

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

Notice of Proposed Action [14-307-P]

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

- (1) Amend Regulation .01 under COMAR 27.01.01 General Provisions;
- (2) Amend Regulation .01 under COMAR 27.02.01 General Provisions; and
- (3) Repeal existing Regulations .01 — .03 and adopt new Regulations .01 — .03-3 under COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Land.

This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on September 3, 2014, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update certain provisions in the regulations due to changes in other State regulations that have rendered certain provisions obsolete; update the drafting style of the regulations according to current drafting standards; streamline the regulations; and insert climate change provisions into the regulations that govern State agency actions on State-Owned lands. The climate change provisions were prompted by Executive Order 01.01.2012.29, which requires the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays to evaluate existing regulations and policies for State agency actions resulting in development on State-owned land and consider the adoption of new or revised provisions that address climate change and the risk of sea level rise and other extreme weather-related impacts.

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 Lisa Hoerger, Regulations and Mapping 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 lisa.hoerger@maryland.gov, or fax to 410-974-5338. Comments will be accepted through November 17, 2014. 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)–(20) (text unchanged)

(21) [“Development activity” means human activity that results in disturbance to land, natural vegetation, or a structure] *Development*.

(a) “Development” means a human activity that materially affects the condition or use of dry land, land under water, or a structure.

(b) “Development” includes redevelopment.

(21-1)–(78) (text unchanged)

Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS

27.02.01 General Provisions

Authority: Natural Resources Article, §§8-1806 and 8-1814, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)–(7) (text unchanged)

(7-1) “Climate” means a long-term trend in weather that extends over multiple decades.

(7-2) “Climate resilient practice” means a management measure that, in the context of sea level rise, increasing tidal inundation, increasing average temperatures, precipitation changes, and coastal and riverine flooding:

(a) Guides and informs decisions regarding the siting, design, construction, or reconstruction of a development project; and

(b) Enables a natural system to absorb disturbance and adapt while undergoing change, so as to retain essentially the same identity, structure, and function.

(8) (text unchanged)

(8-1) “Coastal hazard” means an episodic, naturally occurring event or long-term coastal process that causes, or has foreseeable potential to cause, substantial damage to a given stretch of shoreline or a coastal area, including a coastal storm, a tsunami, a flood, shore erosion, and land subsidence.

(9)–(13) (text unchanged)

(13-1) “Design life” means the projected life expectancy of a structure or project.

(14) “Development” [means:

(a) The construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures;

(b) Any activity that materially affects the condition and use of dry land; or

(c) Any activity that materially affects the condition and use of land under water within the designated Critical Area] has the meaning stated in COMAR 27.01.01.01.

(15) (text unchanged)

[(16)] (16) "Development activities" means human activities that result in disturbances to land in conjunction with the construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures.]

[(17)] (16)—[(47)] (46) (text unchanged)

[(47-1)] (46-1) [Road.

(a) "Road" means a public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body.

(b) "Road" does not include a drive aisle or driveway] "Road" has the meaning stated in COMAR 27.01.01.01.

(46-2) "Sea level rise" means a rise in mean sea level that impacts a coastal area through seasonally high tides, prolonged inundation, or permanent submergence.

[(48)] (47)—[(64)] (63) (text unchanged)

(63-1) "Wetland migration area" means an area that will likely be suitable for future wetland establishment in response to a change in sea level.

[(65)] (64) Wildlife Corridor.

(a) "Wildlife corridor" means [a strip of land having vegetation that provides habitat and a safe passageway for wildlife] a habitat area that is necessary to connect areas, on a seasonal basis or longer, that are used by an animal or plant species for:

(i) The survival and reproduction of the species; and

(ii) The maintenance or increase of the essential genetic and demographic connections of its population;

(b) "Wildlife corridor" includes a habitat protection area, as defined under COMAR 27.01.01.01, and a wetland migration area, as defined under §B(63-1) of this regulation.

27.02.05 State Agency Actions Resulting in Development on State-Owned [Lands] Land

Authority: Natural Resources Article, §§8-1806 and 8-1814, Annotated Code of Maryland

.01 General Provisions.

A. Definitions.

(1) In this chapter, the following words have the meanings indicated.

(2) Terms Defined.

(a) "Intensely developed area" has the meaning stated under COMAR 27.01.02.03.

(b) "Limited development area" has the meaning stated under COMAR 27.01.02.04.

(c) "Linear project" includes the portion of a road, bridge, sewer line, water line, electrical line, cable line, fiber optic line, storm drain, gas pipeline, railroad, light rail line, sidewalk, bicycle lane, or similar development that is constrained within a public right-of-way or a dedicated easement.

(d) "Resource conservation area" has the meaning stated under COMAR 27.01.02.05.

(e) "State agency" or "agency" means the executive department within State government that:

(i) Owns or is responsible for management of the land on which development will occur; or

(ii) Proposes a development project.

B. The provisions of this chapter shall apply to an action of a State agency which results in development on State-owned land in the Critical Area, unless the action is included in:

(1) A program or class of activities for which the Commission has issued a general approval under COMAR 27.02.03; or

(2) A duly executed Memorandum of Understanding between the agency and the Commission that is applicable to the agency's proposed development.

C. Notwithstanding any of the terms or conditions of a land lease that may exist between a State agency as lessor and a local jurisdiction as lessee, the provisions of this chapter do not apply to development by a local jurisdiction on State-owned land.

D. In order to determine the Critical Area land use classification for an area of State-owned land, the Commission shall use the standards under COMAR 27.01.02.03—.05 and 27.01.11.

E. For the purpose of calculating the growth allocation acreage available to each local jurisdiction, the following provisions shall apply:

(1) If State-owned land is classified as a resource conservation area under COMAR 27.01.02.05 and 27.01.11, that classification may not change the total acreage of growth allocation available to the local jurisdiction where the land is located; and

(2) Development on State-owned land classified by a local jurisdiction as a resource conservation area may not diminish the total acreage of growth allocation available to that jurisdiction.

F. When determining whether the adjacency requirement has been satisfied for an award of growth allocation under COMAR 27.01.02.06-3E(1) or (2), the acreage of State land classified as an intensely developed area or a limited development area may not be considered, unless approved by the Commission.

.02 Commission Review.

A. If the action of a State agency will result in development in the Critical Area, the agency, as soon as practicable in the planning process, shall consult with the Commission regarding an assessment of:

(1) The requirements under Regulations .03—.14 of this chapter and the likely effects of these requirements on a development project, including the fee simple acquisition or disposal of land in the Critical Area; and

(2) Climate resilient practices that address coastal hazards, extreme weather events, sea level rise, and other impacts.

B. At any time during the Commission's review process, the Commission may comment in writing on a proposed development or land acquisition or disposal, and, when applicable, shall transmit its comments to the agency, but these comments may not prevent the agency from submitting the proposed development for funding or from acquiring or disposing of land.

C. When the Commission determines that the consultation process under §A of this regulation has been completed, a State agency shall submit its proposed development for the Commission's approval before the earliest to occur of the following stages of development:

(1) The commencement of construction or the issuance of a request for proposal for site design, development, or engineering; or

(2) For a major transportation capital project, as defined in Transportation Article, §2-103.1, Annotated Code of Maryland, the final project planning phase.

D. In its development proposal under §C of this regulation, an agency shall submit, at a minimum:

(1) A description of the development project;

(2) Findings that the project complies with all requirements under Regulations .03—.14 of this chapter;

(3) All information and documentation required by the Commission; and

(4) If applicable, findings under COMAR 27.02.06.

(2) More than 30 percent of the areal extent of a forest or developed woodland if:

(a) In accordance with the requirements under COMAR 27.02.06, the Commission approves the agency's request for conditional approval;

(b) The agency replaces the forest or developed woodland removed at a ratio of at least 3:1 of the entire areal extent of the forest or developed woodland removed; and

(c) The agency maintains the remaining percentage as forest or developed woodland.

.03-3 Development in a Resource Conservation Area.

A. The requirements of this regulation are in addition to the requirements under Regulation .03 of this chapter.

B. For development on State-owned land that is in a resource conservation area:

(1) A State agency shall comply with all of the provisions under Regulation .03-2 of this chapter, except that the prohibition under Regulation .03-2C(3) is not applicable in the resource conservation area;

(2) A State agency may not design or construct a development project that exceeds 15 percent of the lot coverage on:

(a) The total development site, if the site is mapped entirely as a resource conservation area; or

(b) The portion of the development site that is mapped as a resource conservation area, if only a portion of the site is mapped as a resource conservation area; and

(3) Overall density may not exceed one dwelling unit per 20 acres.

C. If any part of a linear project crosses an area designated as a resource conservation area, the Commission shall review the linear project in accordance with the requirements of Regulation .03-1 of this chapter.

D. A State agency may locate or expand an institutional, commercial, or industrial project or use in a resource conservation area if the project or use is:

(1) Approved by the Commission under the provisions of COMAR 27.02.03 or 27.02.06; or

(2) In accordance with a duly executed Memorandum of Understanding between the agency and the Commission.

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

