

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		TBD
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register:

December 2, 2022

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
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27.01.01.01			
27.01.02.06-1, .06-3			
27.01.04.01, .01-1, .02, .03			
27.01.09.01, .01-2, .01-3			
27.01.14.06			
27.02.01.01			
27.02.05.05, .15-3			

3. Name of Promulgating Authority

Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

4. Name of Regulations Coordinator	Telephone Number
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Lisa Hoerger	(410) 260-3478
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Mailing Address

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5. Name of Person to Call About this Document

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6. Check applicable items:

☒ New Regulations

☒ Amendments to Existing Regulations

☒ Repeal of Existing Regulations

☐ Recodification

☐ - Incorporation by Reference of Documents Requiring DSD Approval

☐ Reproposal of Substantively Different Text:

(vol.) (issue) Md. R (page nos) (date)

Under Maryland Register docket no.:

--P.

7. Is there emergency text which is identical to this proposal:

☐ Yes ☒ - No

8. Incorporation by Reference

☐ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

☒ OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

☐ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

☐ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Emily Vainieri,,Assistant Attorney General, (telephone (410) 260-8352 on September 14, 2022. A signed copy of the approval is on file at this agency.

Name of Authorized Officer

Charles C. Deegan

Title

Telephone No.

Chairman

(410) 260-3464

Date

September 13, 2022

Title 27

**CRITICAL AREA COMMISSION FOR THE
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

**Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM
DEVELOPMENT**

Authority:

Notice of Proposed Action

[TBD]

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 Regulations .06-1 and .06-3 under COMAR 27.01.02 Development in the Critical Area;
- (3) Amend Regulations .01, .02, and .03 and adopt new Regulation .01-1 under COMAR 27.01.04 Shore Erosion Protection Works;
- (4) Amend Regulations .01, .01-2, and .01-3 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area;
- (5) Amend Regulation .06 under COMAR 27.01.14 Renewable Energy Generating Systems;
- (6) Amend Regulation .01 under COMAR 27.02.01 General Provisions;
- (7) Amend Regulations .05 and .15-3 under COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands.

Statement of Purpose

The purpose of this action is to modernize the drafting style of, update, and, where necessary, delete certain outdated provisions. The amendments generally affect the shore erosion protection works regulations where those regulations are located throughout COMAR Title 27. The proposal also includes an amendment to the growth allocation regulations to clarify that towns in the Critical Area can use their full allotment of growth allocation acreage to convert to a resource conservation area.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

**PLEASE USE THE “NO IMPACT” STATEMENT OR COMPLETE THE FORM
BELOW IT.**

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 Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100 Annapolis, MD 21401, or call 410-260-3460, or email to lisa.hoerger@maryland.gov, or fax to 410-974-5338. Comments will be accepted through January 3, 2023. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: **[FY 2023]**

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General funds

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

N/A

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The amendments to the regulations are for stylistic and updating purposes and will not impose additional or remove any existing regulatory requirements.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The amendments to the regulations are for stylistic and updating purposes and will not impose additional or remove any existing regulatory requirements.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

Neither households or businesses are the intended beneficiaries of the proposed regulations.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

Businesses will not be affected by the proposed action.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

None.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

None.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may

impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

There is no long-term economic impact.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) There is no anticipated effect on the work force; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a), and 8-1811, Annotated Code of Maryland

Chapter 01 General Provisions

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) Agricultural Best Management Practice.

(a)—(b) (text unchanged)

(c) “Agricultural best management practice” does not include a shoreline [erosion control] *stabilization* measure authorized by the Department of the Environment under COMAR 26.24.04.

(2-1) — (62) (text unchanged)

(62-1) “*Shoreline stabilization measure*” includes:

(a) A nonstructural shoreline stabilization measure, as defined under COMAR 26.24.01.02; and

(b) A structural shoreline stabilization measure, as defined under COMAR 26.24.01.02.

(63) — (79) (text unchanged)

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a), and 8-1811, Annotated Code of Maryland

Chapter 02 Development in the Critical Area

.06-1 Growth Allocation Submittal Requirements.

- A (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)—(15) (text unchanged)
 - (16) A delineation of the [100-foot] buffer as measured from the mean high water line of tidal waters or the landward boundary of a tidal wetland or a tributary stream;
 - (17)—(24) (text unchanged)
 - (25) Location of any other proposed development feature, including an outlot, storm drain and outfall, utility connection, septic system, stormwater management system, [shore erosion control] *shoreline stabilization* measure, and pier;
 - (26)—(28) (text unchanged)

.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] *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) — (e) (text unchanged)
- (2) (text unchanged)
- B. (text unchanged)
- C. (text unchanged)
- D. [In] *A local jurisdiction may use a standard that varies from §C of this regulation if:*
 - (1) *The local jurisdiction is a municipal corporation; or*
 - (2) *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:*
 - (a) *The county is unable to utilize up to ½ of its of its total allotted growth allocation acreage;*
- [(1)]—[(3)] (b)—(d) (text unchanged)

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a), and 8-1811, Annotated Code of Maryland

Chapter 04 [Shore Erosion Protection Works] *Shoreline Stabilization Measures*

.01 Definition.

[A. “Shore erosion protection works” means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area] *In this chapter, “shoreline stabilization measure” has the meaning stated in COMAR 27.01.01.01.*

[B. The criteria below are not intended to apply to those structures necessarily associated with water-dependent facilities in COMAR 27.01.03.]

.01-1 Applicability.

The provisions of this chapter do not apply to a structure that is, by necessity, associated with a water-dependent facility under COMAR 27.01.03.

.02 Policies.

In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program*, a local jurisdiction shall follow these policies [in regard to shore erosion protection works] *when addressing shoreline stabilization measures:*

- A. *Encourage the preservation of the natural shoreline.*

B. Encourage [the protection of rapidly] *public and private landowners to protect significantly eroding portions of the shoreline in the Critical Area [by public and private landowners]; and*

[B. Where such measures can effectively and practically reduce or prevent shore erosion, encourage the use of nonstructural shore protection measures in order to conserve and protect plant, fish, and wildlife habitat]

C. *In order to conserve and protect plant, fish, and wildlife habitat, encourage the use of appropriate shoreline stabilization measures that effectively and practically reduce shore erosion.*

.03 Criteria.

In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local jurisdiction shall [use] satisfy these criteria when addressing shoreline stabilization measures:*

A. [Local jurisdictions, with assistance from the State, shall designate and map the following shoreline areas:

(1) Shoreline areas where no significant shore erosion occurs,

(2) Other eroding areas where nonstructural measures would be a practical and effective method of erosion control, and

(3) Eroding areas where only structural measures would provide effective and practical erosion control;

B. Local jurisdictions shall adopt policies to be reflective of shoreline characteristics to accomplish the following objectives:

(1) Provide that structural control measures only be used in areas designated in §A(3), above, where nonstructural control measures would be impractical or ineffective,

(2) Provide that where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used,

(3) Provide that nonstructural measures be utilized in areas of erosion as described in §A(2), above,

(4) Provide that structural erosion measures not be encouraged in areas where no significant erosion occurs, and

(5) Provide that if significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change may be used for sites in that area.

C. A local jurisdiction shall provide the Commission with the approved buffer management plan for a shore erosion control measure in accordance with COMAR 26.24.04.01-3 and 27.01.09.01-3] *In accordance with COMAR 26.24.04.01-1, adherence to the structural shoreline stabilization maps developed and maintained by the Department of the Environment:*

B. *In accordance with Environment Article, §16-201(c), Annotated Code of Maryland, and COMAR 26.24.04.01, prohibition of the use of a structural shoreline stabilization measure in an area where no significant shore erosion occurs;*

C. *Performance of mitigation measures applicable to the type of shoreline stabilization measure to be undertaken, as specified in the Commission form entitled "Shoreline Stabilization Measure Buffer Management Plan"; and*

D. *In accordance with COMAR 26.24.04.01-3 and 27.01.09.01-3, delivery to the Commission of an approved buffer management plan for each approved shoreline stabilization measure.*

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a), and 8-1811, Annotated Code of Maryland

Chapter 09 Habitat Protection Areas in the Critical Area

.01 Buffer.

A. — C. (text unchanged)

D. Authority of Secretary; Scope; Alternative Procedures and Requirements.

(1) (text unchanged)

(2) Except for a [shore erosion control project] *shoreline stabilization measure* in a modified buffer area, the provisions of this regulation through Regulation .01-7 of this chapter do not apply within a modified buffer area under Regulation .01-8 of this chapter.

(3) (text unchanged)

E. Buffer Standards.

(1) In conjunction with mitigation performed in accordance with an approved buffer management plan under Regulation .01-3 of this chapter, a local jurisdiction may authorize disturbance in the buffer for:

(a) (text unchanged)

(b) In accordance with COMAR 26.24.02, a [shore erosion control] *shoreline stabilization measure* under COMAR 27.01.04.

(2) —(8) (text unchanged)

.01-2 Mitigation and Planting Standards.

A. — G. (text unchanged)

H. Permanent Disturbance. In accordance with the applicable activity, a local jurisdiction shall require the following ratios of mitigation for each permanent disturbance:

Activity	Mitigation Ratio
Septic on a lot created before local program approval if located in existing grass or if clearing is not required	Not applicable
Septic system in a forest or developed woodland on a lot created before local program approval if clearing is required	1:1
[Shore erosion control] <i>A shoreline stabilization measure, unless otherwise authorized under COMAR 27.01.04.03</i>	1:1
Riparian water access	2:1
Development of a water-dependent facility or activity under COMAR 27.01.03	2:1
Variance	3:1
Violation	4:1

I. — S. (text unchanged)

.01-3 Buffer Management Plans.

A. (text unchanged)

B. A local jurisdiction shall require an applicant proposing a development activity to submit a buffer management plan if:

(1) (text unchanged)

(2) Disturbance to the buffer will result from the issuance of *an authorization, including a*:

(a) — (c) (text unchanged)

(d) [Shore erosion control permit as required under COMAR 26.24.01] *Local approval of a shoreline stabilization measure, as authorized by the Board of Public Works or the Department of the Environment;*

(e) — (h) (text unchanged)

C. — J. (text unchanged)

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a), and 8-1811, Annotated Code of Maryland

Chapter 14 Renewable Energy Generating Systems

.06 Planting Plan Requirements.

A. Based on the constraints and opportunities presented by a project area, a local jurisdiction shall select from the following options to address the requirements for a planting plan in Regulation .04D and F of this chapter:

(1) (text unchanged)

(2) If a local jurisdiction has in [a] place an agreement with the Commission:

(a) (text unchanged)

(b) Create a wetland migration area, nonstructural shoreline [erosion control project] *stabilization measure*, or other nature-based practice that naturally adjusts to changing environmental conditions through the lifespan of the practice and is designed to address future sea level rise, precipitation-induced flooding, or other climate change impacts;

(c) — (d) (text unchanged)

(3) (text unchanged)

B. — E. (text unchanged)

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

Authority: Natural Resources Article, §§8-701, 8-1806, 8-1808(c), 8-1808.4(a), and 8-1814, Annotated Code of Maryland

Chapter 01 General Provisions

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (48) (text unchanged)

(48-1) “*Shoreline stabilization measure*” has the meaning stated in COMAR 27.01.01.01.

(49) — (65) (text unchanged)

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

Authority: Natural Resources Article, §§8-701, 8-1806, 8-1808(c), 8-1808.4(a), and 8-1814, Annotated Code of Maryland

Chapter 05 State Agency Actions Resulting in Development on State-Owned Lands

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

.05 [Shore Erosion Protection Works] Shoreline Stabilization Measures.

A. Definition [and Scope].

[(1) “Shore erosion protection works” means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area] *In this regulation, “shoreline stabilization measure” has the meaning stated in COMAR 27.01.01.01.*

[(2) The criteria below are not intended to apply to those structures necessarily associated with water-dependent facilities in Regulation .04 of this chapter.]

B. [Criteria] *Applicability*.

[(1) If shore erosion protection is planned on State-owned lands, the agency proposing the protection shall determine which of the following characteristics describes the shoreline area:

(a) Shoreline areas where no significant shore erosion occurs;

(b) Other eroding areas where nonstructural measures would be a practical and effective method of erosion control; or

(c) Eroding areas where only structural measures would provide effective and practical erosion control.

(2) When shore erosion control is undertaken, the measures used shall be appropriate to accomplish the following objectives:

(a) Provide that structural control measures only be used in areas designated in §B(1)(c), above, where nonstructural control measures would be impractical or ineffective;

(b) Provide that where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used;

(c) Provide that nonstructural measures be utilized in areas of erosion as described in §B(1)(b), above;

(d) Provide that structural erosion control measures not be permitted in areas where no significant erosion occurs; and

(e) Provide that if significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change may be used for sites in that area]

The provisions of this regulation do not apply to a structure that is, by necessity, associated with a water-dependent facility under COMAR 27.02.05.04--04-3.

C. *Policies*.

An agency planning or proposing a shoreline stabilization measure on State-owned land shall follow these policies:

(1) *Prioritization of the preservation of the natural shoreline;*

(2) *Protection of significantly eroding portions of the shoreline in the Critical Area; and*

(3) *In order to conserve and protect plant, fish, and wildlife habitat, the use of appropriate shoreline stabilization measures that effectively and practically reduce shore erosion.*

D. *Criteria*.

An agency planning or proposing a shoreline stabilization measure on State-owned land shall satisfy these criteria:

(1) *In accordance with COMAR 26.24.04.01-1, adherence to the structural shoreline stabilization maps developed and maintained by the Department of the Environment;*

(2) *In accordance with Environment Article, §16-201(c), Annotated Code of Maryland, and COMAR 26.24.04.01, prohibition of the use of a structural shoreline stabilization measure in an area where no significant shore erosion occurs; and*

(3) *Performance of mitigation measures applicable to the type of shoreline stabilization measure to be undertaken, as specified in the Commission form entitled "Shoreline Stabilization Measure Buffer Management Plan."*

.15-3 Planting Plan Requirements.

A. Based on the constraints and opportunities presented by a project area, a State agency shall select from the following options to address the planting plan requirements of Regulation .15-1D and F of this chapter:

(1) (text unchanged)

(2) If approved by the Commission:

(a) (text unchanged)

(b) Create a wetland migration area, nonstructural shoreline [erosion control project] *stabilization measure*, or other nature-based practice that naturally adjusts to changing environmental conditions through the lifespan of the practice and is designed to address future sea level rise, precipitation-induced flooding, or other climate change impacts;

(c) Create, restore, or enhance a nontidal wetland that results in habitat and water quality benefits [provided] *if* it is authorized by the [Maryland] Department of the Environment; or

(d) (text unchanged)

B.—D. (text unchanged)