

WHEREAS, ~~Also in~~ During that same legislative session, in Chapter 431 of the Acts of 2002, the General Assembly overruled three then-recent decisions by the Maryland Court of Appeals that, by undermining the variance standard of unwarranted hardship, had, in effect, substantially weakened undermined the authority of local jurisdictions' critical area programs in the denial of to deny variances; and

WHEREAS, Despite the authority of Chapter 431 and its clear direction that local jurisdictions are to consider the entire parcel or lot in determining if a variance applicant would be subject to unwarranted hardship, some courts and administrative decisionmakers continue to focus on only part of the property, the 100-foot buffer; and

WHEREAS, In its recent decision of Lewis v. Department of Natural Resources, the Court of Appeals suggested that a prohibition on new development in the buffer, even when viable alternatives exist elsewhere on the parcel, may constitute a taking of property without just compensation, and the General Assembly profoundly disagrees with this suggestion; and

WHEREAS, ~~A recent decision by~~ Moreover, in its Lewis ruling, the Court of Appeals, Lewis v. Department of Natural Resources, has: rejected the finding of the General Assembly that the cumulative impact of development is harmful to the critical area; shifted the burdens of proof and persuasion to local jurisdictions with respect to the denial of a critical area variance application, thus adding burdensome requirements and unnecessary expenses to their consideration of variance applications; and opened the door for citizens to view unpermitted development activity in the critical area as viable due to the lack of detrimental consequence; and

WHEREAS, The Although the Lewis ruling is holding and its associated dicta are clearly contrary to the intent of the General Assembly's enactment of both the Chesapeake Bay Critical Area Protection Act and the Atlantic Coastal Bays Protection Act, these erroneous understandings have already been cited by lower courts and administrative decisionmakers as binding precedent or at least as persuasive authority, and it is the goal of the General Assembly to put an end to this developing trend as soon as possible; and

WHEREAS, Over the past two decades, despite the vigilant efforts of the State and local critical area programs and the ongoing focus of the General Assembly, State agencies, advocacy groups, and private citizens, the health of the Chesapeake Bay has continued to deteriorate, as has water quality overall, and this fact has been substantiated in dozens of studies by a variety of government and private interest groups; and

WHEREAS, It has become readily apparent that local jurisdictions must have more viable enforcement options available to them if their critical area programs are to be implemented as intended by the General Assembly; and

WHEREAS, Acting out of this long-standing and consistent commitment to the preservation of the Chesapeake and Atlantic Coastal Bays and their ecosystems, which are among Maryland's most precious resources, it is the intent of the General Assembly that this Act shall overrule the Lewis decision and re-establish critical area