

CHAPTER 3: DEVELOPMENT IN THE CRITICAL AREA

The value of Maryland's Bays to its citizens' quality of life and the State's economy is beyond estimation. 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. All human activities that have the potential to affect local waterways and the natural habitat of the Chesapeake Bay and the Atlantic Coastal Bays are significant. Perhaps most significant are human activities that modify the landscape. Therefore, a major focus of the Critical Area Law is the management of land development and land use within the Critical Area. Additional goals include protection of water quality and natural habitat, as well as accommodation of future growth in an environmentally sound fashion.

Maps as a Basic Component of Local Programs

To implement the Law, each local jurisdiction was required to map its Critical Area boundaries and to designate existing land uses as one of three classifications. Except for land owned by the State or federal government, all land areas within the Critical Area were designated as Intensely Developed Areas (IDAs), Limited Development Areas (LDAs), or Resource Conservation Areas (RCAs). These designations were based on land uses existing on December 1, 1985. Local governments worked closely with the Commission to refine and finalize their maps. These maps were reviewed and approved by each local government through a local public hearing process, and subsequently the Critical Area Commission approved the maps. It should be noted that these maps are considered an element of a local jurisdiction's Critical Area program. Any local changes to these maps are considered amendments to that jurisdiction's program and must receive formal approval by the Critical Area Commission.

- *The protection of wildlife habitat, such as heron rookeries, is one of the goals of Maryland's Critical Area Program.*



A major focus of the Critical Area Law is the management of land development and land use within the Critical Area.



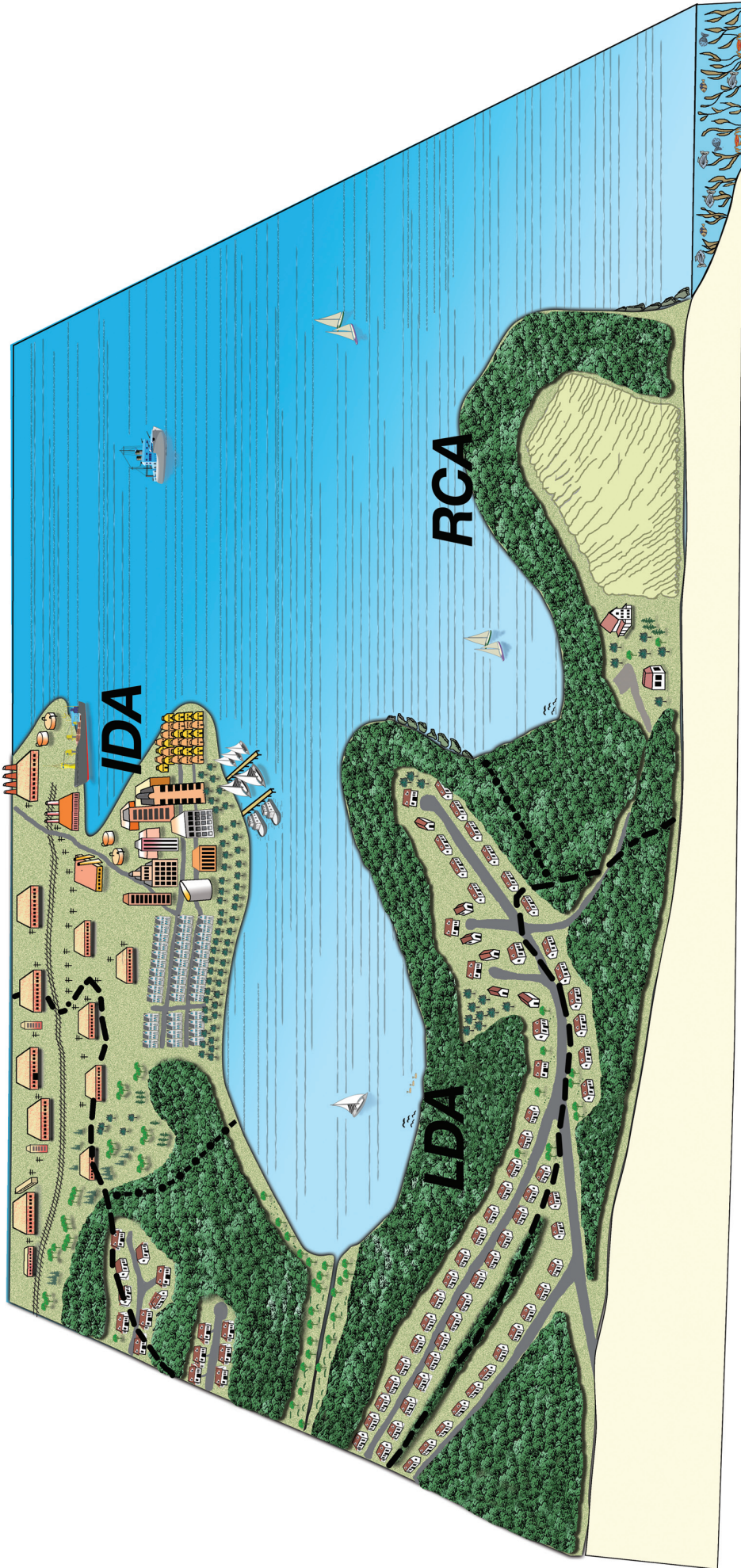
- Interested parties can obtain information about the Critical Area designation of a specific property by contacting the local jurisdiction's planning and zoning office.

Critical Area maps delineating the Critical Area boundary and showing the land use classification assigned to properties are available in each local jurisdiction's planning and zoning offices and the Critical Area Commission office. In some counties and towns, these resources are also available on-line. Landowners interested in obtaining information about a specific property should know the tax map and parcel number of the property, as well as the street address,

since most jurisdictions use tax maps as a base for their Critical Area maps. A review of these maps will reveal if a property is located within the Critical Area and what Critical Area land use classification is assigned to it. In some jurisdictions, the Critical Area classification functions as an overlay zone. Other jurisdictions have one or more specific zoning districts that correspond to each of the three Critical Area designations. The classification of the property is significant because the

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- *Land within the Critical Area is mapped and classified based on land uses that existed at the time the local program was adopted.*





CRITICAL AREA LAND USE CLASSIFICATIONS

- BOUNDARY OF CRITICAL AREA
- BOUNDARY BETWEEN LAND USE CATEGORIES



- *Some provisions of the Critical Area Criteria, such as those relating to the protection of habitat, are applied uniformly throughout the Critical Area regardless of the land classification.*

specific provisions of the local Critical Area program and ordinance that apply to the property are based on these classifications.

Legislation passed in 2008 required the 1,000-foot Critical Area boundary throughout the State to be updated based on current aerial imagery; also, the State was required to develop electronic maps appropriate for integration into a Geographic Information System and accurate to a scale of 1:1200 (that is, one-inch equals 100 feet). These maps must be reviewed and updated as necessary at least once every 12 years. As part of the mapping process, a Statewide base map is used to identify the shoreline and landward boundary of tidal wetlands. The 1,000-foot boundary is then digitally generated and georeferenced based on current conditions. As previously stated, all these changes to a local jurisdiction's Critical Area Maps constitute a modification of that local program and must therefore be approved by both the local government and the Critical Area Commission.

Critical Area Provisions and When They Apply

Certain provisions of the Critical Area Criteria apply throughout the Critical Area and are applied uniformly regardless of the Critical Area designation. Other provisions are specific to the land classifications of IDA, LDA and RCA; these result in particular development criteria and performance standards, as described in the three sections that follow this general discussion.

Some development activities are not permitted in the Critical Area because of their potential to affect habitat and water quality adversely. For example, sanitary landfills and solid or hazardous waste collection or disposal facilities are not permitted in the Critical Area unless there is no environmentally acceptable alternative outside the Critical Area. In these cases, it must be demonstrated that the facilities are needed to correct an existing water quality or wastewater management problem. Local governments can also prohibit other uses that they believe would adversely

affect habitat or water quality if located within the Critical Area. Generally, the prohibition or limitation of specific uses within the Critical Area is part of a local government's zoning code or ordinance.

Other general provisions of the Critical Area Program specify that intense development should be directed outside the Critical Area; but when intense development activities are proposed within the Critical Area, these activities should be directed to IDAs. There are also certain land uses and activities that can only be permitted in IDAs. These include: nonmaritime heavy industry; transportation facilities; utility transmission facilities; and sludge handling, storage, and disposal facilities. Project approvals for one of these activities require a demonstration to all appropriate government agencies that there will be a net improvement in water quality in the adjacent water body.

Other regulations that apply throughout the Critical Area, regardless of whether the land is designated IDA, LDA, or RCA, relate to Habitat Protection Areas and to Water-Dependent Facilities. Detailed information about these regulations and how they are implemented is provided in Chapter 4 and Chapter 6.

Intensely Developed Areas (IDAs)

Intensely Developed Areas (IDAs) are where residential, commercial, institutional, and industrial developed land uses predominate and there is relatively little natural habitat. At the time of original mapping, IDAs were designated through a determination that the area had at least one of the following characteristics: a density of development equal to or greater than four dwelling units per acre; the presence of public sewer and water systems with a density of greater than three dwelling units per acre; or a concentration of industrial, institutional or commercial uses. In addition, these areas had

- *Intensely Developed Areas (IDAs) are developed areas where residential, commercial, institutional, and industrial land uses predominate.*



Local governments can also prohibit other uses that they believe would adversely affect habitat or water quality if located within the Critical Area.

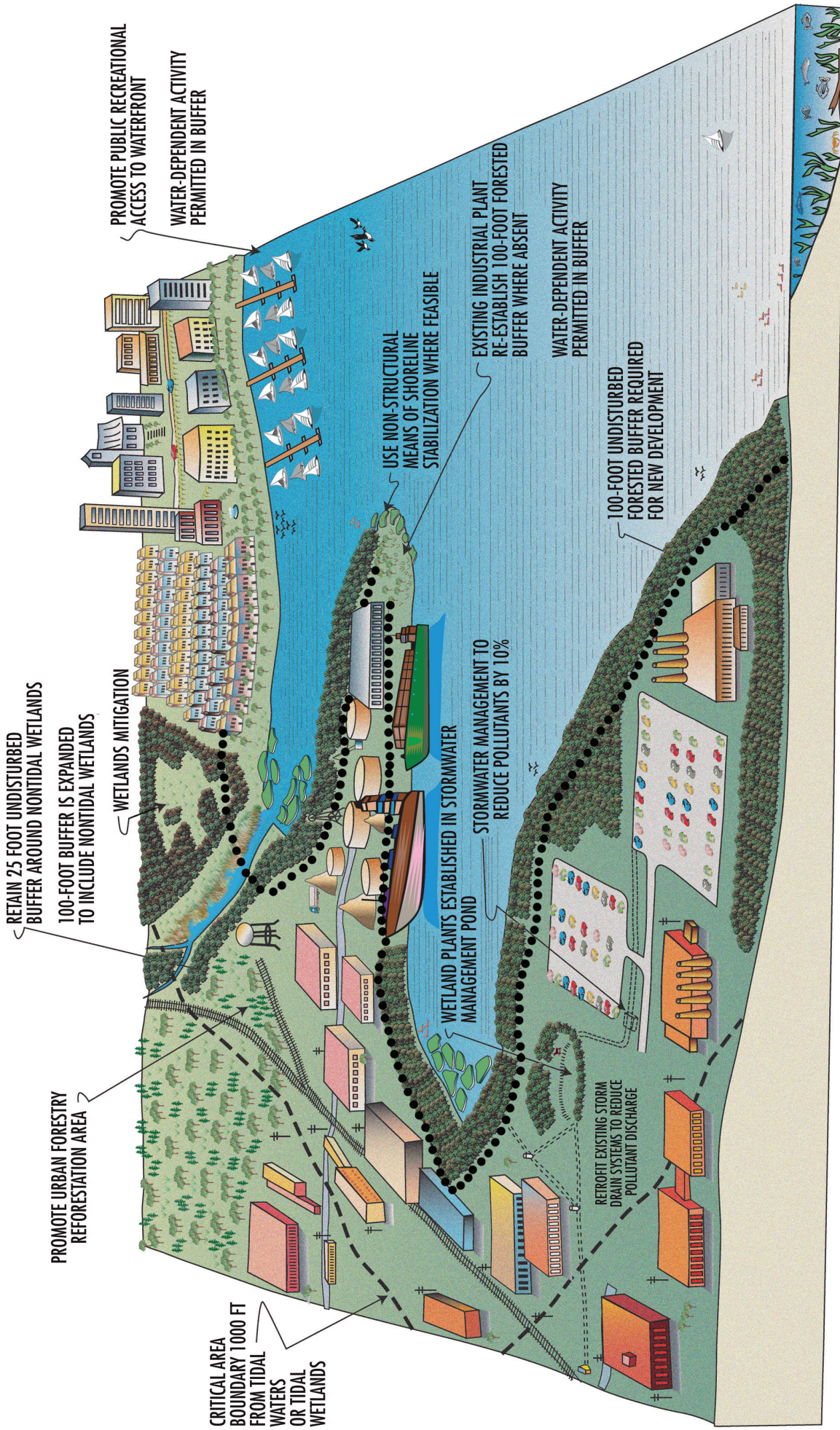
to consist of at least 20 contiguous acres or the entire upland portion of a municipality within the Critical Area, whichever was less. Because IDAs are developed areas where there may be little or no natural habitat, the focus of the Critical Area regulations is on improving water quality through stormwater management, the use of permeable surfaces, and the preservation of existing natural forest vegetation.

The policies and standards established by the Criteria for new development or redevelopment in the IDA include:

- New development or redevelopment requires measures to reduce the amount of pollutants entering waterways and to minimize adverse impacts to water quality caused by stormwater.
- Development and redevelopment shall conserve and enhance fish, wildlife, and plant habitats and must comply with the provisions to protect designated Habitat Protection Areas as described in Chapter 4.
- A 10-percent reduction in stormwater pollutant loading is required for any development activity within an IDA. If this reduction cannot be achieved by providing stormwater treatment practices on site, then alternative measures that result in an improvement in water quality in the local jurisdiction, equal to the 10 percent requirement, must be provided. This requirement, often referred to as the “10% Rule,” can be accomplished by reducing impervious surface areas on another project site, implementing urban forestry programs, creating vegetated buffers, and similar techniques.
- Areas of public access to the shoreline, such as footpaths, scenic drives, and other public recreational facilities, should be maintained and new ones encouraged where feasible.
- Permeable areas shall be established in vegetation, and whenever possible existing levels of pollution should be reduced.
- The clustering of future development is strongly recommended as a means to reduce impervious surface areas and maximize areas of natural vegetation.

- *Within Intensely Developed Areas (IDAs), areas of public access to the shoreline and urban forestry programs are encouraged.*





INTENSELY DEVELOPED AREA (IDA) RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL USES DOMINATE



■ *Natural vegetation in forests and developed woodland areas must be replaced if it is cut or cleared, so that the acreage of forest cover in the Critical Area is maintained or increased.*

- The use of retrofitting measures to address existing stormwater management problems is encouraged.
- When the cutting or clearing of trees in forests or developed woodland areas is part of development activities, local governments shall ensure that development activities minimize the destruction of forest and woodland vegetation and shall establish programs that enhance forest and developed woodland resources such as street tree plantings, bayscaping, urban gardens, and so forth.

An illustration of an Intensely Developed Area (IDA) appears on page 31.

Limited Development Areas (LDAs)

Limited Development Areas (LDAs) are areas developed at low or moderate intensity. They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired. At the time of original mapping, areas having at least one of the

following features were classified as LDAs: housing density between one dwelling unit per five acres and four dwelling units per acre; areas not dominated by agriculture, wetland, forest, barren land, surface water or open space; and areas having public sewer or public water or both. Areas with IDA characteristics, but that were less than 20 adjacent acres, were classified as LDA.

The policies and standards established by the Criteria for new development or redevelopment in the LDA include:

- Additional low or moderate intensity development is permitted but should conform to the prevailing character, type, and intensity of land use currently established. Housing density and permitted land uses shall be those permitted by local zoning regulations.
- The quality of runoff and groundwater entering the Bays and their tributaries must be maintained or improved.

- *Limited Development Areas (LDAs) are developed areas that include residential and some light commercial uses, as well as natural areas, wetlands, forests, and developed woodlands.*



- Existing areas of natural habitat should be conserved.
- Wildlife corridors that connect undeveloped and vegetated tracts within and adjacent to the site must be incorporated into development plans to provide for continuity of wildlife and plant habitat.
- The total acreage of forest cover within the Critical Area shall be maintained or increased.
- Any clearing of forest cover for new development or redevelopment must be replaced so as to ensure that the total acreage in forest cover within a jurisdiction in the Critical Area is maintained and preferably increased. Up to 20 percent of forest acreage on a project site may be removed but must be replaced on an equal area basis. If between 20 percent and 30 percent of forest acreage is removed, reforestation must be provided at 1.5 times the total forest acreage cleared. If greater than 30 percent of forest acreage is removed, reforestation must provide forest coverage at three times the removed acreage.

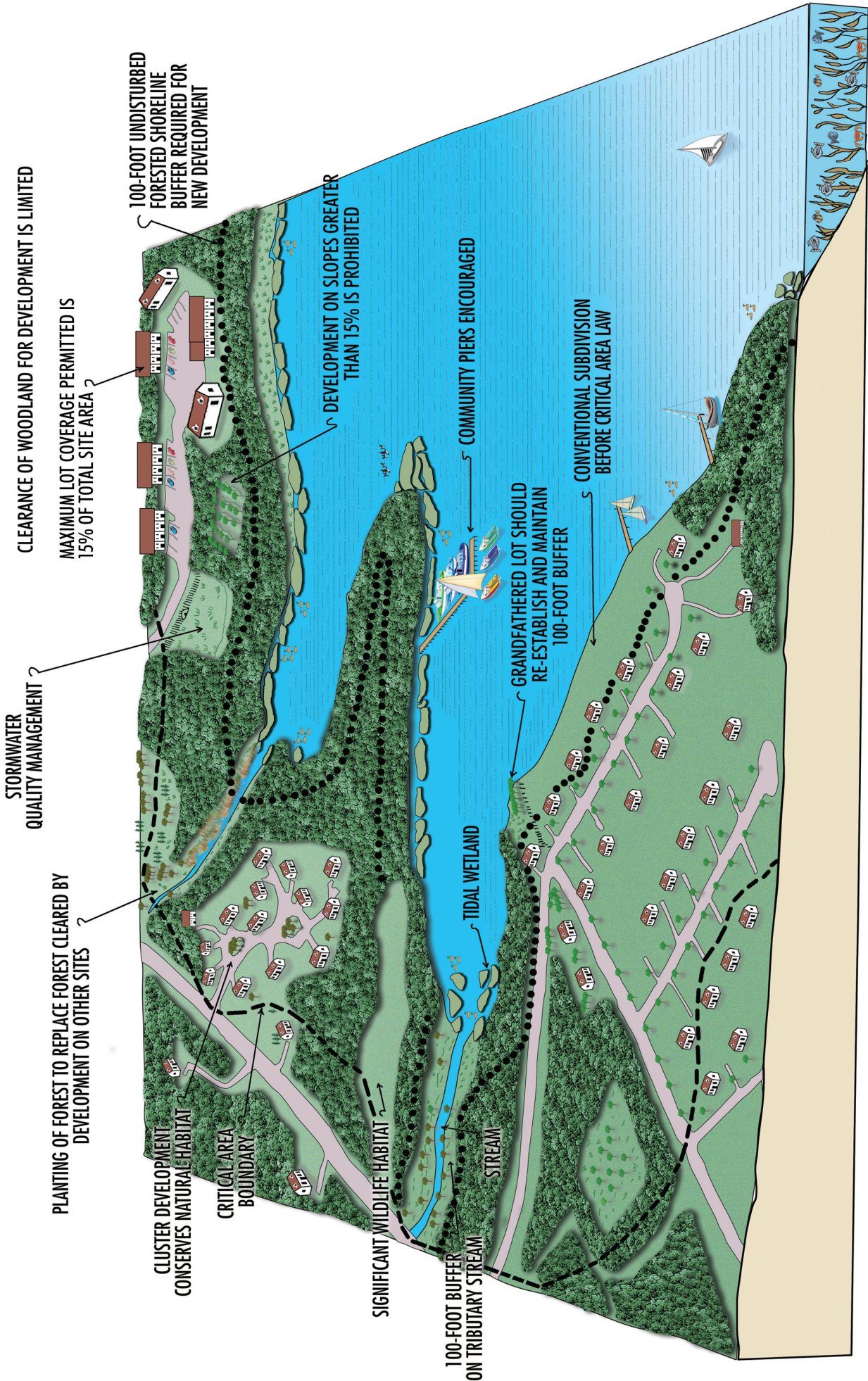
■ *The protection and conservation of natural habitat within LDAs is accomplished through restrictions and performance standards that regulate development.*





■ *In areas where there is no forest cover or it is limited, 15 percent of the site must be planted in order to enhance wildlife habitat.*

- If reforestation cannot take place at prescribed rates, local jurisdictions are required to collect fees in lieu of reforestation; these “fees-in-lieu” are used to establish forest cover elsewhere in the local jurisdiction’s Critical Area or in other locations beneficial to the Critical Area.
- In areas of new development or redevelopment where no or limited forest cover exists, 15 percent of the area must be planted with trees or developed woodland vegetation as part of a project approval.
- No development is allowed on slopes greater than 15 percent unless that development is shown to be the only effective way to maintain or improve the stability of the slope.
- Roads, bridges, and utilities that must cross the 100-foot Buffer or other Habitat Protection Areas must be located, designed, constructed, and maintained so as to control erosion and minimize negative impacts to wildlife, aquatic life, and their habitats. Natural hydrologic processes and water quality must be maintained.
- Development activities that cross or affect streams must be designed to: reduce increases in the frequency and severity of flooding that may be caused by the project, retain tree canopy so as to maintain stream water temperature, provide a natural substrate for streambeds, and minimize adverse water quality and quantity impacts associated with stormwater runoff.
- Lot coverage is generally limited to 15 percent of the site and includes the area of all structures, accessory structures, parking areas, driveways, walkways, and roadways. Areas covered with gravel, stone, shell, impermeable decking, pavers, permeable pavement, or any man-made material are also part of lot coverage calculations. There are specific exceptions for walkways and stairways through the Buffer that provide access to a pier and for decks with gaps to allow water to pass freely.
- There are two exceptions to the 15 percent limit. First, for lots one acre or less within a subdivision recorded after December 1, 1985 (or June 1, 2002 in the Coastal Bays Critical



LIMITED DEVELOPMENT AREA (LDA)
LOW OR MODERATE INTENSITY DEVELOPMENT IS PERMITTED

LOT/PARCEL SIZE (SQUARE FEET)	LOT COVERAGE LIMIT
0 – 8,000	25% of Parcel + 500 SF
8,001 – 21, 780	31.25% of Parcel
21,781 – 36,300	5,445 SF
36,301 – 43,560	15% of Parcel

Area), there is no lot coverage limit for each individual lot; however, the total lot coverage for the entire subdivision, including roads and community facilities, may not exceed 15 percent. The second exception is for smaller, grandfathered lots where a local government may use the lot coverage limits shown in the table above as long as water quality impacts are minimized and appropriate mitigation is provided.

An illustration of a Limited Development Area (LDA) appears on page 35.

Resource Conservation Areas (RCAs)

Resource Conservation Areas (RCAs) are areas characterized by nature-dominated environments, such as wetlands, forests, and abandoned fields, and resource utilization activities, such as agriculture, forestry, fisheries, and aquaculture. At the time of original mapping, areas having at least one of the

- *Within RCAs, agriculture, forestry, and similar resource utilization activities are considered protective land uses.*



following features were classified as RCAs: a density of one dwelling unit per five acres or less; or, a dominant use of agriculture, wetland, forest, barren land, surface water, or open space.

The policies and standards established by the Criteria for new development or redevelopment in RCAs include:

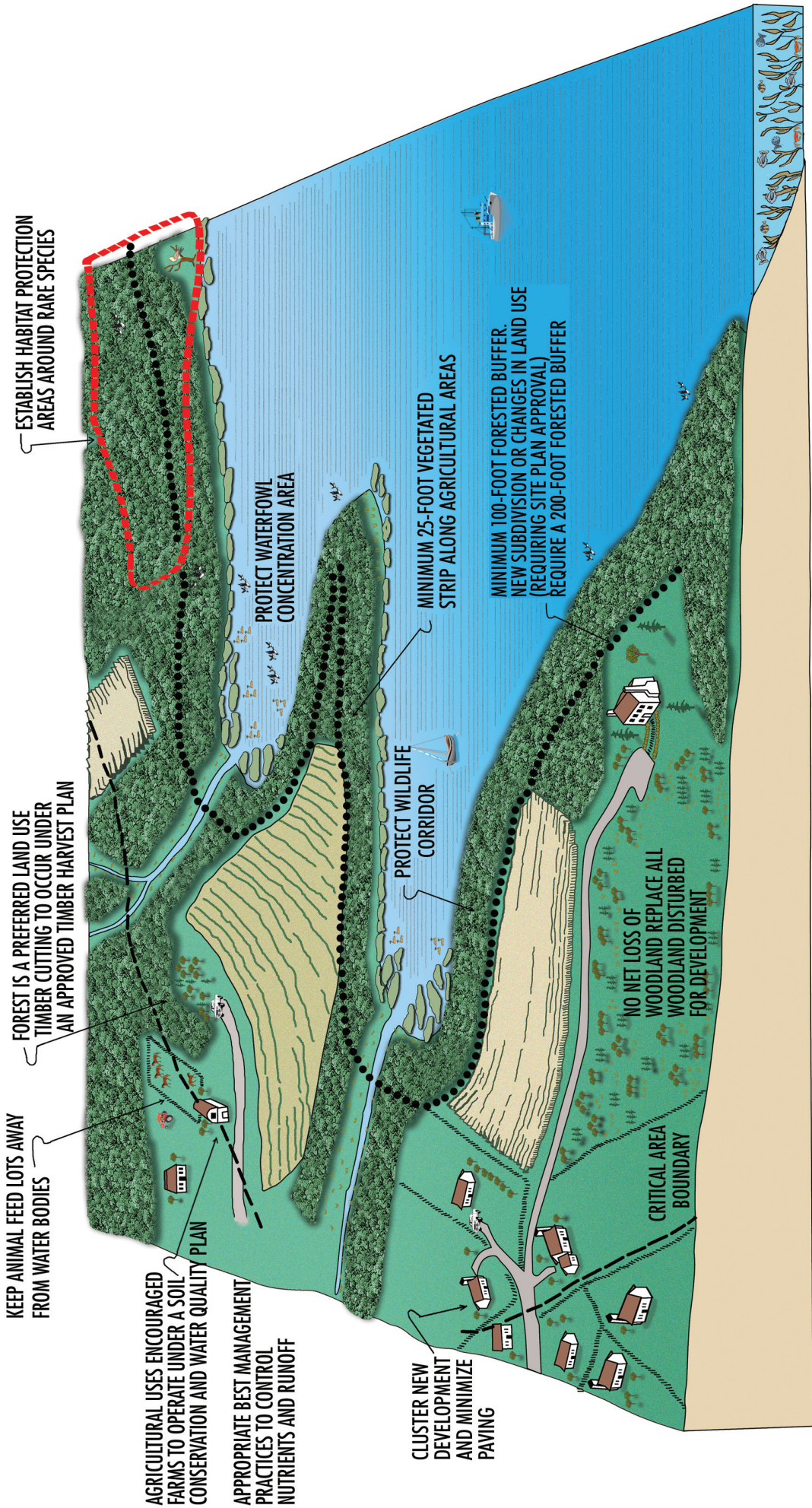
- The ecological values, biological productivity, and diversity of these areas shall be conserved, protected, and enhanced.
- Breeding, feeding, and wintering habitats for wildlife using the Bays, their tributaries, and other coastal habitats shall be protected.
- The land and water resource base that is necessary to maintain and support agriculture, forestry, fisheries, and aquaculture shall be conserved. Local governments are encouraged to develop incentive programs to promote the continuation of agriculture, forestry, and natural habitats in RCAs.
- Forest and woodland areas shall be conserved for the water quality benefits they provide.
- Agriculture and conservation easements shall be promoted.
- Land within the RCA may be developed for residential uses at a density of one dwelling unit per 20 acres. Grandfathered properties as described in the following section that are less than 20 acres may be developed with a single dwelling in accordance with the local regulations for these properties.



■ *Maintaining forests and developed woodlands in the Critical Area is integral to the restoration of the health of Maryland's Bays.*

- New commercial, industrial, and institutional facilities are not allowed in RCAs. However, "growth allocation" as described in Chapter 5 may be used to change the Critical Area classification to LDA or IDA, which may allow for an intensification of use.
- Development and redevelopment activities within RCAs shall comply with the same standards and regulations for development as those for LDAs.

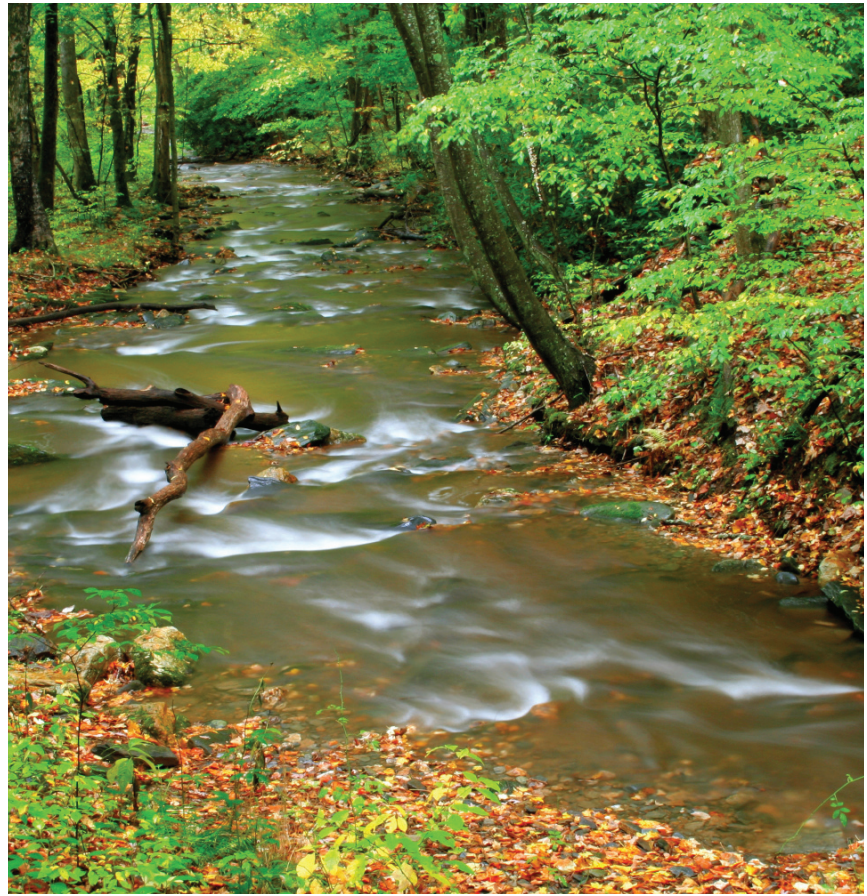
In 2008, in an effort to enhance the protection of sensitive shoreline areas within the RCA, the Critical Area Law was amended to increase the Buffer width for certain projects. This provision only applies to development projects within the RCA that involve subdividing an existing parcel or a change in land



RESOURCE CONSERVATION AREA (RCA)

NATURAL ENVIRONMENT PREDOMINATES

use requiring site plan approval. It does not apply to the development of existing lots of record or to the conversion of farmland to a homesite for a single family dwelling. On applicable projects, the width of the required forested Buffer adjacent to tidal waters and tidal wetlands is 200 feet. The minimum Buffer for tributary streams is 100 feet. With Commission approval, local governments may allow a Buffer that is less than 200 feet in order to accommodate otherwise permitted density and lots created through the intrafamily transfer provisions.



An illustration of a Resource Conservation Area (RCA) appears on page 38.

- *Forested stream Buffers provide area for infiltration, improve water quality, and enhance riparian habitat.*

- *Resource Conservation Areas (RCAs) are nature- dominated areas and may include wetlands, surface water, and open space.*





- *The Critical Area Criteria include provisions for grandfathering; however, intensification or expansion is not necessarily permitted.*

Grandfathering

Most provisions of the Critical Area Law and Criteria became effective on December 1, 1985 in the Chesapeake Bay Critical Area and on June 1, 2002 in the Atlantic Coastal Bays Critical Area. As part of its Critical Area Program, each local jurisdiction adopted “grandfathering” provisions that allowed certain pre-existing uses to continue even though they were inconsistent with the new law. The grandfathering provisions also allow undeveloped, legally recorded, buildable lots to be developed with a single family dwelling, even if the development exceeds the density provisions in the Criteria.

It is important to understand that a “grandfathered” property is not exempt from the Critical Area regulations. Grandfathering provisions allow local

governments to regulate existing development and new development on existing lots in a manner that provides necessary flexibility while still meeting the overall purpose and intent of the Critical Area Program. In some cases, proposed development on grandfathered lots cannot comply fully with the local government’s Critical Area regulations. In those instances, an applicant can apply to a local government for a variance from the strict application of a specific provision of the Critical Area ordinance. A hearing examiner or board of appeals usually has responsibility for reviewing and approving variances as described in more detail in the section below on variances.

The Critical Area Criteria include the following conditions that address the grandfathering of existing uses and lots:

- Local governments shall permit the continuation of any use in existence on the date of local program approval unless the use has been abandoned for more than one year or is restricted by other local ordinances. Intensification or expansion of this use is not necessarily permitted; and if the expansion or intensification does not conform to the provisions of a local Program, a variance is required.
- A single-family dwelling may be constructed on any land on which development activity had progressed, by December 1, 1985 (or June 1, 2002 in the Atlantic Coastal Bays Critical Area), to the point of pouring a foundation or the installation of structural members.
- A single-family dwelling can be constructed on any parcel of land that was recorded as a legally buildable lot prior to December 1, 1985 (or June 1, 2002 in the Atlantic Coastal Bays Critical Area).
- In the Chesapeake Bay Critical Area, a single-family dwelling can be built on any land that



- *A local government may grant a variance if, without a variance, an applicant would be denied reasonable and significant use of the entire property.*

was subdivided into recorded, legally buildable lots where the subdivision received the local jurisdiction's final approval between June 1, 1984 and December 1, 1985.

The grandfathering provisions allow properties that do not comply with the Law's density provisions to be developed. However, these properties still must comply with the development standards and resource protection measures that are included in the Criteria and incorporated into all local programs. If an applicant cannot fully comply with these standards and measures, then a variance for the specific development activity must be requested and approved by the local government.

Variations

In preparing their local Critical Area programs, local governments were required to make provisions for the granting of variances. A hearing examiner or board of appeals generally reviews requests for variances. An application for a variance must be sufficiently detailed in order to enable the reviewing authority to determine that the request meets all of the following variance standards:

- A literal enforcement of the Critical Area regulations would result in an unwarranted hardship to the applicant. Unwarranted hardship means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.
- There are special conditions or circumstances that are unique to the land or structure and that denial of the variance would result in an unwarranted hardship.
- The literal enforcement of the Critical Area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area.
- Granting a variance will not confer on an applicant any special privilege that would be denied on other lands or structures affected by the Critical Area regulations.
- The variance request is not based on conditions or circumstances caused or created

by the applicant or related to any condition on a neighboring property.

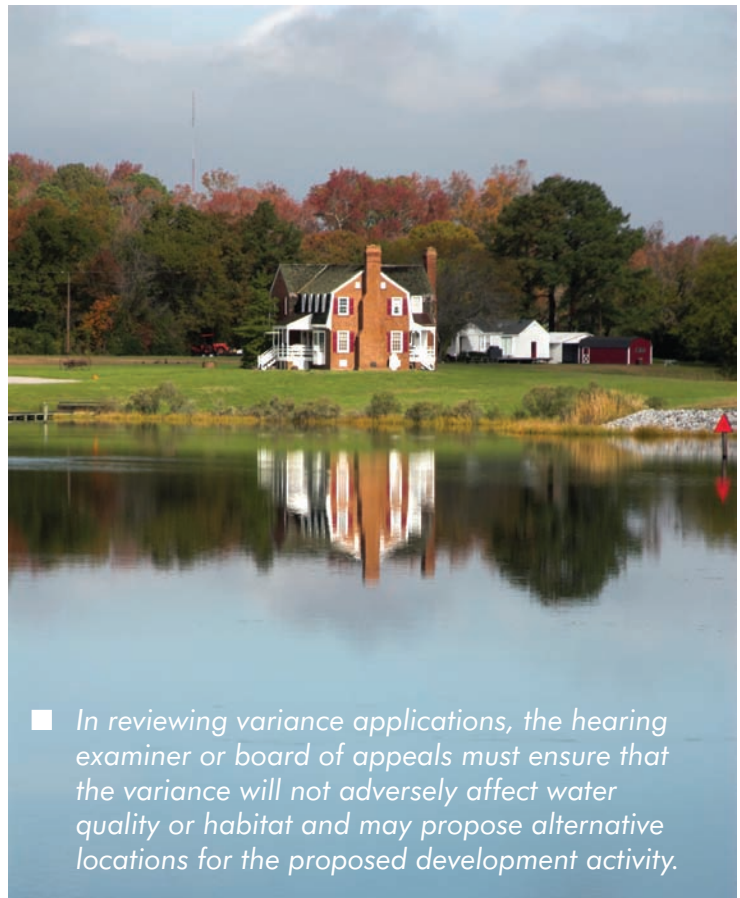
- Granting the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and approval of the variance request will be in harmony with the general spirit and intent of the Critical Area Law and local regulations.

Local governments are required to send all applications for variances to the Critical Area Commission for review and comment. In general, prior to the date of the decision by the board of appeals, the board's designee (in the case of administrative variances), or hearing examiner, the Commission will review the variance request and provide comments to the local government on the application. The Critical Area Commission does not approve variances; however, in some instances, Commission staff may testify at a hearing regarding an application. If the variance request is approved, the board of appeals, board's designee, or hearing examiner will usually require mitigation in the form of plantings, stormwater quality treatment, or other water quality or habitat enhancement measures in order to offset adverse environmental impacts associated with the approval of the variance.

Intrafamily Transfers

When the Critical Area Law and Criteria were being developed, the General Assembly recognized the importance of the unique cultural and social geography of Maryland's tidewater regions. Important elements of this culture are the large number of families who have lived and worked in the region for many generations. Often, these families based their livelihood on the bountiful natural resources of the Chesapeake Bay. The framers of the Critical Area Law, recognizing the historical significance and importance of this cultural geography, made provisions to permit

- *If a variance request is approved, mitigation is generally required and may involve planting native species of trees and shrubs.*





- *In accordance with the intrafamily transfer provisions of the Critical Area Law, a landowner within the Resource Conservation Area may create a building lot for a family member on parcels between seven and 60 acres in size.*

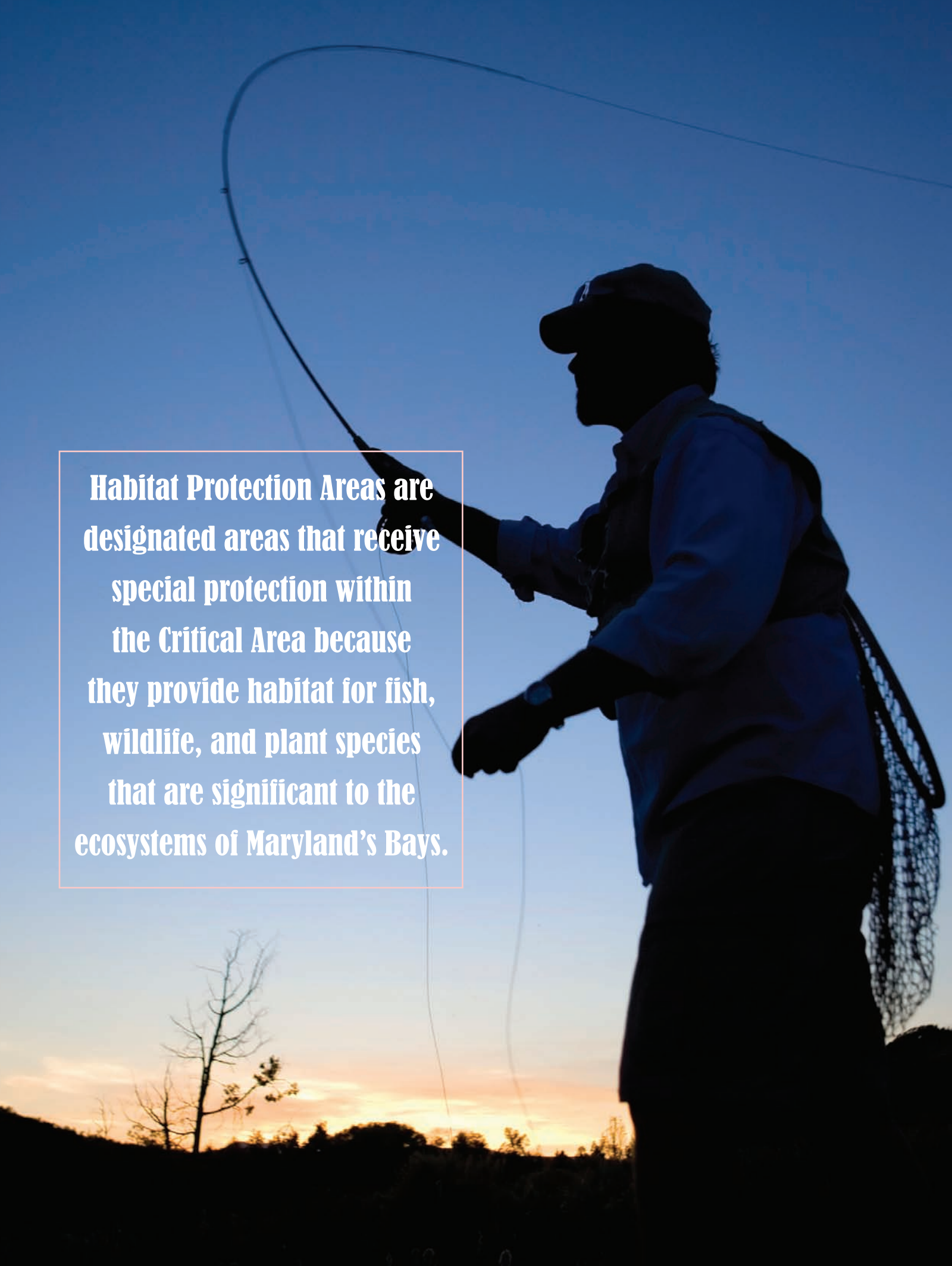
the subdivision of certain lands within the Resource Conservation Area in order to allow a landowner to create lots for family members. Although jurisdictions are not required to incorporate intrafamily transfer provisions into their local Critical Area programs, most, but not all, have done so.

The Critical Area Law, as implemented locally, allows a landowner to subdivide land to provide a building lot for a mother, father, daughter, son, granddaughter, grandson, grandmother or grandfather. The original parcel of land must be recorded as of March 1, 1986 (or June 1, 2002 in the Atlantic Coastal Bays Critical Area), and the property must be at least seven acres and less than 60 acres in size. On qualifying parcels all of the following conditions apply:

- A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.
- A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into three lots.

- The lots may be created at any time.
- No further subdivision of such parcels may be allowed.
- The subdivision must include appropriate plat notes, deed restrictions, and covenants that clearly state that the lot was created through the intrafamily transfer provisions.
- Once a transfer is made to a family member, a subsequent transfer cannot be made unless it is to a member of the owner's immediate family or the owner can demonstrate that a change of circumstances occurred. The local jurisdiction is required to review the change of circumstances and determine that it warrants an exception.

An applicant interested in this type of subdivision should contact the local planning office to ensure that this option is available and to find out about any additional local requirements.

A silhouette of a person wearing a cap and a vest, casting a net. The person is positioned on the right side of the frame, with their body angled towards the left. The net is captured in mid-air, forming a large, elegant arc that spans across the upper half of the image. The background is a clear, deep blue sky, suggesting a late afternoon or early evening setting. In the lower portion of the image, the silhouettes of trees and a horizon line are visible against a warm, orange and yellow glow from the setting sun. The overall mood is serene and focused.

Habitat Protection Areas are designated areas that receive special protection within the Critical Area because they provide habitat for fish, wildlife, and plant species that are significant to the ecosystems of Maryland's Bays.