

SENATE BILL 844

M1

8lr0267
CF HB 1253

By: **The President (By Request – Administration) and Senators Conway, Garagiola, Jones, Lenett, Madaleno, Pinsky, and Raskin**
Introduced and read first time: February 11, 2008
Assigned to: Rules

A BILL ENTITLED

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; requiring the Critical Area Commission for the Chesapeake
8 and Atlantic Coastal Bays to notify the Maryland Home Improvement
9 Commission on a contractor's failure to comply with certain terms or
10 requirements in the Critical Area; authorizing the Critical Area Commission to
11 adopt and amend certain regulations; requiring the Critical Area Commission to
12 adopt certain regulations; requiring that local Critical Area programs contain
13 certain procedures, penalty provisions, and other elements; requiring a local
14 jurisdiction to consider certain factors in the determination of certain penalties;
15 requiring that the Critical Area Commission receive certain notice from a local
16 jurisdiction within a certain time; establishing that certain development
17 activities violate certain provisions of law; prohibiting a local jurisdiction from
18 accepting certain applications for a variance unless certain conditions are
19 satisfied; requiring a local jurisdiction to deny a variance and order certain
20 actions under certain circumstances, and authorizing a local jurisdiction to
21 grant proposed approval to a variance under certain circumstances; requiring
22 the Critical Area Commission to review certain proposed variance approvals
23 and issue certain decisions; specifying the applicability of certain standards
24 under certain circumstances; requiring the Critical Area Commission to
25 consider certain factors when reviewing certain map amendments or
26 refinements; prohibiting lot coverage in the buffer in excess of a certain amount,
27 except under certain circumstances; specifying the applicability of certain
28 limitations to the extent of lot coverage, with certain exceptions; requiring the
29 establishment of a certain buffer in a certain area, and allowing for certain
30 reductions under certain circumstances; requiring that certain erosion

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 protections consist of nonstructural shoreline stabilization measures, except
2 under certain circumstances; requiring that the Critical Area Commission
3 consider a local jurisdiction's determination of a classification mistake and
4 make a certain determination; authorizing a local authority to obtain access and
5 enter a certain property for certain purposes and under certain circumstances;
6 requiring a local authority to take certain actions under certain circumstances
7 related to certain violations; authorizing the Chairman of the Critical Area
8 Commission to invoke certain sanctions and remedies and bring certain actions
9 under certain circumstances; requiring that certain criminal prosecutions and
10 suits for civil penalties be instituted within a certain time; modifying the initial
11 planning areas for the determination of the Chesapeake Bay Critical Area and
12 Atlantic Coastal Bays Critical Area by the use of a certain map; providing for
13 the preparation, distribution, review, refinement, formal adoption, and periodic
14 update of a certain map; clarifying the applicability of certain provisions of law;
15 specifying certain legislative findings; defining certain terms; requiring certain
16 local jurisdictions to report to the Critical Area Commission by a certain date
17 regarding certain procedures; prohibiting a certain construction of this Act;
18 making the effective date of a certain provision of this Act subject to a certain
19 contingency; and generally relating to the Chesapeake and Atlantic Coastal
20 Bays Critical Area Protection Program.

21 BY repealing and reenacting, without amendments,
22 Article – Business Regulation
23 Section 8–101(a)
24 Annotated Code of Maryland
25 (2004 Replacement Volume and 2007 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Business Regulation
28 Section 8–101(g) and 8–311(a)
29 Annotated Code of Maryland
30 (2004 Replacement Volume and 2007 Supplement)

31 BY adding to
32 Article – Business Regulation
33 Section 8–506
34 Annotated Code of Maryland
35 (2004 Replacement Volume and 2007 Supplement)

36 BY repealing and reenacting, with amendments,
37 Article – Natural Resources
38 Section 8–1801, 8–1802(a)(15) through (18), 8–1806, 8–1807(a) and (b),
39 8–1808(c), (d), and (e), 8–1808.1(c) and (e)(2)(i), 8–1808.3, 8–1809(h) and
40 (o)(1), 8–1811(b)(2), 8–1815(a), and 8–1815.1(b)
41 Annotated Code of Maryland
42 (2007 Replacement Volume)

43 BY repealing and reenacting, without amendments,

1 Article – Natural Resources
2 Section 8–1802(a)(1)
3 Annotated Code of Maryland
4 (2007 Replacement Volume)

5 BY adding to
6 Article – Natural Resources
7 Section 8–1802(a)(15), 8–1808.10, and 8–1808.11
8 Annotated Code of Maryland
9 (2007 Replacement Volume)

10 Preamble

11 WHEREAS, Following extensive research and the issuance of a report by the
12 United States Environmental Protection Agency that clearly demonstrated an
13 alarming extent of degradation of the Chesapeake Bay, in significant part because of
14 prominent land use and growth patterns, the Critical Area Commission was created in
15 1984 in order to preserve and restore water quality in the State, to maintain valued
16 wildlife habitat, and to accommodate inevitable growth, and these same legislative
17 concerns were addressed in 2002 when the protections of the Critical Area Program
18 were expanded to include the Atlantic Coastal Bays; and

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

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

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

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

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

37 WHEREAS, Particularly in light of the ongoing, accelerating decline of the
38 State’s water quality resources and the loss of valuable shoreline areas due to erosion
39 and global warming, it is the view of the General Assembly that significant

1 improvements are in order at this time so as to accomplish Program preservation goals
2 more effectively while streamlining the Program and enhancing its efficiency and
3 predictability; and

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

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

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

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

20 **Article – Business Regulation**

21 8–101.

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

23 (g) (1) “Home improvement” means:

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

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

29 (2) “Home improvement” includes:

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

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

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

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

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

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

14 (3) “Home improvement” does not include:

15 (i) construction of a new home;

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

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

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

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

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

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

29 8-311.

30 (a) Subject to the hearing provisions of § 8-312 of this subtitle, the
 31 Commission may deny a license to an applicant, reprimand a licensee, or suspend or

1 revoke a license if the applicant or licensee or the management personnel of the
2 applicant or licensee:

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

5 (2) fraudulently or deceptively uses a license;

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

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

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

11 (i) felony; or

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

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

15 (7) falsifies an account;

16 (8) engages in fraud;

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

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

22 (11) violates this title;

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

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

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

28 **(I) THE TERMS OF A STATE OR LOCAL PERMIT, LICENSE, OR**
29 **APPROVAL ISSUED FOR HOME IMPROVEMENT; OR**

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

3 **8-506.**

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

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

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

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

14 **Article - Natural Resources**

15 8-1801.

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

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

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

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

28 (4) Human activity is harmful in these shoreline areas, where the new
29 development of nonwater-dependent structures or [the addition of impervious
30 surfaces] **AN INCREASE IN LOT COVERAGE** is presumed to be contrary to the purpose
31 of this subtitle, because these activities may cause adverse impacts, of both an
32 immediate and a long-term nature, to the Chesapeake and Atlantic Coastal Bays, and
33 thus it is necessary wherever possible to maintain a buffer of at least 100 feet

1 landward from the mean high water line of tidal waters, tributary streams, and tidal
2 wetlands;

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

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

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

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

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

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

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

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

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

1 8-1802.

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

3 (15) (I) **“LOT COVERAGE” MEANS THE PERCENTAGE OF A TOTAL**
4 **LOT OR PARCEL THAT IS:**

5 1. **OCCUPIED BY A STRUCTURE, ACCESSORY**
6 **STRUCTURE, PARKING AREA, DRIVEWAY, OR ROADWAY; OR**

7 2. **COVERED WITH A PAVER, WALKWAY, DECKING, OR**
8 **OTHER MANMADE MATERIAL.**

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

13 (III) **“LOT COVERAGE” DOES NOT INCLUDE A FENCE OR**
14 **WALL THAT IS LESS THAN 1 FOOT IN WIDTH THAT HAS NOT BEEN CONSTRUCTED**
15 **WITH A FOOTER.**

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

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

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

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

25 [(17)] (18) (i) “Program refinement” means any change or proposed
26 change to an adopted program that the Commission chairman determines will result
27 in a use of land or water in the Chesapeake Bay Critical Area or the Atlantic Coastal
28 Bays Critical Area in a manner consistent with the adopted program, or that will not
29 significantly affect the use of land or water in the critical area.

30 (ii) “Program refinement” may include:

31 1. A change to an adopted program that results from
32 State law;

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

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

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

8 [(18)] (19) (i) "Project approval" means the approval of
9 development, other than development by a State or local government agency, in the
10 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area by the
11 appropriate local approval authority.

12 (ii) "Project approval" includes:

13 1. Approval of subdivision plats and site plans;

14 2. Inclusion of areas within floating zones;

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

17 4. Approval of rezoning.

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

19 8-1806.

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

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

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

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

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

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

3 (1) ESTABLISH COMPREHENSIVE STANDARDS FOR BUFFER
4 ESTABLISHMENT, MAINTENANCE, AND LONG-TERM PROTECTION AND FOR
5 BUFFER MITIGATION ACTIVITIES ASSOCIATED WITH VIOLATIONS, VARIANCES,
6 OR AUTHORIZED DEVELOPMENT ACTIVITIES, INCLUDING PROVISIONS TO
7 ENSURE THE PROTECTION AND CONSERVATION OF THE BUFFER AS A STATE
8 WATER QUALITY AND HABITAT RESOURCE ESSENTIAL TO THE RESTORATION OF
9 THE CHESAPEAKE AND ATLANTIC COASTAL BAYS; AND

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

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

15 8-1808.

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

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

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

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

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

29 [1.] A. Subdivision regulations;

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

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

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

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

7 [(iv)] **4.** Provisions requiring that project approvals shall be
8 based on findings that projects are consistent with the standards stated in subsection
9 (b) of this section **AND THAT THE COMMISSION SHALL RECEIVE WRITTEN NOTICE**
10 **OF LOCAL DECISIONS ON PROJECT APPROVALS WITHIN 10 WORKING DAYS**
11 **AFTER THE DATE OF ISSUANCE;**

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

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

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

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

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

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

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

35 [(xii)] **12.** Provisions for reasonable accommodations in policies
36 or procedures when the accommodations are necessary to avoid discrimination on the

1 basis of physical disability, including provisions that authorize a local jurisdiction to
2 require removal of a structure that was installed or built to accommodate a physical
3 disability and require restoration when the accommodation permitted by this
4 paragraph is no longer necessary;

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

9 **A. ANY LEGAL PARCEL OF LAND, NOT BEING PART**
10 **OF A RECORDED OR APPROVED SUBDIVISION, THAT WAS RECORDED AS OF**
11 **DECEMBER 1, 1985; AND**

12 **B. LAND THAT WAS SUBDIVIDED INTO RECORDED**
13 **LEGALLY BUILDABLE LOTS, WHERE THE SUBDIVISION RECEIVED THE LOCAL**
14 **JURISDICTION'S FINAL APPROVAL BEFORE JUNE 1, 1984;**

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

19 [(xiv)] **15. Penalty provisions establishing that, in addition to**
20 **any other penalty applicable under State or local law, a person who violates a**
21 **provision of this subtitle or of a program, INCLUDING A CONTRACTOR, PROPERTY**
22 **OWNER, OR ANY OTHER PERSON WHO COMMITTED, ASSISTED, OR PARTICIPATED**
23 **IN A VIOLATION:**

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

25 **B. MAY BE HELD JOINTLY OR SEVERALLY**
26 **RESPONSIBLE FOR EACH VIOLATION; AND**

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

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

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

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

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

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

12 **F. PAYMENT OF ALL CIVIL PENALTIES AND**
13 **CORRECTION OF THE VIOLATION SHALL BE A CONDITION PRECEDENT TO THE**
14 **ISSUANCE OF ANY PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION FOR**
15 **THE AFFECTED PROPERTY.**

16 (2) In determining the amount of the penalty to be assessed under
17 paragraph [(1)(xiv)] **(1)(II)15** of this subsection, a local jurisdiction [may] **SHALL**
18 **consider:**

19 (i) The gravity of the violation;

20 (ii) Any willfulness or negligence involved in the violation; [and]

21 (iii) The environmental impact of the violation; **AND**

22 **(IV) THE COST OF RESTORATION OF THE RESOURCE**
23 **AFFECTED BY THE VIOLATION AND MITIGATION FOR DAMAGE TO THAT**
24 **RESOURCE, INCLUDING THE COST TO THE STATE OR LOCAL AUTHORITIES FOR**
25 **PERFORMING, SUPERVISING, OR RENDERING ASSISTANCE TO THE**
26 **RESTORATION AND MITIGATION.**

27 **(3) REGULATIONS ADOPTED UNDER PARAGRAPH (1)(II)16 OF**
28 **THIS SUBSECTION SHALL PROVIDE FOR THE COMMISSION'S CONSIDERATION OF**
29 **ENFORCEMENT PROVISIONS SUBMITTED BY A LOCAL JURISDICTION THAT ARE**
30 **AT LEAST AS EFFECTIVE AS ENFORCEMENT REQUIREMENTS UNDER THIS**
31 **SUBTITLE AND REGULATIONS ADOPTED UNDER THE AUTHORITY OF THIS**
32 **SUBTITLE.**

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

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

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

13 (3) (i) An applicant has the burden of proof and the burden of
14 persuasion to overcome the presumption established under paragraph (2)(i) of this
15 subsection.

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

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

22 A. The applicant;

23 B. The local jurisdiction or any other government
24 agency; or

25 C. Any other person deemed appropriate by the local
26 jurisdiction.

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

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

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

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

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

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

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

14 1. ISSUES A NOTICE OF VIOLATION, INCLUDING
15 ASSESSMENT OF AN ADMINISTRATIVE PENALTY, FOR THE VIOLATION; AND

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

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

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

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

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

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

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

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

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

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

19 **[(5)] (7)** This subsection does not apply to building permits or
20 activities that comply with a buffer exemption plan or buffer management plan of a
21 local jurisdiction which has been approved by the Commission.

22 **[(6)] (8)** Notwithstanding any provision of a local law or ordinance,
23 or the lack of a provision in a local law or ordinance, all of the provisions of this
24 subsection shall apply to, and shall be applied by, a local jurisdiction in the
25 consideration, processing, and decision on an application for a variance.

26 (e) (1) The Commission shall adopt by regulation on or before December
27 1, 1985 criteria for program development and approval, which are necessary or
28 appropriate to achieve the standards stated in subsection (b) of this section. Prior to
29 developing its criteria and also prior to adopting its criteria, the Commission shall
30 hold at least 6 regional public hearings, 1 in each of the following areas:

- 31 (i) Harford, Cecil, and Kent counties;
- 32 (ii) Queen Anne's, Talbot, and Caroline counties;
- 33 (iii) Dorchester, Somerset, and Wicomico counties;
- 34 (iv) Baltimore City and Baltimore County;

1 (v) Charles, Calvert, and St. Mary's counties; and

2 (vi) Anne Arundel and Prince George's counties.

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

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

9 8-1808.1.

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

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

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

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

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

26 **(V) LOCATE NEW INTENSELY DEVELOPED AREAS IN A**
27 **MANNER THAT MINIMIZES THEIR IMPACTS TO THE DEFINED LAND USES OF THE**
28 **RESOURCE CONSERVATION AREA;**

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

32 ~~[(vi)]~~ **(VII)** New intensely developed or limited development
33 areas ~~[to be located in the resource conservation area]~~ **INVOLVING THE USE OF**

1 **GROWTH ALLOCATION** shall conform to all criteria of the Commission and shall be
2 designated on the comprehensive zoning map submitted by the local jurisdiction as
3 part of its application to the Commission for program approval or at a later date in
4 compliance with § 8-1809(g) of this subtitle; and

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

14 **(2) IN REVIEWING MAP AMENDMENTS OR REFINEMENTS**
15 **INVOLVING THE USE OF GROWTH ALLOCATION, THE COMMISSION SHALL**
16 **CONSIDER:**

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

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

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

25 **2. MAXIMIZATION OF STATE INVESTMENT IN**
26 **EXISTING PUBLIC INFRASTRUCTURE;**

27 **(III) CONSISTENCY WITH STATE AND REGIONAL**
28 **ENVIRONMENTAL PROTECTION POLICIES AND MEASURES, INCLUDING THOSE**
29 **THAT PROTECT THREATENED AND ENDANGERED SPECIES AND SPECIES IN NEED**
30 **OF CONSERVATION THAT MAY BE LOCATED ON- OR OFF-SITE;**

31 **(IV) LOCATION IN OR NEAR A PRIORITY PRESERVATION**
32 **AREA, AS DEFINED UNDER § 2-518 OF THE AGRICULTURE ARTICLE;**

33 **(V) ENVIRONMENTAL IMPACTS ASSOCIATED WITH**
34 **TREATMENT OF WASTE;**

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

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

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

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

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

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

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

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

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

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

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

29 8–1808.3.

30 (a) This section applies notwithstanding:

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

32 (2) Any criteria or guideline of the Commission adopted under this
33 subtitle.

1 (b) **(1)** This section controls over any other requirement concerning
2 [impervious surfaces] **LOT COVERAGE** limitations in limited development areas and
3 resource conservation areas in the critical area.

4 **(2) (I) IN THE BUFFER, LOT COVERAGE MAY NOT EXCEED THE**
5 **MINIMUM AMOUNT NECESSARY FOR WATER-DEPENDENT FACILITIES.**

6 **(II) 1. THE PROVISIONS OF THIS SUBPARAGRAPH DO**
7 **NOT APPLY TO BUFFER EXEMPTION AREAS, AS ESTABLISHED UNDER AN**
8 **APPROVED LOCAL PROGRAM.**

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

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

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

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

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

26 **(4)** If an individual lot one acre or less in size is part of a subdivision
27 approved after December 1, 1985 in the Chesapeake Bay Critical Area or after June 1,
28 2002 in the Atlantic Coastal Bays Critical Area, then [man-made impervious surfaces
29 of the lot] **LOT COVERAGE** may not exceed 25% of the lot. However, the total [of the
30 impervious surfaces] **LOT COVERAGE** over the entire subdivision may not exceed 15%.

31 (e) This section does not apply to a trailer park that was in residential use on
32 or before December 1, 1985 in the Chesapeake Bay Critical Area or on or before June
33 1, 2002 in the Atlantic Coastal Bays Critical Area.

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

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

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

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

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

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

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

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

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

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

34 (2) (I) **A LOT OR PARCEL LEGALLY DEVELOPED IN**
35 **ACCORDANCE WITH A LOCAL PROGRAM'S APPLICABLE IMPERVIOUS SURFACE**

1 LIMITATIONS AS OF JUNE 30, 2008 MAY BE CONSIDERED LEGALLY
2 NONCONFORMING FOR PURPOSES OF LOT COVERAGE REQUIREMENTS.

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

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

9 2. CONSTRUCTION WAS INITIATED AND AN
10 INSPECTION WAS PERFORMED BY JUNE 30, 2009.

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

16 8-1808.10.

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

19 (1) AN APPLICATION FOR SUBDIVISION WITHIN THE RESOURCE
20 CONSERVATION AREA THAT RECEIVES FINAL LOCAL APPROVAL AFTER JUNE 30,
21 2008; AND

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

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

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

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

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

4 **(II) ALL OTHER LOCAL ZONING AND SUBDIVISION**
 5 **REQUIREMENTS WILL BE SATISFIED.**

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

9 **8-1808.11.**

10 **IMPROVEMENTS TO PROTECT A PERSON'S PROPERTY AGAINST EROSION**
 11 **SHALL CONSIST OF NONSTRUCTURAL SHORELINE STABILIZATION MEASURES**
 12 **THAT PRESERVE THE NATURAL ENVIRONMENT, SUCH AS MARSH CREATION,**
 13 **EXCEPT IN AREAS WHERE THE PERSON CAN DEMONSTRATE TO THE**
 14 **SATISFACTION OF THE DEPARTMENT OF ENVIRONMENT THAT THESE**
 15 **MEASURES ARE NOT FEASIBLE.**

16 **8-1809.**

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

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

25 **2. THE COMMISSION SHALL:**

26 **A. CONSIDER THE LOCAL JURISDICTION'S**
 27 **DETERMINATION OF MISTAKE IN THE EXISTING CRITICAL AREA**
 28 **CLASSIFICATION; AND**

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

33 (ii) The requirement in [paragraph (2)(i) of this subsection]
 34 **SUBPARAGRAPH (I) OF THIS PARAGRAPH** that a [zoning] **CRITICAL AREA** map

1 amendment may be granted only on proof of a mistake does not apply to proposed
2 changes to a [zoning] **CRITICAL AREA** map that:

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

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

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

12 8-1811.

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

23 8-1815.

24 (a) (1) **(I) A LOCAL AUTHORITY MAY OBTAIN ACCESS TO AND**
25 **ENTER A PROPERTY IN ORDER TO IDENTIFY OR VERIFY A SUSPECTED**
26 **VIOLATION, RESTRAIN A DEVELOPMENT ACTIVITY, OR ISSUE A CITATION IF THE**
27 **LOCAL AUTHORITY HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF**
28 **THIS SUBTITLE OR THE LOCAL PROGRAM HAS OCCURRED, IS OCCURRING, OR**
29 **WILL OCCUR.**

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

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

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

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

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

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

15 **(2) (I) [Violators of the provisions of programs approved or adopted**
16 **by the Commission] A PERSON WHO VIOLATES A PROVISION OF AN ORDER,**
17 **PERMIT, PLAN, LOCAL PROGRAM, THIS SUBTITLE, OR REGULATIONS ADOPTED,**
18 **APPROVED, OR ISSUED UNDER THE AUTHORITY OF THIS SUBTITLE shall be**
19 **subject to prosecution or suit by THE CHAIRMAN OR local authorities, who may**
20 **invoke the sanctions and remedies afforded by State or local law.**

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

27 **[(2)] (3) A local authority may request:**

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

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

32 8-1815.1.

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

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

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

8 (2) To restrain the planned violation; or

9 (3) For damages:

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

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

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

16 **Article - Natural Resources**

17 8-1807.

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

20 (1) All waters of and lands under the Chesapeake Bay and its
21 tributaries to the head of tide as indicated on the “**MD IMAP**” State [wetlands maps]
22 **BASE MAP**, and all State and private wetlands designated under Title 16 of the
23 Environment Article; and

24 (2) All land and water areas within 1,000 feet beyond the landward
25 boundaries of State or private wetlands and the heads of tides designated under Title
26 16 of the Environment Article.

27 (b) The initial planning area for determination of the Atlantic Coastal Bays
28 Critical Area consists of:

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 State and private wetlands designated under Title 16 of the
32 Environment Article; and

1 (2) All land and water areas within 1,000 feet beyond the landward
2 boundaries of State or private wetlands and the heads of tides designated under Title
3 16 of the Environment Article.

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

5 (1) The Department of Natural Resources shall prepare a State Base
6 Map that includes a State determined shoreline and edge of tidal wetlands and a
7 digitally generated 1,000-foot Critical Area Boundary overlaid on aerial imagery
8 obtained in 2007 and 2008 as part of the “MD iMap” State Base Map project. Within
9 30 days of the date of official completion of the “MD iMap” State Base Map project,
10 which shall include distribution of the Base Map by the Department of Natural
11 Resources to each local jurisdiction with an approved Critical Area program, the
12 Department shall notify the Critical Area Commission for the Chesapeake and
13 Atlantic Coastal Bays in writing regarding the applicable date of project completion.

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

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

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

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

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

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

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

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

7 (ii) as part of the required 6-year comprehensive review of the
8 local Critical Area program, each local government shall formally amend its Critical
9 Area Maps to reflect the State-determined shoreline and edge of tidal wetlands and a
10 digitally generated 1,000-foot Critical Area boundary as shown on the current "MD
11 iMap" State Base Map in effect at that time.

12 SECTION 4. AND BE IT FURTHER ENACTED, That the provisions of Section
13 2 of this Act shall take effect 24 months after the date of official completion of the "MD
14 iMap" State Base Map project, as specified under Section 3(1) of this Act.

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

17 (1) an initial application for subdivision was submitted before January
18 1, 2008; and

19 (2) a final plat is recorded by December 31, 2008.

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

25 SECTION 7. AND BE IT FURTHER ENACTED, That, subject to the provisions
26 of Section 4 of this Act, this Act shall take effect July 1, 2008.