

CHAPTER 1: BACKGROUND AND HISTORY

The Critical Area Law and Criteria were developed in response to serious and far-reaching problems affecting Maryland's water resources. Like any law or regulation directed towards "solving" a complicated problem, the Critical Area Law and Criteria are a comprehensive, complex, and detailed body of legislation and regulations. The Law and Criteria were designed to foster more sensitive land use and development activity along the shoreline of the Chesapeake Bay, Atlantic Coastal Bays, their tributaries, and tidal wetlands and to ensure the implementation of appropriate long-term conservation measures to protect important habitats. To some degree, these regulations affect a significant number of Maryland residents. They may be affected directly because they own land within the Critical Area or they may be affected indirectly because they operate a business or are engaged in activities that involve the development, use, or conservation of land within the Critical Area. In order to understand how the Critical Area Program is implemented, some background information on the history of the Program, the purposes and goals of the Law, and the resulting partnership between the State and local governments is helpful.

Origins of the Program

In the summer of 1982, results from a study of the Chesapeake Bay by the United States Environmental Protection Agency (EPA), *Chesapeake Bay: A Framework for Action*, indicated that water quality in the Bay was deteriorating, and the Bay was experiencing a substantial decline in economically valuable biological resources. It was noted that continued population growth in the Baltimore and Washington metropolitan areas and surrounding suburbs was likely to accelerate and intensify the deterioration and decline. The study concluded that a comprehensive and long-term strategy was needed. Unfortunately, in spite of the study's dire



■ Throughout the Critical Area, extensive areas of the shoreline are developed right up to the water's edge.

...water quality in the Bay was deteriorating, and the Bay was experiencing a substantial decline in economically valuable biological resources.



■ *Members of the original Critical Area Commission. Standing from left: Sarah J. Taylor, Ph.D. (Executive Director), Mary Roe Walkup, Bill Bostian, John Luthy, Bill Eischbaum, Tom Jarvis, Sam Turner, Florence Beck Kurdle, Shepard Krech, Anne Coates Sturgis, Harry Stine, Parris Glendening, Skip Zahniser, J. Frank Raley, and Barbara O'Neil. Seated from left: Connie Leider, Ron Hickernell, Jim Gutman, Bob Lynch, Lloyd Tyler, Dr. Torrey Brown and Judge Solomon Liss (Chairman).*

predictions, there were no federal funds available to finance a restoration effort. In the fall of 1982, in response to concerns raised by the EPA study and subsequent meetings among various state officials, the Governors of Maryland, Virginia, and Pennsylvania, and the Mayor of the District of Columbia announced that they would convene a Governors' Conference on the Chesapeake Bay in December 1983, and information about a joint state and federal program would be presented.

In Maryland in the spring of 1983, representatives from the Governor's Office, the University of Maryland, and various State agencies met to develop an action program that would be announced at the Governors' Conference. This group, which was known as the Wye Group, analyzed and reviewed growth management and shoreline protection programs in the Adirondack Preserve in New

York and the New Jersey Pinelands. They also looked at relevant programs in Maryland, North Carolina, Oregon, and California. In the fall of 1983, with assistance from the Wye Group members, legislation was drafted and approved by Governor Harry Hughes. This legislation was presented at the Governors' Conference and called for the establishment of a resource protection program for shoreline areas that would facilitate restoration of the Chesapeake Bay.

As would be expected, the Critical Area Law that was passed by the General Assembly in the spring of 1984, while drawing on concepts found in other plans and

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programs, was unique in its approach. Of particular significance was the emphasis placed on establishing performance standards for land use and development that would be implemented by local governments through their zoning

■ *Original Commission Chairman, Judge Solomon Liss, making a presentation to City officials in Annapolis.*



ordinances, subdivision regulations, and land use codes. This arrangement would integrate State oversight of Maryland's Critical Area Program with local zoning and land use regulatory authority, providing consistency throughout the affected jurisdictions. The Law called for oversight by a State entity and established a 25-member Commission (increased to 29 members in 2002 as a result of the addition of the Atlantic Coastal Bays to Maryland's Critical Area Program) consisting of elected or appointed local officials, Cabinet-level Secretaries from affected State agencies, and citizens representing "diverse interests."

The 1984 Law itself was general in nature, primarily addressing the purpose of the Chesapeake Bay Critical Area Protection Program, the definition of the "Critical Area," the creation and role of the Commission, the process and procedures for local Critical Area Program development

and adoption, and the various administrative functions of the Commission. In enacting the Law, the General Assembly included specific findings in an effort to highlight the importance of the Chesapeake Bay (and later the Atlantic Coastal Bays) as natural resources of great significance to the State and the nation and to emphasize that, without significant changes in land use and development activities along the shoreline, further degradation of water quality and natural habitats was inevitable. The findings also state that Maryland's Bays are

particularly stressed by continuing population growth and that restoration of these waters is dependent on minimizing further adverse impacts to water quality and natural habitat of the shoreline and adjacent lands, particularly in the Buffer. One of the most significant findings by the General Assembly states that the quality and productivity of Maryland's tidal waters have declined due to the "...cumulative



■ *In 1984, it was acknowledged that without significant changes to the pattern of development, the quality and productivity of Maryland's tidal waters would continue to decline.*



- *Maryland's Bays include a wide variety of habitat types, so efforts to conserve fish, wildlife, and plant habitat must address this diversity.*

- *The water quality of Maryland's Bays has deteriorated in part because of pollutants that are found in untreated stormwater runoff.*



effects of human activity that have caused increased levels of pollutants, nutrients, and toxics...”, thereby acknowledging the need for a rigorous, consistent, and comprehensive program addressing all human activities in order to accomplish Maryland’s restoration goals.

Defining the Critical Area

The drafters of the Law recognized that the land immediately surrounding the Chesapeake and Atlantic Coastal Bays and their tributaries has the greatest potential to affect the water quality and wildlife habitat of these resources. Therefore, all lands within 1,000 feet of the edge of tidal waters, or from the landward edge of adjacent tidal wetlands, and all tidal waters and lands under those waters and wetlands were designated as a “Critical Area.” The 1,000-foot area was delineated on Maryland’s 1972 State Wetland Maps. Local governments then transferred the Critical Area boundary line to their own maps.

Although there are many sensitive environmental areas throughout the State of Maryland, including thousands of miles of tributary streams and thousands of acres of nontidal wetlands, the Critical Area Program and regulations only apply to areas officially designated and mapped as “Critical Area.” As defined, this 1,000-foot wide “Critical Area” encompasses some 680,000

acres, approximately 10 percent of the land area of Maryland, and spans 64 local political subdivisions (16 counties, 47 municipalities and Baltimore City). Each jurisdiction maintains detailed maps showing the designated Critical Area within the jurisdiction. Seven counties in Maryland -- Garrett, Allegany, Washington, Frederick, Carroll, Montgomery, and Howard – are not part of the Critical Area Program because they do not include any tidal waters.

Critical Area Program Goals

The purpose of the 1984 Law was to establish a “resource protection program” that would foster more sensitive development activity and minimize damage to water quality and natural habitats. The Law stated that each local jurisdiction had the responsibility for developing and implementing its own Critical Area program that would be sufficiently comprehensive to accomplish the following overall goals for the State:

- Minimize adverse impacts on water quality that result from pollutants that are discharged from

structures or conveyances or that have runoff from surrounding lands.

- Conserve fish, wildlife, and plant habitat in the Critical Area.
- Establish land use policies for development in the Chesapeake and 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 an area can create adverse environmental impacts.

These original goals are included in every jurisdiction’s Critical Area program and function as the cornerstone of the Critical Area Criteria and all related regulations. These goals also serve to guide Critical Area decision-makers, including the Critical Area Commission, local government officials, and State regulatory agencies, to ensure that the Program is effectively implemented.



- *Local Critical Area programs must address the fact that even if pollution is controlled, the activities of people can create adverse environmental impacts.*



- *The Critical Area Criteria were a pioneering model for regulatory programs designed to conserve and protect natural resources.*

Development of the Criteria

The Critical Area Law charged the Commission with establishing a resource protection program that would foster more sensitive development activity and land use practices in order to minimize damage to water quality and natural habitats. The Law also directed the Commission to implement the program on a cooperative basis between State and local governments. Local governments would create their own individual programs and related ordinances that would be implemented in a consistent and uniform manner based on specific State criteria and subject to State oversight. Initially, the Commission's primary responsibility was to develop criteria that local governments would use to prepare their individual Critical Area programs.

The Critical Area Law required the newly formed Commission to develop the criteria by December 1, 1985. The time frame to accomplish this task was very tight because the Commission had to hold public hearings and publish the Criteria in the *Maryland Register* for comment. The Commission formed three subcommittees to focus on developing criteria for "development," "resource utilization activities," and "resource protection." The first draft of the Criteria was published in the *Maryland Register* in June 1985, and copies were widely distributed to members of the General Assembly, local jurisdictions, interest groups, and the general public. Over the next several months, many issues were discussed and numerous changes were made to clarify provisions, eliminate redundancy, and incorporate references to other complementary State regulations.

... the three goals of the Critical Area Program: the protection of water quality, the conservation of habitat, and the accommodation of future growth and development without adverse impacts.

The Criteria used ideas and regulatory antecedents adopted by other coastal states such as New Jersey, New York, North Carolina, Vermont, and California. The land and resource management regulations incorporated into the Critical Area Criteria were a pioneering model for resource conservation programs nationwide and internationally. Work on the Criteria was completed in November 1985, and the complex regulations were submitted to the General Assembly during the 1986 legislative session. Governor Hughes was initially resistant to significant changes to the Criteria as drafted, but following discussion on many contentious issues, several related bills were enacted. Joint Resolutions approving the Criteria and the amendments to the Law were approved by the General Assembly on the last day of the 1986 Session and signed into law on May 13, 1986.

Designed to promote environmentally sensitive use, development, and stewardship of land in the Critical Area, the Criteria address the three goals of the Critical Area Program: the protection of water quality, the conservation of habitat, and the accommodation of future growth and development without adverse environmental impacts. The Criteria include provisions that address development, water-dependent facilities, shore erosion control, resource utilization activities, habitat protection, and variances. Information about the provisions of the Criteria and how these provisions are implemented locally are addressed in detail in Chapters 3 through 8 of this guidance publication.

Changes to the Law During the First Two Decades

Over the course of the first two decades of Program implementation, the Critical Area Law was modified several times. Generally, these modifications involved clarification of the existing regulations or the addition of provisions necessary to accommodate special circumstances that were not anticipated when the

- *Changes to the Critical Area Law have been made to clarify certain provisions and ensure consistency throughout the Critical Area.*





- *The Atlantic Coastal Bays, including Assawoman Bay, Isle of Wight Bay and the St. Martin River, Sinepuxent Bay, Newport Bay, and Chincoteague Bay, were added to the Critical Area Program in 2002.*

Criteria were developed. The prohibition of structures on piers and the adjustment of impervious surface (changed to “lot coverage” in 2008) limits on small, grandfathered lots are two changes to the Critical Area Law that were determined to be necessary as a result of situations that arose from on-the-ground implementation of local programs. Other modifications of the Law resulted from unfavorable court decisions that the General Assembly found to be contrary to the purpose and intent of the Law, and therefore required clarification of the existing language. In some instances, changes to the Law required that each local government amend its Critical Area program. Unless otherwise specified, these changes were to be implemented within one year or during the required six-year comprehensive review of the jurisdiction’s Critical Area program. Possibly the most substantive change to the Law during this time was the addition of the Atlantic Coastal Bays Critical Area to the Critical Area Program in 2002. This change added approximately 30,000 acres to Maryland’s Critical Area.

Comprehensive Revision in 2008

In the spring of 2008, Governor Martin O’Malley and the General Assembly enacted House Bill 1253, which comprehensively revised Maryland’s Critical Area Law. The Governor and the General Assembly worked closely with the Critical Area Commission, the Maryland Association of Counties, the Maryland Municipal League, the Maryland State Builders Association, representatives from over 40 environmental organizations, and other stakeholders to craft the 47-page bill. The main purposes of this far-reaching legislation were to: improve the Critical Area Program’s operational structure, enhance the coordination between the State and local governments, clarify and strengthen enforcement procedures, increase consistency and fairness, and more effectively protect Maryland’s tidal shoreline from the negative impacts of growth and development.

The provisions of the legislation became effective on July 1, 2008; however, certain elements of the legislation will be phased in over time. In addition

- *In order to improve consistency throughout the Critical Area, “lot coverage” replaced “impervious surface area” as the term used to define and limit the footprint of development activity.*
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to provisions affecting enforcement, shore erosion control, future growth, the development of new Critical Area maps, and managing the footprint of development activity, the legislation included language allowing the Critical Area Commission to adopt its own regulations. Most State agencies have the ability to adopt regulations, which provide the specificity necessary to implement legislation in a consistent and uniform manner. Providing the Commission with regulatory authority was viewed as essential to streamlining the Critical Area Program and ensuring that the increasingly complex and variable issues affecting Maryland’s Bays can be addressed quickly and effectively.



- *A major focus of the revisions to the Law in 2008 was to strengthen enforcement of the Critical Area regulations.*

