

Critical Area Commission

STAFF REPORT

January 5, 2022

PROPOSAL: Permission to Publish as Final Regulations Updates to Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays - Water-Dependent Facilities Regulations

COMMISSION ACTION: Vote

**STAFF
RECOMMENDATION:** Approve with Non-Substantive Changes

STAFF: Lisa Hoerger

**AFFECTED CHAPTERS
OF COMAR:**

- COMAR 27.01.01 General Provisions
- COMAR 27.01.03 Water-Dependent Facilities
- COMAR 27.01.09 Habitat Protection Areas in the Critical Area
- COMAR 27.01.11 Directive for Updating Critical Area Maps
- COMAR 27.01.13 Nonwater-Dependent Projects
- COMAR 27.02.01 General Provisions
- COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands
- COMAR 27.03.01 Notification of Project Applications

REVIEW:

At its August 8, 2021, meeting the Commission approved for publication as proposed regulations the draft proposal to update the water-dependent facility regulations (COMAR 27.01.03 and associated chapters are indicated above). The updates modernize the drafting style, update certain provisions, and where necessary, delete certain provisions.

DISCUSSION:

This proposal was published in the Maryland Register on October 22, 2021. The public comment period ran through November 22, 2021. The regulations as they appeared in the October 22 edition of the Maryland Register are attached to this staff report.

Commission staff request that several non-substantive changes be made to the proposal and are outlined below. The Assistant Attorney General has certified that these changes do not differ substantially from the proposed text.

1) COMAR 27.01.03.03 – delete an improper cross-reference (see highlighted section)

.03 General Criteria.

In developing [their] *and updating its* Critical Area [programs, local jurisdictions shall follow these criteria when addressing water-dependent facilities] *program, a local jurisdiction:*

A. In accordance with Natural Resources Article, §8-1808.3, Annotated Code of Maryland, [[Regulation .11C 4) of this chapter, if applicable,]] and COMAR 27.01.09, shall limit development in the buffer to the minimum lot coverage necessary to accommodate each water-dependent facility or activity;

2) COMAR 27.01.03.05B(1)– clarify (green highlight) and delete unnecessary language (yellow highlight)

.05 Industrial and Port-Related Water-Dependent Facilities and Activities.

A. The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.

*B. A local jurisdiction may approve the development of an industrial or port-related water-dependent facility or activity that is located in **the buffer in** an intensely developed area that:*

*(1) Under the provisions of COMAR 27.01.09.01-8 **[[**:*

*(a) **Has]] has** been designated as a modified buffer area **[[**; or*

*(b) **Has not been designated as a modified buffer area, if the facility or activity complies with local program requirements applicable to a nonconforming use in the local jurisdiction in which the facility or activity is located]]**; or*

(2) Is an approved use in accordance with the local Critical Area program.

3) COMAR 27.01.03.03E(1) – Clarify language.

E. Shall ensure:

*(1) The avoidance, or, **[[in the alternative]] if unavoidable**, the minimization of impacts to fish, wildlife, or plant habitat; and*

4) COMAR 27.01.03.04C(4) – Clarify language.

C. In developing the plan required under §B of this regulation, a local jurisdiction shall document how each of the following siting factors is accorded due consideration:

*(4) **[[Avoidance or, in the alternative,]] The avoidance or, if unavoidable, the** minimization of:*

5) COMAR 27.02.05.04-1D(1) – Clarify language.

D. Shall ensure:

*(1) The avoidance, or, **[[in the alternative]] if unavoidable**, the minimization of impacts to fish, wildlife, or plant habitat; and*

6) COMAR 27.02.05.04-2B(4) – Clarify language.

B. An agency proposing development on State-owned land or responsible for the administration of a water dependent facility or activity located on State-owned land shall document how each of the following siting factors is accorded due consideration:

*(4) Avoidance or, **[[in the alternative]] if unavoidable**, minimization of:*

STAKEHOLDER COMMENTS:

No comments were received during the official public comment period.

COMMISSION ACTION:

The Commission will be asked to vote to authorize the staff to publish these regulations as final regulations in the Maryland Register. If permission is granted, the final notice would appear in the January 28th edition of the Maryland Register with a final effective date of February 7, 2022.

If you have any questions or comments regarding the regulations prior to the meeting, please contact me at (410) 260-3478 or at (lisa.hoerger@maryland.gov).

Maryland Register



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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before October 4, 2021 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of October 4, 2021.

Gail S. Klakring
Acting Administrator, Division of State Documents
Office of the Secretary of State



Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Notice of Proposed Action

[21-156-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, .04—.06, .09, and .10, adopt new Regulations .01, .01-1, .04—.06, .09, and .10, and amend Regulations .02, .03, .07, and .08 under **COMAR 27.01.03 Water-Dependent Facilities and Activities**;
- (3) Amend Regulations .01 and .01-2 under **COMAR 27.01.09 Habitat Protection Areas in the Critical Area**;
- (4) Amend Regulation .04 under **COMAR 27.01.11 Directive for Updating Critical Area Maps**;
- (5) Amend Regulation .01 under **COMAR 27.01.13 Nonwater-Dependent Projects**;
- (6) Amend Regulation .01 under **COMAR 27.02.01 General Provisions**;
- (7) Repeal existing Regulation .04, adopt new Regulations .04—.04-3, and amend Regulations .09 and .12 under **COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands**; and
- (8) 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 4, 2021, notice of which was given 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, update certain provisions, and, where necessary, delete certain provisions. The amendments generally affect the water-dependent facility 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 410-260-3478, or email to lisa.hoerger@maryland.gov. Comments will be accepted through November 22, 2021. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by Critical Area Commission for the Chesapeake and Atlantic Coastal Bays during a public meeting to be held on August 6, 2021, at 1 p.m., at 100 Community Place, Crownsville, MD 21032.

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

27.01.01 General Provisions

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a),
8-1808.5(a), and 8-1811, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (13) (text unchanged)

(14) ["Community piers" means boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition] *"Community pier" has the meaning stated in Natural Resources Article, §8-1808.5(a), Annotated Code of Maryland.*

(15) — (51-2) (text unchanged)

(52) "Port" means a facility or area established or designated by the State or a local [jurisdictions for purposes] *jurisdiction for the purpose of inter-borne commerce.*

(53) — (67) (text unchanged)

(67-1) *Structure.*

(a) *"Structure" means building or construction materials, or a combination of those materials, that are purposely assembled or joined together on or over land or water.*

(b) "Structure" includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, and shelter for the purpose of marina access, navigation, working, eating, sleeping, or recreating.

(68) — (75) (text unchanged)

[(76) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.]

(77) — (79) (text unchanged)

27.01.03 [Water Dependent] Water-Dependent Facilities and Activities

Authority: Natural Resources Article, §§8-1808(d) and 8-1808.3, Annotated Code of Maryland

.01 Definition.

A. In this chapter, the following term has the meaning indicated.

B. Term Defined — Water-Dependent Facility or Activity.

(1) "Water-dependent facility or activity" means a structure or activity that, by reason of its intrinsic nature or operation or because of its association with an industrial, maritime, recreational, educational, aquaculture, or fishery activity, is dependent on the water and requires location at or near the shoreline or in the buffer.

(2) "Water-dependent facility or activity" includes:

(a) A port;

(b) An intake or outfall structure;

(c) A marina, another boat-docking facility, or a structure or activity that is essential to the operation of the water-dependent facility, structure, or activity;

(d) A fuel pump or other fuel-dispensing equipment on a pier, a sanitary sewage pump or other wastewater removal equipment on a pier, and an office on a pier for managing marina operations, such as monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations;

(e) A public beach and any other public water-oriented recreation area; and

(f) Any other water-dependent facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

.01-1. Applicability.

A. The provisions of this chapter are not applicable to:

(1) A private pier that:

(a) Is installed or maintained by a riparian landowner; and

(b) Is not part of a residential project that provides a community pier or other community boat-docking or storage facility under Regulation .07 of this chapter; or

(2) A nonwater-dependent project covered under COMAR 27.01.13.

B. The requirements of COMAR 27.01.02 apply to this chapter.

.02 [Policies] Policy.

In developing [their] and updating its Critical Area [programs, local jurisdictions] program, a local jurisdiction shall [follow these policies when addressing water-dependent facilities:

A. Limit development activities in the Buffer, specified in COMAR 27.01.09, to those that are water-dependent; and

B. Provide by] provide design and locational criteria to assure that [these activities will have] a water-dependent facility or activity has minimal individual and cumulative impact on water quality and fish, wildlife, and plant habitat in the Critical Area.

.03 General Criteria.

In developing [their] and updating its Critical Area [programs, local jurisdictions] shall follow these criteria when addressing water-dependent facilities] program, a local jurisdiction:

A. In accordance with Natural Resources Article, §8-1808.3, Annotated Code of Maryland, Regulation .11C 4) of this chapter, if applicable, and COMAR 27.01.09, shall limit development in the buffer to the minimum lot coverage necessary to accommodate each water-dependent facility or activity;

[A.] B. Except as otherwise provided in this chapter, [new or expanded development activities may be permitted in the Buffer in] may approve a water-dependent facility or activity in the buffer of an intensely developed [and] area or a limited development [areas provided that it can be shown]area if:

(1) [That they are] The facility or activity is water-dependent;

(2) [That the project] The facility or activity meets a recognized private right or public need;

(3) [That adverse effects] Adverse impacts on water quality and fish, [plant, and] wildlife, and plant habitat are first avoided or, if unavoidable, minimized; and

(4) [That, insofar] Insofar as possible, a nonwater-dependent [structures or operations] project associated with the water-dependent [projects or activities are] facility or activity is located outside the [Buffer; and] buffer;

[(5) That the facilities are consistent with an approved local plan as set forth below.]

[B.] C. Except as otherwise authorized in this [regulation, new or expanded development activities may not be permitted in those portions of " Buffer which occur in] chapter, may not approve a water-dependent facility or activity in the buffer of a resource conservation [areas] area;

D. May not approve the placement of dredged material in the buffer or a portion of the Critical Area that has been designated as a habitat protection area, except as necessary for:

(1) A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:

(a) Backfill for a shoreline stabilization measure;

- (b) Use in a nonstructural shoreline stabilization measure, including a living shoreline;
- (c) Beach nourishment;
- (d) Restoration of an island;
- (e) The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or
- (f) Any other approved beneficial use; or

(2) Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988; and

E. Shall ensure:

- (1) The avoidance, or, in the alternative, the minimization of impacts to fish, wildlife, or plant habitat; and
- (2) Mitigation at a ratio of 1:1 based on the square footage of the area of the canopy coverage removed.

.04 General Requirements for the Location of Water-Dependent Facilities or Activities.

A. The provisions of this regulation are in addition to the provisions of Regulation .03 of this chapter.

B. In accordance with the provisions of this chapter and in conjunction with, as applicable, the Departments of Agriculture, the Environment, and Natural Resources, and any other appropriate federal or State agency, a local jurisdiction shall develop a plan for the approval of an area as suitable for the location of a new or expanded water-dependent facility or activity.

C. In developing the plan required under §B of this regulation, a local jurisdiction shall document how each of the following siting factors is accorded due consideration:

- (1) The impact on the water body upon which the water-dependent facility or activity is proposed that would likely result from the approval of that location, including:
 - (a) Alteration of an existing water circulation pattern or salinity regime;
 - (b) Adequacy of area flushing characteristics;
 - (c) Necessity of, and proximity to, a dredging operation; and
 - (d) Interference with the natural transport of sand;
- (2) Disturbance to:
 - (a) An oyster harvest area, as defined in COMAR 08.02.04.11;
 - (b) An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
 - (c) A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
 - (d) An oyster sanctuary, as established in COMAR 08.02.04.15A; and
 - (e) Any other shellfish located in a shellfish area regulated by the Department of Natural Resources;
- (3) Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
- (4) Avoidance or, in the alternative, minimization of:
 - (a) Disturbance to:
 - (i) A wetland;
 - (ii) Submerged aquatic vegetation;
 - (iii) A habitat of threatened or endangered species or species in need of conservation;
 - (iv) In accordance with COMAR 26.08.02.04-1, a water body identified by the Department of the Environment as a Tier II, high quality water body and its watershed; and
 - (v) A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and .04 and COMAR 26.23.06.01; and
 - (b) Adverse impact on water quality that would likely result from the facility or activity, such as nonpoint source runoff, sewage discharge, or other pollution related to vessel maintenance.

.05 Industrial and Port-Related Water-Dependent Facilities and Activities.

A. The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.

B. A local jurisdiction may approve the development of an industrial or port-related water-dependent facility or activity that is located in an intensely developed area that:

- (1) Under the provisions of COMAR 27.01.09.01-8:
 - (a) Has been designated as a modified buffer area; or
 - (b) Has not been designated as a modified buffer area, if the facility or activity complies with local program requirements applicable to a nonconforming use in the local jurisdiction in which the facility or activity is located; or
- (2) Is an approved use in accordance with the local Critical Area program.

.06 Commercial Marinas and Other Water-Dependent Commercial Maritime Facilities and Activities.

A. The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.

B. A local jurisdiction shall require that the operation of each commercial marina and each related commercial maritime facility or activity complies with:

- (1) The requirements of COMAR 26.08.04.09 and, as applicable, COMAR 26.24.04.03; and
- (2) The stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of the Department of the Environment.

C. A local jurisdiction may approve:

- (1) The development of a commercial marina or a related commercial maritime facility or activity located in the buffer of an intensely developed area or a limited development area;
- (2) The redevelopment or expansion of a commercial marina or other related commercial maritime facility or activity located in the buffer of a resource conservation area; or
- (3) The development of a new commercial marina or other related commercial maritime facility or activity located in the buffer of a resource conservation area, if the marina or other related facility or activity is publicly owned and meets all the requirements under Regulation .08 of this chapter.

.07 Community Piers and Other [Related Noncommercial Boat Docking] Community Boat-Docking and Storage Facilities.

A. [New or expanded community piers and other noncommercial boat-docking and storage facilities may be authorized in the buffer subject to the requirements of Regulation .03A of this chapter and §B of this regulation, provided that:] *The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.*

B. *Subject to the requirements under §C of this regulation, a local jurisdiction may approve the location of a new or expanded community pier or other community boat-docking or storage facility in the buffer if:*

(1) [These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities:] *The owner or operator of the pier or facility:*

(a) *Does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and*

(b) *As applicable, complies with the requirements of COMAR 26.24.04.03;*

(2) The [facilities are] *pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;*

(3) The [facilities are] *pier or facility is associated with a residential [development] project approved by the local jurisdiction [for the Critical Area and consistent with all criteria and local regulations for the Critical Area] as consistent with all State and local program requirements;*

(4) Disturbance to the [Buffer] *buffer is the minimum necessary to provide a single point of access to the [facilities] pier or facility; and*

(5) If [community piers are] *a community pier is provided as part of [the new development] a new residential project, private piers [in the development are not authorized] are prohibited in that residential project.*

[B.] C. The number of slips authorized at [the] *a pier or facility shall be the lesser of [§B(1) or (2),] §C(1) or (2) of this regulation:*

(1) One slip for each 50 feet of shoreline in [the subdivision] *a residential project in the intense development and limited development areas, and one slip for each 300 feet of shoreline in [the subdivision] a residential project in the resource conservation area; or*

(2) A density of slips to platted lots or dwellings within [the subdivision] *a residential project in the Critical Area according to the following schedule:*

(table unchanged)

.08 Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities.

[A. Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in intensely developed areas.]

[B.] A. [These facilities may be permitted within the Buffer in limited development areas and resource conservation areas provided that:] *The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.*

B. *A local jurisdiction may approve the location of:*

(1) *A public beach or other public water-oriented recreation or education area or activity in the buffer of:*

(a) *An intensely developed area; or*

(b) *A limited development area or a resource conservation area if:*

[(1)] (i) (text unchanged)

[(2)] (ii) [Service] *Sanitary and service facilities are, to the extent possible, located outside the [Buffer] buffer;*

[(3)] (iii) [Permeable surfaces are] *A permeable surface is used to the extent practicable, if no degradation of ground water would likely result; and*

[(4)] (iv) Disturbance to natural vegetation is *first avoided or, if unavoidable, minimized; [and] or*

[(5) Areas for passive recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within resource conservation areas, if service facilities for these uses are located outside of the Buffer.]

(2) *A public passive outdoor recreation or education area, such as for hiking, hunting, trapping, or nature study, in the buffer of a limited development area or a resource conservation area if sanitary and service facilities to support these uses are located outside the buffer.*

.09 Research-Associated and Education-Associated Water-Dependent Facilities or Activities.

A. *The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.*

B. *As applicable, if an associated nonwater-dependent project is located outside the buffer, a local jurisdiction may approve the location in the buffer of a research-associated water-dependent facility or activity or of an education-associated water-dependent facility or activity.*

.10 Aquaculture and Fishery Facilities and Activities; Water Quality Restoration.

A. *The provisions of this regulation are in addition to the provisions of Regulations .03 and .04 of this chapter.*

B. *A local jurisdiction may approve the location of the following facilities and activities in the buffer:*

(1) *A shore-based facility or activity necessary for a commercial aquaculture operation;*

(2) *A commercial water-dependent fishery facility or activity, including a structure for crab shedding, a fish off-loading dock, and a shellfish culture operation; and*

(3) *A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.*

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) — (16) (text unchanged)

[(17) Structure.

(a) "Structure" means building or construction materials, or a combination of those materials, that are purposely assembled or joined together on or over land or water.

(b) "Structure" includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.]

(18) — (20) (text unchanged)

C. — D. (text unchanged)

E. Buffer Standards.

(1) In conjunction with mitigation performed in accordance with an approved buffer management plan under Regulation .01-3 of this chapter, a local jurisdiction may authorize disturbance in the buffer for:

(a) A [new] development activity [or a redevelopment activity]:

(i) Associated with a water-dependent facility *or activity* under COMAR 27.01.03;

(ii) (text unchanged)

(iii) In accordance with §E(8) of this regulation; [or]

(iv) (text unchanged)

(v) *Associated with the placement of dredged material under COMAR 27.01.03.03D; or*

(b) (text unchanged)

(2) — (8) (text unchanged)

.01-2 Mitigation and Planting Standards.

A. — C. (text unchanged)

D. Temporary Disturbance. As applicable to a site, a local jurisdiction shall [calculate mitigation for temporary disturbance according to the ratios under §H of this regulation] *require that an area in the buffer that is temporarily disturbed by a development activity be restored to pre-disturbance conditions.*

E. — G. (text unchanged)

H. *Permanent Disturbance.* In accordance with the applicable activity, a local jurisdiction shall require the following ratios of mitigation *for each permanent disturbance:*

[existing table proposed for repeal]

<i>Activity</i>	<i>Mitigation Ratio</i>
<i>Septic on a lot created before local program approval if located in existing grass or if clearing is not required</i>	<i>Not applicable</i>
<i>Septic system in a forest or developed woodland on a lot created before local program approval if clearing is required</i>	<i>1:1</i>
<i>Shore erosion control</i>	<i>1:1</i>
<i>Riparian water access</i>	<i>2:1</i>
<i>Development of a water-dependent facility or activity under COMAR 27.01.03</i>	<i>2:1</i>
<i>Variance</i>	<i>3:1</i>
<i>Violation</i>	<i>4:1</i>

I. — S. (text unchanged)

27.01.11 Directives for Updating Critical Area Maps

Authority: Ch. 119, Acts of 2008, §§1—4

.04 Mapping Methodology for the Assessment of Physical Features.

A. — C. (text unchanged)

D. Except for a living shoreline or a mudflat, the Department and the Commission shall map the following land features as upland:

(1) (text unchanged)

(2) An upland area surrounded by a tidal wetland if the upland area:

(a) (text unchanged)

(b) Except for a duckblind or a water-dependent facility *or activity under COMAR 27.01.03*, is developed with a legally authorized improvement; and

(3) (text unchanged)

E. — H. (text unchanged)

27.01.13 Nonwater-Dependent Projects

Authority: Natural Resources Article, §§8-1808.4, Annotated Code of Maryland; Ch. 492, Acts of 2013, §§1-4

Definition.

A. — B. (text unchanged)

C. "Nonwater-dependent project" does not include:

(1) (text unchanged)

(2) A sanitary sewage pump or other wastewater removal equipment on a pier; [or]

(3) An office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations; or

(4) A water-dependent facility or activity covered under COMAR 27.01.03.

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

27.02.01 General Provisions

Authority: Natural Resources Article, §§8-701, 8-1806, 8-1808.4(a), and 8-1814, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (40-2) (text unchanged)

(41) "Port" [means a facility or area established or designated by the State or local jurisdictions for purposes of water-borne commerce] *has the meaning stated in COMAR 27.01.01.01.*

(42) — (60) (text unchanged)

(61) "Vessel" *has the meaning stated in Natural Resources Article, §8-701, Annotated Code of Maryland.*

[(62) "Water-use industry" means an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.]

(63) — (65) (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

.04 Water-Dependent Facilities and Activities — Definition.

In this regulation and in Regulations .04-1 through .04-3 of this chapter, "water-dependent facility or activity" has the meaning stated in COMAR 27.01.03.01.

.04-1 Water-Dependent Facilities and Activities — General Criteria.

An agency proposing development on State-owned land or responsible for the administration of a water-dependent facility or activity located on State-owned land:

A. *In accordance with Natural Resources Article, §8-1808.3, Annotated Code of Maryland, and COMAR 27.02.05.09, shall limit development the buffer to the minimum lot coverage necessary to accommodate each water-dependent facility or activity;*

B. *Except as otherwise provided under Regulations .04 through .04-3 of this chapter, may develop a water-dependent facility or activity in the buffer if:*

(1) *The facility or activity is water-dependent;*

(2) *The facility or activity meets a recognized public need;*

(3) *Adverse impacts on water quality and fish, wildlife, and plant habitat are first avoided or, if unavoidable, minimized; and*

(4) *A nonwater-dependent project associated with the water-dependent facility or activity is located outside the buffer;*

C. *May not place, or approve the placement of, dredged material in the buffer or a portion of the Critical Area that has been designated as a habitat protection area, except as necessary for:*

(1) *A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:*

(a) *Backfill for a shoreline stabilization measure;*

(b) *Use in a nonstructural shoreline stabilization measure, including a living shoreline;*

(c) *Beach nourishment;*

(d) *Restoration of an island;*

(e) *The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or*

(f) *Any other approved beneficial use; or*

(2) *Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988; and*

D. *Shall ensure:*

(1) *The avoidance, or, in the alternative, the minimization of impacts to fish, wildlife, or plant habitat; and*

(2) *Mitigation at a ratio of 1:1 based on the square footage of the area of the canopy coverage removed.*

.04-2 Water-Dependent Facilities and Activities — General Location Requirements.

A. *The provisions of this regulation are in addition to the provisions of Regulation .04-1 of this chapter.*

B. *An agency proposing development on State-owned land or responsible for the administration of a water-dependent facility or activity located on State-owned land shall document how each of the following siting factors is accorded due consideration:*

(1) *The impact on the water body upon which the water-dependent facility or activity is proposed that would likely result from the approval of that location, including:*

(a) *Alteration of an existing water circulation pattern or salinity regime;*

(b) *Adequacy of area flushing characteristics;*

(c) *Necessity of, and proximity to, a dredging operation; and*

(d) *Interference with the natural transport of sand;*

(2) *Disturbance to:*

- (a) An oyster harvest area, as defined in COMAR 08.02.04.11;
- (b) An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
- (c) A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
- (d) An oyster sanctuary, as established in COMAR 08.02.04.15A; and
- (e) Any other shellfish located in a shellfish area regulated by the Department of Natural Resources;
- (3) Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
- (4) Avoidance or, in the alternative, minimization of:
 - (a) Disturbance to:
 - (i) A wetland;
 - (ii) Submerged aquatic vegetation;
 - (iii) A habitat of threatened or endangered species or species in need of conservation;
 - (iv) In accordance with COMAR 26.08.02.04-1, a water body identified by the Department of the Environment as a Tier II, high quality water body and its watershed; and
 - (v) A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and .04, and COMAR 26.23.06.01; and
 - (b) Adverse impact on water quality that would likely result from the facility or activity, such as nonpoint source runoff, sewage discharge, or other pollution related to vessel maintenance.

.04-3 Water-Dependent Facilities and Activities — Site-Specific Criteria.

- A. The provisions of this regulation are in addition to the provisions of Regulations .04-1 and .04-2 of this chapter.
- B. An agency proposing development on State-owned land or responsible for the administration of a water-dependent facility or activity located on State-owned land:
 - (1) May locate a water-dependent industrial or port-related facility or activity in the buffer if:
 - (a) The facility or activity is in an intensely developed area; and
 - (b) The Commission has approved a modification of the buffer requirements under Regulation .09 of this chapter or has duly executed a memorandum of understanding to that effect;
 - (2) Shall require that the operation of each commercial marina and each related commercial maritime facility or activity complies with:
 - (a) The requirements of COMAR 26.08.04.09 and, as applicable, COMAR 26.24.04.03; and
 - (b) The stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of the Department of the Environment;
 - (3) May develop a commercial marina or a related commercial maritime facility or activity in the buffer of a resource conservation area, upon full satisfaction of all the requirements under §B(4)(a) of this regulation;
 - (4) May locate:
 - (a) A public beach or other public water-oriented recreation or education area or activity, including a publicly owned fishing pier or a boat unloading and docking facility or activity, in the buffer if:
 - (i) Adequate sanitary facilities exist;
 - (ii) Sanitary and service facilities are, to the extent possible, located outside the buffer;
 - (iii) A permeable surface is used to the extent practicable, if no degradation of ground water would likely result; and
 - (iv) Disturbance to natural vegetation is first avoided or, if unavoidable, minimized; or
 - (b) A public passive outdoor recreation or education area, such as hiking, hunting, trapping, or nature study, in the buffer of a limited development area or a resource conservation area if sanitary and service facilities to support these uses are located outside the buffer;
 - (5) As applicable, if an associated nonwater-dependent project is located outside the buffer, may locate in the buffer a research-associated water-dependent facility or activity or an education-associated water-dependent facility or activity; and
 - (6) May locate the following facilities and activities in the buffer:
 - (a) A shore-based facility or activity necessary for a commercial aquaculture operation;
 - (b) A commercial water-dependent fishery facility or activity, including a structure for crab shedding, a fish off-loading dock, and a shellfish culture operation; and
 - (c) A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

.09 Buffer.

- A. (text unchanged)
- B. Criteria. In planning or proposing development on State-owned lands, the agency proposing the development shall use the following criteria:
 - (1) (text unchanged)
 - (2) [New development] Development activities, including structures, roads, parking areas, and other lot coverage areas, mining and related facilities, and septic systems, are [prohibited] *not authorized* in the buffer, except for those necessarily associated with water-dependent facilities [covered] *or activities as defined* in Regulation .04 of this chapter.
 - (3) — (8) (text unchanged)

.12 Plant and Wildlife Habitat.

- A. (text unchanged)
- B. Criteria. When planning or proposing development [or redevelopment] on State-owned lands within the Critical Area, the agency proposing the development shall use the following criteria for plant and wildlife habitat:
 - (1) (text unchanged)
 - (2) The agency shall develop protection measures for the plant and wildlife habitats identified above as follows:
 - (a) (text unchanged)
 - (b) Provide that new water-dependent facilities or activities, as defined in Regulation .04 of this chapter, are so located as to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.

(c) — (f) (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. [As used in] *In* this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) — (12) (text unchanged)

(12-1) *“Structure” has the meaning stated in COMAR 27.01.01.01.*

(13) — (14) (text unchanged)

CHARLES C. DEEGAN

Chairman

Critical Area Commission for the Chesapeake
and Atlantic Coastal Bays