

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

Notice of Final Action

[11-347-F]

On February 1, 2012, the Secretary of the Environment adopted amendments to:

- (1) Regulation .01 under COMAR 26.11.01 General Administrative Provisions;
- (2) Regulation .01 under COMAR 26.11.02 Permits, Approvals, and Registration; and
- (3) Regulation .14 under COMAR 26.11.06 General Emissions Standards, Prohibitions, and Restrictions.

This action, which was proposed for adoption in 38:25 Md. R. 1645 — 1647 (December 2, 2011), has been adopted as proposed.

Effective Date: March 5, 2012.

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment

Subtitle 11 AIR QUALITY

Notice of Final Action

[11-346-F]

On February 9, 2012, the Secretary of the Environment adopted amendments to:

- (1) Regulation .01 under COMAR 26.11.01 General Administrative Provisions; and
- (2) Regulation .12 under COMAR 26.11.06 General Emission Standards, Prohibitions, and Restrictions.

This action, which was proposed for adoption in 38:25 Md. R. 1647—1648 (December 2, 2011), has been adopted as proposed.

Effective Date: March 5, 2012.

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment

Subtitle 11 AIR QUALITY

Notice of Final Action

[11-348-F]

On February 9, 2012, the Secretary of the Environment adopted amendments to:

- (1) Regulation .04 under COMAR 26.11.01 General Administrative Provisions; and
- (2) Regulation .02 under COMAR 26.11.19 Volatile Organic Compounds from Specific Processes.

This action, which was proposed for adoption in 38:25 Md. R. 1648—1650 (December 2, 2011), has been adopted as proposed.

Effective Date: March 5, 2012.

ROBERT M. SUMMERS, Ph.D.
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

[11-364-F]

On February 1, 2012, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays adopted:

- (1) Amendments to Regulation .01 under COMAR 27.01.01 General Provisions; and
- (2) Amendments to Regulations .01 — .01-3, new Regulation .01-4, and the recodification of existing Regulations .01-4 — .01-7 to be Regulations .01-5 — .01-8 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area.

This action, which was proposed for adoption in 38:26 Md. R. 1740—1746 (December 16, 2011), has been adopted with the nonsubstantive changes shown below.

Effective Date: March 5, 2012.

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:

As originally proposed COMAR 27.01.01.01 and COMAR 27.01.09.01 to .01-4 were provisions to amend the Buffer regulations adopted in March 2010. The proposed amendments were made primarily to make adjustments to mitigation requirements that allow for greater flexibility and decrease costs. During the past year, Commission staff has received comments from individuals and local governments concerning the proposed amendments. In addition, during the official public comment period, the Commission received two comments from local jurisdictions. All comments were discussed with each jurisdiction.

Therefore, the Critical Area Commission has decided to change the regulations as proposed with seven nonsubstantive changes which clarify definitions; delete language to buffer establishment; clarify mitigation and planting standards and reword to clarify buffer management plans. All of these changes are clarifying and none of these changes is substantive. Furthermore, the changes are less restrictive than originally proposed.

Specifically, the nature of the changes and the basis for the above conclusion is as follows:

COMAR 27.01.09.01B(14-1): Added language to clarify "septic systems in a forest or developed woodland on a lot created before local program approval, if clearing is required". This provision is included under the list for permanent disturbance and already appears under the definition of "temporary disturbance" as an example of what is not a temporary disturbance.

COMAR 27.01.09.01B(18-2): Added language to clarify "locating septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required". This provision is included under the list for temporary disturbance

and already appears under the definition of "permanent disturbance" as an example of what is not a permanent disturbance.

COMAR 27.01.09.01E(4): Reworded to better explain and clarify the concept of calculating the minimum buffer widths. The rewording did not change the meaning of the sentence.

COMAR 27.01.09.01-1D(2): Deleted the words "with native vegetation" based on comments received that this wording seems to suggest the area where lot coverage is removed must be planted with woody vegetation. Since that is not the intent of this section, this language is removed to avoid confusion.

COMAR 27.01.09.01-2C(1)(b): Added the words, "as determined by the local jurisdiction" based on a request received to clarify that the local government will make the final determination of canopy coverage. This is clarifying language and does not change the meaning of the section.

COMAR 27.01.09.01-2I(2): Deleted the words "with native vegetation" based on comments received that this wording seems to suggest the area where lot coverage is removed must be planted with woody vegetation. Since that is not the intent of this section, this language is removed to avoid confusion.

COMAR 27.01.09.01-3H(1)(a): Reworded the sentence to clarify that "up to 3 feet wide" refers to access and not the private pier or shoreline.

Finally, 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.

27.01.09 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) — (14) (proposed text unchanged)

(14-1) *Permanent Disturbance.*

(a) (proposed text unchanged)

(b) "Permanent disturbance" includes:

(i) — (ii) (proposed text unchanged)

(iii) *Except under §B(18-2)(b)(iii) of this regulation,*

grading; [[and]]

(iv) Except under §B(18-2)(b)(ii) of this regulation, clearing of a tree, forest, or developed woodland; and

(v) A septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required.

(c) (proposed text unchanged)

(15) — (18-1) (proposed text unchanged)

(18-2) *Temporary Disturbance.*

(a) (proposed text unchanged)

(b) "Temporary disturbance" includes:

(i) (proposed text unchanged)

(ii) Construction of a road or other pathway that is necessary for access to the site of the development or redevelopment activity, if the road or pathway is removed immediately after completion of the development or redevelopment activity and the area is restored to its previous vegetative condition; [[and]]

(iii) Grading of a development site, if the area is restored to its previous vegetative condition immediately after completion of the development or redevelopment activity; and

(iv) Locating a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required.

(c) (proposed text unchanged)

(19) — (20) (proposed text unchanged)

C. — D. (proposed text unchanged)

E. Buffer Standards.

(1) — (3) (proposed text unchanged)

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

(5) — (8) (proposed text unchanged)

.01-1 Buffer Establishment.

A. — C. (proposed text unchanged)

D. A local jurisdiction may authorize an applicant to deduct from the total establishment requirement an area of lot coverage removed from the buffer if:

(1) (proposed text unchanged)

(2) The total area is stabilized [[with native vegetation]].

.01-2 Mitigation and Planting Standards.

A. — B. (proposed text unchanged)

C. Permanent Disturbance. As applicable to a site, a local jurisdiction shall calculate the cumulative amount of buffer mitigation required for permanent disturbance in accordance with the following standards:

(1) Except as specified under [[§]]§C(2) and (3) of this regulation, mitigation for a development or redevelopment activity in the buffer or for the removal of an individual tree, developed woodland, or forest shall be calculated:

(a) (proposed text unchanged)

(b) Based on the square footage of the area of the canopy coverage removed, as determined by the local jurisdiction.

(2) — (3) (proposed text unchanged)

D. — H. (proposed text unchanged)

I. A local jurisdiction may authorize an applicant to deduct from the total mitigation requirement an area of lot coverage removed from the buffer if:

(1) (proposed text unchanged)

(2) The total area is stabilized [[with native vegetation]].

J. — S. (proposed text unchanged)

.01-3 Buffer Management Plans.

A. — G. (proposed text unchanged)

H. Simplified Buffer Management Plan.

(1) Before the performance of an activity under this section in the buffer, a local jurisdiction shall require the applicant to submit a simplified buffer management plan as part of the application associated with any of the following activities:

(a) Providing access up to 3 feet wide to a private pier or shoreline *[[that is up to 3 feet wide]]*;

(b) — (f) (proposed text unchanged)

(2) — (3) (proposed text unchanged)

I. — J. (proposed text unchanged)

MARGARET G. McHALE

Chair

Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays