

CHAPTER 119

(House Bill 1253)

AN ACT concerning

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

FOR the purpose of authorizing the Maryland Home Improvement Commission to deny, reprimand, suspend, or revoke certain licenses for failure to comply with certain legal terms or requirements in the Chesapeake and Atlantic Coastal Bays Critical Area; authorizing the Home Builder Registration Unit to deny, reprimand, suspend, or revoke a home builder's registration, or impose certain civil penalties on a registrant, for failure to comply with certain critical area legal terms and requirements; authorizing the Department of Natural Resources to revoke or suspend the license of a licensed tree expert for failure to comply with certain critical area legal terms and requirements; requiring the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays to notify the Maryland Home Improvement Commission ~~on a contractor's failure,~~ the Home Builder Registration Unit, or the Department of Natural Resources on the failure of certain contractors to comply with certain terms or requirements in the Critical Area; authorizing the Critical Area Commission to adopt and amend certain regulations regarding certain matters; requiring the Critical Area Commission to adopt certain regulations; requiring that local Critical Area programs contain certain procedures, penalty provisions, and other elements; repealing a provision of law that allows for the omission of certain runoff prevention measures on certain sites; requiring a local jurisdiction to consider certain factors in the determination of certain penalties; requiring that the Critical Area Commission receive certain notice from a local jurisdiction within a certain time; establishing that certain development activities violate certain provisions of law; prohibiting a local jurisdiction from accepting certain applications for a variance or issuing certain authorizations unless certain conditions are satisfied; requiring a local jurisdiction to deny a variance and order certain actions under certain circumstances, and authorizing a local jurisdiction to grant proposed approval to a variance under certain circumstances; ~~requiring the Critical Area Commission to review certain proposed variance approvals and issue certain decisions;~~ specifying the applicability of certain standards under certain circumstances; requiring the Critical Area Commission to consider certain factors when reviewing certain map amendments or refinements; prohibiting lot coverage in the buffer in excess of a certain amount, except under certain circumstances; specifying the applicability of certain limitations to the extent of lot coverage, with certain exceptions and subject to a certain construction; requiring the establishment of a certain buffer in a certain area, and allowing for certain reductions under

certain circumstances; requiring that certain erosion protections consist of nonstructural shoreline stabilization measures, except under certain circumstances; ~~requiring that the Critical Area Commission consider a local jurisdiction's determination of a classification mistake and make a certain determination;~~ requiring the Department of the Environment to adopt certain regulations to include a certain waiver process; authorizing a local authority to obtain access and enter a certain property for certain purposes and under certain circumstances; requiring a local authority to take certain actions under certain circumstances related to certain violations; authorizing the Chairman of the Critical Area Commission to invoke certain sanctions and remedies and bring certain actions under certain circumstances; requiring that certain criminal prosecutions and suits for civil penalties be instituted within a certain time; modifying the initial planning areas for the determination of the Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area by the use of a certain map; providing for the preparation, distribution, review, refinement, formal adoption, and periodic update of ~~a certain map~~ certain maps; requiring the Department of Natural Resources to notify the Department of Legislative Services regarding the date of completion of a certain mapping project; clarifying the applicability of certain provisions of law; specifying certain legislative findings; defining certain terms; requiring certain local jurisdictions to report to the Critical Area Commission by a certain date regarding certain procedures; ~~prohibiting a certain construction~~ certain constructions of this Act; making the effective date of a certain provision of this Act subject to a certain contingency; and generally relating to the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

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

BY repealing and reenacting, with amendments,
 Article – Business Regulation
 Section ~~8–101(g)~~ 4.5–308(a), 8–101(g), and 8–311(a)
 Annotated Code of Maryland
 (2004 Replacement Volume and 2007 Supplement)

BY adding to
 Article – Business Regulation
 Section 8–506
 Annotated Code of Maryland
 (2004 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources

Section 5-421(a)
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 8-1801, ~~8-1802(a)(15) through (18)~~ 8-1802(a)(13) through (23), 8-1806,
8-1807(a) and (b), 8-1808(c), (d), and (e), 8-1808.1(c) and (e)(2)(i),
8-1808.3, ~~8-1809(h) and (e)(1)~~ 8-1809(o)(1), 8-1811(b)(2), 8-1815(a), and
8-1815.1(b)
Annotated Code of Maryland
(2007 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 8-1802(a)(1)
Annotated Code of Maryland
(2007 Replacement Volume)

BY adding to
Article – Natural Resources
Section 8-1802(a)(15), 8-1808.10, and 8-1808.11
Annotated Code of Maryland
(2007 Replacement Volume)

Preamble

WHEREAS, Following extensive research and the issuance of a report by the United States Environmental Protection Agency that clearly demonstrated an alarming extent of degradation of the Chesapeake Bay, in significant part because of prominent land use and growth patterns, the Critical Area Commission was created in 1984 in order to preserve and restore water quality in the State, to maintain valued wildlife habitat, and to accommodate inevitable growth, and these same legislative concerns were addressed in 2002 when the protections of the Critical Area Program were expanded to include the Atlantic Coastal Bays; and

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

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

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

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

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

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

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

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

WHEREAS, It is likewise the intent of this legislation to strengthen and clarify the reach of the Program where necessary to compensate for gaps in the current structure, such as the institution of more meaningful enforcement mechanisms, and to provide for fairer and more effective Program procedures around the State that will continue to allow for flexibility in recognition of local partners' varying needs; now, therefore,

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

Article – Business Regulation

4.5-308.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8-101.

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

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

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

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

(2) "Home improvement" includes:

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

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

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

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

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

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

(3) “Home improvement” does not include:

(i) construction of a new home;

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

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

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

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

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

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

8-311.

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

- (1) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another person;
- (2) fraudulently or deceptively uses a license;
- (3) fails to give the Commission information required by this subtitle about an application for a license;
- (4) fails to pass an examination required by this subtitle;
- (5) under the laws of the United States or of any state, is convicted of a:
 - (i) felony; or
 - (ii) misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to engage in home improvement services;
- (6) often fails to perform home improvement contracts;
- (7) falsifies an account;
- (8) engages in fraud;
- (9) as a contractor or subcontractor fails to show financial solvency, based on the intended scope and size of the business in relation to total assets, liabilities, credit rating, and net worth;
- (10) as a contractor or subcontractor lacks competence, as shown by the performance of an unworkmanlike, inadequate, or incomplete home improvement;
- (11) violates this title;
- (12) attempts to violate this title; [or]
- (13) violates a regulation adopted under this title; **OR**
- (14) **IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA, AS DEFINED UNDER § 8-1802 OF THE NATURAL RESOURCES ARTICLE, FAILS TO COMPLY WITH:**
 - (i) **THE TERMS OF A STATE OR LOCAL PERMIT, LICENSE, OR APPROVAL ISSUED FOR HOME IMPROVEMENT; OR**

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

8-506.

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

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

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

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

Article - Natural Resources

5-421.

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

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

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

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

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

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

8-1801.

(a) The General Assembly finds and declares that:

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

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

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

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

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

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

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

(8) The restoration of the Chesapeake and the Atlantic Coastal Bays and their tributaries is dependent, in part, on minimizing further adverse impacts to

the water quality and natural habitats of the shoreline and adjacent lands, particularly in the buffer;

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

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

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

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

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

8-1802.

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

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

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

2. A RELATIVELY SMALL AMOUNT OF NATURAL HABITAT OCCURS.

(II) "INTENSELY DEVELOPED AREA" INCLUDES:

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

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

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

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

(15) (I) "LIMITED DEVELOPMENT AREA" MEANS AN AREA:

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

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

(II) "LIMITED DEVELOPMENT AREA" INCLUDES AN AREA:

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

2. WITH A PUBLIC WATER OR SEWER SYSTEM;

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

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

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

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

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

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

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

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

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

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

3. A WOOD MULCH PATHWAY; OR

4. A DECK WITH GAPS TO ALLOW WATER TO PASS FREELY.

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

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

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

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

[(17)] ~~(18)~~ (20) (i) “Program refinement” means any change or proposed change to an adopted program that the Commission chairman determines

will result in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program, or that will not significantly affect the use of land or water in the critical area.

(ii) "Program refinement" may include:

1. A change to an adopted program that results from State law;
2. A change to an adopted program that affects local processes and procedures;
3. A change to a local ordinance or code that clarifies an existing provision; and
4. A minor change to an element of an adopted program that is clearly consistent with the provisions of this subtitle and all of the criteria of the Commission.

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

(ii) "Project approval" includes:

1. Approval of subdivision plats and site plans;
2. Inclusion of areas within floating zones;
3. Issuance of variances, special exceptions, and conditional use permits; and
4. Approval of rezoning.

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

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

- 1. NATURE DOMINATED ENVIRONMENTS, SUCH AS WETLANDS, SURFACE WATER, FORESTS, AND OPEN SPACE; AND**
- 2. RESOURCE-BASED ACTIVITIES, SUCH AS AGRICULTURE, FORESTRY, FISHERIES, OR AQUACULTURE.**

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

(23) "TRIBUTARY STREAM" MEANS A PERENNIAL STREAM OR AN INTERMITTENT STREAM WITHIN THE CRITICAL AREA THAT HAS BEEN IDENTIFIED BY SITE INSPECTION OR IN ACCORDANCE WITH LOCAL PROGRAM PROCEDURES APPROVED BY THE COMMISSION.

8-1806.

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

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

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

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

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

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

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

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

(II) BUFFER EXEMPTION AREAS;

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

(IV) COMMUNITY PIERS;

(V) COMMERCIAL MARINAS;

(VI) WATER DEPENDENT FACILITIES;

(VII) PUBLIC WATER ACCESS;

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

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

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

1. CLEARING, GRADING, AND CONSTRUCTION ACTIVITY;

2. CLUSTERING TO PROMOTE CONSERVATION OF NATURAL SITE FEATURES;

3. FLEXIBILITY FOR REDEVELOPMENT;

4. STORMWATER MANAGEMENT;

5. APPLICATION OF THE 10% POLLUTANT REDUCTION RULE;

6. FOREST AND DEVELOPED WOODLANDS PROTECTIONS;

7. CLEARING OF NATURAL VEGETATION;

8. LOT COVERAGE STANDARDS;

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

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

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

(XII) GROWTH ALLOCATION APPLICATIONS, WITH RESPECT TO:

1. THE DEDUCTION OF GROWTH ALLOCATION ACREAGE;

2. COMMISSION REVIEW AND DETERMINATIONS;

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

4. THE LOCATION OF SEPTIC SYSTEMS;

5. GOLF COURSES; AND

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

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

1. HABITAT PROTECTION AREAS;

2. THREATENED AND ENDANGERED SPECIES;

3. SPECIES IN NEED OF CONSERVATION;

4. FOREST INTERIOR DWELLING BIRDS;

5. ANADROMOUS FISH PROPAGATION WATERS; AND

6. PLANT AND WILDLIFE HABITAT;

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

- 1. NOTIFICATION OF PROJECT APPLICATIONS;**
- 2. THE 6-YEAR COMPREHENSIVE REVIEW OF A LOCAL CRITICAL AREA PROGRAM;**
- ~~**3. PUBLIC NOTICE AND COMMENT FOR A STATE OR LOCAL GOVERNMENT DEVELOPMENT ACTIVITY;**~~
 - 3. FOR A STATE OR LOCAL GOVERNMENT DEVELOPMENT ACTIVITY:**
 - A. PUBLIC NOTICE, INCLUDING NOTICE TO BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA WHERE THE PROPOSED DEVELOPMENT ACTIVITY WOULD OCCUR; AND**
 - B. AN OPPORTUNITY FOR PUBLIC COMMENT IN THE LOCAL JURISDICTION IN WHICH THE PROPOSED DEVELOPMENT ACTIVITY WOULD BE LOCATED.**
- 4. REPORTING REQUIREMENTS;**
- 5. THE SUBMISSION AND PROCESSING OF A PROPOSED PROGRAM AMENDMENT OR REFINEMENT; AND**
- 6. PROVISIONS APPLICABLE TO AREAS REQUESTED FOR EXCLUSION FROM THE CRITICAL AREA;**

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

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

- 1. AMENDING A VARIANCE APPLICATION;**
- 2. ADVANCE NOTICE TO THE COMMISSION;**
- 3. THE CONTENTS OF A COMPLETE VARIANCE APPLICATION;**

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

5. THE USE OF VARIANCE STANDARDS; AND

6. NOTICE OF A VARIANCE DECISION; AND

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

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

8-1808.

(c) (1) (I) [At a minimum,] **NOTWITHSTANDING ANY PROVISION IN A LOCAL LAW OR ORDINANCE, OR THE LACK OF A PROVISION IN A LOCAL LAW OR ORDINANCE, ALL OF THE REQUIREMENTS OF THIS SUBTITLE SHALL APPLY TO, AND BE APPLIED BY, A LOCAL JURISDICTION AS MINIMUM STANDARDS FOR a program sufficient to meet the goals [stated in subsection (b) of this section includes] OF THE CRITICAL AREA PROGRAM.**

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

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

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

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

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

[1.] A. Subdivision regulations;

[2.] B. Comprehensive or master plan;

[3.] C. Zoning ordinances or regulations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(xiv)]15.~~ **14.** Penalty provisions establishing that, in addition to any other penalty applicable under State or local law, ~~a~~ **EACH** person who violates a provision of this subtitle or of a program, **INCLUDING A CONTRACTOR,**

PROPERTY OWNER, OR ANY OTHER PERSON WHO COMMITTED, ASSISTED, AUTHORIZED, OR PARTICIPATED IN A THE VIOLATION;

~~A. He IS~~ **IS** subject to a fine not exceeding \$10,000; AND

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

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

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

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

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

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

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

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

G. UNLESS AN EXTENSION OF TIME IS APPROPRIATE BECAUSE OF ADVERSE PLANTING CONDITIONS, WITHIN ~~60~~ 90 DAYS OF THE

ISSUANCE OF A PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION FOR THE AFFECTED PROPERTY, ANY ADDITIONAL MITIGATION REQUIRED AS A CONDITION OF APPROVAL FOR THE PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION SHALL BE COMPLETED.

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

- ~~(i)~~ **1.** The gravity of the violation;
- ~~(ii)~~ **2.** Any willfulness or negligence involved in the violation; [and]
- ~~(iii)~~ **3.** The environmental impact of the violation; **AND**
- ~~(iv)~~ **4.** **THE COST OF RESTORATION OF THE RESOURCE AFFECTED BY THE VIOLATION AND MITIGATION FOR DAMAGE TO THAT RESOURCE, INCLUDING THE COST TO THE STATE OR LOCAL AUTHORITIES FOR PERFORMING, SUPERVISING, OR RENDERING ASSISTANCE TO THE RESTORATION AND MITIGATION.**

(II) IN PARAGRAPH ~~(1)(H)15~~ (1)(III)14 OF THIS SUBSECTION, "PROPERTY OWNER" INCLUDES TWO OR MORE PERSONS HOLDING TITLE TO THE PROPERTY UNDER ANY FORM OF JOINT OWNERSHIP.

(3) **REGULATIONS ADOPTED UNDER PARAGRAPH ~~(1)(H)16~~ ~~(1)(H)15~~ (1)(III)15 OF THIS SUBSECTION SHALL PROVIDE FOR THE COMMISSION'S CONSIDERATION OF ENFORCEMENT PROVISIONS SUBMITTED BY A LOCAL JURISDICTION THAT ARE AT LEAST AS EFFECTIVE AS ENFORCEMENT REQUIREMENTS UNDER THIS SUBTITLE AND REGULATIONS ADOPTED UNDER THE AUTHORITY OF THIS SUBTITLE.**

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

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

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

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

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

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

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

~~(ii)~~ **(III)** If the variance request is based on conditions or circumstances that are the result of actions by the applicant[, including the commencement of development activity before an application for a variance has been filed], a local jurisdiction ~~may~~ **SHALL** consider that fact.

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

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

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

- A. The applicant;
- B. The local jurisdiction or any other government agency; or
- C. Any other person deemed appropriate by the local jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. DOES NOT MEET EACH OF THE VARIANCE CRITERIA UNDER THIS SUBSECTION, THE LOCAL JURISDICTION SHALL DENY THE REQUESTED VARIANCE AND ORDER REMOVAL OR RELOCATION OF ANY STRUCTURE AND RESTORATION OF THE AFFECTED RESOURCES; OR

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

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

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

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

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

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

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

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

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

8-1808.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~2. MAXIMIZATION OF STATE INVESTMENT IN EXISTING PUBLIC INFRASTRUCTURE~~

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

A. TO BE SERVED BY A PUBLIC WASTEWATER SYSTEM;

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

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

D. TO HAVE A DEMONSTRABLE ECONOMIC BENEFIT TO THE AREA; AND

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

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

B. A COMPLETION OF AN EXISTING SUBDIVISION;

C. AN EXPANSION OF AN EXISTING BUSINESS; OR

D. TO BE CLUSTERED;

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

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

~~(IV) LOCATION IN OR NEAR~~

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

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

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

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

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

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

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

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

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

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

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

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

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

8-1808.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985 in the Chesapeake Bay Critical Area or after June 1, 2002 in the Atlantic Coastal Bays Critical Area, then [man-made impervious surfaces of the lot] **LOT COVERAGE** may not exceed 25% of the lot. However, the total [of the impervious surfaces] **LOT COVERAGE** over the entire subdivision may not exceed 15%~~

UNLESS OTHERWISE RESTRICTED BY A LOCAL JURISDICTION, LOT COVERAGE IN A SUBDIVISION APPROVED AFTER DECEMBER 1, 1985 IN THE CHESAPEAKE BAY CRITICAL AREA OR AFTER JUNE 1, 2002 IN THE ATLANTIC COASTAL BAYS CRITICAL AREA MAY NOT EXCEED 15%. HOWEVER, THE TOTAL LOT COVERAGE ON AN INDIVIDUAL LOT ONE ACRE OR LESS IN SIZE MAY EXCEED 15%.

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

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

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

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

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

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

(5) The property owner performs on-site mitigation as required by the local jurisdiction to offset potential adverse water quality impacts from the new [impervious surfaces] **DEVELOPMENT ACTIVITIES THAT CONTRIBUTE TO LOT COVERAGE**, or the property owner pays a fee to the local jurisdiction in lieu of performing the on-site mitigation.

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

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

(I) **EXISTED BEFORE COMMISSION APPROVAL OF A LOCAL PROGRAM; OR**

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

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

(II) **FOR THE PURPOSE OF INCREASING LOT COVERAGE ON A LOT OR PARCEL UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE LOT COVERAGE LIMITATIONS UNDER THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO A DEVELOPMENT ACTIVITY FOR WHICH:**

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

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

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

8-1808.10.

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

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

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

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

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

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

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

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

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

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

(1) RECEIVES FINAL LOCAL APPROVAL ON OR AFTER JULY 1, 2008, UNLESS AN APPLICATION FOR SUBDIVISION OR SITE PLAN APPROVAL IS SUBMITTED BEFORE JULY 1, 2008 AND LEGALLY RECORDED BY ~~DECEMBER 31, 2009~~ JULY 1, 2010; AND

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

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

(I) ~~300~~ 200 FEET FROM TIDAL WATERS OR A TIDAL WETLAND; AND

(II) 100 FEET FROM A TRIBUTARY STREAM.

(2) ALL PROVISIONS UNDER COMAR 27.01.09.01 THAT ARE APPLICABLE TO DEVELOPMENT ACTIVITIES WITHIN THE 100-FOOT BUFFER, INCLUDING THE ESTABLISHMENT OF VEGETATION AND EXPANSION REQUIREMENTS, SHALL APPLY TO THE ~~300 FOOT~~ 200-FOOT BUFFER.

(C) THE ~~300-FOOT~~ 200-FOOT BUFFER MAY BE REDUCED IF:

(1) THE STRICT APPLICATION OF THE MINIMUM ~~300-FOOT~~ 200-FOOT BUFFER WOULD PRECLUDE:

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

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

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

8-1808.11.

(A) IMPROVEMENTS OTHER THAN IN AREAS DESIGNATED BY THE DEPARTMENT OF THE ENVIRONMENT MAPPING AS APPROPRIATE FOR STRUCTURAL SHORELINE STABILIZATION MEASURES, IMPROVEMENTS TO PROTECT A PERSON'S PROPERTY AGAINST EROSION SHALL CONSIST OF NONSTRUCTURAL SHORELINE STABILIZATION MEASURES THAT PRESERVE THE NATURAL ENVIRONMENT, SUCH AS MARSH CREATION, EXCEPT IN AREAS WHERE THE PERSON CAN DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT OF THE ENVIRONMENT THAT THESE MEASURES ARE NOT FEASIBLE, INCLUDING AREAS OF EXCESSIVE EROSION, AREAS SUBJECT TO HEAVY TIDES, AND AREAS TOO NARROW FOR EFFECTIVE USE OF NONSTRUCTURAL SHORELINE STABILIZATION MEASURES.

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

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

8-1809.

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

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

~~2. THE COMMISSION SHALL:~~

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

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

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

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

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

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

8-1811.

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

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

8-1815.

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

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

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

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

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

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

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

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

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

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

2. GUILTY OF A MISDEMEANOR; AND

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

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

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

(i) Assistance from the Commission in an enforcement action;

or

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

8-1815.1.

(b) If a person cuts or clears or plans to cut or clear trees within the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of an

approved local critical area program or of regulations adopted by the Commission, **THE CHAIRMAN MAY BRING AN ACTION, OR** the local jurisdiction may bring an action or request that the chairman of the Commission refer the matter to the Attorney General to bring an action:

- (1) To require the person to replant trees where the cutting or clearing occurred in accordance with a plan prepared by the State Forester, a registered professional forester, or a registered landscape architect;
- (2) To restrain the planned violation; or
- (3) For damages:
 - (i) To be assessed by a circuit court in an amount equal to the estimated cost of replanting trees; and
 - (ii) To be paid to the Department by the person found to have violated the provisions of this subsection.

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

Article – Natural Resources

8–1807.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) ~~appropriately designate unclassified areas that were not within the original Critical Area boundary in accordance with the mapping standards~~

~~set forth in COMAR 27.01.02.03 through 27.01.02.05 and as further determined through regulations developed by the Commission; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Appropriately designate unclassified areas that were not within the original Critical Area boundary in accordance with the mapping standards

set forth under COMAR 27.01.02.03 through 27.01.02.05 and as further determined through regulations adopted by the Commission; and

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

(6) In accordance with regulations adopted by the Critical Area Commission, each local jurisdiction shall provide public notice of changes anticipated in that jurisdiction as a result of the transition from the State wetlands maps to the Statewide Base Map and provide for a public hearing and public comment regarding those changes;

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

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

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

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

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

(ii) In coordination with the regulations adopted under subparagraph (i) of this paragraph, the Critical Area Commission shall adopt regulations providing for the periodic review and formal update of a local jurisdiction's Critical Area Map, in accordance with each jurisdiction's required 6-year comprehensive review, in order to reflect the State-determined shoreline and landward boundary of tidal wetlands and the digitally generated, georeferenced

1,000-foot Critical Area boundary shown on the Statewide Base Map in effect at the time of the comprehensive review.

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

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

(2) The provisions of Section 2 of this Act shall take effect ~~24~~ 28 months after the date of official ~~completion of the "MD iMap" State Base Map project, as specified under Section 3(1) of this Act~~ completion of the Statewide Base Map project; and

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

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

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

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

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

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

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

(2) May not be applied to:

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

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

SECTION 8. AND BE IT FURTHER ENACTED, That:

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

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

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

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

(iii) By July 1, 2010:

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 24, 2008.