

CHAPTER 9: ENFORCEMENT AND VIOLATIONS

The success of land use and development regulations is largely dependent on effective enforcement. As part of its Critical Area program, a local government is responsible for ensuring that the Critical Area regulations are consistently applied and enforced. While the Commission plays a significant oversight role in ensuring appropriate and effective implementation of the Program across the State, each local government bears the primary responsibility for enforcing its own Critical Area regulations.

Enforcement Responsibilities

Maryland's Critical Area Program is implemented primarily through each jurisdiction's land use codes, subdivision regulations, and zoning ordinances; therefore, the primary responsibility for enforcement is borne by local inspectors. In § 8-1815 of the Natural Resources Article of the Annotated Code of Maryland, local jurisdictions are given considerable authority to address violations, and when a violation is identified they are required to take enforcement action. The Law states, "A person who violates a provision of an order, permit, plan, local program, this subtitle, or regulations adopted, approved, or issued under the authority of this subtitle shall be: subject to prosecution or suit in circuit court or district court by the Chairman or local authorities, who may invoke the sanctions and remedies afforded by State or local law; guilty of a misdemeanor; and on conviction in a court of competent jurisdiction, subject to a fine not exceeding \$10,000 or imprisonment not exceeding 90 days or both, with costs imposed in the discretion of the court." See § 8-1815(a)(2)(i).

Recent changes to the Law allow penalty provisions associated with Critical Area violations to be applicable to contractors, property owners, or any

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- *The Critical Area Commission responds to notices from citizens regarding suspected violations and works with local governments on enforcement efforts.*

other person who committed, assisted, authorized, or participated in the violation. These changes allow local governments to pursue violations more effectively and to identify and take appropriate action against persistent violators. Licensed home improvement contractors, marine contractors, and tree experts and registered home builders who fail to comply with the terms of a State or local permit, license, or approval in the Critical Area can be reprimanded, fined, or have their license or registration denied or revoked by the appropriate State agency.

Local governments may assess a fine of up to \$10,000 for a Critical Area violation. Recent revisions to the Law specify that each violation of the Critical Area provisions constitutes a separate offense and that each day that a violation continues likewise constitutes a separate offense. This allows jurisdictions to assess fines that are appropriate to the nature and scope of the violation and the environmental damage or degradation resulting from it. In determining the amount of a fine for a specific violation, a local government must consider the gravity of the violation, any willfulness or negligence involved, the

environmental impact of the violation, and the cost of restoration of the affected resources and mitigation for damages to the resources. In addition, a jurisdiction considers the cost to State or local authorities for performing, supervising, or rendering assistance to the restoration and mitigation effort.

The Law also allows a local government to request assistance from the Commission, including a referral to the Attorney General, to ensure that Critical Area violations are identified and cited and that appropriate enforcement action is taken. Many local governments that have limited enforcement personnel or staff attorneys find that these provisions allow local officials to rely on the experience and expertise of the Commission in resolving the issue or pursuing the matter in court.

Although there are no State-level Critical Area inspectors, the Critical Area Commission does respond to all notices from citizens regarding suspected violations. The Commission coordinates with local governments to report violations so the local government can effectively perform site

inspections, issue citations, and follow up on restoration or mitigation. The Commission's role in these activities is primarily one of oversight and technical assistance; all stop work orders, noncompliance notices, citations, and fines are issued by the local government. However, as a result of recent changes in the Law, the Chairman of the Critical Area Commission may institute an action against a violator in circuit court or district court.

Addressing Violations

The Critical Area covers over 1,000 square miles and includes 5,200 miles of shoreline, and development is widely dispersed. This makes enforcement difficult and time consuming for local governments. Therefore, the Critical Area Commission relies on citizen awareness and monitoring of activities in the Critical Area. Commission staff is available to assist citizens inquiring about suspected violations,

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and the staff follows up on all reported violations. In some cases, the reported activity may not be a violation, and the issue can be resolved in the field. In other situations, the violation may be quite serious and involve the issuance of a stop work order and a citation.

- *Many violations result from a lack of understanding of the regulations or incorrectly implementing the plans that have been approved by the local government.*





- *One of the most common Critical Area violations involves unauthorized grading and the removal of natural vegetation within the 100-foot Buffer.*

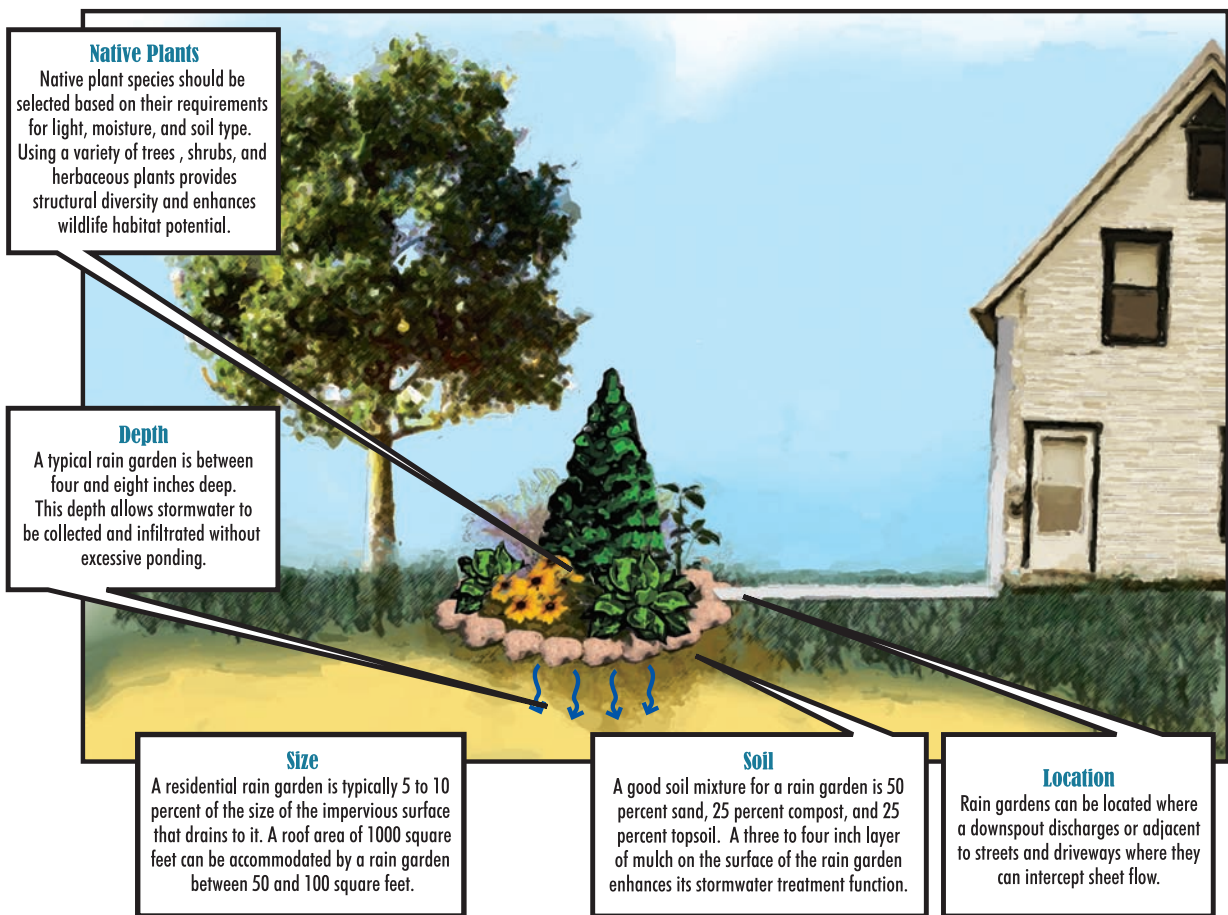
When the Critical Area Commission receives a call about a suspected violation, Commission staff needs as much information as possible about the activity from the caller. Knowledge of the street address or location of the violation, the type of activity, whether or not any permits are posted, and the size and scope of the activity is all necessary to ensure that proper action is taken as quickly as possible. Commission staff reports the suspected violation to the appropriate enforcement agency of the local government and follows up after a local inspector has performed a field visit.

Many violations result from a lack of knowledge or understanding of the regulations, while others may be a deliberate attempt to circumvent the regulations and to request “after-the-fact” approval. Most Critical Area jurisdictions prefer to work with property owners to secure compliance with the law, either through the permitting process or through management plans that may include mitigation and restoration. However, local governments are authorized to require the removal of unauthorized structures and the complete

restoration of sites that have been cleared or graded without proper authorization or in violation of an approved plan.

- *While sometimes difficult, reporting a possible violation can help a landowner avoid significant fines and prevent serious damage to water quality and habitat.*





■ *Rain gardens are a form of stormwater treatment that can improve water quality and serve as mitigation for a violation.*

Types of Violations

The previous chapters summarize many of the regulations that affect development and land-disturbing activities within the Critical Area. These regulations cover a variety of issues from clearing trees and removing vegetation to limiting lot coverage. Enforcement of these regulations requires attention to detail, and, in some instances, violations are not readily apparent. Generally, a permit or some form of local authorization is required for any activity that disturbs the soil, alters natural vegetation, or results in a new structure within the Critical Area. In many cases, these permits can be obtained quickly and easily. A property owner can avoid the inconvenience of a stop work order or the expense of a citation by contacting the local planning office and getting any necessary permits before starting any construction.

The following activities are those that, without proper approval, such as a building permit, grading permit, variance, or Buffer Management Plan, are considered

violations and should be reported immediately to local authorities:

- Clearing, removing, cutting, burning, or bush-hogging vegetation and trees in the Buffer.
- Construction or placement of accessory structures (such as sheds, pools, and gazebos) in the Buffer.
- Disturbance to the Buffer like grading, filling, stockpiling of construction materials, or dumping.
- Clearing or cutting trees anywhere within the Critical Area or that exceeds approved limits.
- Building or grading within the Critical Area that does not comply with an approved plan or permit.

Although some violations take place in the Critical Area, enforcement action is taken through the Maryland Department of the Environment (MDE) when the unauthorized activity involves direct impacts to water resources and wetlands. Citizens can report the following suspected unauthorized activities to the MDE at (410) 537-3837 or (410) 537-3768.

- Filling of tidal and/or nontidal wetlands without a permit.
- Construction of a pier without a permit.
- Construction of a structure on a pier, such as a gazebo or a boathouse, without a permit.
- Construction of a shore erosion protection measure, including the construction of a wall or the placement of rubble, without a permit.

- Clearing or destruction of marsh vegetation without a permit.
- Any of the above activities that is not consistent with the terms of the permit issued for the activity.

Although it may be difficult or unpleasant to report suspected violations, sometimes a landowner is unaware or unsure of the regulations, or does not understand the limits or restrictions on the permit, or simply underestimates the scope and environmental impact of the project. In these instances, reporting a suspected violation promptly can minimize adverse, and, in some cases irreversible, impacts to habitat and water quality. Prompt inspection of the property, which often leads to a landowner obtaining the necessary permits and bringing the project into compliance, can actually help the landowner to avoid or minimize fines and potentially expensive restoration activities.

■ *Although a violation may involve a relatively small structure in the Buffer, the cumulative impacts of these structures throughout the Critical Area contribute significantly to the degradation of riparian habitats.*





■ A Buffer Management Plan may be required to restore a site following a violation.

Restoration and Mitigation

If an activity is determined to be a Critical Area violation, local governments are authorized to assess fines, to compel restoration of lands or structures to their condition prior to that activity, and to require mitigation to offset adverse impacts to resources. While local governments may determine the specific amount and procedural requirements associated with the collection of fines, the Critical Area Law requires that violations be appropriately mitigated. The payment of fines is not an alternative to restoring the site and bringing the development activity into full compliance with the local Critical Area regulations. Restoration and mitigation activities may involve a variety of curative measures, such as the removal of structures or paving to comply with lot coverage limits, the relocation of sheds or other structures to locations outside the Buffer or away from steep slopes, the design and installation of stormwater treatment practices, or the planting of trees and shrubs to replace forest vegetation.

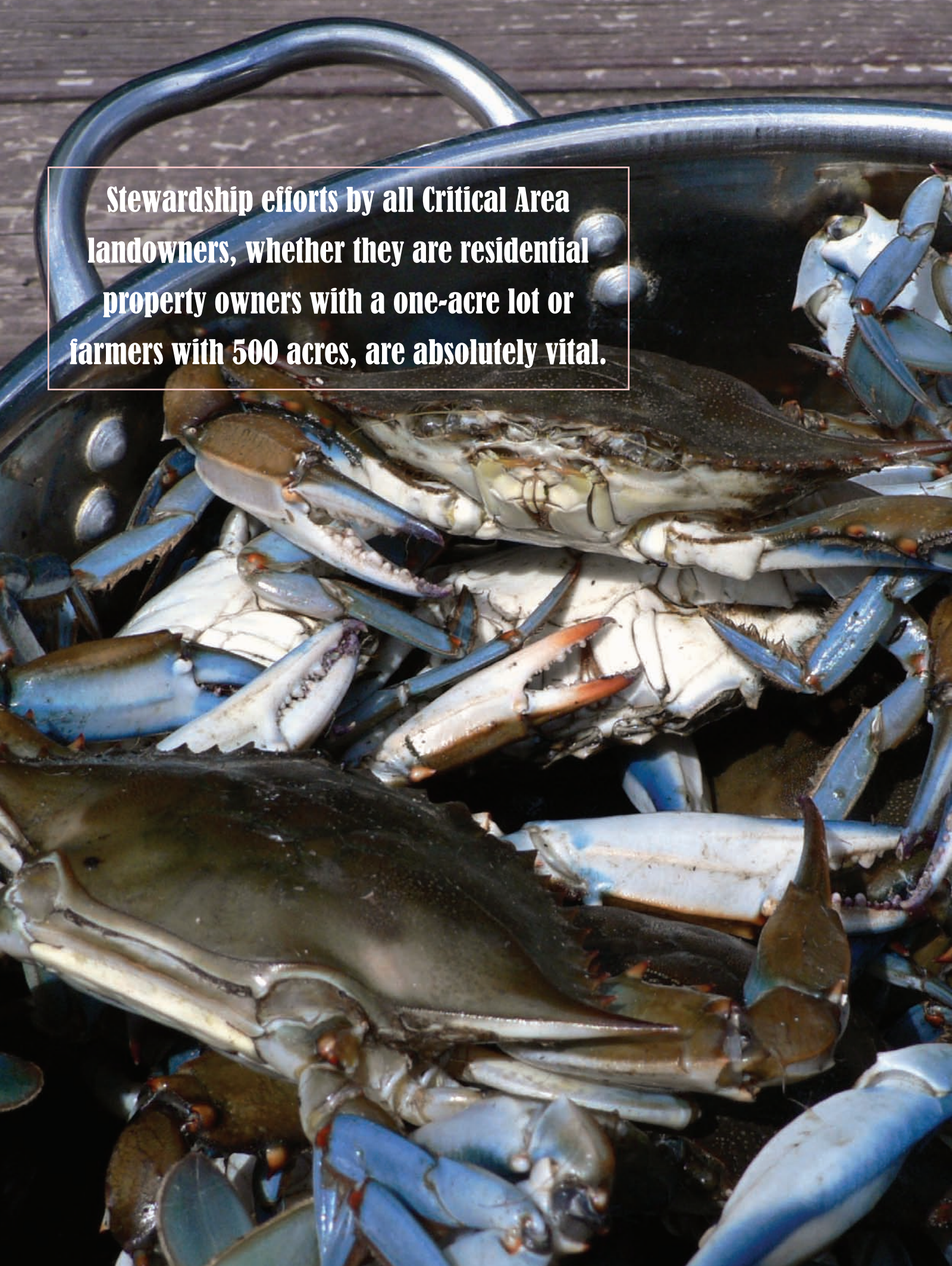
Many Critical Area violations involve unauthorized clearing. The Critical Area Criteria require mitigation planting for tree removal or clearing violations at a three-to-one ratio. Many local governments require planted mitigation at three-to-one for many other types of violations as well.

Even though restoration and mitigation activities do eventually provide environmental benefits,

they generally do not fully restore or compensate for the ecosystem functions lost as a result of the violation. That is why cutting trees, removing natural vegetation, grading, or filling within the Buffer are such serious offenses, and that is why these activities are generally prohibited unless they are associated with the construction of a water-dependent facility or a shore erosion control measure. For violations involving disturbance to the Buffer, a landowner may be required to develop a Buffer Management Plan, which must include a landscape plan indicating the establishment of the Buffer in natural vegetation (using native species) and maintenance provisions to ensure that the Buffer will be maintained as natural riparian habitat. Through the implementation of the Plan and careful maintenance, it is possible that the functions of the Buffer can eventually be restored.



■ Restoration and mitigation activities often involve planting.

A close-up photograph of a large, dark metal pot filled with cooked blue crabs. The crabs are piled together, showing their characteristic blue and white colors. The pot has a silver handle visible at the top left. The background is a wooden surface.

Stewardship efforts by all Critical Area landowners, whether they are residential property owners with a one-acre lot or farmers with 500 acres, are absolutely vital.