

10 AN ACT CONCERNING

20 **Chesapeake Bay Critical Area Protection Program**

30 FOR the purpose of altering the requirements for local critical area programs to
40 include certain variance provisions; prohibiting a variance from being granted
50 unless certain conditions are met; requiring a local jurisdiction, in considering an
60 application for a variance, to consider reasonable use of the entire parcel or lot for
70 which the variance is requested; providing that certain provisions of this Act do
80 not apply to certain permits or activities which comply with certain buffer
90 exemption plans or buffer management plans; revising the period of time for the
100 review of certain critical area programs by local jurisdictions; and generally
110 relating to the Chesapeake Bay Critical Area Protection Program.

120 BY repealing and reenacting, without amendments,
130 Article - Natural Resources
140 Section 8-1801
150 Annotated Code of Maryland
160 (2000 Replacement Volume)

170 BY repealing and reenacting, with amendments,
180 Article - Natural Resources
190 Section 8-1808 and 8-1809(g)
200 Annotated Code of Maryland
210 (2000 Replacement Volume)

220 **Preamble**

230 WHEREAS: State lawmakers in 1984 recognized the importance of fostering
240 more sensitive development activity along the shoreline areas of the Chesapeake
250 Bay and its tributaries, from the standpoint of protecting and preserving water
260 quality and natural habitats, with the adoption of the Chesapeake Bay Critical
270 Area Protection Act; and

280 WHEREAS: The grandfathering provisions of the enabling Act and its
290 accompanying criteria provided certain exemptions for grandfathered properties
300 from density limits, the criteria expressly provided that grandfathered properties
310 were not exempt from Habitat Protection Area (HPA) or water-dependent
320 facilities requirements; and

330 WHEREAS: The criteria provide that variances to a jurisdiction's local Critical
340 Area Program may be granted in certain circumstances; and

350 WHEREAS: Recent decisions by the Maryland Court of Appeals have held that
360 a variance may be granted if the regulations would deny development on a
370 specific portion of an applicant's property rather than considering alternative
380 locations on-site; and

390 WHEREAS: The Court of Appeals has ruled that a local Board of Appeals, when
400 determining if denial of a variance would deny an applicant rights commonly
410 enjoyed by others in the Critical Area, may compare a proposal to nonconforming
420 uses or development that predated implementation of a local Critical Area
430 program; and

440 WHEREAS: The Court of Appeals has ruled that an applicant for a variance
450 from Critical Area requirements may generally satisfy the variance standards of a

460 local zoning ordinance, rather than satisfy all of the standards; and

470 WHEREAS: These recent rulings by the Court of Appeals are contrary to the
480 intent of the General Assembly in enacting the Chesapeake Bay Critical Area
490 Protection Act; and

500 WHEREAS: It is the intent of this Act to overrule these recent decisions of the
510 Court of Appeals regarding variances to Critical Area regulations; now, therefore,

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

540 **Article - Natural Resources**

550 **8-1801.**

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

- 570 (1) The Chesapeake Bay and its tributaries are natural resources of
580 great significance to the State and the nation;
- 590 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
600 sensitive part of this estuarine system, where human activity
610 can have a particularly immediate and adverse impact on water
620 quality and natural habitats;
- 630 (3) The capacity of these shoreline and adjacent lands to withstand
640 continuing demands without further degradation to water quality
650 and natural habitats is limited;
- 660 (4) National studies have documented that the quality and productivity
670 of the waters of the Chesapeake Bay and its tributaries have
680 declined due to the cumulative effects of human activity that have
690 caused increased levels of pollutants, nutrients, and toxics in the
700 Bay System and declines in more protective land uses such as
710 forestland and agricultural land in the Bay region;
- 720 (5) Those portions of the Chesapeake Bay and its tributaries within
730 Maryland are particularly stressed by the continuing population
740 growth and development activity concentrated in the Baltimore-
750 Washington metropolitan corridor;
- 760 (6) The quality of life for the citizens of Maryland is enhanced through
770 the restoration of the quality and productivity of the waters of the
780 Chesapeake Bay and its tributaries;
- 790 (7) The restoration of the Chesapeake Bay and its tributaries is
800 dependent, in part, on minimizing further adverse impacts to the
810 water quality and natural habitats of the shoreline and adjacent
820 lands;
- 830 (8) The cumulative impact of current development is inimical to these
840 purposes; and
- 850 (9) There is a critical and substantial State interest for the benefit of
860 current and future generations in fostering more sensitive

870 development activity in a consistent and uniform manner along
880 shoreline areas of the Chesapeake Bay and its tributaries so as to
890 minimize damage to water quality and natural habitats.

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

910 (1) To establish a Resource Protection Program for the Chesapeake
920 Bay and its tributaries by fostering more sensitive development
930 activity for certain shoreline areas so as to minimize damage to
940 water quality and natural habitats; and

950 (2) To implement the Resource Protection Program on a cooperative
960 basis between the State and affected local governments, with local
970 governments establishing and implementing their programs in a
980 consistent and uniform manner subject to State criteria and
990 oversight.

1000 **8-1808.**

1010 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
1020 primary responsibility for developing and implementing a
1030 program, subject to review and approval by the Commission.

1040 (2) The Governor shall include in the budget a sum of money to be
1050 used for grants to reimburse local jurisdictions for the reasonable
1060 costs of developing a program under this section. Each local
1070 jurisdiction shall submit to the Governor by October 31, 1984 a
1080 detailed request for funds that are equivalent to the additional
1090 costs incurred in developing the program under this section.

1100 (3) The Governor shall include in the budget annually a sum of money
1110 to be used for grants to assist local jurisdictions with the
1120 reasonable costs of implementing a program under this section.
1130 Each local jurisdiction shall submit to the Governor by May 1 of
1140 each year a detailed request for funds to assist in the
1150 implementation of a program under this section.

1160 (b) A program shall consist of those elements which are necessary or
1170 appropriate:

1180 (1) To minimize adverse impacts on water quality that result from
1190 pollutants that are discharged from structures or conveyances or
1200 that have run off from surrounding lands;

1210 (2) To conserve fish, wildlife, and plant habitat; and

1220 (3) To establish land use policies for development in the Chesapeake
1230 Bay Critical Area which accommodate growth and also address the
1240 fact that, even if pollution is controlled, the number, movement,
1250 and activities of persons in that area can create adverse
1260 environmental impacts.

1270 (c) At a minimum, a program sufficient to meet the goals stated in subsection
1280 (b) of this section includes:

1290 (1) A map designating the critical area in a local jurisdiction;

- 1300 (2) A comprehensive zoning map for the critical area;
- 1310 (3) As necessary, new or amended provisions of the jurisdiction's:
- 1320 (i) Subdivision regulations;
- 1330 (ii) Comprehensive or master plan;
- 1340 (iii) Zoning ordinances or regulations;
- 1350 (iv) Provisions relating to enforcement; and
- 1360 (v) Provisions as appropriate relating to grandfathering of
1370 development at the time the program is adopted or
1380 approved by the Commission;
- 1390 (4) Provisions requiring that project approvals shall be based on
1400 findings that projects are consistent with the standards stated in
1410 subsection (b) of this section;
- 1420 (5) Provisions to limit the amount of land covered by buildings, roads,
1430 parking lots, or other impervious surfaces, and to require or
1440 encourage cluster development, where necessary or appropriate;
- 1450 (6) Establishment of buffer areas along shorelines within which
1460 agriculture will be permitted only if best management practices are
1470 used, provided that structures or any other use of land which is
1480 necessary for adjacent agriculture shall also be permitted in any
1490 buffer area;
- 1500 (7) Requirements for minimum setbacks for structures and septic
1510 fields along shorelines;
- 1520 (8) Designation of shoreline areas, if any, that are suitable for parks,
1530 hiking, biking, wildlife refuges, scenic drives, public access or
1540 assembly, and water-related recreation such as boat slips, piers,
1550 and beaches;
- 1560 (9) Designation of shoreline areas, if any, that are suitable for ports,
1570 marinas, and industries that use water for transportation or derive
1580 economic benefits from shore access;
- 1590 (10) Provisions requiring that all harvesting of timber in the
1600 Chesapeake Bay Critical Area be in accordance with plans
1610 approved by the district forestry board;
- 1620 (11) Provisions establishing that the controls in a program which are
1630 designed to prevent runoff of pollutants will not be required on
1640 sites where the topography prevents runoff from directly or
1650 indirectly reaching tidal waters; [and]
- 1660 (12) Provisions for reasonable accommodations in policies or
1670 procedures when the accommodations are necessary to avoid
1680 discrimination on the basis of physical disability, including
1690 provisions that authorize a local jurisdiction to require

1700 removal of a structure that was installed or built to accommodate a
1710 physical disability and require restoration when the
1720 accommodation permitted by this paragraph is no longer
1730 necessary; AND

1740 (13) PROVISIONS FOR GRANTING A VARIANCE TO THE
1750 LOCAL JURISDICTION'S CRITICAL AREA PROGRAM, IN
1760 ACCORDANCE WITH REGULATIONS ADOPTED BY THE
1770 COMMISSION CONCERNING VARIANCES SET FORTH IN
1780 COMAR 27.01.011.

1790 (D) (1) A VARIANCE TO A LOCAL JURISDICTION'S CRITICAL
1800 AREA PROGRAM MAY NOT BE GRANTED UNLESS:

1810 (I) DUE TO SPECIAL FEATURES OF A SITE, OR
1820 SPECIAL CONDITIONS OR CIRCUMSTANCES
1830 PECULIAR TO THE APPLICANT'S LAND OR
1840 STRUCTURE, A LITERAL ENFORCEMENT OF THE
1850 CRITICAL AREA PROGRAM WOULD RESULT IN
1860 UNWARRANTED HARDSHIP TO THE APPLICANT;

1870 (II) THE LOCAL JURISDICTION FINDS THAT THE
1880 APPLICANT HAS SATISFIED EACH ONE OF THE
1890 VARIANCE PROVISIONS; AND

1900 (III) WITHOUT THE VARIANCE, THE APPLICANT
1910 WOULD BE DEPRIVED OF A USE OF LAND OR A
1920 STRUCTURE PERMITTED TO OTHERS IN
1930 ACCORDANCE WITH THE PROVISIONS OF THE
1940 JURISDICTION'S CRITICAL AREA PROGRAM.

1950 (2) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A
1960 LOCAL JURISDICTION SHALL CONSIDER THE
1970 REASONABLE USE OF THE ENTIRE PARCEL OR LOT FOR
1980 WHICH THE VARIANCE IS REQUESTED.

1990 (3) THIS SUBSECTION DOES NOT APPLY TO BUILDING
2000 PERMITS OR ACTIVITIES THAT COMPLY WITH A BUFFER
2010 EXEMPTION PLAN OR BUFFER MANAGEMENT PLAN OF
2020 A LOCAL JURISDICTION WHICH HAS BEEN APPROVED
2030 BY THE COMMISSION.

2040 (e) (1) The Commission shall adopt by regulation on or before
2050 December 1, 1985 criteria for program development and approval,
2060 which are necessary or appropriate to achieve the standards stated
2070 in subsection (b) of this section. Prior to developing its criteria and
2080 also prior to adopting its criteria, the Commission shall hold at
2090 least 6 regional public hearings, 1 in each of the following areas:

2100 (i) Harford, Cecil, and Kent counties;

2110 (ii) Queen Anne's, Talbot, and Caroline counties;

2120 (iii) Dorchester, Somerset, and Wicomico counties;

2130 (iv) Baltimore City and Baltimore County;

- 2140 (v) Charles, Calvert, and St. Mary's counties; and
- 2150 (vi) Anne Arundel and Prince George's counties.
- 2160 (2) During the hearing process, the Commission shall consult with
2170 each affected local jurisdiction.
- 2180 (f) Nothing in this section shall impede or prevent the dredging of any
2190 waterway in a critical area. However, dredging in a critical area is subject
2200 to other applicable federal and State laws and regulations.
- 2210 **8-1809.**
- 2220 (g) Each local jurisdiction shall review its entire program and propose any
2230 necessary amendments to its entire program, including local zoning maps,
2240 at least every [4] 6 years [beginning with the 4-year anniversary of the
2250 date that the program became effective and every 4 years after that date]
2260 IN COORDINATION WITH THE REVIEW OF THE
2270 COMPREHENSIVE PLAN BY THE PLANNING COMMISSION AS
2280 REQUIRED UNDER ARTICLE 66B, §§ 1.03(B) AND 3.05(B) OF THE
2290 CODE. Each local jurisdiction shall send in writing to the Commission,
2300 within 60 days after [each 4-year anniversary,] THE COMPLETION OF
2310 ITS REVIEW, the following information:
- 2320 (1) A statement certifying that the required review has been
2330 accomplished;
- 2340 (2) Any necessary requests for program amendments, program
2350 refinements, or other matters that the local jurisdiction wishes the
2360 Commission to consider;
- 2370 (3) An updated resource inventory; and
- 2380 (4) A statement quantifying acreages within each land classification,
2390 the growth allocation used, and the growth allocation remaining.

2400 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2410 October 1, 2002.

2420 MANDATES: Governor Parris N. Glendening
2430 Lieutenant Governor Kathleen Kennedy Townsend
2440 Delegate Ronald A. Guns
2450 Senator Roy P. Dyson
2460 Senator Christopher Van Hollen, Jr.

Sponsor:

The Governor
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