

**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)

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

### **.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) — (20) (text unchanged)

C. — E. (text unchanged)

## **Chapter 14 Solar 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.*

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 afforestation, 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 and fencing.*

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

20       (7) *“Reservation of Development Rights Agreement” means a legal instrument recorded*  
21 *among the land records and approved by the local jurisdiction, restricting land development*  
22 *within a defined area and for a specified period of time.*

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

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

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

7       (9) Solar energy generating system.

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

10      (b) “Solar energy generating system” includes:

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

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

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

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

1 ***.02 Authority of the Public Service Commission; Applicability.***

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

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

6  
7 ***.03 General Provisions.***

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

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

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

13 *(3) Provided mitigation is required at a 1:1 ratio, a small residential accessory solar energy*  
14 *generating system in the buffer if there is not an alternative location outside the buffer.*

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

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

18 *(2) Except for the growth allocation provision in §D of this Regulation and the lot coverage*  
19 *provision in Regulation .04 B of this chapter, apply alternative standards and procedures if the*  
20 *local jurisdiction submits those standards to the Commission and they are approved as part of a*  
21 *local Critical Area program.*

22 *C. A local jurisdiction may authorize a major and minor solar energy generating system in a*  
23 *modified buffer area in accordance with a local Critical Area program provided the project is*

1 *located over existing legally-developed lot coverage as described in Natural Resources Article,*  
2 *§8-1808.3, Annotated Code of Maryland.*

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

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

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

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

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

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

17 *H. A local jurisdiction may require a site plan for a minor solar energy generating system.*  
18

19 ***.04 Criteria for a Solar Energy Generating System.***

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

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

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

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

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

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

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

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

12             *(i) Pollinator habitat;*

13             *(ii) Native vegetation other than pollinator habitat; or*

14             *(iii) An agricultural use.*

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

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

18     *(2) Unless there is no feasible alternative, authorize one point of access through the buffer to*  
19     *the project area, or where a project includes noncontiguous parcels, minimize the number of*  
20     *access points through the buffer if:*

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

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

1     *D. Except when a project area is in an intensely developed area, a local jurisdiction shall*  
2     *require the following minimum standards:*

3     *(1) In a limited development area, limit clearing of forest and developed woodlands to 10*  
4     *acres or 20 percent of the entirety of the project area, whichever is greater;*

5     *(2) In a resource conservation area, limit clearing of forest to 10 acres of the entirety of the*  
6     *project area; and*

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

8     *E. For a major solar energy generating system, require afforestation in accordance with the*  
9     *following maximums:*

10    *(1) 15 percent of the total project area in a limited development area; and*

11    *(2) 20 percent of the total project area in a resource conservation area.*

12    *F. Require a planting plan for mitigation and afforestation in accordance with Regulation .06*  
13    *of this chapter.*

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

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

19  
20    ***.05 Criteria for a Major Solar Energy Generating System in the Resource Conservation Area.***

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



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

5       B. In addition to any applicable local land recordation requirements, record a Reservation  
6       of Development Rights Agreement in accordance with §§C and D of this regulation.

7       C. The number of development rights reserved is equal to the permitted density associated  
8       with the project area of each parcel as calculated under Natural Resources Article, §8-  
9       1808.1(e), Annotated Code of Maryland and COMAR 27.01.02.05 C(4).

10      D. The Reservation of Development Rights Agreement shall remain in effect until:

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

13      (2) A local government confirms the implementation of the decommissioning plan is  
14      complete and the termination of the Reservation of Development Rights Agreement is reflected in  
15      the land records.

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

20      F. A lot, parcel, or a portion of a lot or parcel are not eligible for a major solar energy  
21      generating system if the development rights associated with that lot, parcel, or portion of a lot or  
22      parcel have been:

23      (1) Utilized for an intrafamily transfer;

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

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

3       (4) Reserved or otherwise associated with the area of land to be utilized for the solar energy  
4       generating system.

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

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

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

12  
13      **.06 Planting Plan Requirements.**

14      A. Depending on the individual site constraints, a local jurisdiction shall select from the  
15      following options to address the requirements for a planting plan in Regulation .04 of this  
16      chapter:

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

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

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

21          (c) A wildlife corridor; or

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

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

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

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

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

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

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

14           (1) The area under the solar panels;

15           (2) Reforestation; or

16           (3) Afforestation.

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

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

22 **.07 Fee In Lieu.**

23 A local jurisdiction shall:

- 1      *A. Collect at least \$1.50 per square foot of mitigation or afforestation as required in*  
2      *Regulation .06 of this chapter.*
- 3      *B. Ensure the fee is adequate to cover the cost associated with administration, acquisition,*  
4      *planting, monitoring, and maintenance for the required mitigation or required afforestation.*
- 5      *C. Establish a separate account independent of other Critical Area funds, which may not*  
6      *revert to a local jurisdiction's general fund, for the collection of the fee in lieu.*
- 7      *D. Prohibit the use of the fees to meet other landscaping requirements.*
- 8      *E. Use the fees to accomplish one or more the options provided in Regulation .06 A (1) (i)—*  
9      *(iv).*