

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays  
(DLS Control No. 20-020)**

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**Overview and Legal and Fiscal Impact**

The regulations make technical and clarifying changes to provisions concerning development in the Critical Area, most of which relate to surface mining in the Critical Area.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Critical Area Commission for the Chesapeake and Atlantic Coastal Bays:**

Criteria For Local Critical Area Program Development: General Provisions:

COMAR 27.01.01.01

Development in the Critical Area: COMAR 27.01.02.05

Surface Mining in the Critical Area: COMAR 27.01.07.01, .02, and .03

Development in the Critical Area Resulting From State and Local Agency Programs:

General Provisions: COMAR 27.02.01.01

State Agency Actions Resulting in Development on State-Owned Lands:

COMAR 27.02.05.08

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**Legal Analysis**

**Background**

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries. The goals of the program include the protection of water quality, the conservation of habitat, and the accommodation of future growth and development without adverse environmental impacts.

Chapter 794 identified the Critical Area as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the affected area was expanded to include the State's coastal bays. The 1984 legislation also created a statewide Chesapeake Bay Critical Area Commission (now called the Critical Area Commission for the Chesapeake and Atlantic Coastal

Bays) that oversees the development and implementation of local land use programs dealing with the Critical Area. The commission is required to adopt regulations on surface mining in the Critical Area, among other things. Each local jurisdiction is charged with the primary responsibility for development and implementation of its own local program; that local authority, however, is subject to commission review and approval and must meet the standards established in statute and set by the commission.

## **Summary of Regulations**

The regulations clarify provisions related to development in the Critical Area, including by updating terminology and making stylistic changes. Among other things, the regulations:

- repeal the definitions of “overburden,” “reclamation,” “spoil pile,” and “wash plant” in COMAR 27.01.01.01 and COMAR 27.02.01.01 and add substantially similar definitions in COMAR 27.01.07.01 and COMAR 27.02.05.08;
- repeal and add a substantially similar definition of “surface mining” in COMAR 27.01.07.01 and COMAR 27.02.05.08;
- add definitions of “affected land,” “borrow pit,” and “mineral” in COMAR 27.01.07.01 and 27.02.05.08;
- repeal definitions of “nonrenewable resources” and “renewable resource” in COMAR 27.01.01.01;
- prohibit a local jurisdiction from approving a variance to the one dwelling unit per 20 acre limit in a resource conservation area;
- add provisions specifying the applicability and construction of the regulations in Title 27, Subtitle 01, Chapter 07, the chapter on surface mining in the Critical Area, and Title 27, Subtitle 02, Chapter 05, the chapter on surface mining on State–owned land in the Critical Area;
- make technical and clarifying changes to the wording in COMAR 27.01.07.02 and COMAR 27.01.07.03 related to surface mining in the Critical Area;
- repeal COMAR 27.02.05.08 and add substantially similar provisions in new regulations, COMAR 27.02.05.08-2 and COMAR 27.02.05.08–3, related to surface mining on State-owned land in the Critical Area;
- add an exception to the requirement that a local jurisdiction designate certain areas in the Critical Area as unsuitable for surface mining for an activity approved before the local program was approved or for the expansion of an activity after the local program was approved, if the expansion complies with State and local law;

- add an exception to the requirement that an agency designate certain State-owned land in the Critical Area as unsuitable for surface mining for an activity approved before June 11, 1988 or for the expansion of an activity after June 11, 1988, if the expansion complies with State and local law; and
- require an agency administering State-owned land in the Critical Area for surface mining to assure that a lessee obtains any necessary approvals, if applicable.

### **Legal Issues**

The regulations present no legal issues of concern.

### **Statutory Authority and Legislative Intent**

The commission cites §§ 8-1806, 8-1808(c) and (d), 8-1811, 8-1814 of the Natural Resources Article as statutory authority for the regulations. Section 8-1806 authorizes and requires the commission to adopt and amend regulations for the administration and enforcement of State and local programs under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program, including regulations establishing comprehensive standards and procedures for surface mining in the Critical Area. Section 8-1808(c) establishes minimum requirements for local programs implementing the goals of the Critical Area Program. Section 8-1808(d) governs proceedings involving applications for a variance for development in the buffer. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The commission advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The commission advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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