

## Preamble

WHEREAS, With the enactment of the Chesapeake Bay Critical Area Protection Act in 1984, State lawmakers recognized the major detrimental impact of development activity along the shoreline of the Chesapeake Bay and its tributaries, an area that is pivotal to the preservation and protection of water quality and natural habitat; and

WHEREAS, Two years later, in approving the State Critical Area program and its criteria, the General Assembly specified the need for a shoreline buffer of at least 100 feet, and this minimum buffer has been an essential critical area component ever since that time; and

WHEREAS, Also considered fundamental to the critical area criteria since their inception in the mid-1980s is, under certain circumstances, the allowance of variances to a local jurisdiction's critical area program; and

WHEREAS, In keeping with an equitable application of critical area requirements, on average 90% or more of the variances requested each year have been granted; and

WHEREAS, The General Assembly has always recognized, nevertheless, that attainment of critical area program goals necessitates a clear authority in support of local jurisdictions when, in their discretion, a variance must be denied; and

WHEREAS, From the beginning of the critical area program in the mid-1980s through 1999, courts consistently interpreted the variance standard of unwarranted hardship in accordance with the intent of the General Assembly, that is, as a deprivation of the reasonable use of the entire property which is equivalent to an unnecessary or unreasonable hardship; and

WHEREAS, In 2002, with a particular awareness of the growing danger to water quality and natural habitat presented by the magnitude of waterfront development, the General Assembly expanded the application of critical area protections so as to include the ecologically sensitive Atlantic Coastal Bays and their tributaries; and

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 decision makers 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,