

Title 27
Critical Area Commission for the Chesapeake and Atlantic Coastal Bays
Subtitle 01

Chapter 01 General Provisions

.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)

Chapter 02 Development in the Critical Area

.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)—(10)] (9) — (11) (text unchanged)

D. (text unchanged)

1 **Chapter 09 Habitat Protection Areas in the Critical Area**

2 **.01 Buffer.**

3 A. (text unchanged)

4 B. Terms Defined.

5 (1) — (5) (text unchanged)

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

8 (6-1) — (20) (text unchanged)

9 C. — E. (text unchanged)

10

11 **Chapter 14 Solar Energy Generating Systems**

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

13 ***.01 Definitions.***

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

15 B. *Terms Defined.*

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

18 (2) *Major solar energy generating system.*

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

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

1 (3) *Minor solar energy generating system.*

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

4 (b) *“Minor solar energy generating system” does not include a small residential accessory*
5 *solar energy generating system.*

6 (4) *“Planting plan” means a narrative, graphic description, or plan of an area when planting*
7 *is required for mitigation, or under solar panels.*

8 (5) *Project area.*

9 (a) *“Project area” means the total area within the limits of disturbance inside the Critical*
10 *Area of a solar energy generating system.*

11 (b) *“Project area” includes:*

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

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

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

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

21 (7) *“Reservation of Resource Conservation Area Density Rights Agreement” means a legal*
22 *instrument recorded among the land records and approved by the local jurisdiction, restricting*

1 land development within a defined area in the resource conservation area and for a specified
2 period of time.`

3 (8) *Small residential accessory solar energy generating system.*

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

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

10 (9) *Solar energy generating system.*

11 (a) *“Solar energy generating system” means an energy generating system that derives*
12 *energy from the sun to produce electricity.*

13 (b) *“Solar energy generating system” includes:*

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

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

21 (c) *“Solar energy generating system” does not include an energy storage device or facility*
22 *where the device or facility operates independently, is separate from, and whose primary*
23 *purpose does not include supporting the solar energy generating system in the Critical Area.*

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

3
4 **.02 Authority of the Public Service Commission; Applicability.**

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

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

9
10 **.03 General Provisions.**

11 A. On or after DATE TBD a local jurisdiction may authorize:

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

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

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

18 (i) There is not an alternative location outside the buffer; and

19 (ii) The lot is ¼ acre or less in size and created before local program approval.

20 B. On or after DATE TBD a local jurisdiction shall:

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

1 (2) Except for the growth allocation provisions in §D of this Regulation, the lot coverage
2 provisions in Regulation .04 B of this chapter, and the forest conservation and planting plan
3 provisions in Regulations .04 D and .04 E of this chapter, a local jurisdiction may adopt
4 alternative procedures and requirements if:

5 (1) The alternative procedures and requirements are at least as effective as the Critical
6 Area program under Natural Resources Article, Title 8, Subtitle 18, Annotated Code of
7 Maryland, regulations adopted under the authority of that subtitle, and any additional
8 requirements of the local program; and

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

10 C. A local jurisdiction may authorize a major and minor solar energy generating system in a
11 modified buffer area in accordance with a local Critical Area program provided the project is
12 located over existing legally-developed lot coverage as described in Natural Resources Article,
13 §8-1808.3, Annotated Code of Maryland.

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

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

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

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

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

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

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

8

9 ***.04 Criteria for a Solar Energy Generating System.***

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

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

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

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

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

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

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

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

3 (i) Pollinator habitat;

4 (ii) Native vegetation other than pollinator habitat; or

5 (iii) An agricultural use.

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

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

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

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

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

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

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

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

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

22 (3) Require replacement of cleared forest and developed woodlands on an equal area basis.

1 E. For a major solar energy generating system, require on-site or off-site planting in
2 accordance with the following:

3 (1) 15 percent of the total project area in a limited development area; and

4 (2) 20 percent of the total project area in a resource conservation area.

5 F. Require a planting plan for mitigation in accordance with Regulation .06 of this chapter.

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

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

11
12 **.05 Criteria for a Major Solar Energy Generating System in the Resource Conservation Area.**

13 In addition to the requirements under Regulation .04 of this chapter, a local jurisdiction
14 shall use the following standards when authorizing a major solar energy generating system in the
15 resource conservation area:

16 A. Except for access allowed in accordance with Regulation .04 C of this chapter and in
17 accordance with the provisions in COMAR 27.01.06, restrict forest clearing within 300 feet
18 beyond the landward boundary of tidal waters or tidal wetlands, or the edge of each bank of a
19 tributary stream; and

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

23 C. The number of development rights reserved is equal to:

1 (1) The permitted density associated with the project area of each parcel as calculated
2 under Natural Resources Article, §8-1808.1(e), Annotated Code of Maryland and COMAR
3 27.01.02.05 C(4); and

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

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

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

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

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

17 F. A lot, parcel, or a portion of a lot or parcel is not eligible for a major solar energy
18 generating system if the development rights associated with that lot, parcel, or portion of a lot or
19 parcel have been:

20 (1) Utilized for an intrafamily transfer;

21 (2) Transferred through a transfer of development right program;

22 (3) Preserved or conserved through an easement; or

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

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

7 (1) A transfer of development rights program; or

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

10
11 **.06 Planting Plan Requirements.**

12 A. Based on the constraints and opportunities presented by a site, a local jurisdiction shall
13 select from the following options to address the requirements for a planting plan in Regulation
14 .04 of this chapter:

15 (1) Plant onsite in one of the following planting areas:

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

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

19 (c) A wildlife corridor; or

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

21 (a) Plant offsite in accordance with the options specified in §A1 (i)—(iii) of this
22 regulation;

1 (b) Create a wetland migration area, non-structural shoreline erosion control project, or
2 other nature-based practice that naturally adjusts to changing environmental conditions
3 through the lifespan of the practice and is designed to address future sea level rise,
4 precipitation-induced flooding, or other climate change impacts;

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

7 (d) Propose alternative mitigation options that include provisions for Commission review.

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

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

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

12 (1) The area under the solar panels; or

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

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

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

19 **.07 Fee In Lieu.**

20 A local jurisdiction shall:

21 A. Collect at least \$1.50 per square foot of mitigation as required in

22 Regulation .06 of this chapter.

1 *B. Ensure the fee is adequate to cover the cost associated with administration, acquisition,*
2 *planting, monitoring, and maintenance for the required mitigation or required planting*
3 *requirements of Regulation .04 D and E of this chapter.*

4 *C. Establish a separate account independent of other Critical Area funds, which may not*
5 *revert to a local jurisdiction's general fund, for the collection of the fee in lieu.*

6 *D. Prohibit the use of the fees to meet other landscaping requirements.*

7 *E. Use the fees to accomplish one or more the options provided in Regulation .06 A (1) (i)—*
8 *(iv).*

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