

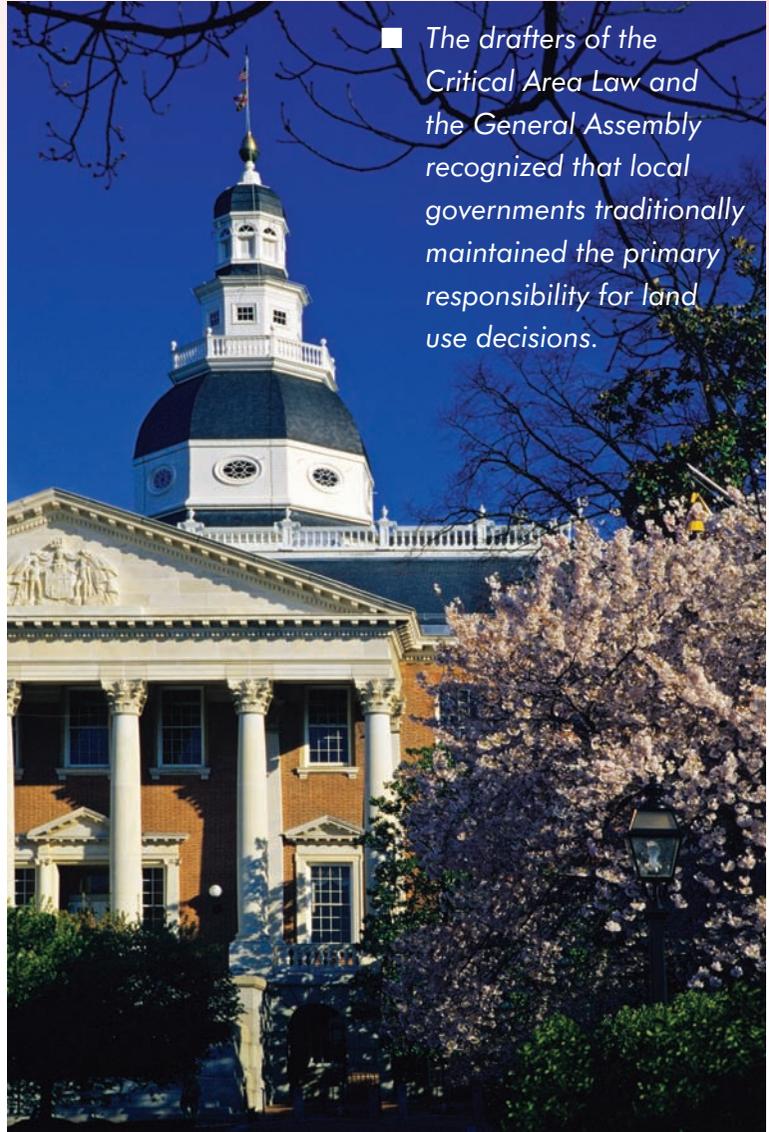
## CHAPTER 2: A UNIQUE RESTORATION AND PRESERVATION PARTNERSHIP

Maryland's Critical Area Program is distinctive not only because of the significant resources that it is designed to protect, but because it is one of only a few regulatory land use programs in the country that involve a cooperative implementation effort between State and local governments. The purpose of this arrangement is to provide local governments with the flexibility needed to address the unique physical, economic, and social characteristics of the particular jurisdiction while ensuring that the goals, purposes, policies, and criteria of Maryland's Critical Area Program are implemented in a consistent and uniform manner throughout the State.

### **A Partnership Involving the State and Local Governments**

The unique partnership between the Critical Area Commission and the affected local jurisdictions evolved from an understanding that State regulations were necessary in order to restore Maryland's Bays. However, it was acknowledged that the key to effective and successful implementation was support at the local government level where plans and programs affecting land use and development activities were traditionally implemented in Maryland. Therefore, the drafters of the Critical Area Law and the General Assembly opted to work toward integrating Maryland's Critical Area Program into existing local plans, programs, and regulations where these already met, or could be modified to meet, the goals and intent of the Program.

What resulted from this approach was that each jurisdiction with its own planning and zoning authority adopted its own local Critical Area program based on the Criteria promulgated by the Commission. The Critical Area Law recognized the primary responsibility of local governments for land use decisions. By implementing the Law in this fashion, local governments were allowed to add to or modify



■ *The drafters of the Critical Area Law and the General Assembly recognized that local governments traditionally maintained the primary responsibility for land use decisions.*

existing zoning and land use regulations, providing the flexibility necessary to accommodate local conditions. As a result, most jurisdictions' Critical Area programs differ substantially from one another. Some jurisdictions incorporate the Critical Area regulations throughout various chapters of their zoning ordinances and codes; others have a separate Critical Area ordinance or Critical Area Manual that functions as a stand-alone document. A third approach is the adoption of specific chapters of zoning ordinances and subdivision regulations dedicated to Critical Area implementation.

- *The Critical Area Commission acknowledges that each jurisdiction has unique qualities, characteristics, and challenges, and that local programs must be able to address these differences.*



## **Local Critical Area Program Development**

Like the development of the Critical Area Criteria, the development of local programs was also subject to time constraints. Each local government was required to develop and submit a program to the Commission by March 1987; and these local programs were to be reviewed, amended, and approved by the Commission by June 1988. The deadline for submittal to the Commission was extended to August 1987, but many jurisdictions did not meet that deadline because of the difficulties and logistics involved in preparing maps, holding public hearings, and addressing the questions and concerns of thousands of affected property owners. In addition to the sheer amount of work that had to be accomplished, local governments were hampered by a lack of resolution on several key programmatic issues such as mapping, growth allocation, Buffer provisions, and exclusions. Ultimately, after many months of intense effort by the Critical Area Commission and local governments, all jurisdictions that were required to have a local program had one in place by 1990.

Local Critical Area programs were, and continue to be, as different as the jurisdictions that implement them. In every case, the Critical Area Commission makes a concerted effort to acknowledge each jurisdiction's distinctive qualities, characteristics, and challenges, and to provide sufficient flexibility to local officials. This approach allows local governments to continue to make land use decisions affecting the Critical Area autonomously and without undue State involvement. However, through State oversight, the Commission has sufficient knowledge of local practices and decisions, as well as the authority necessary, to ensure that local programs are operating effectively.

The Critical Area Law requires local governments to review their Critical Area programs comprehensively every six years. These reviews are necessary for the Commission to make sure that local programs are kept up to date and that required legislation is incorporated into local codes and ordinances. The reviews also provide an opportunity for local governments to work closely with the Commission to modify provisions of their programs to accommodate new State or local plans or initiatives and to address

any specific implementation challenges that they are facing. Over time, many local governments have made substantive changes to the various elements that make up their Critical Area programs. In 1997, in response to requests from many municipalities attempting to update their local Programs, Commission staff prepared a “model Critical Area Ordinance” which can be used wholly or in part by local governments. The “model” is regularly updated to address changes to the Law and to clarify and interpret provisions that local governments find difficult to implement properly and effectively.

In addition to changes that are regularly made to local plans and ordinances, many jurisdictions have revised or are in the process of revising their Critical Area maps and converting them to an electronic format. This enables local governments to make use of state-of-the-art technology and provides opportunities to make these resources more accessible to the public. This type of comprehensive re-mapping provides greater accuracy, enhanced information integration, and allows the maps to be used with other Geographic Information System data layers.

### **Local Critical Area Program Implementation**

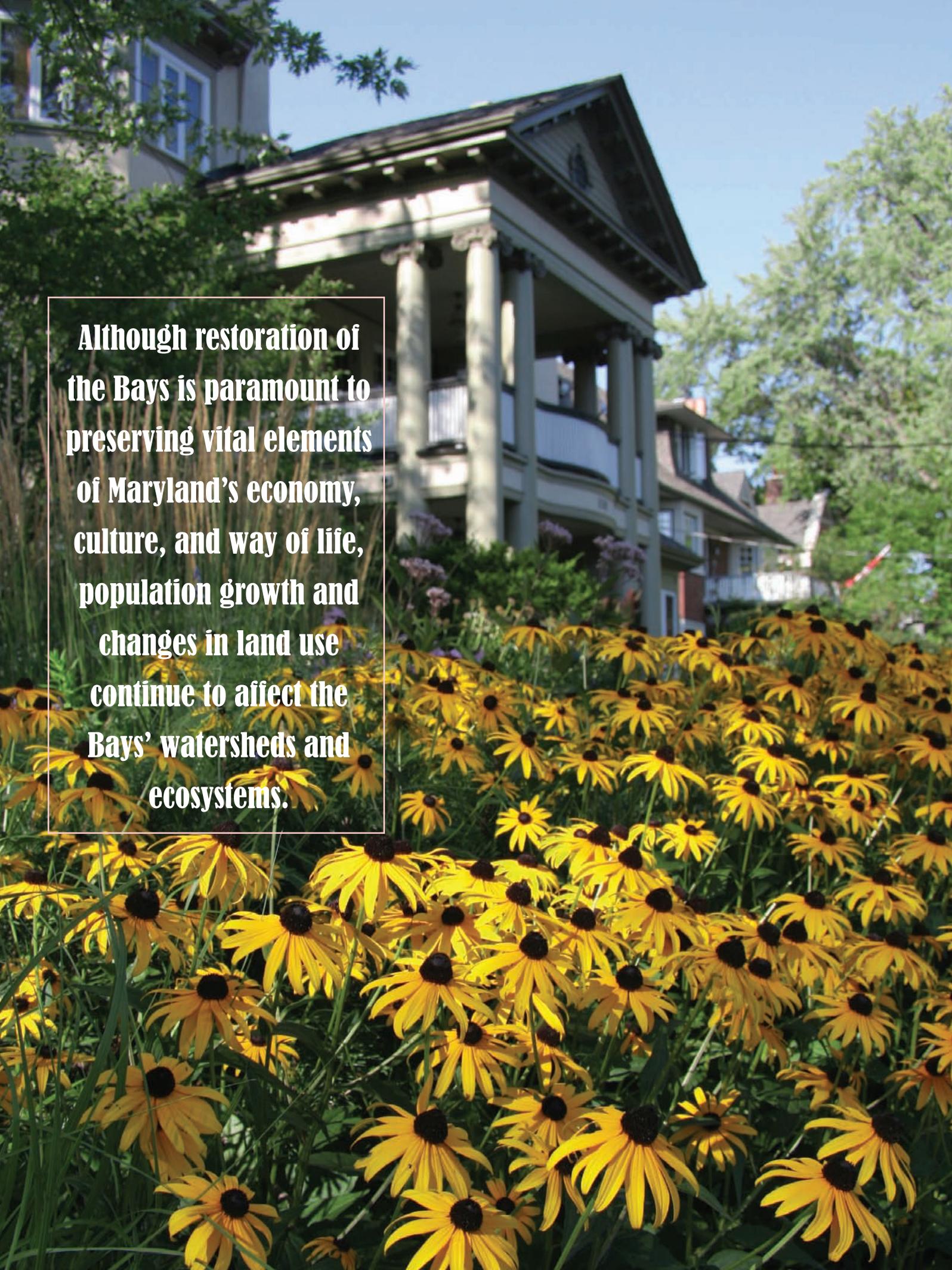
In general, for all development activities on private lands or lands owned by a local government, the local planning and zoning department is the primary agency responsible for reviewing and approving building permits, site plans, and subdivision plans. The local governments review these plans for consistency with their ordinances and regulations. Before approvals may be issued, the local permitting authority must ensure compliance with requirements for impervious surfaces, forest clearing, habitat protection and stormwater management, among other factors. Many local jurisdictions have streamlined review processes for minor development activities.

**The Critical Area Law requires local governments to review their local Critical Area programs comprehensively every six years.**

The Commission performs an oversight role with respect to local review of projects. Subdivision plans, site plans, variance applications, requests for special exceptions, conditional use permits, and rezoning requests are forwarded by local governments to the Critical Area Commission for review and comment by the Commission’s staff of natural resource planners. Comments and recommendations on these projects are provided to the local government by the Commission in order to aid the local government in the decision-making process.

Many development proposals involve significant disturbance to water and forest resources and can require considerable time to review. The Commission works cooperatively with local enforcement officials to assist them in effectively administering and implementing their local Critical Area regulations. In certain instances, local governments or a citizen may request assistance from the Commission in determining if a particular situation is a violation or in pursuing a violation. The Commission’s staff of natural resource planners is available to provide the assistance necessary to ensure that local programs are properly, fairly, and effectively enforced. In 2004, the Critical Area Law was amended to allow local governments to request assistance from the Office of the Attorney General through the Critical Area Commission to provide assistance in pursuing and remediating serious violations.

The provisions of Maryland’s Critical Area Program described in the following chapters are intended to provide general information about the basic requirements and standards included in the Critical Area Law and Criteria. However, it should be noted that each local government has its own locally implemented program, and this guide is not a substitute for local ordinances, codes, regulations, and policies that may be more specific and detailed.



**Although restoration of the Bays is paramount to preserving vital elements of Maryland's economy, culture, and way of life, population growth and changes in land use continue to affect the Bays' watersheds and ecosystems.**