attributed to the primary dwelling unit;
 24 and

25 C. Is served by the same sewage disposal system as the
 26 primary dwelling unit.

27 8-1808.3.

28 (a) (1) This section applies notwithstanding:

29 ~~(1)~~ (I) Any other provision of this subtitle; or

30 ~~(2)~~ (II) Any criteria or guideline of the Commission adopted under
 31 this subtitle.

1 **(2) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT A CREDIT**
 2 **APPLICABLE TO A STORMWATER MANAGEMENT PRACTICE THAT IS APPROVED**
 3 **BY THE DEPARTMENT OF THE ENVIRONMENT.**

4 (b) ~~(1)~~ **LOT COVERAGE IN THE BUFFER MAY NOT EXCEED THE**
 5 **MINIMUM AMOUNT NECESSARY FOR WATER-DEPENDENT FACILITIES,**
 6 **REGARDLESS OF THE CRITICAL AREA CLASSIFICATION OR THE SIZE OF THE**
 7 **PARCEL OR LOT, EXCEPT:**

8 **(1) FOR A BUFFER EXEMPTION AREA, AS MAPPED OR**
 9 **ESTABLISHED UNDER AN APPROVED LOCAL PROGRAM;**

10 **(2) FOR A VARIANCE GRANTED IN ACCORDANCE WITH THIS**
 11 **SUBTITLE; OR**

12 **(3) AS PROVIDED IN A WATERFRONT REVITALIZATION AREA OR A**
 13 **WATERFRONT INDUSTRIAL AREA UNDER A LOCAL PROGRAM.**

14 (c) This section controls over any other requirement concerning [impervious
 15 surfaces] **LOT COVERAGE** limitations in limited development areas and resource
 16 conservation areas in the critical area.

17 ~~(2) (1) IN THE BUFFER, LOT COVERAGE MAY NOT EXCEED THE~~
 18 ~~MINIMUM AMOUNT NECESSARY FOR WATER-DEPENDENT FACILITIES.~~

19 ~~(H) 1. THE PROVISIONS OF THIS SUBPARAGRAPH DO~~
 20 ~~NOT APPLY TO BUFFER EXEMPTION AREAS, AS ESTABLISHED UNDER AN~~
 21 ~~APPROVED LOCAL PROGRAM.~~

22 ~~2. EXCEPT BY VARIANCE GRANTED IN ACCORDANCE~~
 23 ~~WITH THE PROVISIONS OF THIS SUBTITLE, NEW NONWATER-DEPENDENT LOT~~
 24 ~~COVERAGE MAY NOT OCCUR IN THE BUFFER, REGARDLESS OF THE CRITICAL~~
 25 ~~AREA CLASSIFICATION OR THE SIZE OF THE PARCEL OR LOT.~~

26 ~~(e) On or before December 31, 1996, a local jurisdiction shall amend its local~~
 27 ~~critical area protection program to meet the provisions of this section.~~

28 (d) (1) Except as otherwise provided in this subsection for stormwater
 29 runoff, [man-made impervious surfaces are] **LOT COVERAGE IS** limited to 15% of a
 30 parcel or lot.

31 (2) If a parcel or lot one-half acre or less in size existed on or before
 32 December 1, 1985 in the Chesapeake Bay Critical Area or on or before June 1, 2002 in
 33 the Atlantic Coastal Bays Critical Area, then [man-made impervious surfaces are]
 34 **LOT COVERAGE IS** limited to 25% of the parcel or lot.

1 (3) If a parcel or lot greater than one-half acre and less than one acre
2 in size existed on or before December 1, 1985 in the Chesapeake Bay Critical Area or
3 on or before June 1, 2002 in the Atlantic Coastal Bays Critical Area, then [man-made
4 impervious surfaces are] **LOT COVERAGE IS** limited to 15% of the parcel or lot.

5 (4) ~~If an individual lot one acre or less in size is part of a subdivision~~
6 ~~approved after December 1, 1985 in the Chesapeake Bay Critical Area or after June 1,~~
7 ~~2002 in the Atlantic Coastal Bays Critical Area, then [man-made impervious surfaces~~
8 ~~of the lot] **LOT COVERAGE** may not exceed 25% of the lot. However, the total [of the~~
9 ~~impervious surfaces] **LOT COVERAGE** over the entire subdivision may not exceed 15%~~
10 **UNLESS OTHERWISE RESTRICTED BY A LOCAL JURISDICTION, LOT COVERAGE**
11 **IN A SUBDIVISION APPROVED AFTER DECEMBER 1, 1985 IN THE CHESAPEAKE**
12 **BAY CRITICAL AREA OR AFTER JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS**
13 **CRITICAL AREA MAY NOT EXCEED 15%. HOWEVER, THE TOTAL LOT COVERAGE**
14 **ON AN INDIVIDUAL LOT ONE ACRE OR LESS IN SIZE MAY EXCEED 15%.**

15 (e) This section does not apply to a trailer park that was in residential use on
16 or before December 1, 1985 in the Chesapeake Bay Critical Area or on or before June
17 1, 2002 in the Atlantic Coastal Bays Critical Area.

18 (f) A local jurisdiction may allow a property owner to exceed the [impervious
19 surface] **LOT COVERAGE** limits provided in subsection (d)(2) and (3) of this section if
20 the following conditions exist:

21 (1) [New impervious surfaces] **LOT COVERAGE ASSOCIATED WITH**
22 **NEW DEVELOPMENT ACTIVITIES** on the property [have] **HAS** been minimized;

23 (2) For a lot or parcel one-half acre or less in size, total [impervious
24 surfaces do] **LOT COVERAGE DOES** not exceed [impervious surface] **LOT COVERAGE**
25 limits in subsection (d)(2) of this section by more than 25% or 500 square feet,
26 whichever is greater;

27 (3) For a lot or parcel greater than one-half acre and less than one
28 acre in size, total [impervious surfaces do] **LOT COVERAGE DOES** not exceed
29 [impervious surface] **LOT COVERAGE** limits in subsection (d)(3) of this section or
30 5,445 square feet, whichever is greater;

31 (4) Water quality impacts associated with runoff from [the] new
32 [impervious surfaces] **DEVELOPMENT ACTIVITIES, INCLUDING CLEARING AND**
33 **GRADING ACTIVITIES, THAT CONTRIBUTE TO LOT COVERAGE** can be and have
34 been minimized through site design considerations or use of best management
35 practices approved by the local jurisdiction to improve water quality; and

36 (5) The property owner performs on-site mitigation as required by the
37 local jurisdiction to offset potential adverse water quality impacts from the new

1 [impervious surfaces] **DEVELOPMENT ACTIVITIES THAT CONTRIBUTE TO LOT**
 2 **COVERAGE**, or the property owner pays a fee to the local jurisdiction in lieu of
 3 performing the on-site mitigation.

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

7 (h) **(1) IN THIS SUBSECTION, "LEGALLY DEVELOPED" MEANS THAT**
 8 **ALL PHYSICAL IMPROVEMENTS TO A PROPERTY:**

9 (i) **EXISTED BEFORE COMMISSION APPROVAL OF A LOCAL**
 10 **PROGRAM; OR**

11 (ii) **WERE PROPERLY PERMITTED IN ACCORDANCE WITH**
 12 **THE LOCAL PROGRAM AND IMPERVIOUS SURFACE POLICIES IN EFFECT AT THE**
 13 **TIME OF CONSTRUCTION.**

14 **(2) (i) A LOT OR PARCEL LEGALLY DEVELOPED ~~IN~~**
 15 **~~ACCORDANCE WITH A LOCAL PROGRAM'S APPLICABLE IMPERVIOUS SURFACE~~**
 16 **~~LIMITATIONS~~ AS OF ~~JUNE 30~~ JULY 1, 2008 MAY BE CONSIDERED LEGALLY**
 17 **NONCONFORMING FOR PURPOSES OF LOT COVERAGE REQUIREMENTS.**

18 (ii) **FOR THE PURPOSE OF INCREASING LOT COVERAGE ON**
 19 **A LOT OR PARCEL UNDER SUBPARAGRAPH (i) OF THIS PARAGRAPH, THE LOT**
 20 **COVERAGE LIMITATIONS UNDER THIS SECTION MAY NOT BE CONSTRUED TO**
 21 **APPLY TO A DEVELOPMENT ACTIVITY FOR WHICH:**

22 **1. ~~PROJECT APPROVAL OR A~~ A BUILDING PERMIT**
 23 **WAS ISSUED BEFORE ~~JUNE 30~~ JULY 1, 2008; AND**

24 **2. CONSTRUCTION WAS INITIATED AND AN**
 25 **INSPECTION WAS PERFORMED ~~BY JUNE 30~~ BEFORE JULY 1, 2009.**

26 (i) A local jurisdiction may grant a variance from the provisions of this
 27 section in accordance with **THE PROVISIONS OF THIS SUBTITLE**, regulations adopted
 28 by the Commission concerning variances as part of local program development set
 29 forth in [COMAR 27.01.11] **COMAR 27.01.11**, and notification of project
 30 applications set forth in COMAR 27.03.01.

31 **8-1808.10.**

32 **~~(A) EXCEPT AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION,~~**
 33 **~~THE PROVISIONS OF THIS SECTION APPLY TO:~~**

1 ~~(1) AN APPLICATION FOR SUBDIVISION WITHIN THE RESOURCE~~
2 ~~CONSERVATION AREA THAT RECEIVES FINAL LOCAL APPROVAL AFTER JUNE 30,~~
3 ~~2008; AND~~

4 ~~(2) DEVELOPMENT WITHIN A NEWLY DESIGNATED INTENSELY~~
5 ~~DEVELOPED AREA OR LIMITED DEVELOPMENT AREA THAT IS AWARDED~~
6 ~~GROWTH ALLOCATION BY A LOCAL GOVERNMENT AFTER JUNE 30, 2008.~~

7 ~~(B) (1) THE MINIMUM BUFFER AS DEFINED AND ESTABLISHED~~
8 ~~UNDER COMAR 27.01.09.01 SHALL BE 300 FEET IN A RESOURCE~~
9 ~~CONSERVATION AREA.~~

10 ~~(2) ALL PROVISIONS APPLICABLE TO DEVELOPMENT ACTIVITIES~~
11 ~~WITHIN THE 100 FOOT BUFFER, INCLUDING THE ESTABLISHMENT OF~~
12 ~~VEGETATION AND EXPANSION REQUIREMENTS, SHALL APPLY TO THE 300 FOOT~~
13 ~~BUFFER.~~

14 ~~(C) (1) THE 300 FOOT BUFFER MAY BE REDUCED IF:~~

15 ~~(I) THE STRICT APPLICATION OF THE MINIMUM 300 FOOT~~
16 ~~BUFFER WOULD PRECLUDE THE SUBDIVISION OF THE PROPERTY AT A DENSITY~~
17 ~~OF ONE DWELLING UNIT PER 20 ACRES; AND~~

18 ~~(II) ALL OTHER LOCAL ZONING AND SUBDIVISION~~
19 ~~REQUIREMENTS WILL BE SATISFIED.~~

20 ~~(2) A REDUCTION IN THE BUFFER AUTHORIZED UNDER~~
21 ~~PARAGRAPH (1) OF THIS SUBSECTION MAY NOT RESULT IN A BUFFER THAT IS~~
22 ~~LESS THAN THE MINIMUM BUFFER REQUIRED BY THE LOCAL PROGRAM.~~

23 (A) THIS SECTION APPLIES TO AN APPLICATION FOR SUBDIVISION OR
24 SITE PLAN APPROVAL WITHIN THE RESOURCE CONSERVATION AREA THAT:

25 (1) RECEIVES FINAL LOCAL APPROVAL ON OR AFTER JULY 1,
26 2008, UNLESS AN APPLICATION FOR SUBDIVISION OR SITE PLAN APPROVAL IS
27 SUBMITTED BEFORE JULY 1, 2008 AND LEGALLY RECORDED BY DECEMBER 31,
28 2009; AND

29 (2) DOES NOT INVOLVE THE USE OF GROWTH ALLOCATION.

30 (B) (1) EXCEPT AS PROVIDED UNDER SUBSECTION (C) OF THIS
31 SECTION, THE MINIMUM BUFFER SHALL BE:

32 (I) 300 FEET FROM TIDAL WATERS OR A TIDAL WETLAND;
33 AND

1 **(II) 100 FEET FROM A TRIBUTARY STREAM.**

2 **(2) ALL PROVISIONS UNDER COMAR 27.01.09.01 THAT ARE**
3 **APPLICABLE TO DEVELOPMENT ACTIVITIES WITHIN THE 100-FOOT BUFFER,**
4 **INCLUDING THE ESTABLISHMENT OF VEGETATION AND EXPANSION**
5 **REQUIREMENTS, SHALL APPLY TO THE 300-FOOT BUFFER.**

6 **(C) THE 300-FOOT BUFFER MAY BE REDUCED IF:**

7 **(1) THE STRICT APPLICATION OF THE MINIMUM 300-FOOT**
8 **BUFFER WOULD PRECLUDE:**

9 **(I) SUBDIVISION OF THE PROPERTY AT A DENSITY OF ONE**
10 **DWELLING UNIT PER 20 ACRES, AND ALL OTHER STATE AND LOCAL**
11 **REQUIREMENTS WILL BE SATISFIED; OR**

12 **(II) AN INTRA-FAMILY TRANSFER AUTHORIZED UNDER**
13 **§ 8-1808.2 OF THIS SUBTITLE; AND**

14 **(2) THE REDUCTION WILL OCCUR IN ACCORDANCE WITH LOCAL**
15 **PROGRAM PROCEDURES APPROVED BY THE COMMISSION.**

16 **8-1808.11.**

17 **(A) IMPROVEMENTS TO PROTECT A PERSON'S PROPERTY AGAINST**
18 **EROSION SHALL CONSIST OF NONSTRUCTURAL SHORELINE STABILIZATION**
19 **MEASURES THAT PRESERVE THE NATURAL ENVIRONMENT, SUCH AS MARSH**
20 **CREATION, EXCEPT IN AREAS WHERE THE PERSON CAN DEMONSTRATE TO THE**
21 **SATISFACTION OF THE DEPARTMENT OF ENVIRONMENT THAT THESE**
22 **MEASURES ARE NOT FEASIBLE, INCLUDING AREAS OF EXCESSIVE EROSION,**
23 **AREAS SUBJECT TO HEAVY TIDES, AND AREAS TOO NARROW FOR EFFECTIVE**
24 **USE OF NONSTRUCTURAL SHORELINE STABILIZATION MEASURES.**

25 **(B) (1) IN CONSULTATION WITH THE DEPARTMENT, THE**
26 **DEPARTMENT OF THE ENVIRONMENT SHALL ADOPT REGULATIONS TO**
27 **IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.**

28 **(2) THE REGULATIONS SHALL INCLUDE A WAIVER PROCESS THAT**
29 **EXEMPTS A PERSON FROM THE REQUIREMENTS OF SUBSECTION (A) OF THIS**
30 **SECTION ON A DEMONSTRATION TO THE SATISFACTION OF THE DEPARTMENT**
31 **OF THE ENVIRONMENT THAT NONSTRUCTURAL SHORELINE STABILIZATION**
32 **MEASURES ARE NOT FEASIBLE FOR THE PERSON'S PROPERTY.**

33 **8-1809.**

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

4 ~~(2) (i) 1. Except for program amendments or program~~
 5 ~~refinements developed during program review under subsection (g) of this section, a~~
 6 ~~[zoning] CRITICAL AREA map amendment may be [granted] PROPOSED TO THE~~
 7 ~~CRITICAL AREA COMMISSION by a local [approving authority] JURISDICTION only~~
 8 ~~on proof of a mistake in the existing [zoning] CRITICAL AREA CLASSIFICATION.~~

9 ~~2. THE COMMISSION SHALL:~~

10 ~~A. CONSIDER THE LOCAL JURISDICTION'S~~
 11 ~~DETERMINATION OF MISTAKE IN THE EXISTING CRITICAL AREA~~
 12 ~~CLASSIFICATION; AND~~

13 ~~B. DETERMINE WHETHER THAT PROPOSED~~
 14 ~~CORRECTION OF MISTAKE IS CONSISTENT WITH THE PURPOSES, POLICIES,~~
 15 ~~GOALS, AND PROVISIONS OF THIS SUBTITLE AND ALL CRITERIA OF THE~~
 16 ~~COMMISSION.~~

17 ~~(ii) The requirement in [paragraph (2)(i) of this subsection]~~
 18 ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH that a [zoning] CRITICAL AREA map~~
 19 ~~amendment may be granted only on proof of a mistake does not apply to proposed~~
 20 ~~changes to a [zoning] CRITICAL AREA map that:~~

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

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

25 (o) (1) For proposed program amendments, a Commission panel shall
 26 hold a public hearing in the local jurisdiction, and the Commission shall act on the
 27 proposed program amendment within [90] **130** days of the Commission's acceptance of
 28 the proposal. If action by the Commission is not taken within [90] **130** days, the
 29 proposed program amendment is deemed approved.

30 8-1811.

31 (b) (2) From the date designated by the Commission in approving or
 32 adopting a program, an applicant for project approval or the local agency authorized to
 33 grant project approval on an application in any of the identified classes shall send to
 34 the Commission in accordance with the regulations and any other instructions of the
 35 Commission, a copy of every pending or new application for approval that is in any of

1 the identified classes. Before the close of the [next] FIFTH business day after receipt of
2 a copy of an application from the applicant or the local approving authority, the
3 Commission shall send written notice of receipt to the applicant and to the local
4 approving authority. A failure of the Commission to send a timely notice shall render
5 paragraph (3) of this subsection inapplicable as to that application.

6 8-1815.

7 (a) (1) (I) ~~**A EXCEPT AS OTHERWISE AUTHORIZED IN A LOCAL**~~
8 ~~**JURISDICTION, IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN**~~
9 ~~**SUBPARAGRAPH (II) OF THIS PARAGRAPH, A LOCAL AUTHORITY MAY OBTAIN**~~
10 ~~**ACCESS TO AND ENTER A PROPERTY IN ORDER TO IDENTIFY OR VERIFY A**~~
11 ~~**SUSPECTED VIOLATION, RESTRAIN A DEVELOPMENT ACTIVITY, OR ISSUE A**~~
12 ~~**CITATION IF THE LOCAL AUTHORITY HAS REASONABLE CAUSE TO BELIEVE THAT**~~
13 ~~**A VIOLATION OF THIS SUBTITLE OR THE LOCAL PROGRAM HAS OCCURRED, IS**~~
14 ~~**OCCURRING, OR WILL OCCUR.**~~

15 (II) 1. A LOCAL AUTHORITY SHALL MAKE A REASONABLE
16 EFFORT TO CONTACT A PROPERTY OWNER BEFORE OBTAINING ACCESS TO OR
17 ENTERING THE PROPERTY, ~~**BUT FAILURE TO CONTACT THE OWNER MAY NOT**~~
18 ~~**PREVENT THE LOCAL AUTHORITY FROM OBTAINING ACCESS TO OR ENTERING**~~
19 ~~**THE PROPERTY TO PURSUE ENFORCEMENT ACTION.**~~

20 2. ~~**IF ENTRY IS DENIED, THE LOCAL AUTHORITY MAY**~~
21 ~~**SEEK AN INJUNCTION TO ENTER THE PROPERTY TO PURSUE AN ENFORCEMENT**~~
22 ~~**ACTION.**~~

23 (III) 1. A LOCAL AUTHORITY THAT IDENTIFIES A
24 VIOLATION OF THIS SUBTITLE OR OF THE LOCAL PROGRAM SHALL TAKE
25 ENFORCEMENT ACTION.

26 2. THE LOCAL AUTHORITY SHALL REQUIRE
27 APPROPRIATE RESTORATION AND MITIGATION AS NECESSARY TO OFFSET
28 ADVERSE IMPACTS TO THE CRITICAL AREA RESULTING FROM THE VIOLATION.

29 3. A. FOR RESTORATION OR MITIGATION THAT
30 EXCEEDS 1,000 SQUARE FEET OR INVOLVES EXPENSES EXCEEDING \$1,000, THE
31 LOCAL AUTHORITY SHALL COLLECT A BOND OR OTHER FINANCIAL SECURITY OR
32 ADOPT APPROPRIATE PROCEDURES TO ENSURE THAT THE RESTORATION OR
33 MITIGATION IS PROPERLY COMPLETED.

34 B. IF THE RESTORATION OR MITIGATION INVOLVES
35 PLANTING, THE BOND SHALL BE HELD FOR AT LEAST 2 YEARS AFTER THE DATE
36 THE PLANTINGS WERE INSTALLED TO ENSURE PLANT SURVIVAL.

1 **C. ON REQUEST OF THE PROPERTY OWNER, THE**
 2 **LOCAL AUTHORITY SHALL SCHEDULE INSPECTIONS AS NECESSARY TO ENSURE**
 3 **COMPLIANCE AND THE RETURN OF THE BOND OR OTHER FINANCIAL SECURITY.**

4 **(2) (I) [Violators of the provisions of programs approved or adopted**
 5 **by the Commission] A PERSON WHO VIOLATES A PROVISION OF AN ORDER,**
 6 **PERMIT, PLAN, LOCAL PROGRAM, THIS SUBTITLE, OR REGULATIONS ADOPTED,**
 7 **APPROVED, OR ISSUED UNDER THE AUTHORITY OF THIS SUBTITLE shall be**
 8 **~~subject:~~**

9 **1. SUBJECT to prosecution or suit IN CIRCUIT COURT**
 10 **OR DISTRICT COURT by THE CHAIRMAN OR local authorities, who may invoke the**
 11 **sanctions and remedies afforded by State or local law;**

12 **2. GUILTY OF A MISDEMEANOR; AND**

13 **3. ON CONVICTION IN A COURT OF COMPETENT**
 14 **JURISDICTION, SUBJECT TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT**
 15 **NOT EXCEEDING 90 DAYS OR BOTH, WITH COSTS IMPOSED IN THE DISCRETION**
 16 **OF THE COURT.**

17 **(II) A CRIMINAL PROSECUTION OR A SUIT FOR A CIVIL**
 18 **PENALTY FOR VIOLATION OF A PROVISION OF AN ORDER, PERMIT, PLAN, LOCAL**
 19 **PROGRAM, THIS SUBTITLE, OR REGULATIONS ADOPTED, APPROVED, OR ISSUED**
 20 **UNDER THE AUTHORITY OF THIS SUBTITLE SHALL BE INSTITUTED WITHIN 3**
 21 **YEARS AFTER THE COMMISSION OR THE LOCAL AUTHORITIES IN FACT KNEW OR**
 22 **REASONABLY SHOULD HAVE KNOWN OF THE VIOLATION.**

23 **[(2)] (3) A local authority may request:**

24 **(i) Assistance from the Commission in an enforcement action;**
 25 **or**

26 **(ii) That the chairman refer an enforcement action to the**
 27 **Attorney General.**

28 **8-1815.1.**

29 **(b) If a person cuts or clears or plans to cut or clear trees within the**
 30 **Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of an**
 31 **approved local critical area program or of regulations adopted by the Commission,**
 32 **THE CHAIRMAN MAY BRING AN ACTION, OR** the local jurisdiction may bring an
 33 **action or request that the chairman of the Commission refer the matter to the**
 34 **Attorney General to bring an action:**

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

4 (2) To restrain the planned violation; or

5 (3) For damages:

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

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

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

12 **Article – Natural Resources**

13 8–1807.

14 (a) The initial planning area for determination of the Chesapeake Bay
 15 Critical Area consists of **THE FOLLOWING AREAS, AS INDICATED ON THE**
 16 **STATEWIDE BASE MAP:**

17 (1) All waters of and lands under the Chesapeake Bay and its
 18 tributaries to the head of tide ~~as indicated on the “MD IMAP” State [wetlands maps]~~
 19 ~~BASE MAP, and all;~~

20 (2) **ALL** State and private wetlands designated under Title 16 of the
 21 Environment Article; and

22 ~~(2) (3)~~ (3) All land and water areas within 1,000 feet beyond the landward
 23 boundaries of ~~State or private wetlands and the heads of tides designated under Title~~
 24 ~~16 of the Environment Article~~ **THE RESOURCES IDENTIFIED UNDER PARAGRAPHS**
 25 **(1) AND (2) OF THIS SUBSECTION.**

26 (b) The initial planning area for determination of the Atlantic Coastal Bays
 27 Critical Area consists of **THE FOLLOWING AREAS, AS INDICATED ON THE**
 28 **STATEWIDE BASE MAP:**

29 (1) All waters of and lands under the coastal bays and their tributaries
 30 to the head of tide ~~as indicated on the “MD IMAP” State [wetlands maps]~~ ~~BASE~~
 31 ~~MAP, and all;~~

1 (2) ALL State and private wetlands designated under Title 16 of the
2 Environment Article; and

3 ~~(2)~~ (3) All land and water areas within 1,000 feet beyond the landward
4 boundaries of ~~State or private wetlands and the heads of tides designated under Title~~
5 ~~16 of the Environment Article~~ **THE RESOURCES IDENTIFIED UNDER PARAGRAPHS**
6 **(1) AND (2) OF THIS SUBSECTION.**

7 SECTION 3. AND BE IT FURTHER ENACTED, That the process of transition
8 from reliance on the State wetlands maps to the Statewide Base Map for
9 determination of the Chesapeake and Atlantic Coastal Bays Critical Area, as enacted
10 under Section 2 of this Act, shall proceed as follows:

11 (1) The Department of Natural Resources ~~shall prepare a State Base~~
12 ~~Map that includes a State determined shoreline and edge of tidal wetlands and a~~
13 ~~digitally generated 1,000-foot Critical Area Boundary overlaid on aerial imagery~~
14 ~~obtained in 2007 and 2008 as part of the “MD iMap” State Base Map project. Within~~
15 ~~30 days of the date of official completion of the “MD iMap” State Base Map project,~~
16 ~~which shall include distribution of the Base Map by the Department of Natural~~
17 ~~Resources to each local jurisdiction with an approved Critical Area program, the~~
18 ~~Department shall notify the Critical Area Commission for the Chesapeake and~~
19 ~~Atlantic Coastal Bays in writing regarding the applicable date of project completion.~~

20 (2) ~~Following receipt of notice from the Department, and where~~
21 ~~practical as part of the required 6 year comprehensive review process, the~~
22 ~~Commission shall notify each local jurisdiction with an approved Critical Area~~
23 ~~program in writing regarding the effective date of project completion and the~~
24 ~~requirement to adopt an amended Critical Area Map based on the “MD iMap” State~~
25 ~~Base Map project within 24 months.~~

26 (3) ~~In accordance with notification from the Commission, each local~~
27 ~~jurisdiction, with assistance from the Critical Area Commission and the Department~~
28 ~~of Natural Resources as appropriate, shall review and refine the “MD iMap” State~~
29 ~~Base Maps prepared by the Department of Natural Resources. This process will be~~
30 ~~used to:~~

31 (i) ~~verify the boundaries of the existing Critical Area~~
32 ~~designations;~~

33 (ii) ~~appropriately designate unclassified areas that were not~~
34 ~~within the original Critical Area boundary in accordance with the mapping standards~~
35 ~~set forth in COMAR 27.01.02.03 through 27.01.02.05 and as further determined~~
36 ~~through regulations developed by the Commission; and~~

37 (iii) ~~identify areas where there appear to be inconsistencies~~
38 ~~between the “MD iMap” State Base Maps and local Critical Area Maps.~~

1 ~~(4) Following resolution of any inconsistencies and as appropriate to~~
2 ~~its form of government and in conformance with all applicable requirements, each~~
3 ~~jurisdiction with an approved Critical Area program shall formally amend its program~~
4 ~~by adopting the “MD iMap” State Base Map for that jurisdiction, including shoreline~~
5 ~~and edge of tidal wetlands, the 1,000-foot Critical Area Boundary, and all applicable~~
6 ~~Critical Area designations.~~

7 ~~(5) In accordance with regulations adopted by the Critical Area~~
8 ~~Commission in coordination with the Department of Natural Resources:~~

9 ~~(i) the State Base Map, including the State-determined~~
10 ~~shoreline and edge of tidal wetlands and a digitally generated 1,000-foot Critical Area~~
11 ~~boundary, shall be periodically updated, at least once every 12 years, starting with the~~
12 ~~date specified under paragraph (1) of this section; and~~

13 ~~(ii) as part of the required 6-year comprehensive review of the~~
14 ~~local Critical Area program, each local government shall formally amend its Critical~~
15 ~~Area Maps to reflect the State-determined shoreline and edge of tidal wetlands and a~~
16 ~~digitally generated 1,000-foot Critical Area boundary as shown on the current “MD~~
17 ~~iMap” State Base Map in effect at that time, the Department of the Environment, and~~
18 ~~the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays shall:~~

19 ~~(i) By October 1, 2008, complete a pilot project to develop and~~
20 ~~implement an appropriate mapping methodology for at least two counties with~~
21 ~~approved local Critical Area programs; and~~

22 ~~(ii) Based on this pilot project, develop procedures, source~~
23 ~~documents, and joint regulations as necessary and appropriate to most accurately and~~
24 ~~effectively create new maps of the Critical Area, based on the Statewide Base Map, for~~
25 ~~the State and each affected local jurisdiction;~~

26 ~~(2) In accordance with the following requirements and conditions, the~~
27 ~~Department of Natural Resources shall prepare a Statewide Base Map that includes a~~
28 ~~State-determined shoreline and landward boundary of tidal wetlands and a digitally~~
29 ~~generated, georeferenced 1,000-foot Critical Area boundary, as appropriate for~~
30 ~~integration into a Geographic Information System:~~

31 ~~(i) Aerial imagery obtained in 2007 and 2008 or the best~~
32 ~~available imagery of comparable scale shall be used to identify the shoreline and~~
33 ~~landward boundary of tidal wetlands as part of the Statewide Base Map project;~~

34 ~~(ii) The boundary shall be accurate to a scale of 1:1200; and~~

35 ~~(iii) The mapped shoreline and landward boundary of tidal~~
36 ~~wetlands may not be construed to represent an official wetland delineation or to~~
37 ~~change in any way any statutory provision under Title 16 of the Environment Article,~~
38 ~~any regulatory provision under Title 26, Subtitle 24 of the Code of Maryland~~

1 Regulations, or any other provision related to a project-specific wetland delineation
2 that may be necessary and appropriate;

3 (3) Within 4 months of the date of official completion of the Statewide
4 Base Map project, the Department of Natural Resources shall:

5 (i) Distribute the appropriate portion of the Statewide Base
6 Map to each local jurisdiction with an approved Critical Area Program; and

7 (ii) Notify the Critical Area Commission in writing regarding
8 the distribution date applicable to each local jurisdiction;

9 (4) Following receipt of notice from the Department of Natural
10 Resources and in accordance with the following conditions, the Commission shall
11 notify each local jurisdiction in writing regarding the effective date of project
12 completion applicable to that jurisdiction:

13 (i) A local jurisdiction shall formally adopt its amended Critical
14 Area Map based on the Statewide Base Map within 24 months of its receipt from the
15 Department of Natural Resources; and

16 (ii) However, where practicable, and after submission by the
17 local jurisdiction of evidence satisfactory to the Commission that reasonable progress
18 has been made toward formal adoption of its amended map, the Commission may
19 authorize the local jurisdiction to proceed toward formal adoption of its amended map
20 in coordination with its required 6-year comprehensive review process;

21 (5) In accordance with notification from the Commission, each local
22 jurisdiction, with assistance from the Department of Natural Resources, the
23 Department of the Environment, and the Critical Area Commission, as appropriate,
24 shall review and refine its portion of the Statewide Base Map prepared by the
25 Department of Natural Resources and proceed to:

26 (i) Verify the boundaries of the existing Critical Area
27 designations;

28 (ii) Appropriately designate unclassified areas that were not
29 within the original Critical Area boundary in accordance with the mapping standards
30 set forth under COMAR 27.01.02.03 through 27.01.02.05 and as further determined
31 through regulations adopted by the Commission; and

32 (iii) Identify areas where there appear to be inconsistencies
33 between the Statewide Base Map and the local jurisdiction's Critical Area map;

34 (6) In accordance with regulations adopted by the Critical Area
35 Commission, each local jurisdiction shall provide public notice of changes anticipated
36 in that jurisdiction as a result of the transition from the State wetlands maps to the

1 Statewide Base Map and provide for a public hearing and public comment regarding
2 those changes;

3 (7) Following resolution of any inconsistencies and as appropriate to
4 its form of local government and in conformance with all applicable requirements,
5 each jurisdiction with an approved Critical Area Program shall:

6 (i) Formally amend its program by adopting the Statewide
7 Base Map for that jurisdiction, including the shoreline and landward boundary of tidal
8 wetlands, the digitally generated and georeferenced 1,000-foot Critical Area
9 boundary, and all applicable Critical Area designations as its official Critical Area
10 Map; and

11 (ii) Within 90 days of formally amending its program under
12 item (i) of this paragraph, provide the Critical Area Commission with a list of the
13 development projects or activities within that jurisdiction that were newly mapped
14 under this Act as within the critical area and that received growth allocation, final
15 subdivision approval, final site plan approval, any other final approval, or were vested
16 by December 31, 2008;

17 (8) Upon official adoption of its new Critical Area Map, each local
18 jurisdiction shall ensure that, where applicable, each project submittal utilizes the
19 digitally generated, georeferenced Critical Area boundary; and

20 (9) (i) The Department of Natural Resources shall adopt
21 regulations providing for the periodic review and updating, at least once every 12
22 years, of the Statewide Base Map, including the State-determined shoreline and
23 landward boundary of tidal wetlands and a digitally generated, georeferenced
24 1,000-foot Critical Area boundary, beginning with the date of initial preparation and
25 official completion under paragraph (2) of this section; and

26 (ii) In coordination with the regulations adopted under
27 subparagraph (i) of this paragraph, the Critical Area Commission shall adopt
28 regulations providing for the periodic review and formal update of a local jurisdiction's
29 Critical Area Map, in accordance with each jurisdiction's required 6-year
30 comprehensive review, in order to reflect the State-determined shoreline and
31 landward boundary of tidal wetlands and the digitally generated, georeferenced
32 1,000-foot Critical Area boundary shown on the Statewide Base Map in effect at the
33 time of the comprehensive review.

34 SECTION 4. AND BE IT FURTHER ENACTED, That ~~the~~:

35 (1) The Department of Natural Resources shall notify the Department
36 of Legislative Services in writing on the date of official completion of the Statewide
37 Base Map project, as specified under Section 3(2) of this Act;

38 (2) The provisions of Section 2 of this Act shall take effect ~~24~~ 28
39 months after the date of official completion of the "MD iMap" State Base Map project,

1 ~~as specified under Section 3(1) of this Act~~ completion of the Statewide Base Map
2 project; and

3 (3) The Critical Area Commission shall adopt regulations regarding
4 the administration of local critical area programs related to mapping issues during the
5 process of transition from reliance on the State wetlands maps to the Statewide Base
6 Map for determination of the Chesapeake and Atlantic Coastal Bays Critical Area.

7 SECTION 5. AND BE IT FURTHER ENACTED, That for the purpose of a ~~new~~
8 ~~subdivision, this Act may not be construed to apply to a property for which:~~

9 (1) ~~an initial application for subdivision was submitted before January~~
10 ~~1, 2008; and~~

11 (2) ~~a final plat is recorded by December 31, 2008~~ criminal prosecution
12 under § 8-1815(a)(2)(ii) of the Natural Resources Article, as enacted under Section 1 of
13 this Act, this Act shall be construed prospectively to apply only to a Critical Area
14 violation alleged to have arisen out of an act or omission that originated on or after
15 July 1, 2008, and this Act may not be applied or interpreted to have any effect on or
16 application to an alleged critical area violation that originated before the effective date
17 of this Act.

18 SECTION 6. AND BE IT FURTHER ENACTED, That each local jurisdiction
19 with an approved Critical Area program shall report to the Critical Area Commission
20 by January 1, 2009 regarding its proposed procedures for notice of Critical Area
21 project approval or denial and for bringing lots into Program conformance under
22 § 8-1808(c)(1)(ii)4 and 12 of the Natural Resources Article, as enacted under Section 1
23 of this Act.

24 SECTION 7. AND BE IT FURTHER ENACTED, That the considerations
25 required under § 8-1808.1(c)(3) of the Natural Resources Article, as enacted under
26 Section 1 of this Act:

27 (1) Shall be a part of each growth allocation determination made by
28 the Critical Area Commission at a formal meeting of the Commission occurring on
29 July 1, 2008 or thereafter; and

30 (2) May not be applied to:

31 (i) Property in the town of St. Michael's designated as an
32 intensely developed area by an award of growth allocation approved by the Critical
33 Area Commission before July 1, 2006; or

34 (ii) Any other award of growth allocation approved by the
35 Critical Area Commission before July 1, 2008.

36 SECTION 8. AND BE IT FURTHER ENACTED, That:

1 (1) The provisions of this Act regarding lot coverage under § 8–1808.3
2 of the Natural Resources Article, as enacted under Section 1 of this Act, may not be
3 construed to affect a development project, including the plans for the development
4 project and any subsequent permits related to those plans, if the development project
5 meets the following requirements:

6 (i) 1. An application for a building permit or a grading
7 permit is filed by October 1, 2008, and the permit is issued by January 1, 2010; or

8 2. An initial application for development that satisfies
9 all local requirements for submittal is filed by October 1, 2008, and the development
10 plan is approved by July 1, 2010;

11 (ii) The approved permit or approved development plan remains
12 valid in accordance with local procedures and requirements;

13 (iii) By July 1, 2010:

14 1. In accordance with the requirements of the local
15 jurisdiction regarding impervious surface limitations applicable before the effective
16 date of this Act, the applicant prepares a detailed lot coverage plan that is drawn to
17 scale and shows the amounts of impervious surface area, partially pervious surface
18 area, and developed pervious surface area in the development project; and

19 2. The lot coverage plan is approved by the local
20 jurisdiction and maintained in the local jurisdiction's files; and

21 (iv) The development project is implemented in compliance with
22 the approved lot coverage plan, except as authorized under paragraph (3)(ii) of this
23 section;

24 (2) By October 1, 2010, a local jurisdiction shall provide the Critical
25 Area Commission with a list of the projects for which lot coverage plans have been
26 approved under paragraph (1)(iii)2 of this section.

27 (3) If a change or revision to a lot coverage plan approved under
28 paragraph (1)(iii)2 of this section operates so as to:

29 (i) Increase the amount of impervious surface area, partially
30 pervious surface area, or developed pervious surface area in the development project,
31 the provisions of paragraph (1) of this section may not apply and the project shall be
32 completed in accordance with the lot coverage requirements under § 8–1808.3 of the
33 Natural Resources Article, as enacted under Section 1 of this Act; or

34 (ii) Equal or decrease the amount of impervious surface area,
35 partially pervious surface area, or developed pervious surface area in the development
36 project, the provisions of paragraph (1) of this section shall continue to apply;

1 (4) If a development plan does not receive final approval by July 1,
 2 2010, as required under paragraph (1)(i)2 of this section, this Act may not be
 3 construed to terminate the operation of paragraph (1) of this section as to that
 4 development project if the failure to meet that date is due solely to the application of a
 5 building moratorium or an adequate public facilities ordinance in the local jurisdiction
 6 in which the development project is located; and

7 (5) A property owner, through subsequent development or
 8 redevelopment, may not exceed the amounts of impervious surface, partially pervious,
 9 or developed pervious surface area shown and specified on the lot coverage plan
 10 approved under paragraph (1)(iii)2 of this section.

11 SECTION 9. AND BE IT FURTHER ENACTED, That, as a result of remapping
 12 under this Act, the designation of an unclassified area that was not previously within
 13 the Chesapeake and Atlantic Coastal Bays Critical Area may not affect the initial
 14 construction of a development project or activity if by December 31, 2008, the
 15 development project or activity receives either growth allocation, final subdivision
 16 approval, final site plan approval, or any other final approval, or is vested.

17 SECTION 10. AND BE IT FURTHER ENACTED, That, subject to the
 18 provisions of Section 4 of this Act, this Act shall take effect July 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.