

Title 27
CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL
BAY
Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT
Chapter 15 Enforcement

Authority: Natural Resources Article, §§8-1806, 1808(c), 1809, 1815, 1815.1, Annotated Code of Maryland

.01 Definitions.

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

B. Terms Defined.

(1) Abatement.

(a) "Abatement" means the elimination of the violation;

(b) "Abatement" includes stabilization of the site.

(2) "Restoration" means returning the affected area to its previous condition prior to the violation.

(3) "Violator" means a contractor, property owner, or any other person who committed, assisted, authorized, or participated in the violation.

(4) Violation.

(a) "Violation" means an act that violates the provisions of this subtitle or the Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland.

(b) "Violation" includes:

(i) Clearing, disturbance of the Buffer, construction of unpermitted structures, grading in the Critical Area without a permit, grading in the Critical Area beyond the allowable limits authorized by a local jurisdiction, and exceedance of allowable lot coverage limits; and

(ii) Failure to comply with the deadlines required under Regulation .03 of this chapter.

.02 Applicability.

A. Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this regulation shall apply to, and be applied by, a local jurisdiction as minimum standards for a local program sufficient to meet the goals of the Critical Area program.

B. If a provision of this chapter conflicts with a provision of a local program, the stricter provision applies.

.03 Minimum Requirements for Enforcement Program.

A local jurisdiction shall include all the following requirements as part of their enforcement program.

A. A local jurisdiction may obtain access to and enter a property to:

(1) Identify or verify a suspected violation;

(2) Restrain a development activity; or

(3) Issue a notice of violation if a local jurisdiction believes that a violation of the local program has occurred or is occurring.

B. A local jurisdiction shall make a reasonable effort to contact a property owner before obtaining access to or entering the property.

C. If a property owner denies entry, a local jurisdiction may seek an injunction to enter the property to pursue an enforcement action.

D. If a local jurisdiction identifies an active violation, it shall issue a stop work order.

E. Within 30 days of identifying a violation or issuing a stop work order, a local jurisdiction shall send the alleged violator, via certified mail, a notice of violation letter that includes:

(1) A description of the facts supporting the alleged violation;

(2) References to the provisions of the Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, this title, or a local jurisdiction's Critical Area program which have been alleged to have been violated;

(3) A notice of the right to file an appeal in accordance with §J of this regulation;

(4) If eligible to apply for a variance, an explanation that applying for a variance constitutes a waiver of the right to appeal the notice of violation;

(5) Actions necessary to bring the site into compliance, which may include:

(a) Paying fines in accordance with Regulation .04 of this chapter;

(b) Description of the abatement and restoration measures required under §H of this regulation to resolve the violation and the deadline by which those measures must be implemented;

(c) If the violation is a clearing violation, a requirement that the alleged violator replant trees where the cutting or clearing occurred in accordance with a plan prepared by the State Forester, a licensed professional forester, a licensed landscape architect, or a Forest Conservation Qualified Professional approved by the Department of Natural Resources;

(d) A mitigation plan as required under §H of this regulation; and

(e) Applying for an after-the-fact variance; and

(6) A deadline for when a response or action is required from the alleged violator.

F. The local jurisdiction shall:

(1) Track the deadlines required in §E of this regulation;

(2) Communicate in writing if an alleged violator fails to meet the initial deadline; and
(3) Perform one of the following actions if the alleged violator does not resolve the violation as required by the notice of violation, and fails to respond to the local jurisdiction's written communication for 30 days:

(a) Request assistance from the Commission;

(b) Refer the matter to the Commission as required under Regulation .05 of this chapter for referral to the Office of the Attorney General;

(c) Refer the matter to the local jurisdiction's Office of Law to bring an enforcement action, including civil penalties;

(d) Refer the matter to the Office of the Attorney General for criminal prosecution; or

(e) If the violation is for clearing, file suit in circuit court for damages in an amount equal to the estimated cost of replanting trees which shall be paid by the alleged violator to the local jurisdiction.

G. If a local jurisdiction fails to comply with the requirements under §F of this regulation, the Commission may notify the local jurisdiction of the deficiency and take any necessary actions, in accordance with Natural Resources Article §8-1809(n), Annotated Code of Maryland.

H. The local jurisdiction may require any of the following actions to remedy the violation:

(1) Abatement;

(2) A restoration plan to provide plantings at a mitigation rate in accordance with a local program; and

(3) A mitigation plan to provide plantings at the rate required by a local program if the alleged violator pursues an after-the-fact variance.

I. If the alleged violator pursues an after-the-fact variance, mitigation requirements are cumulative and consist of plantings for:

(1) The violation in accordance with an approved restoration plan under § H(2) of this regulation; and

(2) The variance in accordance with an approved mitigation plan under § H(3) of this regulation.

J. A local jurisdiction shall provide an appeals process consistent with their local program that allows the alleged violator to appeal the notification of violation.

.04 Fees and Penalties.

A. These regulations are not intended to alter a local jurisdiction's authority to assess fines, as provided under the Maryland Constitution or the Express Powers Act.

B. Each alleged violator who violates a provision of a local program shall be subject to separate fines for each offense in accordance with Natural Resources Article 8-1808(c)(1)(iii)15, Annotated Code of Maryland, including:

(1) Each violation constitutes a separate offense;

(2) Each calendar day that a violation continues constitutes a separate offense; and,

(3) *Fines for a continuing violation shall accrue without a requirement for an additional assessment, notice, or opportunity for hearing for each separate offense.*

C. In determining the amount of the penalty to be assessed, a local jurisdiction shall consider:

(1) The gravity of the violation;

(2) Any willfulness or negligence involved in the violation;

(3) The environmental impact of the violation; and

(4) The cost of restoration of the resource affected by the violation and mitigation for damage to that resource.

D. A jurisdiction may require a bond or other financial security for restoration or mitigation that exceeds 1,000 square feet or \$1,000.

.05 Request for Assistance from the Chair of the Commission or the Attorney General.

A. At any time during the enforcement process, a local jurisdiction may request, in writing, assistance from the Commission with an enforcement action.

B. A local jurisdiction may request in writing that the Chair refer an enforcement action to the Office of the Attorney General.

.06 Timeframes.

A. A local jurisdiction shall require any additional mitigation as a condition of approval for a permit, approval, variance, or special exception be completed within 90 days of issuance of the permit, approval, variance, or special exception unless an extension of time is appropriate because of adverse planting conditions, not to exceed an additional 90 days.

B. A local jurisdiction shall institute a criminal prosecution or suit for a civil penalty for a violation within three years after the Commission or the local jurisdiction knew or reasonably should have known of a violation.

COMAR 27.03.01

03 Notice Requirements for State Agency and Local Agency Development.

A. (text unchanged)

B. Public Notice.

(1) Except as provided under §A of this regulation, a State agency or local agency that proposes development in the Critical Area shall, as part of its formal project submittal to the Commission, provide evidence that:

(a) Public notice was published [for 1 business day in a newspaper of general circulation in the geographic area in which the proposed development would occur];

(i) *At least 30 days prior to the date of the project committee meeting at which the project will be presented for a vote; and*

(ii) *For one business day in a newspaper of general circulation in the geographic area in which the proposed development would occur;*

(b) (text unchanged)

(c) At least [14] 30 days were provided for public comment in the local jurisdiction in which the proposed development would occur; and

(d) (text unchanged)

(2) (text unchanged)

C. — D. (text unchanged)

COMAR 27.03.01

.04 Categories of Applications to be Submitted to the Executive Director.

A. [Developments, Subdivisions, and Site Plans Requiring Project Approval.

(1) The local approving authority shall electronically submit to the Executive Director each application for a development, subdivision, and site plan that is located wholly or partially within the Critical Area, except those specified in §A(2) of this regulation.

(2) The following types of developments, subdivisions, and site plans are exempted from §A(1) of this regulation, if the proposed development, subdivision, or site plan does not result in a physical disturbance to the buffer:

(a) The following developments, subdivisions, or site plans that would occur wholly or partially within [the IDAs] an intensely developed area:

(i) A single family dwelling unit;

(ii) A structure which is necessary to a single family dwelling unit which may include a pool, garage, porch, shed, or tennis courts;

(iii) Development in which the land disturbance does not exceed 15,000 square feet; and

(iv) Subdivisions resulting in up to ten lots or up to ten dwelling units;

(b) The following developments, subdivisions, or site plans that would occur wholly or partially within a limited development area:

(i) Those listed in §A(2)(a)(i)—(iii) of this regulation; and

(ii) A subdivision resulting in up to three lots that does not affect the local jurisdiction's growth allocation; and

(c) Developments, subdivisions, or site plans occurring wholly or partially within a resource conservation area for which the land disturbance does not exceed 5,000 square feet.] *A local jurisdiction shall electronically submit to the Executive Director each application for:*

(1) *A variance from the local Critical Area program;*

(2) *In the resource conservation area:*

- (i) *A site plan;*
- (ii) *A subdivision;*
- (iii) *A lot consolidation or a reconfiguration;*
- (iv) *A special exception;*
- (v) *A conditional use; and*
- (vi) *A zoning map amendment or a rezoning.*

(3) *In an intensely developed area or a limited development area, a subdivision or a lot consolidation or reconfiguration:*

- (i) *That proposes impacts to any habitat protection area, including the buffer; or*
- (ii) *On a site that has received growth allocation; and*

(4) *In accordance with COMAR 27.01.14 and COMAR 27.02.07, a major or minor solar energy generating system that would be located wholly or partially in a limited development area or a resource conservation area.*

B. [Other Applications. The local approving authority shall electronically submit to the Executive Director:

(1) Each initial and subsequent application for a rezoning or a floating zone that would occur wholly or partially within the resource conservation area or would result in a change to the Critical Area land classification;

(2) Each application for a special exception or a conditional use that would allow industrial, commercial, institutional, nonresidential, or multifamily uses to be located wholly or partially within a limited development area or a resource conservation area;

(3) Each application for a variance from the local Critical Area program; and

(4) In accordance with COMAR 27.01.14 and COMAR 27.02.07, each application for a major or minor solar energy generating system that would be located wholly or partially in a limited development area or a resource conservation area.

C. Approvals.]The local approving authority shall electronically submit to the Executive Director *final approvals for:*

(1) [Each final approval of a] *A major solar energy generating system;*

(2) In accordance with COMAR 27.01.04.03 and 27.01.09.01-3, for each category of application under §A(1)—(3) of this regulation [and for each Critical Area variance application];

[(a) Each approved] (3) *Upon request by the Executive Director, a major buffer management plan; and*

[(b)] (4) *As applicable, each [approved] completed Commission form entitled “Shoreline Stabilization Measure Buffer Management Plan.”*