

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.12 Foreclosure Procedures for Residential Property

Authority: Real Property Article, §7-105.1(c)(4) and (d)(2)(vii),
Annotated Code of Maryland

Notice of Final Action

[09-431-F]

On February 4, 2010, the Commissioner of Financial Regulation adopted amendments to Regulations .01 and .02 under **COMAR 09.03.12 Foreclosure Procedures for Residential Property**. This action, which was proposed for adoption in 36:26 Md. R. 2020 — 2021 (December 18, 2009), has been adopted as proposed.

Effective Date: March 15, 2010.

SARAH BLOOM RASKIN
Commissioner of Financial Regulation

Subtitle 16 BOARD OF BARBERS

09.16.01 General Regulations

Authority: Business Occupations and Professions Article, §4-206,
Annotated Code of Maryland

Notice of Final Action

[09-286-F]

On December 14, 2009, the Maryland State Board of Barbers adopted amendments to Regulation .08 under **COMAR 09.16.01 General Regulations**. This action, which was proposed for adoption in 36:19 Md. R. 1454 — 1455 (September 11, 2009), has been adopted as proposed.

Effective Date: March 8, 2010.

ROBERT WOOD
Executive Director
State Board of Barbers

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 01 OFFICE OF THE SECRETARY

15.01.08 *Conflicts of Interest Policy for Employees Who Own or Operate a Farm*

Authority: Agriculture Article, §2-102(e),
Annotated Code of Maryland

Notice of Final Action

[09-352-F]

On December 22, 2009, the Secretary of Agriculture adopted new Regulations .01 — .08 under a new chapter, **COMAR 15.01.08 Conflicts of Interest Policy for Employees Who Own or Operate a Farm**. This action,

which was proposed for adoption in 36:22 Md. R. 1761 — 1762 (October 23, 2009), has been adopted as proposed.

Effective Date: March 8, 2010.

EARL F. HANCE
Secretary of Agriculture

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, AND SOLID WASTE

26.04.10 Management of Coal Combustion Byproducts

Authority: Environment Article, §§9-281 — 9-286,
Annotated Code of Maryland;
Ch. 480, Acts of 2009

Notice of Final Action

[09-311-F]

On February 3, 2010, the Secretary of the Environment adopted new Regulations .09 and .10 under **COMAR 26.04.10 Management of Coal Combustion Byproducts**. This action, which was proposed for adoption in 36:20 Md. R. 1552 — 1554 (September 25, 2009), has been adopted as proposed.

Effective Date: March 8, 2010.

SHARI T. WILSON
Secretary of the Environment

Title 27 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Notice of Final Action

[09-373-F]

On February 3, 2010, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays adopted:

- (1) Amendments to Regulations .01 and .02 under **COMAR 27.01.01 General Provisions**;
- (2) The repeal of existing Regulation .01 and the recodification of existing Regulations .02 and .03 to be Regulations .01 and .02 under **COMAR 27.01.05 Forest and Woodland Protection**; and
- (3) Amendments to Regulation .01 and new Regulations .01-1 — .01-7 under **COMAR 27.01.09 Habitat Protection Areas in the Critical Area**.

This action, which was proposed for adoption in 36:24 Md. R. 1895 — 1904 (November 20, 2009), has been adopted with the nonsubstantive changes shown below.

Effective Date: March 8, 2010.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

COMAR 27.01.01.01B(21-2): Amended to provide that the definition of "Disturbance" does not include gardening or maintenance of an existing grass lawn. This amendment responds to several commenters who questioned whether the practice of gardening or maintaining an existing lawn in the buffer would constitute "disturbance" under the definition as proposed.

COMAR 27.01.01.01B(23-1): Amended to substitute more precise terminology in response to questions from commenters about the meaning of "creation of native vegetated cover." The substitution of "planting or regeneration of native vegetation" conveys a more commonly understood meaning without changing the substance of the definition.

COMAR 27.01.09.01B(18): Amended to add the term "replacement" and to respond to a comment that the phrase "existing principal structure" in the proposal could be read to refer to more than one structure. The amendment clarifies that the percentage of the total footprint refers to the "structure that is the subject of the application."

COMAR 27.01.09.01C(1), (2), and (3): Added applicability language to respond to comments about three issues: First, the proposed regulation does not limit the authority of the Secretary of Agriculture; second, the proposed regulation does not apply to a designated buffer exemption area; and third, as set forth in the Annotated Code of Maryland, a local jurisdiction may adopt alternative procedures and requirements in accordance with the provisions of Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, and the provisions of COMAR.

COMAR 27.01.09.01D(1)(a)(iii): This language was added to state expressly that one of the circumstances in which disturbance in the buffer may be authorized by a local jurisdiction is for development in the expanded buffer pursuant to the provisions of subsection 8 of this section.

COMAR 27.01.09.01D(8): Reworded to better explain the concept of development in the expanded buffer without change in content or meaning. The amendments specify the area described as the "expanded portion of the buffer" within which a local jurisdiction may authorize a development activity.

COMAR 27.01.09.01-1A: The amendments simplify the organizational structure of this regulation, by describing each of the types and locations of development and redevelopment activities to which the requirements of buffer establishment apply. The amendments facilitate ease of reference for the public to determine whether a proposed development activity is subject to this regulation. The amendments do not propose new or different requirements than contained in the proposed regulations.

COMAR 27.01.09.01-1B(1): The amendment substitutes "Approval" for "Creation" to use a more technically accurate term.

COMAR 27.01.09.01-1C: Reworded without change in meaning, to state that an area "fully established in woody or

wetland vegetation" will count as already having been established for purposes of the planting requirements in this regulation.

COMAR 27.01.09.01-2A: The addition of an applicability statement provides better organizational structure to this regulation, by describing each of the types and locations of development and redevelopment activities to which the requirements of buffer mitigation apply.

COMAR 27.01.09.01-2A(1) and (3): The amendments clarify that the requirements of this regulation apply only to the part of the site located in the buffer, and not to the entire site.

COMAR 27.01.09.01-2A(4): This new sentence explains that the plantings required under this regulation are to be distributed evenly throughout the entire area of the buffer. The amendment does not impose any additional planting requirement.

COMAR 27.01.09.01-2B: Insertion of the word "cumulative" explains that the mitigation amounts and standards set forth in subsections (1) through (3) of this section are to be calculated in total, if the development activity is described in more than one of the subsections (1) through (3).

COMAR 27.01.09.01-2B(2): In response to questions from commenters, this amendment inserts a modifying phrase to clarify that, in cases of removal of dead, diseased, or dying trees, mitigation of at least one 1-inch caliper tree for each tree removed is required.

COMAR 27.01.09.01-2B(4): The amendment deletes this subsection, in response to several commenters who expressed concern about the placement of this subsection in Regulation .01-2 (Mitigation). The requirement for revegetation of the area disturbed by removal of invasive species has been moved to Regulation .01-3H (Simplified Buffer Management Plan).

COMAR 27.01.09.01-2I: Inserted the phrase "in accordance with §I" to state expressly that the survival requirement applies only to stock planted pursuant to the standards in the immediately preceding table.

COMAR 27.01.09.01-2K(2)(a): Replaced the phrase "implementation of a" buffer management plan with the more explanatory phrase "planting required under an approved" buffer management plan. This amendment clarifies that the completion required under this regulation is the completion of the planting, and not merely the completion of the buffer management plan.

COMAR 27.01.09.01-2K(2)(b): Amended to more simply describe the circumstances and the timeframe within which financial assurance is required. As amended, the section provides that, if planting cannot be completed due to the time of year, an applicant can provide financial assurance pending completion of the planting; and that long-term survivability is to be covered by financial assurance only when the mitigation or establishment requirement is at least 5,000 square feet. The amendment does not increase any requirement that existed in the proposed regulation.

COMAR 27.01.09.01-2M: Substituted the phrase "measure in a buffer management plan" for the phrase "easement for the buffer." The amendment provides more flexibility for the regulated community and for local governments.

COMAR 27.01.09.01-3H(3)(c): This amendment specifies that, in the case of removal of invasive or noxious species, revegetation is to be provided, in the form of planting, or natural regeneration, in accordance with a Simplified Buffer Management Plan. The requirement for revegetation existed in proposed regulation COMAR 27.01.09.01-2B(4), and it has been reorganized to simplify ease of reference.

The changes do not affect parties subject to the regulations, because the changes consist of rewording and simplification of the requirements set forth in the proposed regulations, without increasing any requirement on any affected person.

27.01.01 General Provisions

Authority: Natural Resources Article, §8-1806,
Annotated Code of Maryland

.01 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1) — (21-1) (proposed text unchanged)

(21-2) *Disturbance*.

(a) — (b) (proposed text unchanged)

(c) *“Disturbance” does not include gardening or maintenance of an existing grass lawn.*

(22) — (23) (proposed text unchanged)

(23-1) *“Establishment” means the [[creation]] planting or regeneration of native [[vegetated cover]] vegetation throughout the buffer.*

27.01.09 Habitat Protection Areas in the Critical Area

Authority: Natural Resources Article, §8-1806,
Annotated Code of Maryland

.01 Buffer.

A. (proposed text unchanged)

B. Terms Defined.

(1) — (17) (proposed text unchanged)

(18) *“Substantial alteration” means a repair, reconstruction, replacement, or improvement of a principal structure, with a proposed total footprint that is at least 50 percent greater than that of the [[existing principal]] structure that is the subject of the application.*

(19) — (20) (proposed text unchanged)

C. (proposed text unchanged)

D. Authority of Secretary; Scope; Alternative Procedures and Requirements.

(1) The provisions of this chapter may not be construed to limit the authority of the Secretary of Agriculture under Agriculture Article, Title 9, Subtitle 4, Annotated Code of Maryland.

(2) The provisions of Regulations .01-1 through .01-6 of this chapter do not apply to an area of the buffer that is designated as a buffer exemption area under Regulation .01-7 of this chapter.

(3) A local jurisdiction may adopt alternative procedures and requirements for the provisions of this chapter if:

(a) The alternative procedures and requirements are at least as effective as the Critical Area program under Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, regulations adopted under the authority of that subtitle, and any additional requirements of the local program; and

(b) The Commission has approved those alternative procedures and requirements.

[[D.]] E. Buffer Standards.

(1) A local jurisdiction may authorize disturbance in the buffer for:

(a) A new development activity or a redevelopment activity:

*(i) Associated with a water-dependent facility under COMAR 27.01.03; **[[or]]***

(ii) (proposed text unchanged)

(iii) In accordance with §E(8) of this regulation; or

(b) (proposed text unchanged)

*(2) Except as authorized under **[[§D(1)]] §E(1)** of this regulation, a local jurisdiction may not authorize disturbance in the buffer.*

*(3) Except for the minimum buffer widths under **[[§D(5) — (8)]] §E(5) — (8)** of this regulation, a local jurisdiction shall establish a buffer of at least 100 feet landward from:*

(a) — (c) (proposed text unchanged)

*(4) For purposes related to the calculation of the minimum buffer widths under **[[§D(5) — (8)]] §E(5) — (8)** of this regulation, a local jurisdiction shall measure landward from the points specified under **[[§D(3) and (4)]] §E(3) and (4)** of this regulation.*

*(5) Except as provided under **[[§D(6)]] §E(6)** of this regulation, and in accordance with **[[§D(4)]] §E(4)** of this regulation, if a local jurisdiction grants final local approval for a subdivision or a site plan in the Resource Conservation Area on or after July 1, 2008, the local jurisdiction shall establish:*

*(a) An expanded buffer in accordance with **[[§D(7) and (8)]] §E(7) and (8)** of this regulation; and*

(b) (proposed text unchanged)

*(6) The provisions of **[[§D(5)(b)]] §E(5)(b)** of this regulation do not apply if:*

(a) — (b) (proposed text unchanged)

*(c) A local program procedure approved by the Commission provides for the reduction of the strict application of the minimum 200-foot buffer under **[[§D(5)(b)]] §E(5)(b)** of this regulation if that minimum would preclude a subdivision of the property at a density of one dwelling unit per 20 acres or an intra-family transfer authorized under Natural Resources Article, §8-1808.2, Annotated Code of Maryland.*

*(7) If a buffer is contiguous to a steep slope, a nontidal wetland, a nontidal wetland of special State concern under COMAR 26.23.06.01, a hydric soil, or a highly erodible soil, a local jurisdiction shall expand the minimum buffer required under **[[§D(3) or (5)]] §E(3) or (5)** of this regulation and shall calculate the extent of that expansion in accordance with the following requirements:*

(a) — (c) (proposed text unchanged)

(d) A highly erodible soil on a slope less than 15 percent or a hydric soil, to the lesser of:

(i) (proposed text unchanged)

*(ii) 300 feet, including the minimum buffer required under **[[§D(3) or (5)]] §E(3) or (5)** of this regulation.*

*(8) **[[On a lot or parcel that was created before January 1, 2010, a local jurisdiction may authorize in the expanded buffer a development activity that impacts a highly erodible soil on a slope less than 15 percent or a hydric soil, if:]]** If a buffer is contiguous to a highly erodible soil on a slope less than 15% or a hydric soil and is located on a lot or parcel that was created before January 1, 2010, a local jurisdiction may authorize a development activity in the expanded buffer, if:*

(a) The location of the development activity is in the expanded portion of the buffer for a highly erodible soil on a slope less than 15 percent or a hydric soil, but not the 100-foot buffer;

*(b) The **[[entire]]** buffer for a highly erodible soil on a slope less than 15 percent or a hydric soil occupies at least 75 percent of the lot or parcel; and*

(c) (proposed text unchanged)

.01-1 Buffer Establishment.**A. Applicability.**

(1) [[The requirements of this regulation are applicable to a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.]] The requirements of this regulation are applicable to:

(a) A development or redevelopment activity that occurs on a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream if that development or redevelopment activity is located outside the buffer; or

(b) The approval of a new subdivision that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.

(2) (proposed text unchanged)

B. A local jurisdiction shall require an applicant to establish the buffer in vegetation in accordance with §C of this regulation and Regulation .01-2 of this chapter and to provide a buffer management plan under Regulation .01-3 of this chapter when an applicant applies for:

(1) [[Creation]] Approval of a new subdivision or a new lot;

(2) — (3) (proposed text unchanged)

C. [[If the buffer is not fully forested at the time of application, an applicant shall establish the buffer to the extent required in the following table]] At the time of application, if the buffer is not fully forested or is not fully established in woody or wetland vegetation, an applicant shall establish the buffer to the extent required in the following table:

Table. (proposed text unchanged)

D. — E. (proposed text unchanged)

.01-2 Mitigation and Planting Standards.

A. Applicability. The requirements of this regulation are applicable to a development or redevelopment activity that occurs on a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream when that development or redevelopment activity is located inside the buffer.

[[A.]] B. As applicable to a site, a local jurisdiction shall require that a buffer management plan in accordance with Regulation .01-3 of this chapter satisfy the planting and mitigation standards of this regulation and satisfy the buffer establishment standards required under Regulation .01-1 of this chapter so as to:

(1) Prohibit the installation or cultivation of new lawn or turf on-site in the buffer;

(2) Ensure the planting of native species in compliance with the amounts specified under [[§§B, F, and G]] §§C, G, and H of this regulation;

(3) Ensure coverage of the [[site]] buffer with mulch or ground cover or both until buffer plantings are established; [[and]]

(4) Ensure planting is evenly distributed throughout the entire buffer; and

[[4]] (5) (proposed text unchanged)

[[B.]] C. As applicable to a site, a local jurisdiction shall calculate the cumulative amount of buffer mitigation required in accordance with the following standards:

(1) For a development activity within the buffer, mitigation shall be based on the limits of disturbance and calculated in accordance with the ratios under [[§F]] §G of this regulation;

(2) [[For a development activity that results in]] Except for the mitigation required under §C(3) of this regulation, for the removal of an individual tree with a diameter of at least 2 inches when measured at 4.5 feet above the ground surface, mitigation shall be at a rate of 100 square feet for every 1 inch of diameter; and

(3) For removal of a dead, diseased, or dying tree, mitigation shall be at least one 1-inch caliper tree for each tree removed [[; and

(4) For disturbance associated with invasive species control, replanting shall be equivalent to the size of the area disturbed and in accordance with the buffer management plan]].

[[C.]] D. Except as authorized under [[§D]] §E of this regulation, if mitigation planting cannot be located on-site within the buffer because of site constraints, a local jurisdiction shall require planting in the following order of priority:

(1) — (2) (proposed text unchanged)

[[D. — F.]] E. — G. (proposed text unchanged)

[[G.]] H. A local jurisdiction may authorize the combination of the planting and mitigation standards found in [[§G(3) and (4)]] §§I and K of this regulation in accordance with the following table:

Requirement	Amount	Options
Establishment	Less than 1/4 acre	Landscaping stock according to <u>[[§H]] §I</u> of this regulation for the entire area
	1/4 acre to less than or equal to 1 acre	At least 50 percent of area in landscaping stock according to <u>[[§H]] §I</u> of this regulation, the remainder according to <u>[[§J]] §K</u> of this regulation
	Greater than 1 acre to less than or equal to 5 acres	At least 25 percent of area in landscaping stock according to <u>[[§H]] §I</u> of this regulation, the remainder according to <u>[[§J]] §K</u> of this regulation
Mitigation	Greater than 5 acres	At least 10 percent of area in landscaping stock according to <u>[[§H]] §I</u> of this regulation, the remainder according to <u>[[§J]] §K</u> of this regulation
	Less than 1 acre	Landscaping stock according to <u>[[§H]] §I</u> of this regulation for the entire area
	1 acre or greater	At least 50 percent of area in landscaping stock according to <u>[[§H]] §I</u> of this regulation, the remainder according to <u>[[§J]] §K</u> of this regulation

[[H.]] I. (proposed text unchanged)

[[I.]] J. All landscaping stock planted in accordance with §I shall be 100 percent guaranteed for at least 2 years after planting is completed.

[[J.]] K. A local jurisdiction may use the following table to allow flexible stocking size when authorized under [[§G]] §H of this regulation:

[[K.]] *L. A local jurisdiction may not:*

(1) (proposed text unchanged)
 (2) *Issue a final use and occupancy permit for an application under Regulation .01-3B(2) of this chapter unless the applicant:*

(a) *Completes the [[implementation of a]] planting required under an approved buffer management plan; or*

(b) *[[Provides]] Pending completion of the planting required under an approved buffer management plan during the next planting season, provides financial assurance to cover the costs for:*

(i) (proposed text unchanged)

(ii) *[[Long-term]] In the case of a mitigation or establishment requirement that is at least 5,000 square feet, long-term survivability in accordance with the requirements of Regulation .01-3J(2)(d) of this chapter.*

[[L.]] *M. Before recordation of a final subdivision, an applicant shall:*

(1) (proposed text unchanged)

(2) *Design each sign required under [[§L(1)]] §M(1) of this regulation so that it:*

(a) — (c) (proposed text unchanged)

[[M.]] *N. Concurrent with the recordation of a final plat, an applicant shall record a protective [[easement for the buffer]] measure in a buffer management plan in accordance with Regulation .01-3 of this chapter.*

[[N.]] *O. (proposed text unchanged)*

.01-3 Buffer Management Plans.

A. — G. (proposed text unchanged)

H. *Simplified Buffer Management Plan.*

(1) — (2) (proposed text unchanged)

(3) *A simplified buffer management plan shall include:*

(a) — (b) (proposed text unchanged)

(c) *In the case of the removal of invasive or noxious species, the revegetation of the area in accordance with Regulation .01-2 B(1) and (3) of this chapter;*

[[([c])] (d) — [[(d)]] (e) (proposed text unchanged)

I. *Minor Buffer Management Plan.*

(1) (proposed text unchanged)

(2) *A minor buffer management plan shall include:*

(a) — (b) (proposed text unchanged)

(c) *A maintenance plan for the control of invasive species, pests, and predation that shows invasive species and pest control practices, the provision of at least 2 years of monitoring, and a reinforcement planting provision if survival rates fall below the standards in Regulation [[.01-2H]] .01-2J and K of this chapter;*

(d) — (g) (proposed text unchanged)

J. *Major Buffer Management Plan.*

(1) (proposed text unchanged)

(2) *A major buffer management plan shall include:*

(a) — (b) (proposed text unchanged)

(c) *A maintenance plan for the control of invasive species, pests, and predation that shows invasive species and pest control practices, the provisions of at least 2 years of monitoring, and a reinforcement planting provision if survival rates fall below the standards in Regulation [[.01-2H]] .01-2J and K of this chapter [[and §E(2)(d) of this regulation]];*

(d) *A long-term protection plan that includes evidence of financial assurance that adequately covers the planting and survivability requirement, a provision for at least 2 years of monitoring as required in Regulation [[.01-2H]] .01-2J and K of this chapter, and if planting, an anticipated planting date before construction or the sale of the lot;*

(e) — (h) (proposed text unchanged)

MARGARET G. McHALE
 Critical Area Commission for the
 Chesapeake and Coastal Bays

Title 29 DEPARTMENT OF STATE POLICE

Subtitle 08 INVESTIGATIONS INVOLVING THE EXERCISE OF FIRST AMENDMENT ACTIVITIES

29.08.01 Covert Investigations and Criminal Intelligence

Authority: Public Safety Article, §3-701,
 Annotated Code of Maryland

Notice of Final Action

[09-399-F]

On February 4, 2010, the Secretary of State Police adopted new Regulations **.01 — .05** under a new chapter, **COMAR 29.08.01 Covert Investigations and Criminal Intelligence**. This action, which was proposed for adoption in 36:26 Md. R. 2076 (December 18, 2009), has been adopted with the nonsubstantive changes shown below.

Effective Date: March 8, 2010.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .04A(4): This is a nonsubstantive clarification denoting who has responsibility for oversight, without diminishing it in any respect.

.04 Procedures.

A. *Covert Investigations Involving First Amendment Activities.*

(1) — (3) (proposed text unchanged)

(4) *Reports.*

(a) *It is the responsibility of the sworn Criminal [[Investigation]] Intelligence Section (CIS) supervisor to ensure that all activities are properly reported and documented by the covert operative.*

(b) — (e) (proposed text unchanged)

(5) (proposed text unchanged)

B. — C. (proposed text unchanged)

TERRENCE B. SHERIDAN
 Secretary of State Police