

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Notice of Proposed Action

[21-056-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) Repeal existing Regulations .01 and .03, amend Regulation .02, and adopt new Regulation .03 under **COMAR 27.01.06 Agriculture**;
- (3) Amend Regulation .01-6 under **COMAR 27.01.09 Habitat Protection Areas in the Critical Area**;
- (4) Amend Regulation .01 under **COMAR 27.02.01 General Provisions**;
- (5) Amend Regulation .01 under **COMAR 27.02.03 General Approval of State and Local Agency Programs Which Result in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions**;
- (6) Repeal existing Regulation .07, adopt new Regulation .07, and amend Regulation .09 under **COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands**; and
- (7) Amend Regulation .01 under **COMAR 27.03.01 Notification of Project Applications**.

This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on August 5, 2020, pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

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The purpose of this action is to modernize the drafting style of, update, and, where necessary, delete certain outdated provisions.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 agricultural regulations where these regulations are located throughout COMAR Title 27. The proposal does not include any additional regulatory requirements of the affected regulated community.

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 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 May 24, 2021. 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) (text unchanged)

(2) *Agricultural Best Management Practice*.

(a) “Agricultural best management practice” means an agronomic, conservation, or pollution control practice, installation, or structure that manages soil loss, nutrients, animal wastes, or agricultural chemicals so as to minimize their movement into State waters.

(b) “Agricultural best management practice” includes strip cropping, terracing, cover crops, grass waterways, animal waste management, conservation tillage, riparian buffers, nutrient management, and stream protection practices such as fencing, stream crossings, and remote watering devices.

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

(2-1) *Agriculture*.

(a) “Agriculture” means [all methods of] an activity related to the production [and] or management of livestock, crops, vegetation, [and] or soil. [This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.]

(b) “Agriculture” includes:

(i) *Tillage, harvest, fertilization, pest management, cropping, pasturing, or production of an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, and fiber; and*

(ii) *An activity that directly contributes to the production, conversion, processing, storage, or sale of agricultural products primarily generated on-site.*

(3) — (4) (text unchanged)

(5) [Aquaculture.

(a) “Aquaculture” means the farming or culturing of finfish, shellfish, other aquatic plants or animals, or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments.

(b) Activities include the hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas.

(c) Cultivation methods, include, but are not limited to, seed or larvae development and grow-out facilities, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing, and product storage facilities are not considered aquacultural practices] “*Aquaculture*” has the meaning stated in *Natural Resources Article, §4-11A-01(b), Annotated Code of Maryland*.

(6) (text unchanged)

[(7) “Best management practices (BMPs)” means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.]

(8) — (16-1) (text unchanged)

[(17) “Cover crop” means the establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat, or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.]

(18) — (33) (text unchanged)

(34) “[K Value] *K-factor*” means the soil erodibility factor in the Universal Soil Loss Equation. [It is a quantitative value that is experimentally determined.]

(35) — (49) (text unchanged)

[(50) “Palustrine” means all nontidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.]

(51) — (63) (text unchanged)

(64) “Soil conservation and water quality [plans]” means land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

(a) How the landowner plans to treat a farm unit;

(b) Which best management practices the landowner plans to install to treat undesirable conditions; and

(c) The schedule for applying those best management practices] *plan” means an agricultural plan approved by a local soil conservation district to minimize soil erosion and the movement of sediment, animal waste, nutrients, or agricultural chemicals into waters of the State.*

(65) — (71-1) (text unchanged)

(72) “Tributary [streams] *stream*” has the meaning stated in *Natural Resources Article, §8-1802(a), Annotated Code of Maryland*.

(73) — (74) (text unchanged)

(75) [“Water-based aquaculture” means the raising of fish and shellfish in any natural, open, free-flowing water body.]

(76)—(79) (text unchanged)

27.01.06 Agriculture

Authority: *Natural Resources Article, §8-1808(d), Annotated Code of Maryland*

.02 Policies.

In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local jurisdiction* shall follow [all of] these policies when addressing agriculture:

A. Assure that agricultural lands are identified and that programs are established for the Critical Area to maintain, where appropriate, agricultural lands in agricultural use, to the greatest extent [possible.] *possible; and*

B. Recognize that agriculture is a protective land use that should be properly managed so that it minimizes its contribution to pollutant loadings to the [Bay and its] *Chesapeake and Atlantic coastal bays and their tributaries.*

[C. Assure that the creation of new agricultural lands is not accomplished:

(1) By diking, draining, or filling of any class or subclass of palustrine wetlands, as described in COMAR 26.23.01, which have a seasonally flooded or wetter water regime, unless mitigation is performed in accordance with COMAR 26.23.04;

(2) By clearing of forests or woodland on soils with a slope greater than 15 percent or on soils with a “K” value greater than 0.35 and slope greater than 5 percent;

(3) If the clearing will adversely affect water quality or will destroy plant and wildlife habitat as defined in COMAR 27.01.09.04; or

(4) By the clearing of existing natural vegetation within the buffer as described in COMAR 27.01.09.01.

D. Assure that the drainage of nontidal wetlands for the purpose of agriculture be done in accordance with a soil conservation and water quality plan, approved by the local soil conservation district, and in accordance with the mitigation requirements in COMAR 26.23.04.

E. Assure that best management practices for the control of nutrients, animal wastes, pesticides, and sediment runoff be used to protect the productivity of the land base and enhance water quality. These practices shall minimize contamination of surface and ground water and, further, shall

minimize adverse effects on plant, fish, and wildlife resources.

F. Assure that animal feeding operations, including retention and storage ponds, feed lot waste storage, and manure storage minimize the contamination of water bodies.

G. Assure that agricultural activity permitted within the Critical Area use best management practices in accordance with a soil conservation and water quality plan approved by the local soil conservation district.]

.03 Criteria.

A. *Applicability.* The provisions of this regulation apply only to a local jurisdiction in which agriculture exists as a land use in that jurisdiction.

B. In developing and updating its Critical Area program, a local jurisdiction shall develop an agricultural protection plan as part of its Critical Area program in cooperation with the local soil conservation district, the county agricultural land preservation advisory board, and any other appropriate agency.

C. Each agricultural protection plan developed under §B of this regulation shall:

(1) Consist of:

(a) An identification, inventory, and mapping of agricultural land within the Critical Area;

(b) An identification of agricultural land that includes a habitat protection area covered in COMAR 27.01.09; and

(c) A program to maintain agricultural land in agricultural use and to protect water quality and plant and wildlife habitat, which shall at least include:

(i) Measures to encourage the preservation of agricultural land;

(ii) In accordance with the provisions of COMAR 27.01.09, protection of a habitat protection area located within agricultural land; and

(iii) In order to conform to harvest practice requirements in COMAR 27.01.05 and 27.01.09.01-7, a forest management plan for each agricultural operation that harvests timber; and

(2) Assure that:

(a) Each agricultural operation has in place and is implementing a current:

(i) Soil conservation and water quality plan; and

(ii) Nutrient management plan prepared by a certified nutrient management consultant or certified farm operator in accordance with COMAR 15.20.04.07 and .08;

(b) Agricultural activities authorized in the buffer are in accordance with COMAR 27.01.09.01-6; and

(c) The creation of new agricultural land is not accomplished:

(i) By diking, draining, or filling of a nontidal wetland, except in accordance with the requirements of COMAR 26.23.05.01;

(ii) By clearing of forest or developed woodland on soil with a slope greater than 15 percent or on soil with a K-factor greater than 0.35 and a slope greater than 5 percent;

(iii) If clearing will adversely affect water quality or will destroy plant or wildlife habitat covered in COMAR 27.01.09.02—.05, as applicable; or

(iv) By clearing of existing natural vegetation within the buffer.

27.01.09 Habitat Protection Areas in the Critical Area

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

.01-6 Agricultural Activities.

A. [The buffer is not required for agricultural drainage ditches] *The provisions of this regulation may not be construed to require a buffer or a vegetated filter strip for an agricultural drainage ditch, if the adjacent agricultural land has in place [best management practices] a soil conservation and water quality plan as required in COMAR [27.01.06] 27.01.06.03.*

B. [Agricultural activities are permitted] *Agriculture is authorized in the buffer, if, as a minimum agricultural best management practice, a [25-foot] vegetated filter strip of at least 25 feet, measured landward from the mean high water line of tidal waters or tributary streams [(excluding drainage ditches),] or from the edge of tidal wetlands, whichever is further inland, is established, and [further provided that] if:*

(1) The filter strip [shall be] is composed of [either trees with a dense ground cover, or a thick sod of grass,] *trees, shrubs, grass, or mixed vegetation and [shall be so] is managed as to provide water quality benefits and habitat protection consistent with the policies stated in Regulation .01 of this chapter[; noxious]. Noxious weeds, including Johnson grass, Canada thistle, and other invasive plants, such as multiflora rose, which occur in the filter strip, may be controlled by authorized means;*

(2) The filter strip [shall be] is expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent;

(3) The [25-foot vegetated] filter strip [shall be] is maintained until [such time as] the landowner is implementing, under [an approved] a soil conservation and water quality plan, a program of *agricultural* best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat[;], and [provided that] *if the portion of the soil conservation and water quality plan being implemented achieves the water quality and habitat protection objectives of the [25-foot vegetated] filter strip;*

(4) The [best management practices shall include a requirement for the implementation of a grassland and manure management program, where appropriate, and that the] feeding or watering of livestock [may not be permitted] *does not occur* within 50 feet of the mean high water line of tidal water and tributary streams[,], or from the edge of tidal wetlands, whichever is further inland;

(5) Clearing of existing natural vegetation in the buffer is [not allowed] *prohibited*; and

(6) [Farming] *Agricultural* activities, including the grazing of livestock, do not disturb stream banks, tidal shorelines, or other habitat protection areas [as described] *covered, as applicable, in this chapter.*

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

27.02.01 General Provisions

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(1-1) *“Agricultural best management practice” has the meaning stated in COMAR 27.01.01.01.*

(2) “Agriculture” [means all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry, and handling their by-products] *has the meaning stated in COMAR 27.01.01.01.*

(3) (text unchanged)

(4) [Aquaculture.

(a) “Aquaculture” means the farming or culturing of finfish, shellfish, other aquatic plants or animals, or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments.

(b) Activities include the hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas.

(c) Cultivation methods, include, but are not limited to, seed or larvae development and grow-out facilities, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing, and product storage facilities are not considered aquacultural practices] *“Aquaculture” has the meaning stated in Natural Resources Article, §4-11A-01(b), Annotated Code of Maryland.*

[(5) “Best management practices (BMPs)” means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.]

(6) — (11) (text unchanged)

[(12) “Cover crop” means the establishment of a vegetative cover to protect soils from erosion and to restrict pollutants from entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat, or soybean stubble which maximize infiltration and prevent runoff from reaching erosive velocities.]

(13) — (26) (text unchanged)

(27) “[K Value] *K-factor*” [means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined] *has the meaning stated in COMAR 27.01.01.01.*

(28) — (38) (text unchanged)

[(39) “Palustrine” means all nontidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all these wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.]

(40) — (49) (text unchanged)

(50) “Soil conservation and water quality [plans]” means land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. These plans are documents containing a map and related plans that indicate:

(a) How the landowner plans to treat a farm unit;

(b) Which best management practices the landowner plans to install to treat undesirable conditions; and

(c) The schedule for applying those best management practices] *plan” has the meaning stated in COMAR 27.01.01.01.*

(50-1) — (58) (text unchanged)

(59) “Tributary [streams] *stream*” has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

(60) — (65) (text unchanged)

27.02.03 General Approval of State and Local Agency Programs Which Result in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions

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

.01 Criteria.

A. Rather than obtaining certification for *an* individual [projects or actions] *project or action*, as provided in COMAR 27.02.02, a State [and] or local [agencies] *agency* may seek a general approval from the Commission for [programs or classes] *a program or class* of activities that *will* result in development of local significance in the Critical Area[. These activities include, but are not limited to, forest management plans and soil conservation and water quality plans], *such as forest management plans and soil conservation and water quality plans.*

B.—F. (text unchanged)

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

.07 Agriculture.

A. *Applicability. The provisions of this regulation do not apply to an agricultural activity that is conducted for an experimental purpose on State-owned land in the Critical Area if:*

(1) *Adverse impact to a habitat protection area covered in Regulations .09—.13 of this chapter, as applicable, is avoided; and*(2) *The experimental activity is approved by the Maryland Department of Agriculture and the University of Maryland.*

B. Criteria. When agriculture occurs on State-owned land, the agency administering the land shall assure that:

(1) Each agricultural operation has in place and is implementing a current:

(a) Soil conservation and water quality plan; and

(b) Nutrient management plan prepared by a certified nutrient management consultant or certified farm operator in accordance with COMAR 15.20.04.07 and .08;

(2) Agricultural activities authorized in the buffer are in accordance with Regulation .09 of this chapter; and

(3) The creation of new agricultural land is not accomplished:

(a) By diking, draining, or filling of a nontidal wetland, except in accordance with the requirements of COMAR 26.23.05.01;

(b) By clearing of forest or developed woodland on soil with a slope greater than 15 percent or on soil with a K-factor greater than 0.35 and a slope greater than 5 percent;

(c) If clearing will adversely affect water quality or will destroy plant or wildlife habitat covered in Regulations .10—.13 of this chapter, as applicable; or

(d) By clearing of existing natural vegetation within the buffer.

.09 Buffer.

A. [Definition. “Buffer” means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances] *Applicability. The provisions of this regulation may not be construed to require a buffer or a vegetated filter strip for an agricultural drainage ditch, if the adjacent agricultural land has in place a soil conservation and water quality plan as required in Regulation .07 of this chapter.*

B. Criteria. In planning or proposing development on State-owned lands, the agency proposing the development shall use the following criteria:

(1) The agency shall [establish a minimum 100-foot Buffer] *measure the buffer at least 100 feet* landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands. [The Buffer is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices as required in Regulation .09 of this chapter.]

(2) New development activities, including structures, roads, parking areas, and other lot coverage areas, mining and related facilities, and septic systems, are [not permitted in the Buffer] *prohibited in the buffer*, except for those necessarily associated with water-dependent facilities[, as set forth] *covered in Regulation .04 of this chapter.*

(3) The [Buffer] *buffer* shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize, or enhance the shoreline.

(4) [Agricultural activities are permitted] *Agriculture is authorized* in the [Buffer] *buffer*, if, as a minimum *agricultural* best management practice, a [25-foot] vegetated filter strip *of at least 25 feet*, measured landward from the mean high water line of tidal waters or tributary streams [(excluding drainage ditches),] or from the edge of tidal wetlands, whichever is further inland, is established, and [further provided that all of the following apply] *if*:

(a) The filter strip [shall be] *is* composed of [either trees with a dense ground cover, or a thick sod of grass,] *trees, shrubs, grass, or mixed vegetation* and [shall be so] *is* managed as to provide water quality benefits and habitat protection consistent with the policies stated in COMAR [27.01.09.01B(1)—(5)] *27.01.09.01*. Noxious weeds, including Johnson grass, Canada thistle, and *other invasive plants, such as* multiflora rose, which occur in the filter strip, may be controlled by authorized means[.];

(b) The filter strip [shall be] *is* expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent[.];

(c) The [25-foot vegetated] filter strip [shall be] *is* maintained until [such time as] the agency or [farm operator] *agricultural operation* is implementing, under [an approved] *a* soil conservation and water quality plan, a program of *agricultural* best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat, and *if* the portion of the soil conservation and water quality plan being implemented achieves the water quality and habitat protection objectives of the [25-foot] vegetated filter strip[.];

(d) The [best management practices shall include a requirement for the implementation of a grassland and manure management program, where appropriate, and that the] feeding or watering of livestock [is not permitted] *does not occur* within 50 feet of the mean high water line of tidal water and tributary streams[, or from the edge of tidal wetlands, whichever is further inland].;

(e) Clearing of existing natural vegetation in the [Buffer is not allowed.] *buffer is prohibited; and*

(f) [Farming] *Agricultural* activities, including the grazing of livestock, do not disturb stream banks, tidal shorelines, or other [Habitat Protection Areas] *habitat protection areas* [as described in] *covered, as applicable, in this regulation or in Regulations .10—.13 of this chapter.*

(5)—(8) (text unchanged)

Subtitle 03 PROJECT APPLICATIONS

27.03.01 Notification of Project Applications

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)—(13) (text unchanged)

(14) “Tributary stream” has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

CHARLES C. DEEGAN

Chairman

Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays