

# Renewable Energy Regulations as Published in the Maryland Register on 12/18/20

## Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

### 27.01.01 General Provisions

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

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (24) (text unchanged)

(24-1) *“Financial assurance” means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to a local jurisdiction.*

(25) — (79) (text unchanged)

### 27.01.02 Development in the Critical Area

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

#### .05 Resource Conservation Areas.

A. — B. (text unchanged)

C. In developing their Critical Area programs, local jurisdictions shall use all of the following criteria for resource conservation areas:

(1) — (7) (text unchanged)

(8) *A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.14.*

[(8)] (9) — [(10)] (11) (text unchanged)

D. (text unchanged)

### 27.01.09 Habitat Protection Areas in the Critical Area

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

#### .01 Buffer.

A. (text unchanged)

B. Terms Defined.

(1) — (5) (text unchanged)

[(6) *“Financial assurance” means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to a local jurisdiction.*]

[(6-1)] (6) — [(6-2)] (6-1) (text unchanged)

(7) — (20) (text unchanged)

C. — E. (text unchanged)

### 27.01.14 Renewable Energy Generating Systems

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

#### .01 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *“Energy generating system” has the meaning stated in the Land Use Article, §4-211, Annotated Code of Maryland.*

(2) *Major Solar Energy Generating System.*

(a) *“Major solar energy generating system” means an energy generating system that derives energy from the sun to produce more than two megawatts of electricity.*

(b) *“Major solar energy generating system” includes multiple minor solar energy generating systems that are located on the same parcel that collectively produce more than two megawatts of electricity.*

(3) *Minor Solar Energy Generating System.*

(a) "Minor solar energy generating system" means an energy generating system that derives energy from the sun to produce two megawatts or less of electricity.

(b) "Minor solar energy generating system" does not include a small residential accessory solar energy generating system.

(4) "Planting plan" means a narrative, graphic description, or plan of an area when planting is required for mitigation, on-site or off-site plantings, or under solar panels.

(5) Project Area.

(a) "Project area" means the total area within the limits of disturbance inside the Critical Area of a solar energy generating system.

(b) "Project area" includes:

(i) A parcel or portions of parcels within the limits of disturbance inside the Critical Area, whether or not those parcels are contiguous;

(ii) The components of a solar energy generating system listed in §B(9)(b)(i) of this regulation; and

(iii) Any required roads, internal access ways, transmission infrastructure, fencing, or improvements accessory to the solar energy generating system.

(6) "Reservation of resource conservation area density rights" means withholding a certain number of density rights that are attributable to a lot or parcel that prevents them from being used for development for a specified period of time.

(7) "Reservation of Resource Conservation Area Density Rights Agreement" means a legal instrument recorded among the land records and approved by the local jurisdiction, restricting land development within a defined area in the resource conservation area and for a specified period of time.

(8) Small Residential Accessory Solar Energy Generating System.

(a) "Small residential accessory solar energy generating system" means an energy generating system that derives energy from the sun to produce electricity to support the principal use on a residential property on the same lot or parcel as the principal use.

(b) "Small residential accessory solar energy generating system" includes an energy generating system that delivers electricity to a power grid and complies with the laws of the State of Maryland.

(9) Solar Energy Generating System.

(a) "Solar energy generating system" means an energy generating system that derives energy from the sun to produce electricity.

(b) "Solar energy generating system" includes:

(i) A land use that uses solar collectors, panels, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware, or equipment to produce electricity; and

(ii) Any term used by a local jurisdiction for a solar application that proposes to construct a solar energy generating system such as a solar energy system utility scale, solar energy system utility scale on farms, utility scale solar array, solar power plant, solar energy system large scale, solar energy system medium scale, solar array, power generating facilities, solar facilities, solar energy system grid connected, and solar energy generating facility commercial.

(c) "Solar energy generating system" does not include an energy storage device or facility where the device or facility operates independently of, is separate from, and the primary purpose of which does not include supporting the solar energy generating system within the Critical Area.

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

### **.02 Authority of the Public Service Commission; Applicability.**

A. The provisions of this chapter may not be construed to limit the authority of the Public Service Commission under Public Utilities Article, §7-207, Annotated Code of Maryland.

B. The requirements of this chapter are applicable to major, minor, and small residential accessory solar energy generating systems.

### **.03 General Provisions.**

A. On or after April 1, 2021, a local jurisdiction may authorize:

(1) A major or minor solar energy generating system within the Critical Area in accordance with Regulation .04 of this chapter;

(2) A major solar energy generating system in the resource conservation area without growth allocation in accordance with Regulation .05 of this chapter; and

(3) A small residential accessory solar energy generating system in the buffer or in a modified buffer area if:

(a) There is not an alternative location outside the buffer;

(b) The lot is 1/4 acre or less in size and created before local program approval; and

(c) Provided mitigation is required at a 1:1 ratio.

B. On or after April 1, 2021, a local jurisdiction:

(1) Notwithstanding existing local standards and procedures, shall apply the provisions of this chapter; or

(2) Except for the growth allocation provision in §D of this regulation, the lot coverage provision in Regulation .04B of this chapter, and the forest conservation and planting plan provisions in Regulation .04D and F of this chapter, may adopt alternative procedures and requirements if:

(a) The alternative procedures and requirements are as least as effective as the Critical Area program under Natural Resource 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

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

C. A local jurisdiction may authorize a major and minor solar energy generating system in a modified buffer area in accordance with a local Critical Area program provided the project is located over existing legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland.

D. In addition to meeting the requirements of this chapter, a local jurisdiction may not authorize a growth allocation to accommodate a major or a minor solar energy generating system in the limited development area or the resource conservation area.

E. Except for a regulated activity that is authorized by the Maryland Department of the Environment in accordance with COMAR 26.23.02, a local jurisdiction may not authorize a major or minor solar energy generating system:

(1) In a habitat protection area designated under COMAR 27.01.09; or

(2) On a steep slope or a highly erodible soil.

F. Unless authorized under an approved Critical Area program in accordance with §B(2) of this regulation, a local jurisdiction may not authorize a variance, modification, waiver, or other local procedure or approval that alters the requirements of this chapter.

G. For a major solar energy generating system, a local jurisdiction shall require a site plan that includes the information listed on the Solar Energy Generating Facility Site Plan Checklist provided by the Commission to ensure compliance with the requirements of this chapter.

H. A local jurisdiction may require a site plan for a minor solar energy generating system.

#### **.04 Criteria for a Solar Energy Generating System.**

A. Except for a small residential accessory solar energy generating system as provided in Regulation .03 of this chapter, the provisions of this regulation are applicable to a major and minor solar energy generating system in an intensely developed area, a limited development area, and a resource conservation area.

B. A local jurisdiction shall not count the area of a solar panel as lot coverage and:

(1) For a minor solar energy generating system, the solar panel is:

(a) Located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland; or

(b) Elevated above the ground and the area under the solar panel is maintained as an area of existing grass, established grass, or other natural vegetation, or as an agricultural use; and

(2) For a major solar energy generating system, the solar panel is:

(a) Located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland; or

(b) Elevated above the ground and the area under the solar panel is maintained in accordance with the planting plan requirements of Regulation .06 of this chapter as:

(i) Pollinator habitat;

(ii) Native vegetation other than pollinator habitat; or

(iii) An agricultural use.

C. A local jurisdiction shall require the following minimum standards for the buffer as defined in COMAR 27.01.01.01:

(1) Measure and delineate the buffer in accordance with COMAR 27.01.09.01E(3)—(7);

(2) Unless there is no feasible alternative, prohibit access through the buffer to the project area; and

(3) When there is no feasible alternative to access through the buffer, authorize one point of access through the buffer to the project area, or where a project includes noncontiguous parcels, minimize the number of access points through the buffer if:

(a) The disturbance inside the buffer is replanted at a 2.5:1 ratio; and

(b) A buffer management plan is required in accordance with COMAR 27.01.09.01-3.

D. Except when a project area is in an intensely developed area, a local jurisdiction shall minimize the clearing of forest and developed woodlands and not exceed the following standards:

(1) In a limited development area, limit clearing of forest and developed woodlands to 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located; and

(2) In a resource conservation area, limit clearing of forest to 10 acres or 20 percent of the entirety of the forest and developed woodlands on the parcel or parcels on which the project area is located, whichever is less.

E. A local jurisdiction shall require replacement of cleared forest and developed woodlands on an equal area basis.

F. For a major solar energy generating system, a local jurisdiction shall require on-site or off-site planting in accordance with the following:

(1) 15 percent of the total project area in a limited development area; and

(2) 20 percent of the total project area in a resource conservation area.

G. A local jurisdiction shall require a planting plan for mitigation in accordance with Regulation .06 of this chapter.

H. A local jurisdiction shall require stormwater management in accordance with Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02.

I. Except for a small residential accessory solar energy generating system, a local jurisdiction shall require a decommissioning plan if one is not otherwise required as a result of obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission.

**.05 Criteria for a Major Solar Energy Generating System in the Resource Conservation Area.**

A. In addition to the requirements of this regulation, a local jurisdiction shall also apply the standards under Regulation .04 of this chapter when authorizing a major solar energy generating system in the resource conservation area.

B. Except for access allowed in accordance with Regulation .04C of this chapter and in accordance with the provisions in COMAR 27.01.06, a local jurisdiction shall restrict forest clearing within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream.

C. In addition to any applicable local land recordation requirements, a local jurisdiction shall record a Reservation of Resource Conservation Area Density Rights Agreement in accordance with §§D and E of this regulation.

D. The number of density rights reserved is equal to:

(1) The permitted density associated with the project area of each parcel as calculated under Natural Resources Article, §8-1808.1(e), Annotated Code of Maryland, and COMAR 27.01.02.05C(4); and

(2) The number of density rights that are attributable to the project area, with a minimum of one density right reserved.

E. The Reservation of Resource Conservation Area Density Rights Agreement shall remain in effect until:

(1) The decommissioning plan, as required in Regulation .04 of this chapter, has been implemented and completed; and

(2) A local government confirms the implementation of the decommissioning plan is complete and the termination of the Reservation of Resource Conservation Area Density Rights Agreement is reflected in the land records.

F. The remaining land unencumbered by the solar energy generating system or lands not otherwise restricted by the Reservation of Resource Conservation Area Density Rights Agreement may be developed in accordance with Natural Resources Article, §8-1808.1, Annotated Code of Maryland, and COMAR 27.01.02.05C(4).

G. A lot, a parcel, or a portion of a lot or parcel is not eligible for a major solar energy generating system if the density rights associated with that lot, parcel, or portion of a lot or parcel have been:

(1) Utilized for an intrafamily transfer;

(2) Transferred through a transfer of development rights program;

(3) Preserved or conserved through an easement; or

(4) Otherwise reserved in association with an area of land to be utilized for the solar energy generating system.

H. A local jurisdiction may propose alternatives to a Reservation of Resource Conservation Area Density Rights Agreement in the resource conservation area if the local jurisdiction submits those standards to the Commission and they are approved as part of a local Critical Area program. The standards may include:

(1) A transfer of development rights program; or

(2) A permanent restriction of development rights of other lands that proffer water quality and habitat benefits such as wetland migration areas.

**.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) Plant on-site in one of the following planting areas:

(a) The area within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream;

(b) Contiguous to or within a designated forest interior dwelling bird habitat; or

(c) A wildlife corridor;

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

(a) Plant off-site in accordance with the options specified in §A(1) of this regulation;

(b) Create a wetland migration area, nonstructural shoreline erosion control project, 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 it is authorized by the Maryland Department of the Environment; or

(d) Propose alternative mitigation options that include provisions for Commission review; or

(3) Collect a fee in lieu in accordance with Regulation .07 of this chapter.

B. A local jurisdiction shall ensure that any general landscape screening requirements for an energy generating system are not included as part of the mitigation planting required in Regulation .04 of this chapter.

C. A local jurisdiction shall require a planting plan for:

(1) The area under the solar panels; or

(2) Replanting required in Regulation .04D and F of this chapter.

D. A local jurisdiction shall ensure long-term maintenance of the plantings through financial assurance measures.

E. A local jurisdiction shall require that all planting is in accordance with local reforestation and planting plan requirements, including protecting all planted areas through conservation easements, restrictive covenants, or other protective instruments.

**.07 Fee In Lieu.**

*A local jurisdiction shall:*

- A. *Collect at least \$1.50 per square foot of mitigation as required in Regulation .06 of this chapter;*
- B. *Ensure the fee is adequate to cover the cost associated with administration, acquisition, planting, monitoring, and maintenance for the required mitigation or required planting requirements of Regulation .04D and F of this chapter;*
- C. *Establish a separate account independent of other Critical Area funds, which may not revert to a local jurisdiction's general fund, for the collection of the fee in lieu;*
- D. *Prohibit the use of the fees to meet other landscaping requirements; and*
- E. *Use the fees to accomplish:*
  - (1) *Off-site plantings in accordance with the options provided in Regulation .06A(1) of this chapter; or*
  - (2) *Other water quality and habitat enhancement projects provided in Regulation .06A(2) of this chapter, and as described in a local Critical Area program approved by the Commission or in an agreement between the local jurisdiction and the Commission.*

## **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, 8-1808.4(a), and 8-1814, Annotated Code of Maryland

#### **.01 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) — (17) (text unchanged)
  - (17-1) *"Energy generating system" has the meaning stated in Land Use Article, §4-211, Annotated Code of Maryland.*
  - (18) — (50) (text unchanged)
  - (50-1) *"Solar energy generating system" has the meaning stated in COMAR 27.01.14.01.*
  - (52) (text unchanged)
  - (53) State and Local Agency Actions.
    - (a) "State and local agency actions" means [the following:
      - (i) Any] *any direct action, including an action undertaken by a private sponsor on behalf of a State or local agency, such as construction, that causes development to occur[;].*
        - [(ii)] (b) *"State and local agency actions" includes:*
          - (i) *The issuance of a Certificate of Public Convenience and Necessity by the Maryland Public Service Commission [which allows the construction of a power plant] that results in development within the Critical Area;*
          - [(iii)] (ii) (text unchanged)
        - [(b)] (c) *"State and local agency actions" do not include the following:*
          - (i) (text unchanged)
          - (ii) *Actions causing development which are subject to approval under a Critical Area program by the local agency responsible for implementation of that program; or*
          - (iii) (text unchanged)
    - (54) — (65) (text unchanged)

### **27.02.04 State or Local Agency Actions Resulting in Major Development on Private Lands or Lands Owned by Local Jurisdictions**

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

#### **.01 Definition.**

- A. *In this chapter, the following terms have the meanings indicated.*
- B. Terms Defined.
  - (1) *"Major development" means development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area program of a local jurisdiction. This development includes[, but is not limited to,] airports, power plants, major solar energy generating systems, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities, and any development or project authorized by the Public Service Commission under a Certificate of Public Convenience and Necessity.*
  - (2) *"Reservation of Resource Conservation Area Density Rights Agreement" has the meaning stated in COMAR 27.01.14.01.*

#### **.02 Criteria.**

- A. (text unchanged)

B. If the siting of [this] *a major* development [in] *within* the Critical Area is unavoidable because of water dependency or other locational requirements that cannot be satisfied outside the Critical Area, the State or local agency responsible for the development, or the agency proposing a capital project, [or the private sponsor,] shall seek approval for the development from the Commission.

C. In seeking approval, the agency [or the private sponsor] shall submit the following information to the Commission:

(1) Findings, supported by adequate documentation, showing the extent to which the [project or] development is consistent with the provisions and requirements of the Critical Area program of the local jurisdiction within which it is located; and

(2) An evaluation of the effects of the [project] *development* on the Critical Area program of the local jurisdiction, or jurisdictions, within which it is located, including any effects on the jurisdiction's growth allocation as described in COMAR 27.01.02.06.

D. — F. (text unchanged)

G. *When the Public Service Commission is reviewing an application for a Certificate of Public Convenience and Necessity for development within the Critical Area, the Commission or the Commission Chairman shall:*

(1) *Review the Critical Area impacts to ensure the development meets the requirements of COMAR 27.01 and COMAR 27.02;*

(2) *Provide comments on the Critical Area impacts to the Power Plant Research Program and request the comments be incorporated as recommended conditions to the Public Service Commission; and*

(3) *Forward comments to the affected local jurisdictions.*

H. *A major solar energy generating system proposed by a private sponsor in the resource conservation area requires a Reservation of Resource Conservation Area Density Rights Agreement in accordance with COMAR 27.01.14.05.*

I. *A major solar energy generating system proposed by a local agency on locally owned lands in the resource conservation area does not require reservation of development rights or recordation of a Reservation of Resource Conservation Area Density Rights Agreement in accordance with COMAR 27.01.14.05*

## **27.02.05 State Agency Actions Resulting in Development on State-Owned Lands**

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

### **.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] .15 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) (text unchanged)

B. — C. (text unchanged)

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

(1) (text unchanged)

(2) Findings that the *development* project complies with all requirements under Regulations .03—[.14] .15 of this chapter, *as applicable;*

(3) — (4) (text unchanged)

E. — G. (text unchanged)

### **.03-3 Development in a Resource Conservation Area.**

A. — D. (text unchanged)

E. *A State agency may locate any commercial, institutional, or industrial solar energy generating system in a resource conservation area in accordance with Regulation .15 of this chapter.*

### **.15 Solar Energy Generating Systems.**

A. *Definitions.*

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

(2) *Terms Defined.*

(a) *“Major solar energy generating system” has the meaning stated in COMAR 27.01.14.01.*

(b) *“Minor solar energy generating system” has the meaning stated in COMAR 27.01.14.01.*

(c) *“Planting plan” has the meaning stated in COMAR 27.01.14.01.*

(d) *“Project area” has the meaning stated in COMAR 27.01.14.01.*

(e) *“Solar energy generating system” has the meaning stated in COMAR 27.01.14.01.*

(f) *“Wetland migration area” has the meaning stated in COMAR 27.01.14.01.*

B. *Authority of the Public Service Commission; Applicability.*

(1) *The provisions of this regulation may not be construed to limit the authority of the Public Service Commission under Public Utilities Article, §7-207, Annotated Code of Maryland.*

(2) *The requirements of this regulation are applicable to major and minor solar energy generating systems.*

C. *General Provisions.*

(1) *A State agency may locate a solar energy generating system constructed or established in the Critical Area in accordance with Regulation .15-1 of this chapter.*

(2) A State agency may locate a major solar energy generating system in the resource conservation area in accordance with Regulation .15-2 of this chapter.

(3) A State agency may locate a solar energy generating system in a modified buffer area provided the project is located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland.

(4) Except for a regulated activity that is authorized by the Maryland Department of the Environment in accordance with COMAR 26.23.02, a State agency may not locate a solar energy generating system:

(a) In a habitat protection area designated under COMAR 27.01.09; or

(b) On a steep slope or a highly erodible soil.

#### **.15-1 General Criteria for a Solar Energy Generating System.**

A. The provisions of this section are applicable to a solar energy generating system in an intensely developed area, a limited development area, and a resource conservation area.

B. The area of a solar panel shall not count as lot coverage and:

(1) For a minor solar energy generating system, the solar panel is:

(a) Located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland; or

(b) Elevated above the ground and the area under the solar panel is maintained as an area of existing grass, established grass, or other natural vegetation; and

(2) For a major solar energy generating system the solar panel is:

(a) Located over existing, legally developed lot coverage as described in Natural Resources Article, §8-1808.3, Annotated Code of Maryland; or

(b) Elevated above the ground and the area under the panel is maintained in accordance with the planting plan requirements of Regulation .15-3 of this chapter as:

(i) Pollinator habitat;

(ii) Native vegetation other than pollinator habitat; or

(iii) An agricultural use.

C. In accordance with COMAR 27.02.01.01, a State agency shall:

(1) Measure and delineate the buffer in accordance with COMAR 27.01.09.01E(3)—(7);

(2) Unless there is no feasible alternative, limit access through the buffer to the project area; and

(3) When there is no feasible alternative to access through the buffer, locate one point of access through the buffer to the project area, or where a solar energy generating system includes noncontiguous parcels, minimize the number of access points through the buffer and:

(a) Replant at a 2.5:1 ratio for disturbance inside the buffer; and

(b) Submit a buffer management plan in accordance with COMAR 27.01.09.01-3.

D. Except when a project area is in an intensely developed area, a State agency shall minimize the clearing of forest and developed woodlands and not exceed the following standards:

(1) In a limited development area, limit clearing of forest and developed woodlands to 20 percent of the entirety of the forest and developed woodlands in the project area; and

(2) In a resource conservation area, limit clearing of forest and developed woodlands to 10 acres or 20 percent of the entirety of the forest and developed woodlands in the project area, whichever is less.

E. A State agency shall replace cleared forest and developed woodlands on an equal area basis.

F. For a major solar energy generating system, a State agency shall provide on-site or off-site planting in accordance with the following:

(1) 15 percent of the total project area in a limited development area; and

(2) 20 percent of the total project area in a resource conservation area.

G. A State agency shall submit a planting plan for mitigation and on-site or off-site planting in accordance with Regulation .15-3 of this chapter.

H. A State agency shall provide stormwater management in accordance with Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02.

I. A State agency shall provide a decommissioning plan if one is not otherwise required as a result of obtaining a Certificate of Public Convenience and Necessity from the Public Service Commission.

J. A State agency shall submit a site plan that includes the information listed on the Solar Energy Generating Facility Site Plan Checklist provided by the Commission to ensure compliance with the requirements of this regulation.

#### **.15-2 Criteria for a Major Solar Energy Generating System in the Resource Conservation Area.**

In addition to the requirements of Regulation .15-1 of this chapter, a State agency may locate a solar energy generating system in the resource conservation area if a State agency:

A. Except for access allowed in accordance with Regulation .15-1C(2) of this chapter and in accordance with the provisions of Regulation .07 of this chapter, restricts forest clearing within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream; and

B. Provides an assessment to demonstrate compliance with the climate resilient applications in Regulation .03B(9), C, and D of this chapter.

### **.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) Plant on-site in one of the following planting areas:

(a) The area within 300 feet beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a tributary stream;

(b) Contiguous to or within a designated forest interior dwelling bird habitat; or

(c) A wildlife corridor; or

(2) If approved by the Commission:

(a) Plant off-site and the planting options are in accordance with §A(1) of this regulation;

(b) Create a wetland migration area, nonstructural shoreline erosion control project, 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 it is authorized by the Maryland Department of the Environment; or

(d) Propose alternative mitigation options for Commission review.

B. A State agency shall ensure that any general landscape screening requirements for construction of an energy generating system are not included as part of the mitigation or on-site or off-site planting required in Regulation .15-1 of this chapter.

C. A State agency shall require a planting plan for:

(1) The area under the solar panels; or

(2) Replanting required in Regulation .15-1D and F of this chapter.

D. A State agency shall ensure long-term maintenance of the plantings.

## **27.02.07 Commission Review, Decision Process, and Time Frames**

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

### **.02 Review Procedures.**

A. For the purpose of reviewing the development proposals listed in Regulation .01 of this chapter, [above,] the Commission may establish panels, pursuant to Regulation .03 of this chapter, [below,] or it may undertake [these] reviews by the full Commission.

B. — D. (text unchanged)

E. [For purposes of reviewing applications for power plants in the Critical Area, the Commission shall hold joint hearings, as appropriate, with the Public Service Commission. The Critical Area Commission may establish a panel for this purpose as provided for in Regulation .03, below.] For purposes of reviewing an application for a Certificate of Public Convenience and Necessity in the Critical Area the following apply:

(1) In accordance with Public Utilities Article, §3-106, Annotated Code of Maryland, the Chairman may request to become a party in a proceeding before the Public Service Commission and shall provide notice to the Commission; and

(2) The Chairman shall review an application in accordance with COMAR 27.02.04.02G.

F. The Chairman may refer an application to the Commission for review, including for:

(1) A Certificate of Public Convenience and Necessity; and

(2) A State minor solar energy generating system in the Critical Area.

G. The Chairman shall refer to the Commission an application for a State or local major solar energy generating system in the Critical Area in the resource conservation area.

## **27.02.08 Appeals**

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

### **.02 Appeals from Commission Disapproval of Proposed Development.**

A. Pursuant to COMAR 27.02.03.01A, 27.02.04.02E, and 27.02.05.02D, a State or local agency [or private sponsor] whose proposal for development has been disapproved by the Commission may appeal the disapproval to the full Commission for reconsideration, within 30 days of receipt of the Commission's decision.

B. — C. (text unchanged)

CHARLES C. DEEGAN  
Chairman  
Critical Area Commission for the Chesapeake  
and Atlantic Coastal Bays