

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

27.01.02 Development in the Critical Area

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

Notice of Proposed Action

[14-020-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to recodify existing Regulation .01 to be Regulation .01-1, adopt new Regulations .01, .06, .06-3, and .06-4, amend and recodify existing Regulations .05-1 and .05-2 to be Regulations .06-1 and .06-2, and repeal existing Regulation .06 under COMAR 27.01.02 Development in the Critical Area. This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on December 4, 2013, pursuant to State Government Article, §10-506 (c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend and recodify certain provisions of COMAR 27.01.02 so as to create thematically organized regulations concerning growth allocation. The Commission also proposes a new regulation defining a term applicable to this chapter, regulations which reiterate and consolidate existing statutory and regulatory provisions relating to growth allocation, and a regulation that captures the Commission's existing growth allocation policies.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Amber Widmayer, Natural Resources Planner, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call 410-260-3481, or email to awidmayer@dnr.state.md.us, or fax to 410-974-5338. Comments will be accepted through February 10, 2014. A public hearing has not been scheduled.

.01 Definition.

In this chapter, "300-foot setback" means an area that is at least 300 feet in width, as measured from the landward boundary of tidal waters or wetlands, that is provided on a growth allocation site in

order to provide habitat and stormwater benefits to supplement benefits required in accordance with COMAR 27.01.09.

.06 Growth Allocation—Minimum Local Program Requirements

A. A local jurisdiction shall calculate its growth allocation based on 5 percent of the total resource conservation area in its critical area at the time of original approval of the local jurisdiction's program by the Commission, excluding:

- (1) Tidal wetlands; and
- (2) Land owned by the federal government.

B. A county shall coordinate future expansions of intensely developed areas and limited development areas in coordination with affected municipalities.

C. A local jurisdiction shall require an application for new intensely developed or limited development areas to be:

- (1) In conformance with the requirements of this subtitle; and
- (2) Designated on the locally approved Critical Area map that is submitted by the local jurisdiction as part of its application to the Commission for growth allocation approval.

D. If a local jurisdiction has within its territorial limits an area that is subject to the Chesapeake Bay Critical Area program and an area that is subject to the Atlantic Coastal Bays Critical Area program, the growth allocation for that jurisdiction may be utilized within either critical area in accordance with Natural Resources Article, §8-1808.1(d), Annotated Code of Maryland.

E. As part of an approved growth allocation by the Commission, the local jurisdiction shall enforce:

- (1) A buffer management plan;
- (2) A habitat protection plan; and
- (3) Other applicable conditions of approval as determined by the Commission at the time of project approval.

[.05-1] .06-1 Growth Allocation Submittal Requirements.

A. The Commission may not accept for processing a growth allocation request unless all of the following are provided at the time of submittal:

(1) All information and documentation relevant to the local jurisdiction's determination that the project meets the standards listed under Natural Resources Article, [§8-1808.1(c)(1)] §8-1808.1(c)(2), Annotated Code of Maryland, and Regulation .06-3 of this chapter;

(2) All information and documentation that addresses the factors to be considered by the Commission under Natural Resources Article, [§ 8-1808.1(c)(3)] §8-1808.1(c)(4), Annotated Code of Maryland, and Regulation .06-3 of this chapter;

(3)—(4) (text unchanged)

(5) [An] In accordance with Regulation .06-2 of this chapter, an environmental report that demonstrates that the project has been designed and will be constructed in compliance with all requirements of the proposed Critical Area land classification;

(6) For the following resources, as appropriate for the project site and each government agency, a preliminary review and comment from the Department of the Environment, Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:

(a)—(b) (text unchanged)

(c) Anadromous fish and their propagation waters and [any] other aquatic species located [onsite] on-site;

(d)—(g) (text unchanged)

(7) A map that shows the land area [for which] where the local jurisdiction proposes a change [of] to a Critical Area land classification; and

(8) (text unchanged)

B. The conceptual site development plan and environmental features map required under §A(3) and (4) of this regulation shall each include:

(1)—(8) (text unchanged)

(9) [Any] A proposed development envelope;

(10)—(15) (text unchanged)

(16) A delineation of the [minimum] 100-foot buffer as measured from the mean high water line of tidal waters or the landward [edge] *boundary* of a tidal wetland or a tributary stream;

(17) As applicable and in accordance with the requirements of [COMAR 27.01.09.01] *COMAR 27.01.09.01E* or the local program, a delineation of [any] *an* expanded buffer that is necessary because of a contiguous slope of 15 percent or greater or the presence of a hydric soil, highly erodible soil, or a nontidal wetland;

(18) When converting from a resource conservation area to a limited development area or an intensely developed area, the location and extent of the 300-foot [minimum] setback;

(19) Unless the Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a nontidal wetland[,] that is less than 2 years old, including the 25-foot buffer from that nontidal wetland;

(20) Unless the Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a tidal wetland[,] that is less than 2 years old, including the delineation of State and private tidal wetland boundaries;

(21)—(28) (text unchanged)

[.05-2] .06-2 Environmental Report.

A. The environmental report required under Regulation [.05-1A(5)] *.06-1A(5)* of this chapter shall include:

(1) (text unchanged)

(2) The subdivision *and development* history [since]:

(a) *Between December 1, 1985 and the date of growth allocation application in the Chesapeake Bay Critical Area; and*

(b) [since] *Between June 1, 2002 and the date of growth allocation application in the Atlantic Coastal Bays Critical Area;*

(3)—(8) (text unchanged)

(9) In the limited development area and resource conservation area, existing and proposed lot coverage information, calculated by square feet of coverage for each lot and total area of lot coverage within the limited development area and [the] total area of lot coverage within the resource conservation area;

(10) Mitigation required for clearing of forest area, developed woodland, or vegetation in accordance with the requirements of *Regulations .04C and .05C(9) of this chapter, COMAR 27.01.05, or the local program;*

(11)—(14) (text unchanged)

B. If §A(13) of this regulation is applicable, the local jurisdiction shall require the developer to prepare a buffer management plan [that provides:

(1) The location and number of square feet of existing vegetation within the buffer;

(2) A general description of the species composition;

(3) The location and number of square feet of vegetation in the buffer that are proposed for removal;

(4) The location and number of square feet of disturbance proposed in the buffer that are associated with a development activity;

(5) A proposed plan that identifies the plantings necessary to establish the buffer or to mitigate for proposed impacts, including the size, species, and location of all proposed plantings;

(6) Any written description, specification, easement, or other protective agreement necessary to ensure implementation of the buffer management plan; and

(7) Bonding or any other financial surety necessary to ensure long-term protection and maintenance of vegetation in the buffer] *in accordance with COMAR 27.01.09.01-3.*

C. If §A(14) of this regulation is applicable, a local jurisdiction shall:

(1) Require the developer to prepare a habitat protection plan that:

(a)—(b) (text unchanged)

(c) Includes [all] protective measures necessary and appropriate to provide for long-term conservation of the identified habitat and species; and

(2) Ensure:

(a) (text unchanged)

(b) The execution of [all] necessary long-term protective agreements.

.06-3 Requirements for New Intensely Developed Areas and Limited Development Areas.

A. *Definition. In §§E, F, and G(1) of this regulation, "consistency with" or "consistent with" a jurisdiction's adopted comprehensive plan means that a standard or factor will further, and not be contrary to:*

(1) *For a growth allocation application that is to be located in a priority funding Area, in accordance with State Finance and Procurement Article, §§5-7B-02 and 5-7B-03, Annotated Code of Maryland, the following items in the plan:*

(a) *Policies;*

(b) *Timing of the implementation of the plan;*

(c) *Timing of development;*

(d) *Timing of rezoning; and*

(e) *Development patterns; or*

(2) *For a growth allocation application that is not to be located in a priority funding area, the following items in the plan:*

(a) *All of the items under §A(1) of this regulation;*

(b) *Land uses; and*

(c) *Densities or intensities.*

B. *Except as authorized under Regulation .03B(2) of this chapter, a new intensely developed area shall be at least 20 acres.*

C. *Except as provided in §D of this regulation, a local jurisdiction may not use more than 1/2 of its total allotted growth allocation acreage to convert a resource conservation area into a new limited development area or a new intensely developed area.*

D. *In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, if the county is unable to utilize a portion of its growth allocation in accordance with §C of this regulation then these counties may use a standard that varies from §C of this regulation if:*

(1) *The alternative standard is consistent with the county's adopted comprehensive plan;*

(2) *The Commission has approved the alternative standard as part of the county's program; and*

(3) *The county requires an applicant for growth allocation to cluster development in the growth allocation area.*

E. *A local jurisdiction shall use the following standards when locating new intensely developed areas or limited development areas:*

(1) *Locate a new intensely developed area in a limited development area or adjacent to an existing intensely developed area;*

(2) *Locate a new limited development area adjacent to an existing limited development area or an intensely developed area;*

(3) *Locate in a manner that:*

(a) *Minimizes impacts to a habitat protection area as defined in COMAR 27.01.01.01;*

(b) *Optimizes benefits to water quality; and*

(c) *Minimizes impacts to the defined land uses of the resource conservation area;*

(4) *Locate a new intensely developed area or limited development area in a resource conservation area at least 300 feet*

beyond the landward boundary of tidal wetlands or tidal waters, unless the local jurisdiction proposes, and the Commission approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources; and

(5) For a growth allocation application for a residential subdivision, comply with the requirements and procedures under Environment Article, §9-206, Annotated Code of Maryland, and Land Use Article, Title 1, Subtitle 5, and §5-104, Annotated Code of Maryland.

F. A local jurisdiction may use a standard that varies from §E(1) and (2) of this regulation if:

(1) The alternative standard is consistent with the local jurisdiction's adopted comprehensive plan; and

(2) The Commission has approved the alternative standard as part of the local program.

G. When reviewing a map amendment or refinement involving the use of growth allocation, the Commission shall consider the following factors:

(1) Consistency with the jurisdiction's adopted comprehensive plan and whether the growth allocation would implement the goals and objectives of the adopted plan;

(2) For a new intensely developed area, whether the development will:

(a) Be served by a public wastewater system;

(b) Have an allowed average density of at least 3.5 units per acre, as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland;

(c) For a new intensely developed area that is greater than 20 acres, be located in a priority funding area; and

(d) Have a demonstrable economic benefit to the area;

(3) For a new limited development area, whether the development will:

(a) Be served by a public wastewater system or septic system that uses the best available nitrogen removal technology;

(b) Complete an existing subdivision;

(c) Expand an existing business; or

(d) Be clustered;

(4) The use of existing public infrastructure, where practical;

(5) Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on-site or off-site;

(6) Impacts on a priority preservation area, as defined under Agriculture Article, §2-518, Annotated Code of Maryland;

(7) Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and

(8) Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development.

H. The Commission shall ensure that the provisions of this regulation have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of this subtitle, and all criteria of the Commission.

.06-4 Deduction of Growth Allocation Acreage.

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Defined Terms.

(a) "Deduction" means the total number of growth allocation acres that are necessary for approval of a growth allocation project and, after approval by the Commission, are subtracted from the growth allocation reserves of the local jurisdiction in which the project is located.

(b) "Growth allocation envelope" means all of the proposed components of a growth allocation project that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.

B. A local jurisdiction shall deduct acreage from its growth allocation reserves:

(1) For the total number of acres of a parcel for which growth allocation is approved if, as of December 1, 1985 in the Chesapeake Bay Critical Area or June 1, 2002 in the Atlantic Coastal Bays Critical Area:

(a) The parcel was less than 20 acres; or

(b) The parcel was at least 20 acres but the growth allocation application does not qualify for use of a growth allocation envelope under §B(2) of this regulation; or

(2) For the number of growth allocation acres approved within a growth allocation envelope, if:

(a) Areas that support the proposed development are included within the growth allocation envelope; and

(b) When converting:

(i) A resource conservation area to a new limited development area or a new intensely developed area, the remaining resource conservation area on the parcel outside the growth allocation envelope is at least 20 acres; or

(ii) A limited development area to a new intensely developed area, the new intensely developed area is at least 20 acres unless a lesser amount is approved in accordance with Regulation .03B(2) of this chapter.

C. Applicability. The provisions of §§D and E of this regulation are applicable to a growth allocation application to convert a resource conservation area to a new limited development area or a new intensely developed area when the application uses a growth allocation envelope under §B(2) of this regulation.

D. A local jurisdiction shall make a determination under §E of this regulation in accordance with the parcel's resource conservation area acreage as it existed:

(1) In the Chesapeake Bay Critical Area, on December 1, 1985; or

(2) In the Atlantic Coastal Bays Critical Area, on June 1, 2002.

E. A local jurisdiction may not approve the application unless the local jurisdiction, by use of the subdivision and development history required under Regulation .06-2A(2) of this chapter, determines that, given the existing dwelling units and the development potential on the parcel outside the proposed growth allocation envelope, there remains sufficient resource conservation area acreage outside the envelope to support a minimum density of one dwelling per 20 acres, as required under Regulation .05C(4) of this chapter.

F. A local jurisdiction may exclude the following from a growth allocation deduction:

(1) The remaining resource conservation area outside a growth allocation envelope in accordance with §B(2)(b)(i) of this regulation;

(2) The remaining resource conservation area that is outside a growth allocation envelope and is less than 20 acres if:

(a) The remaining resource conservation area on the growth allocation parcel is adjacent and contiguous to a permanently protected resource conservation area on another parcel; and

(b) The sum of the total acreage of the remaining resource conservation area on the growth allocation parcel and the acreage of the permanently protected resource conservation area on another parcel is at least 20 acres;

(3) The acreage of a 300-foot setback, even when it is less than 20 acres;

(4) The acreage within the buffer required in COMAR 27.01.09.01 when it is within a 300-foot setback; and

(5) The acreage of tidal wetlands on the parcel.

G. A local jurisdiction shall authorize a maximum of one growth allocation envelope per parcel unless:

(1) Deduction of more than one growth allocation envelope will provide a water quality or habitat benefit; and

(2) The Commission approves the use of more than one growth allocation envelope.

H. A local jurisdiction shall require deduction of the number of growth allocation acres that are shown on the locally approved map.

I. When a 300-foot setback is not provided, a local jurisdiction shall require deduction for the area of the buffer required under COMAR 27.01.09.01.

MARGARET G. McHALE

Chair

Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 10 HEALTH INSURANCE — GENERAL

Notice of Proposed Action (13-221-R)

The Insurance Commissioner proposes to:

(1) Amend Regulation .10 under COMAR 31.10.11 Uniform Claims Forms; and

(2) Adopt new Regulations .01—.04 under a new chapter, COMAR 31.10.39 Utilization Review of Treatment for Autism and Autism Spectrum Disorders.

Because substantive changes have been made to the original proposal as published in 40:16 Md. R. 1391—1393 (August 9, 2013), the action is being repropoed at this time.

Statement of Purpose

The purpose of this action is to clarify the exception found in COMAR 31.10.11.10 for additional information that may be required by a carrier in addition to the uniform claim form. The purpose of this action regarding COMAR 31.10.39 is to conform the definition of habilitative services to the definition found in Insurance Article, § 15-835, Annotated Code of Maryland; to clarify that for the purposes of these regulations, psychological care includes psychotherapy; to clarify that psychologists who provide psychological care as described in these regulations are required to be licensed in the state in which the services are provided; to clarify that the utilization review criteria of a carrier are used to determine the medical necessity or appropriateness of care; to clarify that each carrier's utilization review criteria for the treatment of autism and autism spectrum disorders are required to include criteria for behavioral health treatment, psychological care, and therapeutic care; and to correct cross references.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action has an economic impact because new criteria that are established for the

medically necessary and appropriate use of habilitative services to treat autism and autism spectrum disorders may result in coverage of certain services that may have been denied as experimental or investigational services in the past.

II. Types of Economic Impact.

Revenue (R+/R-)

Expenditure (E+/E-) Magnitude

A. On issuing agency:	NONE	
B. On other State agencies:	(E+)	5.7 million
C. On local governments:	(E+)	Unknown

Benefit (+)

Cost (-)

Magnitude

D. On regulated industries or trade groups:	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unknown

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. There is no economic impact on the issuing agency because the new regulations do not require any additional action by the issuing agency.

B. This action may have an impact on the Department of Budget and Management as the new criteria for the treatment of autism and autism spectrum disorders may impact the costs of health benefits provided to State employees. The Department of Budget and Management has notified the Maryland Insurance Administration that its actuary has estimated the fiscal impact of proposed COMAR 31.10.39 on the State Employee and Retiree Health and Welfare Benefits Program to be an annual cost expectation of \$5.7 million for the State's Health Plan.

C. This action may have an impact on local governments to the extent that the new criteria for the treatment of autism and autism spectrum disorders may impact the costs of health benefits provided to employees of local governments.

D. This action may have an impact on insurers, nonprofit health service plans and health maintenance organizations to the extent that any additional costs of the services identified in the new criteria will be borne by these carriers, who may pass those costs on to their policyholders.

F. The public may benefit from the adoption of these regulations insofar as services that may have been previously denied as experimental or investigational may now be covered for those children with autism or autism spectrum disorders who need these services.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:

Children who are diagnosed with autism or autism spectrum disorders may be eligible for certain treatments that in the past were considered by carriers to be experimental or investigational.