

SENATE BILL 306

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(PRE-FILED)

4lr0313
CF HB 233

By: **Chair, Education, Energy, and the Environment Committee (By Request – Critical Area Commission)**

Requested: September 15, 2023

Introduced and read first time: January 10, 2024

Assigned to: Education, Energy, and the Environment

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program**
3 **– Climate, Equity, and Administrative Provisions**

4 FOR the purpose of altering the standards for membership on the Critical Area
5 Commission; repealing a certain advisory committee on the Atlantic Coastal Bays
6 Critical Area Program; authorizing the Commission to adopt regulations governing
7 the transfer of development rights, fee in lieu payments, the assessment of and
8 adaption to climate change relevant to the critical area, enhancing resilience in the
9 critical area, and environmental justice and equity initiatives; establishing certain
10 considerations of climate change, resiliency, and equity as general principles and
11 minimum elements of local programs; requiring a local program to give consideration
12 to underserved communities when assessing the suitability of critical areas for
13 certain recreation; requiring local jurisdictions to consider climate change when
14 approving growth allocation decisions; requiring the Commission to consider
15 environmental impacts on underserved or overburdened communities when
16 reviewing growth allocation map amendments; altering certain resource
17 conservation area density standards and requirements; authorizing the purchase of
18 transferable development rights for certain intrafamily transfers; authorizing a
19 certain increase in lot coverage limits under certain circumstances; altering the
20 process for performing the required local jurisdiction comprehensive reviews of
21 critical area programs; establishing standards under which a critical area
22 designation may be changed on proof of mistake and under which a zoning map
23 amendment may be granted; authorizing the Commission to direct a local
24 jurisdiction to correct a program deficiency; establishing a certain remedial process
25 if a local jurisdiction fails to update its critical area program; repealing certain
26 requirements on oil or natural gas production or exploration in the critical area;
27 establishing a process for the preparation, distribution, review, refinement, and
28 formal adoption of the periodic update of statewide base maps; and generally relating
29 to the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, without amendments,
2 Article – Business Regulation
3 Section 19–106(a)(1) and (5)
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2023 Supplement)
- 6 BY repealing and reenacting, without amendments,
7 Article – Environment
8 Section 1–701(a)(1), (5), (7), and (8)
9 Annotated Code of Maryland
10 (2013 Replacement Volume and 2023 Supplement)
- 11 BY repealing and reenacting, with amendments,
12 Article – Natural Resources
13 Section 8–1801, 8–1802(a), 8–1804(a)(1) and (c), 8–1805(b)(1) and (2) and (c),
14 8–1806(a) and (b)(1)(ii), (iii), (x), (xiv)4., (xv), and (xvi)6., 8–1808(a), (b), and
15 (c)(1)(iii)3., 6., 8., 13., 14., and 15. and (4), 8–1808.1(c)(2) and (4)(vi) and (vii)
16 and (e), 8–1808.2(f), 8–1808.3(b) and (f), 8–1808.10(b)(1), 8–1809(g) through
17 (j) and (l) through (s), 8–1811(b)(2), 8–1812, 8–1813.1(d)(5), 8–1814(a) and (b),
18 8–1815(a)(2)(i)1. and (3)(ii), (b), and (e), and 8–1815.1(b) through (e)
19 Annotated Code of Maryland
20 (2023 Replacement Volume and 2023 Supplement)
- 21 BY adding to
22 Article – Natural Resources
23 Section 8–1806(b)(1)(xvii), (xviii), and (xix), 8–1808(c)(1)(iii)16. through 19.,
24 8–1808.1(c)(4)(viii), 8–1809(h), (i), and (k), and 8–1810(e)
25 Annotated Code of Maryland
26 (2023 Replacement Volume and 2023 Supplement)
- 27 BY repealing
28 Article – Natural Resources
29 Section 8–1806(c), 8–1809(k), and 8–1817
30 Annotated Code of Maryland
31 (2023 Replacement Volume and 2023 Supplement)

32 Preamble

33 WHEREAS, Following extensive research and the issuance of a report by the U.S.
34 Environmental Protection Agency that clearly demonstrated the alarming extent of
35 degradation of the Chesapeake Bay, in significant part because of prominent land use and
36 growth patterns, the Critical Area Commission was created in 1984 in order to preserve
37 and restore water quality in the State, to maintain valued wildlife habitat, and to
38 accommodate inevitable growth, and these same legislative concerns were addressed in
39 2002 when the protections of the Critical Area Program were expanded to include the
40 Atlantic Coastal Bays and in 2008 with the comprehensive update to the Critical Area

1 Program; and

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

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

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

10 WHEREAS, After nearly 40 years of operation, the Critical Area Program has
11 effectively influenced thousands of land use decisions, addressed and minimized the
12 adverse impacts of growth associated with hundreds of requests for growth allocation, and
13 represented a comprehensive effort between the State and local governments to enforce a
14 variety of water quality and habitat protection standards; and

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

19 WHEREAS, As a member of the Maryland Commission on Climate Change, the
20 Critical Area Commission is charged with recommending short and long-term strategies
21 and initiatives to better mitigate, prepare for, and adapt to the consequences of climate
22 change; and

23 WHEREAS, Particularly in light of the ongoing, accelerating decline of the State's
24 water quality resources and the loss of valuable shoreline areas due to erosion, sea level
25 rise, and climate change, the Critical Area Commission has a significant role in ensuring
26 the adaptation of Maryland's tidal waters, developed shorelines, and their adjacent
27 resource lands and wildlife habitats to the rapidly evolving climate realities; and

28 WHEREAS, To address the increasing effects on water quality from more frequent
29 and higher-intensity storms, to adjust conservation programs and techniques to the
30 shifting realities of species and habitats, and to accommodate appropriate levels and
31 locations for growth within the critical area, improvements to the Critical Area Program
32 are in order at this time; and

33 WHEREAS, It is in the interest of the citizens of Maryland that the Critical Area
34 Commission ensure the equitable distribution of the environmental benefits and burdens
35 of development, restoration, and mitigation within the critical area and, in doing so, the
36 Commission must also ensure equitable representation and participation in its processes;
37 now, therefore,

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

Article – Business Regulation

19–106.

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

(5) “Underrepresented community” means a community whose members
self-identify:

(i) as Black, African American, Hispanic, Latino, Asian, Pacific
Islander, Native American, Native Hawaiian, or Alaska Native; or

(ii) with one or more of the racial or ethnic groups listed in item (i)
of this paragraph.

Article – Environment

1–701.

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

(5) “Environmental justice” means equal protection from environmental
and public health hazards for all people regardless of race, income, culture, and social
status.

(7) “Overburdened community” means any census tract for which three or
more of the following environmental health indicators are above the 75th percentile
statewide:

(i) Particulate matter (PM) 2.5;

(ii) Ozone;

(iii) National Air Toxics Assessment (NATA) diesel PM;

(iv) NATA cancer risk;

(v) NATA respiratory hazard index;

(vi) Traffic proximity;

(vii) Lead paint indicator;

(viii) National Priorities List Superfund site proximity;

- (ix) Risk Management Plan facility proximity;
- (x) Hazardous waste proximity;
- (xi) Wastewater discharge indicator;
- (xii) Proximity to a Concentrated Animal Feeding Operation (CAFO);
- (xiii) Percent of the population lacking broadband coverage;
- (xiv) Asthma emergency room discharges;
- (xv) Myocardial infarction discharges;
- (xvi) Low-birth-weight infants;
- (xvii) Proximity to emitting power plants;
- (xviii) Proximity to a Toxic Release Inventory (TRI) facility;
- (xix) Proximity to a brownfields site;
- (xx) Proximity to mining operations; and
- (xxi) Proximity to a hazardous waste landfill.

(8) “Underserved community” means any census tract in which, according to the most recent U.S. Census Bureau Survey:

- (i) At least 25% of the residents qualify as low-income;
- (ii) At least 50% of the residents identify as nonwhite; or
- (iii) At least 15% of the residents have limited English proficiency.

Article – Natural Resources

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, **INCLUDING CLIMATE CHANGE**, 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 **AND USES** or an increase in lot coverage is presumed to be contrary to the purpose of this subtitle, because these activities may cause **OR AMPLIFY** adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and the 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 **IN A MANNER IN WHICH BURDENS AND BENEFITS ARE DISTRIBUTED EQUITABLY**;

(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, **AND ENHANCING THE RESILIENCY OF NATURAL RESOURCES IN THE CRITICAL AREA**, 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 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 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;

(11) THERE IS A CRITICAL AND SUBSTANTIAL STATE INTEREST IN DEVELOPING POLICIES AND STRATEGIES TO BETTER MITIGATE, PREPARE FOR, AND ADAPT TO THE CONSEQUENCES OF CLIMATE CHANGE ALONG THE STATE'S SHORELINES, INCLUDING SEA LEVEL RISE, STORM SURGE, PRECIPITATION-INDUCED FLOODING, AND OTHER EXTREME WEATHER EVENTS AND TO ENHANCE THE RESILIENCE OF THE STATE'S SHORELINES BY IDENTIFYING, RESTORING, CREATING, AND CONSERVING EXISTING NATURAL AND NATURE-BASED FEATURES;

(12) THERE IS A CRITICAL AND SUBSTANTIAL STATE INTEREST IN ENSURING THE EQUITABLE DISTRIBUTION OF THE BENEFITS AND BURDENS OF DEVELOPMENT, RESTORATION, MITIGATION, AND CONSERVATION ALONG THE STATE'S SHORELINES AND IN ENSURING EQUITABLE REPRESENTATION AND PARTICIPATION IN THESE PROCESSES; AND

(13) THE INCLUSION OF INCENTIVE-BASED PROGRAMS TO ENSURE DEVELOPMENT IS COMPATIBLE WITH PROJECTED CLIMATE IMPACTS AND COASTAL HAZARDS IS VITAL TO THE STATE'S GOAL OF ADDRESSING CLIMATE RESILIENCY.

(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] **CONSISTENT**, uniform, **AND EQUITABLE** manner subject to State and local leadership, criteria, and oversight.

8-1802.

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

(2) "Atlantic Coastal Bays" means the Assawoman, Isle of Wight, Sinepuxent, Newport, and Chincoteague Bays.

(3) "Atlantic Coastal Bays Critical Area" means the initial planning area identified under § 8-1807 of this subtitle.

(4) “Buffer” means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from manmade disturbances.

(5) “Chesapeake Bay Critical Area” means the initial planning area identified under § 8–1807 of this subtitle.

(6) “CLIMATE RESILIENCY” MEANS THE CAPACITY OF A NATURAL SYSTEM TO MAINTAIN FUNCTION IN THE FACE OF STRESSES IMPOSED BY CLIMATE CHANGE AND TO ADAPT THE NATURAL SYSTEM TO BE BETTER PREPARED FOR FUTURE CLIMATE IMPACTS.

(7) “Commission” means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays established in this subtitle.

[(7)] (8) “Critical Area” means the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area.

[(8)] (9) “Developer” means:

(i) A person who undertakes development as defined in this section;
or

(ii) A person who undertakes development activities as defined in the criteria of the Commission.

[(9)] (10) “Development” means any activity that materially affects the condition or use of dry land, land under water, or any structure.

[(10)] (11) (i) “Dwelling unit” means a single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life.

(ii) “Dwelling unit” includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.

(12) “ENVIRONMENTAL JUSTICE” HAS THE MEANING STATED IN § 1–701 OF THE ENVIRONMENT ARTICLE.

(13) “EQUITY” MEANS PROMOTION OF JUSTICE, IMPARTIALITY, AND FAIRNESS WITHIN THE PROCEDURES, PROCESSES, AND DISTRIBUTION OF RESOURCES BY INSTITUTIONS OR SYSTEMS.

[(11)] (14) “Growth allocation” means the number of acres of land in the

Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local jurisdiction may use to create new intensely developed areas and new limited development areas.

[(12)] (15) “Includes” means includes or including by way of illustration and not by way of limitation.

[(13)] (16) (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)] (17) “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)] (18) (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)] **(16)** of this subsection.

[(16)] (19) “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.

[(17)] (20) (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 gravel, stone, shell, [impermeable] decking, a paver, permeable pavement, or any manmade material.

(ii) “Lot coverage” includes the ground area covered or occupied by a stairway or impermeable deck.

(iii) “Lot coverage” does not include:

1. A fence or wall that is less than 1 foot in width that has not been constructed with a footer;

2. A walkway in the buffer or expanded buffer, including a stairway, that provides direct access to a community or private pier;

3. A wood mulch pathway; or

4. A **PERMEABLE** deck [with gaps to allow water to pass freely].

(21) “NATURAL FEATURES” MEANS COMPONENTS AND PROCESSES PRESENT IN OR PRODUCED BY NATURE, INCLUDING SOIL TYPES, GEOLOGY, SLOPES, VEGETATION, SURFACE WATER, DRAINAGE PATTERNS, AQUIFERS, RECHARGE AREAS, CLIMATE, FLOODPLAINS, AQUATIC LIFE, AND WILDLIFE.

(22) (I) “NATURE-BASED FEATURES” MEANS THOSE SMALL-SCALE NONSTRUCTURAL FEATURES THAT MIMIC CHARACTERISTICS OF NATURAL FEATURES AND ARE CREATED BY HUMAN DESIGN, ENGINEERING, AND CONSTRUCTION TO PROVIDE SPECIFIC SERVICES, INCLUDING COASTAL RISK REDUCTION.

(II) “NATURE-BASED FEATURES” INCLUDES LIVING SHORELINES, OYSTER REEFS, MARSH RESTORATION, AND BUFFERS.

(23) “OVERBURDENED COMMUNITY” HAS THE MEANING STATED IN § 1-701 OF THE ENVIRONMENT ARTICLE.

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

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

[(19)] (25) (i) “Program amendment” means any change or proposed change to an adopted program that is not determined by the Commission [chairman] CHAIR 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.

[(20)] (26) (i) “Program refinement” means any change or proposed change to an adopted program that the Commission [chairman] CHAIR 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.

[(21)] (27) (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 **PRELIMINARY AND FINAL** 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.

(28) “RESILIENCY” MEANS THE ABILITY TO ADAPT TO CHANGING CONDITIONS AND WITHSTAND AND RAPIDLY RECOVER FROM DISRUPTION DUE TO EMERGENCIES.

[(22)] (29) (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)] (30) “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.

(31) “UNDERREPRESENTED COMMUNITY” HAS THE MEANING STATED IN § 19–106 OF THE BUSINESS REGULATION ARTICLE.

(32) “UNDERSERVED COMMUNITY” HAS THE MEANING STATED IN § 1–701 OF THE ENVIRONMENT ARTICLE.

8–1804.

(a) (1) The Commission consists of 29 voting members who **REFLECT THE DIVERSITY OF THE STATE AND** are appointed by the Governor, as follows:

(i) A full-time [chairman] **CHAIR**, appointed with the advice and

1 consent of the Senate, who shall serve at the pleasure of the Governor;

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

8 1. 1 from each of Baltimore City and Anne Arundel,
9 Baltimore, and Prince George's counties;

10 2. 1 from Harford County or Cecil County;

11 3. 1 from Kent County or Queen Anne's County;

12 4. 1 from Caroline County;

13 5. 1 from Talbot County or Dorchester County;

14 6. 1 from Wicomico County or Somerset County;

15 7. 2 from Calvert County, Charles County, or St. Mary's
16 County, both of whom may not be from the same county; and

17 8. 2 from Worcester County, 1 of whom shall be a resident of
18 the Chesapeake Bay Watershed and the other of whom shall be a resident of the Atlantic
19 Coastal Bays Watershed;

20 (iii) 8 individuals, appointed with the advice and consent of the
21 Senate, who shall represent diverse interests, **INCLUDING UNDERREPRESENTED**
22 **COMMUNITIES**, and among whom shall be a resident from each of the 5 counties that are
23 listed and from which an appointment has not been made under item (ii) of this paragraph
24 and 3 of the 8 members appointed under this item shall be at large members, 1 of whom
25 shall be a private citizen and resident of the Atlantic Coastal Bays Watershed; and

26 (iv) The Secretaries of Agriculture, Commerce, Housing and
27 Community Development, the Environment, Transportation, Natural Resources, and
28 Planning, ex officio, or the designee of the Secretaries.

29 (c) Except for the [chairman] **CHAIR** and ex officio State officers or their
30 representatives:

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

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

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

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

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

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

14 8–1805.

15 (b) (1) The [chairman] **CHAIR** with the approval of the Commission shall
16 appoint an Executive Director for the Commission.

17 (2) The Executive Director serves at the pleasure of the [chairman] **CHAIR**
18 and is entitled to the salary provided in the State budget.

19 (c) The Attorney General shall designate an assistant Attorney General to advise
20 and represent the [chairman] **CHAIR** and the Commission.

21 8–1806.

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

24 (1) In accordance with Title 2, Subtitle 5 (Joint Committee on
25 Administrative, Executive and Legislative Review) and Title 10, Subtitle 1 (Administrative
26 Procedure Act) of the State Government Article, to adopt and amend regulations as
27 authorized under this subtitle for the administration and enforcement of the State and local
28 programs;

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

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

32 (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) Regulations adopted or amended under subsection (a)(1) of this section shall:

(1) Establish comprehensive standards and procedures for:

(ii) [Buffer exemption areas] **MODIFIED BUFFER AREAS;**

(iii) Impacts of [shore erosion control] **SHORELINE STABILIZATION** activities on the buffer;

(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. **THE TRANSFER OF DEVELOPMENT RIGHTS;**

4. Flexibility for redevelopment;

[4.] **5.** Stormwater management;

[5.] **6.** Application of the 10% pollutant reduction rule;

[6.] **7.** Forest and developed woodlands protections;

[7.] **8.** Clearing of natural vegetation;

[8.] **9.** Lot coverage standards;

[9.] **10.** Commission review of local provisions for lot consolidation; and

[10.] **11.** The exclusion of State tidal wetlands from calculations of density, forest and developed woodlands protections, limitations on clearing natural vegetation, and lot coverage standards;

(xiv) Directives for local program development and implementation, with respect to:

4. Reporting requirements, **INCLUDING ACCOUNTING OF FEE IN LIEU FUNDS;**

(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:

6. Notice of a variance decision; [and]

**(XVII) ASSESSING AND ADAPTING THE CRITICAL AREA TO
CLIMATE-RELATED CHANGES INCLUDING SEA LEVEL RISE, WETLAND MIGRATION,
STORM SURGE, PRECIPITATION-INDUCED FLOODING, AND OTHER EXTREME
WEATHER EVENTS;**

**(XVIII) ENHANCING THE RESILIENCE OF THE CRITICAL AREA BY
PROTECTING, CREATING, AND RESTORING NATURAL AND NATURE-BASED
FEATURES; AND**

**(XIX) ENVIRONMENTAL JUSTICE AND EQUITY INITIATIVES
THAT:**

**1. ADDRESS DISPARATE IMPACTS OF DEVELOPMENT;
AND**

**2. ENSURE THE BENEFITS OF DEVELOPMENT,
RESTORATION, MITIGATION, AND CONSERVATION ARE SHARED EQUITABLY; AND**

[(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.

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

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

(ii) Each local jurisdiction shall submit to the Governor a detailed
request for funds that are equivalent to the additional costs incurred in developing the
program under this section.

(iii) The Governor shall include in the fiscal year 2003 budget a sum
of money to be used for grants to reimburse local jurisdictions in the Atlantic Coastal Bays
Critical Area for the reasonable costs of developing a program under this section.

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

(3) (I) FOR EACH FISCAL YEAR, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION TO PROVIDE GRANTS TO ASSIST LOCAL JURISDICTIONS TO INCORPORATE CLIMATE RESILIENCY AND EQUITABLE PLANNING INTO AN UPDATED LOCAL PROGRAM.

(II) BY MAY 1 OF EACH YEAR, A LOCAL JURISDICTION SHALL SUBMIT TO THE COMMISSION A DETAILED REQUEST FOR FUNDING UNDER THIS PARAGRAPH.

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

(1) [To minimize] **MINIMIZE** adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

(2) [To conserve] **CONSERVE** fish, wildlife, and plant habitat; [and]

(3) [To establish] **ESTABLISH** land use policies for development in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts;

(4) REDUCE VULNERABILITY TO THE IMPACTS OF CLIMATE CHANGE AND INCORPORATE MEASURES TO IMPROVE THE RESILIENCY OF THE CHESAPEAKE AND ATLANTIC COASTAL BAYS AND ITS TRIBUTARIES; AND

(5) ENSURE AN EQUITABLE DISTRIBUTION OF THE BURDENS AND BENEFITS OF DEVELOPMENT, MITIGATION, RESTORATION, CONSERVATION, AND ADAPTATION TO CLIMATE CHANGE WITHIN THE CRITICAL AREA.

(c) (1) (iii) At a minimum, a program shall contain all of the following elements, including:

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] **ORDINANCES** or regulations **THAT**
4 **AFFECT DEVELOPMENT IN THE CRITICAL AREA;**

5 D. Provisions relating to enforcement; and

6 E. Provisions as appropriate relating to [grandfathering of]
7 development [at the time] **RIGHTS THAT PREDATE** the program [is] **AS** adopted or
8 approved by the Commission, including provisions for bringing lands into conformance with
9 the Program as required under item 12 of this subparagraph;

10 6. Establishment of buffer areas along shorelines within
11 which agriculture will be permitted only if **AN AGRICULTURAL** best management
12 [practices are] **PRACTICE IS** used, provided that structures or any other use of land which
13 is necessary for adjacent agriculture shall also be permitted in any buffer area;

14 8. [Designation] **ASSESSMENT AND MAPPING** of shoreline
15 areas, if any, that are suitable for parks, hiking, biking, wildlife refuges, scenic drives,
16 public access or assembly, and water-related recreation such as boat slips, piers, and
17 beaches, **WITH CONSIDERATION GIVEN TO UNDERSERVED COMMUNITIES;**

18 13. Except as provided in subsection (d) of this section,
19 provisions for granting a variance to the local jurisdiction's critical area program, in
20 accordance with regulations adopted by the Commission concerning variances set forth in
21 **[COMAR 27.01.11] COMAR 27.01.12;**

22 14. Penalty provisions establishing that, in addition to any
23 other penalty applicable under State or local law, each person who violates a provision of
24 this subtitle or of a program, including a contractor, property owner, or any other person
25 who committed, assisted, authorized, or participated in the violation is subject to a fine not
26 exceeding \$10,000; [and]

27 15. Administrative enforcement procedures in accordance
28 with due process principles, including notice and an opportunity to be heard, and
29 establishing that:

30 A. Each violation of this subtitle or of a regulation, rule,
31 order, program, or other requirement adopted under the authority of this subtitle
32 constitutes a separate offense;

33 B. Each calendar day that a violation continues constitutes a
34 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 shall impose the amount of the penalty;

F. 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 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;

16. PROVISIONS FOR:

A. IDENTIFYING AREAS VULNERABLE TO CLIMATE CHANGE;

B. MITIGATION AND ADAPTATION MEASURES THAT ADDRESS SEA LEVEL RISE, STORM SURGE, PRECIPITATION-INDUCED FLOODING, OTHER EXTREME WEATHER EVENTS, MIGRATING WETLANDS, AND COASTAL FORESTS; AND

C. ENHANCING THE RESILIENCY OF THE CRITICAL AREA BY IDENTIFYING, RESTORING, AND CREATING AND CONSERVING EXISTING AND PROJECTED FUTURE NATURAL AND NATURE-BASED FEATURES;

17. PROVISIONS FOR:

A. IDENTIFYING UNDERSERVED AND OVERBURDENED COMMUNITIES WITHIN THE CRITICAL AREA;

B. MEASURES TO ENSURE THE EQUITABLE DISTRIBUTION OF THE BENEFITS AND BURDENS OF DEVELOPMENT, RESTORATION, AND MITIGATION WITHIN THE CRITICAL AREA; AND

C. ENSURING EQUITY IN THE PUBLIC PARTICIPATION

1 **PROCESS;**

2 **18. PROVISIONS TO ENSURE PUBLIC ACCESS TO THE**
3 **WATER, SHORELINE, AND OTHER NATURAL AREAS FOR UNDERSERVED OR**
4 **OVERBURDENED COMMUNITIES; AND**

5 **19. METHODS TO ENSURE EFFECTIVE ALLOCATION,**
6 **ACCOUNTING, AND REPORTING OF FEE IN LIEU FUNDS.**

7 (4) A local jurisdiction may not issue a permit, approval, variance, or
8 special exception **THAT IS SUBJECT TO THE VIOLATION**, unless the person seeking the
9 permit, approval, variance, or special exception has:

10 (i) Fully paid all administrative, civil, and criminal penalties
11 imposed under paragraph (1)(iii)15 of this subsection;

12 (ii) Prepared a restoration or mitigation plan, approved by the local
13 jurisdiction, to abate impacts to water quality or natural resources as a result of the
14 violation; and

15 (iii) Performed the abatement measures in the approved plan in
16 accordance with the local critical area program.

17 8–1808.1.

18 (c) (2) When locating new intensely developed or limited development areas,
19 local jurisdictions shall use the following standards:

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

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

24 (iii) Locate a new limited development area or an intensely developed
25 area in a manner that minimizes impacts to a habitat protection area as defined in COMAR
26 27.01.09, and in an area and manner that optimizes benefits to water quality;

27 (iv) Locate a new intensely developed area or a limited development
28 area in a resource conservation area at least 300 feet beyond the landward edge of tidal
29 wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission
30 approves, alternative measures for enhancement of water quality and habitat that provide
31 greater benefits to the resources;

32 (v) Locate new intensely developed areas and limited development
33 areas in a manner that minimizes their impacts to the defined land uses of the resource

1 conservation area;

2 (vi) **LOCATE NEW INTENSELY DEVELOPED AREAS AND LIMITED**
3 **DEVELOPMENT AREAS OUTSIDE OF AREAS VULNERABLE TO CLIMATE CHANGE**
4 **UNLESS THE LOCAL JURISDICTION PROPOSES AND THE COMMISSION APPROVES:**

5 **1. AREAS IDENTIFIED BY THE LOCAL JURISDICTION AS**
6 **VULNERABLE TO CLIMATE CHANGE AS REQUIRED UNDER § 8–1808(C)(1)(III)16 OF**
7 **THIS SUBTITLE; AND**

8 **2. MEASURES THAT:**

9 **A. ASSESS CLIMATE RESILIENCY AND VULNERABILITY;**
10 **AND**

11 **B. INCORPORATE SITING, DESIGN, CONSTRUCTION, AND**
12 **OTHER NATURAL FEATURES TO SIGNIFICANTLY ENHANCE RESILIENCY AND REDUCE**
13 **VULNERABILITY;**

14 **(VII)** Except as provided in item **[(viii)] (IX)** of this paragraph, no more
15 than one-half of the expansion allocated in the criteria of the Commission may be located
16 in resource conservation areas;

17 **[(vii)] (VIII)** New intensely developed or limited development areas
18 involving the use of growth allocation shall conform to all criteria of the Commission and
19 shall be designated on the comprehensive zoning map submitted by the local jurisdiction
20 as part of its application to the Commission for program approval or at a later date in
21 compliance with § 8–1809(g) of this subtitle; and

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

31 (4) In reviewing map amendments or refinements involving the use of
32 growth allocation, the Commission shall consider the following factors:

33 (vi) Environmental impacts associated with wastewater and
34 stormwater management practices and wastewater and stormwater discharges to tidal
35 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) ENVIRONMENTAL IMPACTS ON UNDERSERVED OR OVERBURDENED COMMUNITIES.

(e) (1) Except as authorized under paragraph (2) of this subsection, in calculating the 1-in-20 acre density of development that is permitted on a parcel located within the resource conservation area, a local jurisdiction:

(i) Shall count each dwelling unit; and

(ii) May permit the area of any private wetlands located on the property to be included, under the following conditions:

1. [The density of development on the upland portion of the parcel may not exceed one dwelling unit per 8 acres] **ONLY WHEN USING TRANSFER OF DEVELOPMENT RIGHTS**; and

2. The area of private wetlands shall be [estimated on the basis of vegetative information as designated on the State wetlands maps] **FIELD DELINEATED WHEN CERTIFYING DEVELOPMENT RIGHTS FOR TRANSFER.**

(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. **DOES NOT REQUIRE A VARIANCE TO ANY CRITICAL AREA DEVELOPMENT STANDARDS; AND**

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

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

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

[2. A.] B. I. Is located within the primary dwelling unit;

[B.] II. By its construction, does not increase the amount of

1 lot coverage already attributed to the primary dwelling unit **BY GREATER THAN 900**
2 **SQUARE FEET**; and

3 [C.] III. Is served by the same sewage disposal system as the
4 primary dwelling unit.

5 (ii) The provisions of this paragraph may not be construed to require
6 a local jurisdiction to consider an additional dwelling unit as part of a primary dwelling
7 unit for the purpose of the density calculation under this subsection.

8 (iii) An additional dwelling unit meeting all the criteria under
9 subparagraph (i) of this paragraph that is separate from the primary dwelling unit may not
10 be subdivided or conveyed separately from the primary dwelling unit.

11 (3) [The provisions of this subsection:

12 (i) Apply to density calculations only; and

13 (ii) May not be construed to authorize a local jurisdiction to grant a
14 variance, unless the variance is granted in accordance with the requirements of § 8–1808(d)
15 of this subtitle] **AN ADDITIONAL DWELLING UNIT THAT EXCEEDS 900 SQUARE FEET**
16 **SHALL COUNT TOWARDS THE DENSITY CALCULATION.**

17 8–1808.2.

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

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

22 (ii) A lot created by a bona fide intrafamily transfer may not be
23 conveyed subsequently to any person other than a member of the owner's immediate family,
24 except under procedures established pursuant to subsection (g) of this section **OR**
25 **THROUGH THE PURCHASE OF A TRANSFERABLE DEVELOPMENT RIGHT.**

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

28 8–1808.3.

29 (b) Lot coverage in the buffer may not exceed the minimum amount necessary for
30 water-dependent [facilities] **USES**, regardless of the critical area classification or the size
31 of the parcel or lot, except:

32 (1) For a [buffer exemption area] **MODIFIED BUFFER 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.

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

(1) Lot coverage associated with new development activities on the property has been minimized;

(2) For a lot or parcel one-half acre or less in size, total lot coverage does not exceed 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 lot coverage does not exceed 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 new development 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 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; AND

(6) FOR DEVELOPMENT THAT USES PERVIOUS MATERIALS THAT HAVE BEEN APPROVED BY THE COMMISSION AS PART OF A LOCAL PROGRAM, THE LIMITS ESTABLISHED IN ITEMS (2) AND (3) OF THIS SUBSECTION MAY BE EXCEEDED BY UP TO 500 SQUARE FEET.

8-1808.10.

(b) (1) Except as provided under subsection (c) of this section, the minimum buffer shall be:

(i) 200 feet **LANDWARD** from tidal waters or a tidal wetland; and

(ii) 100 feet **LANDWARD** from a tributary stream.

8-1809.

(g) Each local jurisdiction shall [review]:

(1) REVIEW its entire program and propose any necessary amendments to its entire program, including local zoning maps, at least every [6 years. Each local jurisdiction shall send] **10 YEARS; AND**

(2) SEND in writing to the Commission, within 60 days after the completion of its review, the following information:

[(1)] (I) A statement certifying that the required review has been accomplished;

[(2)] (II) Any necessary requests for program amendments, program refinements, or other matters that the local jurisdiction wishes the Commission to consider;

[(3)] (III) An updated resource inventory; and

[(4)] (IV) A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.

(H) ON REQUEST OF A LOCAL JURISDICTION AND FOR GOOD CAUSE, THE COMMISSION MAY EXTEND THE DEADLINE UNDER SUBSECTION (G) OF THIS SECTION FOR THAT LOCAL JURISDICTION BY NOT MORE THAN TWO 6-MONTH EXTENSIONS.

(I) A LOCAL JURISDICTION THAT DOES NOT MEET THE DEADLINE UNDER SUBSECTION (G)(1) OF THIS SECTION OR AFTER THE EXPIRATION OF ANY EXTENSION GRANTED UNDER SUBSECTION (H) OF THIS SECTION MAY NOT PROPOSE AN AMENDMENT OR REFINEMENT UNDER SUBSECTION (J) OF THIS SECTION.

[(h)] (J) (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)]** Except for program amendments or program refinements developed during program review under subsection (g) of this section, a zoning map amendment may be granted by a local approving authority only on proof of a mistake in the existing zoning.

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

1. Are wholly consistent with the land classifications in the

1 adopted program; or

2 2. Propose the use of a part of the remaining growth
3 allocation in accordance with the adopted program] **A CHANGE TO A CRITICAL AREA**
4 **DESIGNATION MAY BE GRANTED BY A LOCAL APPROVING AUTHORITY ON PROOF OF**
5 **MISTAKE IF THE PROPOSED CRITICAL AREA CLASSIFICATION:**

6 (I) CONFORMS TO THE STATE CRITICAL AREA MAPPING
7 CRITERIA;

8 (II) 1. IS BASED ON LAND USES OR NATURAL FEATURES IN
9 EXISTENCE AS OF DECEMBER 1, 1985; OR

10 2. FOR AREAS INCLUDED IN THE CRITICAL AREA DUE TO
11 REMAPPING, IS BASED ON LAND USES OR NATURAL FEATURES IN EXISTENCE AT THE
12 TIME OF THE REMAPPING; AND

13 (III) FOLLOWS THE LOCAL JURISDICTION'S MAPPING
14 METHODOLOGY FOR CRITICAL AREA CLASSIFICATIONS AT THE TIME OF ORIGINAL
15 PROGRAM ADOPTION.

16 (K) A ZONING MAP AMENDMENT MAY BE GRANTED IF THE ZONING MAP
17 AMENDMENT:

18 (1) IS WHOLLY CONSISTENT WITH THE LAND CLASSIFICATIONS IN
19 THE ADOPTED PROGRAM;

20 (2) PROPOSES THE USE OF A PART OF THE REMAINING GROWTH
21 ALLOCATION IN ACCORDANCE WITH THE ADOPTED PROGRAM; OR

22 (3) PROPOSES TO CHANGE THE LAND CLASSIFICATION FROM EITHER
23 AN INTENSELY DEVELOPED AREA TO A LIMITED DEVELOPMENT AREA OR A
24 RESOURCE CONSERVATION AREA, OR A LIMITED DEVELOPMENT AREA TO A
25 RESOURCE CONSERVATION AREA.

26 [(i)] (L) A program may not be amended except with the approval of the
27 Commission.

28 [(j)] (M) The Commission shall approve programs and program amendments
29 that meet:

30 (1) The standards set forth in § 8-1808(b)(1) through [(3)] (4) of this
31 subtitle; and

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

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

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

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

(ii) [Request] **DIRECT** that the jurisdiction submit a proposed program amendment or program refinement to correct the deficiency.

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

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

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

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

(i) [Mail a notification to] **NOTIFY IN WRITING** the local jurisdiction that the proposal has been accepted for processing; or

(ii) Return the proposal as incomplete.

[(n)] (P) A local jurisdiction may specify whether it intends a proposed change to be a program amendment or program refinement. However, the Commission shall treat a proposed change as a program amendment unless the [chairman] **CHAIR** determines that the proposed change is a program refinement.

[(o)] (Q) (1) (I) 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 130 days of the Commission's acceptance of the proposal **UNLESS THE LOCAL JURISDICTION REQUESTS, AND THE CHAIR APPROVES, AN EXTENSION.**

(II) ~~[(If) UNLESS THE LOCAL JURISDICTION REQUESTS, AND THE CHAIR APPROVES, AN EXTENSION, IF]~~ action by the Commission is not taken within 130 days, the proposed program amendment is deemed approved.

(2) The Commission shall determine if the proposed amendment is consistent with the purposes, policies, goals, and the provisions of this subtitle, and all criteria of the Commission.

(3) In accordance with the Commission's determination in paragraph (2) of this subsection, the Commission shall:

(i) Approve the proposed program amendment and notify the local jurisdiction;

(ii) Deny the proposed program amendment;

(iii) Approve the proposed program amendment subject to one or more conditions; or

(iv) Return the proposed program amendment to the local jurisdiction with a list of the changes to be made.

(4) If the Commission approves a proposed program amendment subject to one or more conditions under item (3)(iii) of this subsection, the local jurisdiction shall notify the Commission within 60 days of its intent to adopt the conditions.

(5) The local jurisdiction shall incorporate the approved program amendment and any required conditions into the adopted program within 120 days of receiving notice from the Commission that the program amendment has been approved.

~~[(p)] (R)~~ (1) Proposed program refinements shall be determined as provided in this subsection.

(2) (i) Within 30 days of the Commission's acceptance of a proposal to change an adopted program, the ~~[chairman]~~ CHAIR, on behalf of the Commission, may determine that the proposed change is a program refinement. ~~[Immediately upon making a determination under this paragraph, the chairman]~~

(II) THE CHAIR shall notify the Commission of that determination AT THE NEXT MEETING OR A SUBSEQUENT MEETING IF THE LOCAL JURISDICTION REQUESTS, AND THE CHAIR APPROVES, AN EXTENSION.

~~[(ii)] (III)~~ If a proposed change that was specifically submitted as a program refinement is not acted on by the ~~[chairman]~~ CHAIR within the 30-day period, the Commission shall notify the appropriate local jurisdiction that the proposed change has

1 been deemed to be a program amendment.

2 (3) (i) The Commission may vote to override the [chairman's] CHAIR'S
3 determination only at the first Commission meeting where a quorum is present following
4 the [chairman's determination] CHAIR'S NOTIFICATION TO THE COMMISSION.

5 (ii) If the [chairman's] CHAIR'S determination is overridden, the
6 proposed change is deemed a program amendment, which shall be decided by the
7 Commission in accordance with the procedures for program amendments provided in this
8 section, except that the Commission shall act on the program amendment within [60] 90
9 days after a vote to override the [chairman] CHAIR.

10 (iii) If the [chairman's] CHAIR'S determination is not overridden,
11 within 10 working days after the opportunity to override the [chairman's] CHAIR'S decision
12 under item (i) of this paragraph, the [chairman, on behalf of the Commission,] CHAIR shall:

13 1. Determine if the program refinement is consistent with
14 the purposes, policies, goals, and provisions of this subtitle, and all criteria of the
15 Commission; and

16 2. A. Approve the proposed program refinement and
17 notify the local jurisdiction;

18 B. Deny the program refinement;

19 C. Approve the proposed program refinement subject to one
20 or more conditions; or

21 D. Return the proposed program refinement back to the local
22 jurisdiction with a list of the changes to be made.

23 (iv) If the [Commission] CHAIR approves a proposed program
24 refinement subject to one or more conditions under item (iii)3 of this paragraph, the local
25 jurisdiction shall notify the Commission within 60 days of its intent to adopt the conditions.

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

29 [(q)] (S) (1) (i) As necessary, a local jurisdiction may combine any or all
30 proposed program amendments or program refinements required for a specific project
31 approval into a single request to the Commission for program amendment, program
32 refinement, or both.

33 (ii) The Commission shall ensure that any requests received in
34 accordance with this paragraph are consistent with the purposes, policies, goals, and

provisions of this subtitle, and all criteria of the Commission.

(2) A project for which a local jurisdiction requests growth allocation may be submitted as a proposed program amendment, program refinement, or both.

(3) Approval by the Commission of a program amendment, program refinement, or both does not affect the Commission's authority to receive notice of or intervene in a project approval that was not specifically approved by the Commission as part of its approval of a program amendment or program refinement.

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

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

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

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

8–1810.

(E) IF A LOCAL JURISDICTION HAS FAILED TO UPDATE AN ADOPTED PROGRAM IN ACCORDANCE WITH § 8–1809(G) OF THIS SUBTITLE:

(1) THE LOCAL JURISDICTION SHALL ADOPT AN UPDATE TO THE LOCAL PROGRAM WITHIN 1 YEAR OF NOTICE FROM THE COMMISSION; OR

(2) THE COMMISSION MAY UPDATE THE LOCAL PROGRAM.

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 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.

8-1812.

(a) After the Commission has approved or adopted a program, the [chairman] **CHAIR** of the Commission has standing and the right and authority to initiate or intervene in any administrative, judicial, or other original proceeding or appeal in this State concerning a project approval in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area. The [chairman] **CHAIR** may exercise this intervention authority without first obtaining approval from the Commission, but the [chairman] **CHAIR** shall send prompt written notice of any intervention or initiation of action under this section to each member of the Commission. The [chairman] **CHAIR** shall withdraw the intervention or action initiated if, within 35 days after the date of the [chairman's] **CHAIR'S** notice, at least 13 members indicate disapproval of the action, either in writing addressed to the [chairman] **CHAIR** or by vote at a meeting of the Commission. A member representing the local jurisdiction affected by the [chairman's] **CHAIR'S** intervention or action may request a meeting of the Commission to vote on the [chairman's] **CHAIR'S** intervention or action.

(b) Except as stated in this subtitle, the [chairman] **CHAIR** is subject to general laws and rules of procedure that govern the time within and manner in which the authority granted in subsection (a) of this section may be exercised.

(c) The [chairman] **CHAIR** may appeal an action or decision even if the [chairman] **CHAIR** was not a party to or is not specifically aggrieved by the action or decision.

8-1813.1.

(d) A local jurisdiction may include in the jurisdiction's local critical area protection program, to be approved by the Commission, an alternative buffer provision for the development of a planned unit development in accordance with the planned unit development's Step III approval, provided that:

(5) At least 75% of the dwelling units in the planned unit development comply with the buffer requirements in COMAR 27.01.09.01 and no dwelling unit has a buffer of less than 50 feet **LANDWARD** from existing or proposed tidal waters, tidal wetlands, or tributary streams.

8-1814.

(a) After 760 days have elapsed from the date upon which criteria adopted by the Commission become effective, any State or local agency that proposes development which has not been subject to project approval by the local jurisdiction under an approved program, including buildings, treatment plants, roads, railroads, and airports, in the Chesapeake Bay Critical Area **AND ATLANTIC COASTAL BAYS CRITICAL AREA** shall, before the State or local agency begins the development, receive the approval of the Commission in accordance with procedures or exceptions set forth in regulations adopted by the Commission using the standards set forth in § 8-1808(b)(1) through (3) of this

1 subtitle. These regulations shall be adopted on or before September 1, 1987, and only after
2 consultation with affected State and local agencies.

3 (b) The Secretary **AND THE SECRETARY OF THE ENVIRONMENT** shall consult
4 with the Commission in making consistency determinations under the Federal Coastal
5 Zone Management Program.

6 8-1815.

7 (a) (2) (i) A person who violates a provision of an order, permit, plan, local
8 program, this subtitle, or regulations adopted, approved, or issued under the authority of
9 this subtitle shall be:

10 1. Subject to prosecution or suit in circuit court or District
11 Court by the [chairman] **CHAIR** or local authorities, who may invoke the sanctions and
12 remedies afforded by State or local law;

13 (3) A local authority may request:

14 (ii) That the [chairman] **CHAIR** refer an enforcement action to the
15 Attorney General.

16 (b) Whenever the [chairman] **CHAIR** has reason to believe that a local jurisdiction
17 is failing to enforce the requirements of a program applicable to a particular development,
18 the [chairman] **CHAIR** shall serve notice upon the local enforcement authorities. If within
19 30 days after service of the notice, the local authorities have failed to initiate an action to
20 remedy or punish the violation, the [chairman] **CHAIR** may refer the matter to the Attorney
21 General.

22 (e) Notwithstanding any other provision of this section, whenever a development
23 in the **CHESAPEAKE BAY CRITICAL AREA OR ATLANTIC COASTAL BAYS** Critical Area
24 is proceeding in violation of approved project plans and threatens to immediately and
25 irreparably degrade the quality of tidal waters or fish, wildlife, or plant habitat, the
26 Attorney General, upon request of the [chairman] **CHAIR**, may bring an action to restrain
27 the violation and, as appropriate, to compel restoration of any land or water areas affected
28 by the development.

29 8-1815.1.

30 (b) If a person cuts or clears or plans to cut or clear trees within the Chesapeake
31 Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of an approved local
32 critical area program or of regulations adopted by the Commission, the [chairman] **CHAIR**
33 may bring an action, or the local jurisdiction may bring an action or request that the
34 [chairman] **CHAIR** of the Commission refer the matter to the Attorney General to bring an
35 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.

(c) If the [chairman] **CHAIR** of the Commission has reason to believe that the local jurisdiction is failing to enforce the requirements of subsection (b) of this section, the [chairman] **CHAIR** shall refer the matter to the Attorney General as provided under § 8–1815(b) of this subtitle.

(d) On the [chairman] **CHAIR** of the Commission's referral of an alleged violation under subsection (c) of this section to the Attorney General, the Attorney General may invoke the remedies available to the local jurisdiction under subsection (b) of this section in any court of competent jurisdiction in which the local jurisdiction would be authorized to prosecute or sue.

(e) On the request of a local jurisdiction or the [chairman] **CHAIR** of the Commission, the State Forester, a registered professional forester, or a registered landscape architect may prepare, oversee, and approve the final implementation of a plan to:

(1) Replant trees in any part of the Chesapeake Bay Critical Area where trees in the Chesapeake Bay Critical Area are cut or cleared in violation of subsection (b) of this section; and

(2) Replant trees in any part of the Atlantic Coastal Bays Critical Area where trees in the Atlantic Coastal Bays Critical Area are cut or cleared in violation of subsection (b) of this section.

[8–1817.

(a) By January 1, 1994, the Commission shall adopt criteria that assure the protection of land and water resources in the Critical Area and that shall apply throughout the Critical Area for:

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

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

(b) (1) In addition to other applicable provisions of law, an applicant for any production or exploratory drilling that will occur on, in, under, or through the Critical Area, including wells drilled outside the Critical Area by a method known as slant drilling that will pass through the Critical Area, shall complete and submit with the application an environmental impact study that addresses the potential for any adverse environmental effects on the Critical Area as a result of the drilling.

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

(ii) The Department shall consider and comment in writing on the objections and concerns of the Commission before issuing a permit under this subsection.】

SECTION 2. AND BE IT FURTHER ENACTED, That on completion of the statewide base map project, as specified under Section 3 of Chapter 119 of the Acts of the General Assembly of 2008, the process for updating the map shall proceed as follows:

(1) in accordance with the following requirements and conditions, the Critical Area Commission, with the assistance of the Department of Natural Resources and the Department of the Environment, shall prepare an update to the statewide base map at appropriate intervals, but not less than every 8 years, 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, under the following standards:

(i) the best available imagery of comparable scale shall be used to identify the shoreline and landward boundary of tidal wetlands as part of the map update;

(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;

(2) a local jurisdiction shall formally adopt its updated critical area map based on the statewide base map within 6 months of its receipt from the Department of Natural Resources and the Commission and may request an extension of time for an additional 6 months if evidence of reasonable progress has been made and is satisfactory to the Commission;

(3) the Commission, with the assistance of each local jurisdiction, shall:

1 (i) designate unclassified areas that were not within the original
2 critical area boundary in accordance with the mapping standards set forth under COMAR
3 27.01.02.03 through 27.01.02.05 and COMAR 27.01.11.05; and

4 (ii) identify areas where there appear to be inconsistencies between
5 the statewide base map and the local jurisdiction's critical area map;

6 (4) a local jurisdiction shall apply the updated State-determined shoreline
7 and landward boundary of tidal wetlands and a digitally generated, georeferenced
8 1,000-foot critical area boundary once it is officially transferred from the Department of
9 Natural Resources and the Commission and shall apply the updates notwithstanding any
10 local approval process; and

11 (5) each local jurisdiction shall ensure that, where applicable, each project
12 submittal uses the updated digitally generated, georeferenced critical area boundary.

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

14 (a) The Department of Natural Resources shall notify the Department of
15 Legislative Services in writing on the date of official completion of the statewide base map
16 project, as required under Section 3 of Chapter 119 of the Acts of the General Assembly of
17 2008.

18 (b) Section 2 of this Act shall take effect 7 days after the Department of Natural
19 Resources provides notice of the official completion of the statewide base map project under
20 subsection (a) of this section.

21 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
22 3 of this Act, this Act shall take effect October 1, 2024.