

8/20/20

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

Chapter 01 General Provisions

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

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

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 27.01.01.01.

(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 in the Critical Area;*

(iii) (text unchanged)

(b) (text unchanged)

(54) — (64) (text unchanged)

Chapter 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.

"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.*

.02 Criteria.

A. New major development which is caused by State or local agency actions shall, to the extent practical, be located outside the Critical Area.

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.

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

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

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

9 D. — F. (text unchanged)

10 *G. When the Public Service Commission is reviewing an application for a Certificate of Public
11 Convenience and Necessity for development in the Critical Area the Commission shall:*

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

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

17 *H. A major solar energy generating system proposed by a private developer in the resource
18 conservation area requires a Reservation of Development Rights agreement in accordance with
19 COMAR 27.01.14.05.*

20 *I. A major solar energy generating system proposed by a local agency on locally-owned lands
21 in the resource conservation area does not require reservation of development rights or
22 recordation of a Reservation of Development Rights Agreement in accordance with COMAR
23 27.01.14.05.*

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

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)

.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 COMAR 27.02.05.15.*

1
2 ***.15 Solar Energy Generating Systems.***

3 ***A. Definitions.***

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

5 *(2) Terms Defined.*

6 *(a) “Major solar energy generating system” has the meaning stated in COMAR*
7 *27.01.14.01.*

8 *(b) “Minor solar energy generating system” has the meaning stated in COMAR*
9 *27.01.14.01.*

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

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

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

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

14
15 ***B. Authority of the Public Service Commission; Applicability.***

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

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

20
21 ***C. General Provisions.***

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

1 *B. A State agency may locate a major solar energy generating system in the Resource*
2 *Conservation Area in accordance with Regulation .15-2 of this chapter.*

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

6 *D. Except for a regulated activity that is authorized by the Maryland Department of the*
7 *Environment in accordance with COMAR 26.23.02, a State agency may not locate a solar*
8 *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
12 ***.15-1 General Criteria for a Solar Energy Generating System.***

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

15 *B. The area of a solar panel shall not count as lot coverage if:*

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

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

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

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

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

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

3 (i) Pollinator habitat;

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

5 (iii) An agricultural use.

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

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

8 and

9 (2) Unless there is no feasible alternative, authorize one point of access through the buffer to
10 the project area, or where a solar energy generating system includes noncontiguous parcels,
11 minimize the number of access points through the buffer if:

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

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

14 D. Except when a project area is in an intensely developed area, a State agency shall:

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

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

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

20 E. For a major solar energy generating system, a State agency shall provide afforestation in
21 accordance with the following maximums:

22 (1) 15 percent of the total project area in a limited development area;

23 (2) 20 percent of the total project area in a resource conservation area.

1 *F. A State agency shall submit a planting plan for mitigation and afforestation in accordance*
2 *with Regulation .15-3 of this chapter.*

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

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

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

11
12 ***.15-2 Criteria for a Major Solar Energy Generating System in the Resource Conservation***
13 ***Area.***

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

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

20 *B. Provides an assessment to demonstrate compliance with the climate resilient applications in*
21 *COMAR 27.02.05.03 B (9), C and D.*

22
23 ***.15-3 Planting Plan Requirements.***

A. Depending on the individual site constraints, a State agency shall select from the following options to address the planting plan requirements of Regulation .15-1 D and E:

(1) Plant onsite 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;

(c) A wildlife corridor; or

(2) If approved by the Commission:

(a) Plant offsite and the planting options are in accordance with §A (1)(a)—(c) of this regulation;

(b) Create a wetland migration area, non-structural 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; or

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

B. A State agency shall ensure that any general landscape screening requirements are not included as part of the mitigation or afforestation planting required in Regulation .15-1 of this chapter.

Chapter 07 Commission Review, Decision Process, and Time Frames

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

.02 Review Procedures.

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

4 B. — D. (text unchanged)

5 E. [For purposes of reviewing applications for power plants in the Critical Area, the
6 Commission shall hold joint hearings, as appropriate, with the Public Service Commission. The
7 Critical Area Commission may establish a panel for this purpose as provided for in Regulation
8 .03, below.] *For purposes of reviewing an application for a Certificate of Public Convenience
9 and Necessity in the Critical Area the following apply:*

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

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

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

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

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

17 G. *The Chairman shall refer to the Commission an application for a State or local major solar
18 energy generating system in the Critical Area in the Resource Conservation Area.*

20 **Chapter 08 Appeals**

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

22 **.02 Appeals from Commission Disapproval of Proposed Development.**

23 A. Pursuant to COMAR 27.02.03.01A, 27.02.04.02E, and 27.02.05.02D, a State or local
24 agency [or private sponsor] whose proposal for development has been disapproved by the

- 1 Commission may appeal the disapproval to the full Commission for reconsideration, within 30
- 2 days of receipt of the Commission's decision.
- 3 B. — C. (text unchanged)

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