

(2) ALL LAND AND WATER AREAS WITHIN 1,000 FEET BEYOND THE LANDWARD BOUNDARIES OF STATE OR PRIVATE WETLANDS AND THE HEADS OF TIDES DESIGNATED UNDER TITLE 16 OF THE ENVIRONMENT ARTICLE.

[(b)](C) (1) (i) In determining the Chesapeake Bay Critical Area OR THE ATLANTIC COASTAL BAYS CRITICAL AREA within its boundaries, a local jurisdiction may exclude those portions of the planning area designated in subsection (a) OR (B) of this section which the local jurisdiction finds to be:

1. Part of a developed, urban area in which, in view of available public facilities and applicable laws and restrictions, the imposition of a program would not substantially improve protection of tidal water quality or conservation of fish, wildlife, or plant habitats; or

2. Located at least 1,000 feet from open water and separated from open water by an area of wetlands which it is found will serve to protect tidal water quality and fish, wildlife, or plant habitats from adverse impacts of development in the excluded area.

(ii) A portion of urban area to be excluded shall be at least 50% developed and may not be less than 2,640,000 square feet in contiguous area or the entire initial planning area located within the boundaries of a municipality, whichever is less.

(2) A local jurisdiction shall include in any program submitted to the Commission under § 8-1809 of this subtitle a designation of those portions of the Chesapeake Bay Critical Area OR ATLANTIC COASTAL BAYS CRITICAL AREA proposed for exclusion under paragraph (1) of this subsection, together with all factual information and expert opinion supporting its findings under this subsection.

(3) The Commission shall approve a local jurisdiction's designation of portions to be excluded unless the Commission finds, based on stated reasons, that the decision of the local jurisdiction was:

- (i) Not supported by competent and material evidence; or
- (ii) Arbitrary or capricious.

(4) If the Commission develops the program to be applied in a local jurisdiction, the Commission shall exclude areas as appropriate to meet the intent of paragraph (1) of this subsection.

[(c)](D) The Chesapeake Bay Critical Area shall consist of:

(1) Those areas designated in subsection (a) of this section, except any areas excluded in accordance with subsection [(b)](C) of this section; and

(2) Additional areas proposed for inclusion by local jurisdictions and approved by the Commission.

(E) THE ATLANTIC COASTAL BAYS CRITICAL AREA SHALL CONSIST OF: