

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Notice of Proposed Action

[09-161-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to:

- (1) Amend Regulation .01 and adopt new Regulation .03 under COMAR 27.01.01 General Provisions;
- (2) Adopt new Regulation .08 under COMAR 27.01.02 Development in the Critical Area; and
- (3) Amend Regulation .01 under COMAR 27.03.01 Notification of Project Applications.

This action was considered and approved for promulgation by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on March 4, 2009, pursuant to State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish consistent procedures for the consolidation or reconfiguration of certain grandfathered lots or parcels so that these lots or parcels are brought into conformance with the Critical Area program to the extent possible.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Ch. 119, Acts of 2008, authorizes the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays to adopt regulations that require directives for local program development and implementation. In addition, the act specifically requires local jurisdictions to include written procedures for lot consolidation and reconfiguration to be an element of a local program. The procedures proposed by these regulations were considered as an assumed cost of Ch. 110, Acts of 2008. The proposed lot consolidation and reconfiguration regulations will serve as the minimum procedures that should be in a local program. Local jurisdictions will have the option to adopt alternative local procedures provided those procedures meet or exceed the standards in these regulations. No additional processes associated with these regulations are required. A slight increase in expenditure on local jurisdictions will include postage associated with mailing the Commission staff the notice of the final decisions.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:			
(1) Salaries and Wages	NONE		
(2) Postage	(E+)		Indeterminable
	Benefit (+)		
	Cost (-)		Magnitude
D. On regulated industries or trade groups:	NONE		
E. On other industries or trade groups:	NONE		

F. Direct and indirect effects on
public:

NONE

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

A. Additional personnel or staff time will not be necessary to handle the review requirements proposed in these regulations since the issuing agency and local governments are already required to review lot consolidation and reconfiguration requests to ensure they meet the Critical Area requirements of their local programs to the extent possible.

C(1). Additional personnel will not be necessary to handle the review requirements proposed in these regulations since the issuing agency and local governments are already required to review lot consolidation and reconfiguration requests to ensure they meet the Critical Area requirements of their local programs to the extent possible.

C(2). Local governments will be required by the proposed regulations to provide the Commission staff with a copy of the final decision regarding lot consolidation and reconfiguration requests.

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 Lisa A. Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, Maryland 21401, or call 410-260-3478, or email to lhoerger@dnr.state.md.us, or fax to 410-974-5338. Comments will be accepted through July 6, 2009. A public hearing has not been scheduled.

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

27.01.01 General Provisions

Authority: Natural Resources Article, §§8-1806, 8-1808(c), and 8-1811, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (8) (text unchanged)

(8-1) "Buffer exemption area" means an area of land:

(a) Where a pattern of residential, industrial, commercial, or recreational development existed in the 100-foot Buffer on December 1, 1985 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical Area; and

(b) That, as part of a local program approved by the Commission, is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions.

(9) — (16) (text unchanged)

(16-1) Consolidation.

(a) "Consolidation" means a combination of any legal parcels of land or recorded, legally buildable lots into fewer parcels or lots.

(b) "Consolidation" includes any term used by a local jurisdiction for a development application that proposes to combine legal parcels of land or recorded, legally buildable lots into fewer parcels or lots than the number that existed before the application, such as a subdivision, lot line aban-

donment, boundary line adjustment, replatting request, or lot line adjustment.

(17) — (22) (text unchanged)

(22-1) "Dwelling unit" has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

(23) — (29) (text unchanged)

(29-1) *Habitat Protection Area.*

(a) "Habitat protection area" means an area that is designated for protection:

(i) Under Natural Resources Article, §8-1806, Annotated Code of Maryland, regulations adopted under that authority, or a local program; or

(ii) By the Secretary of Natural Resources.

(b) "Habitat protection area" includes:

(i) The Buffer as defined in COMAR 27.01.09.01A;

(ii) A nontidal wetland as defined in COMAR 26.24.01.02B;

(iii) A habitat of a threatened species as defined in COMAR 27.01.09.03A;

(iv) A habitat of an endangered species as defined in COMAR 27.01.09.03A;

(v) A habitat of a species in need of conservation as defined in COMAR 27.01.09.03A;

(vi) A plant habitat as defined in COMAR 27.01.09.04A;

(vii) A wildlife habitat as defined in COMAR 27.01.09.04A; and

(viii) Anadromous fish propagation waters as defined in COMAR 27.01.09.05A.

(30) — (37) (text unchanged)

(37-1) "Lot coverage" has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

(38) — (42) (text unchanged)

(42-1) *Reconfiguration.*

(a) "Reconfiguration" means a change of the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lots.

(b) "Reconfiguration" includes any term used by a local jurisdiction for a development application that proposes to change the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lot that existed before the application, such as a subdivision, lot line adjustment, boundary line adjustment, replatting request, or a revision of acreage to increase density.

.03 Applicability.

A. Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this title shall apply to, and be applied by, a local jurisdiction as minimum standards for a local program sufficient to meet the goals of the Critical Area Program.

B. In the event that a provision of this title conflicts with a provision of a local program, the stricter provision applies.

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

27.01.02 Development in the Critical Area

Authority: Natural Resources Article, §§8-1806(a), 8-1806, 8-1808(c), and 8-1811, Annotated Code of Maryland

.08 Lot Consolidation and Reconfiguration.

A. Except as provided under §B of this regulation, and notwithstanding the location of the affected lots or parcels in

a Buffer exemption area, the provisions of this regulation shall apply to a consolidation or reconfiguration of:

(1) *In the Chesapeake Bay Critical Area:*

(a) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;

(b) Land that was subdivided into recorded, legally buildable lots, if the subdivision received the local jurisdiction's final approval before June 1, 1984; and

(c) Land that was subdivided into recorded, legally buildable lots, if the subdivision received the local jurisdiction's final approval after December 1, 1985, but not later than the date of the jurisdiction's program approval; and

(2) *In the Atlantic Coastal Bays Critical Area:*

(a) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of June 1, 2002; and

(b) Land that was subdivided into recorded legally buildable lots, if the subdivision received the local jurisdiction's final approval before June 1, 2002.

B. A local jurisdiction may adopt alternative procedures and requirements for the consolidation or reconfiguration of legal parcels of land or recorded, legally buildable lots listed under §A of this regulation if:

(1) 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

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

C. A local jurisdiction shall include in its local Critical Area program specific, written procedures and requirements for the consolidation and reconfiguration of any legal parcels of land and recorded, legally buildable lots that demonstrate how the proposed consolidation or reconfiguration:

(1) Will, to the extent possible:

(a) Minimize adverse impacts to water quality;

(b) Conserve or create additional or enhanced fish, wildlife, and plant habitat; and

(c) Establish land use policies for development activities in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts; and

(2) Will not increase or intensify development activities or human activities in the Buffer or any other Habitat Protection area when compared with those activities that would result from the lot or parcel configuration in existence at the time of application for consolidation or reconfiguration.

D. An application to a local jurisdiction for the consolidation or reconfiguration of any legal parcels of land or recorded, legally buildable lots shall contain at least the following information:

(1) The date of recordation of each legal parcel of land or recorded, legally buildable lot to be consolidated or reconfigured;

(2) A plan drawn to scale in accordance with local procedures;

(3) A plan that shows all existing and proposed parcel or lot boundaries;

(4) A table that lists the number of all legal parcels of land or recorded, legally buildable lots and the number of proposed parcels or lots to be derived; and

(5) Information sufficient for the local jurisdiction to make the findings set forth in §E of this regulation.

E. A local jurisdiction may not approve a proposed parcel or lot consolidation or reconfiguration unless the local jurisdiction makes written findings that:

(1) The proposed consolidation or reconfiguration will not result in a greater number of lots, parcels, or dwelling units in the Critical Area than the configuration in existence at the time of application would allow;

(2) In the limited development area or resource conservation area, the proposed consolidation or reconfiguration:

(a) Will not result in greater lot coverage than development activities within the configuration in existence at the time of application would allow; and

(b) Will not result in greater impact to a steep slope than development activities within the lot configuration in existence at the time of application would allow, if that steep slope is located outside the Buffer or expanded Buffer;

(3) The proposed consolidation or reconfiguration will not:

(a) Create an additional riparian parcel or lot, waterfront lot, or any other parcel or lot deeded with water access; or

(b) Intensify or increase impacts associated with riparian access;

(4) The proposed consolidation or reconfiguration will not create:

(a) A parcel, lot, or portion of a parcel or lot that will serve development activities outside the Critical Area; or

(b) A resource conservation area parcel or lot that will serve development activities in the intensely developed area or limited development area;

(5) The proposed consolidation or reconfiguration identifies each habitat protection area on site, and, if the proposal impacts a habitat protection area, the proposed protective and restoration measures provide for the least possible adverse impact;

(6) The proposed consolidation or reconfiguration:

(a) Will not result in a greater impact to a habitat protection area than the impact that would result from development activities within the configuration in existence at the time of application; and

(b) Will minimize adverse impacts to the habitat protection area;

(7) The proposed consolidation or reconfiguration provides:

(a) Stormwater management for all proposed development activities; and

(b) Benefits to fish, wildlife, and plant habitat that are clearly identified; and

(8) The proposed consolidation or reconfiguration fully complies with the afforestation and reforestation requirements in COMAR 27.01.05 and 27.01.09, unless clearing is necessary to avoid a habitat protection area.

F. Final Written Decision or Order.

(1) A local jurisdiction shall issue a final written decision or order granting or denying an application for a consolidation, reconfiguration, or a modification or reconsideration of a consolidation or reconfiguration.

(2) After a final written decision or order is issued, the local jurisdiction shall send a copy of the decision or order and, if applicable, the approved development plan within 10 business days by U.S. mail to the Commission's business address.

G. Appeal.

(1) The time period during which the Commission may file an appeal or a petition for judicial review begins on the date of the Commission's receipt of the final written decision or order.

(2) Unless a local ordinance or other local legal authority specifies a time period greater than 30 days, the Commission may file an appeal or a petition for judicial review within 30 days of the date of the Commission's receipt of the final decision or order.

H. A local jurisdiction may not issue a permit or approval of any type on a property affected by the final written decision or order until after the expiration of the time within which the Commission may file an appeal or a petition for judicial review.

Subtitle 03 PROJECT APPLICATIONS

27.03.01 Notification of Project Applications

Authority: Natural Resources Article, §§[8-1806(b)(1)(xiv)3]
8-1806, 8-1808(c), and 8-1811,
Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) Application.

(a) "Application" means whatever initial forms, documents, plats or other materials that are officially submitted to the local authority for the approval of subdivision plats, consolidations, reconfigurations, site plans, grading permits, rezoning (including the consideration of areas within floating zones), the issuance of zoning permits, special exceptions, or conditional use permits.

(2) — (13) (text unchanged)

MARGARET G. McHALE
Chair

Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays