

# **Title 27 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT**

## **Chapter 01 General Provisions**

Authority: Natural Resources Article, §§8-1806, 8-1808(c), and 8-1814, Annotated Code of Maryland

### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(44) (text unchanged)

(45) ["Nonrenewable resources" means resources that are not naturally regenerated or renewed]

*Repealed.*

(46)—(48) (text unchanged)

(49) ["Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits] *Repealed.*

(50)—(55) (text unchanged)

(56) ["Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies] *Repealed.*

(56-1)—(58) (text unchanged)

(59) ["Renewable resource" means a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely] *Repealed.*

(60)—(65) (text unchanged)

(66) ["Spoil pile" means the overburden and reject materials as piled or deposited during surface mining] *Repealed.*

(67)—(73) (text unchanged)

(74) ["Wash plant" means a facility where sand and gravel is washed during processing] *Repealed.*

(75)—(78) (text unchanged)

## **Chapter 02 Development in the Critical Area**

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

### **.06-1 Growth Allocation Submittal Requirements.**

A. (text unchanged)

B. The conceptual site development plan and environmental features map required under §A(3) and (4) of this regulation shall each include:

(1)—(27) (text unchanged)

(28) If applicable:

(a) The identification and location of agricultural land, a surface mining site, natural park, dredging activity, and dredge material disposal area; *and*

(b) The boundary and area of an existing easement, the identity of the easement holder, and any restriction on development as a result of the easement.

## Chapter 07 Surface Mining in the Critical Area

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

### .01 Definitions.

[A. "Surface mining" means:

- (1) The breaking of the surface soil in order to extract or remove minerals in the Critical Area;
- (2) Any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area; and
- (3) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities.

B. For the purposes of this chapter, surface mining also means:

- (1) Operations engaged in processing minerals at the site of extraction;
- (2) Removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and, to the extent necessary, to determine the location, quantity, or quality of any natural deposit; and
- (3) Mining operations, if the affected land exceeds 1 acre or more in area.]

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

*B. Terms Defined.*

(1) "Affected land" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(2) "Borrow pit" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(3) "Mineral" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(4) "Overburden" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(5) "Reclamation" means:

(a) The protection of a natural resource that is located in an area adjacent to a surface mining activity, including a forest, wildlife habitat, waterbody, and wetland; and

(b) The reasonable rehabilitation of affected land for a useful purpose.

(6) "Spoil pile" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(7) Surface mining.

(a) "Surface mining" means:

(i) The breaking of surface soil located in the Critical Area in order to extract or remove a mineral;

(ii) An activity or process that is part of the method of extraction or removal of a mineral from its original location in the Critical Area; and

(iii) The extraction or removal of sand, gravel, rock, stone, earth, or fill from a borrow pit for the purpose of constructing a road or another public facility.

(b) "Surface mining" includes:

(i) An activity related to the processing of a mineral at the site of extraction or removal

(ii) Extraction or removal of overburden and mining of a limited amount of a mineral when done for the purpose of prospecting, to the extent necessary, for the purpose of determining the location, quantity, or quality of a natural deposit; and (iii) A mining activity.

(c) "Surface mining" does not include an activity or process that is excluded under the provisions of Environment Article, §15-807, Annotated Code of Maryland or COMAR 26.21.01.08.

(8) Wash plant.

(a) "Wash plant" means a facility where sand or gravel is washed during processing.

(b) "Wash plant" includes a stockpile, a wash pond, and related washing equipment.

#### **.01-1 Applicability and Construction.**

A. The provisions of this chapter are applicable:

(1) In accordance with Land Use Article, §3-102, Annotated Code of Maryland, to each local jurisdiction in the Critical Area that is required to include a mineral resources element in its comprehensive plan;

(2) To each surface mining activity for which a license, permit, or other approval was issued on or after the date of local program approval; and

(3) In addition to any other statutory or regulatory requirement applicable under federal or State law.

B. Notwithstanding any other provision of law, the provisions of this chapter may not be construed to prohibit the location or use of a water dependent facility, as covered in COMAR 27.01.03, for the transport of a surface mining product or by-product.

#### **.02 Policies.**

In developing [their] and updating its Critical Area [programs, local jurisdictions] program, a local jurisdiction shall [use the following policies when addressing surface mining] assure that due consideration is accorded to:

A. When locating a surface mining activity, avoidance or, in the alternative, minimization of:

(1) The substantial loss of renewable resource land; and

(2) The degradation of water quality; and

B. [Assure that] When conducting a surface mining activity:

(1) Utilization of all available measures [be taken] to protect the Critical Area from all sources of pollution resulting from that [surface mining operations including, but not limited to,] activity, including sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of [wastes, dusts, and spoils] waste, dust, or spoil; and

[B. Assure that mining be conducted in a way to permit the] (2) Facilitation of site reclamation [of the site], including renewable resource land, as soon as possible and to the maximum extent possible.

#### **.03 Criteria.**

[In developing their Critical Area programs, local jurisdictions shall use all of the following criteria:

A. Local jurisdictions shall develop a mineral resources plan and program for management to include in their comprehensive or master plan, if these resources exist in the jurisdiction.

B. The plans and programs are to be developed in conjunction with the Department of the Environment and other appropriate agencies.

C. Each plan and program shall consist of all of the following:

(1) An identification and mapping of the undeveloped land in the Critical Area that should be kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals pursuant to Land Use Article, §§1-411 and 3-107, Annotated Code of Maryland.

(2) Surface mining areas which include Habitat Protection Areas under COMAR 27.01.09; and

(3) An identification of appropriate post-excavation uses for this land such as recreation, habitat restoration, open space use, or development in accordance with the guidelines for development in COMAR 27.01.02.

D. Local authorities shall establish regulations that designate those portions of the Critical Area that are unsuitable for future sand and gravel operations and shall prohibit those operations therein. Areas are unsuitable where:

(1) Important natural resources such as threatened and endangered species, areas of scientific value, or rare assemblages of species occur as discussed in COMAR 27.01.09 of these regulations;

(2) Areas where highly erodible soils exist;

(3) The use of renewable resource lands would result in the substantial loss of long range (that is, 25 years or more) productivity of forest and agriculture, or would result in a degrading of water quality or a loss of vital habitat; or

(4) The lands are within 100 feet of the mean high water line of tidal waters or the edge of streams.

E. Future wash plants including ponds, spoil piles, and equipment may not be located within the Buffer as defined in COMAR 27.01.09.

F. Existing wash ponds shall be reclaimed as soon as possible after the cessation of a sand and gravel operation.

G. To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot buffer of natural vegetation between the operation and the mean high water line of tidal waters or the edges of streams, and tidal wetlands, whichever is further inland.]

*In developing and updating its Critical Area program, a local jurisdiction shall:*

*A. In conjunction with, as applicable, the Departments of Agriculture, Environment, and Natural Resources, and any other appropriate federal or State agency, develop a mineral resources plan and management program that is included in its comprehensive plan and consists of:*

*(1) In accordance with Land Use Article, §§1-411 and 3-107, Annotated Code of Maryland, the identification and mapping of the undeveloped land in the Critical Area that is best kept in its undeveloped state until the land can be used to provide or assist in providing a continuous supply of minerals;*

*(2) Each surface mining area that includes a habitat protection area under COMAR 27.01.09; and*

*(3) In accordance with COMAR 27.01.02, at each location where surface mining is, or has been, conducted, the identification of:*

*(a) Post-reclamation land uses that, where applicable, prioritize the establishment or re-establishment of renewable resource products, such as agriculture and forestry, and other land uses that benefit water quality and habitat, such as wetlands, habitat restoration, and open space; and*

*(b) Any other appropriate post-reclamation land use, such as recreation and development;*

*B. Designate each portion of the Critical Area that is unsuitable for surface mining and prohibit surface mining in those locations, including:*

*(1) In accordance with the provisions of COMAR 27.01.09, a habitat protection area;*

*(2) An area where highly erodible soil exists; and*

*(3) An area that is within 100 feet immediately landward from mean high water of tidal waters or from the edge of a bank of a tributary stream, unless:*

*(a) A license, permit, or other approval to conduct a specific aspect of surface mining was issued before the date of local program approval; and*

*(b) If expansion of the scope or size of the surface mining activity has occurred since the date of local program approval, the expansion complies with State law and local program requirements;*

*C. Require the reclamation of a wash pond in accordance with State law and local program requirements; and*

*D. Prohibit the location of a wash plant within the buffer, as covered in COMAR 27.01.09.*

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

### **Chapter 01 General Provisions**

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

#### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

- (1)—(37) (text unchanged)
- (38) ["Overburden" means the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits] *Repealed*.
- (39)—(42) (text unchanged)
- (43) ["Reclamation" means the reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including waterbodies] *Repealed*.
- (44)—(51) (text unchanged)
- (52) ["Spoil pile" means the overburden and reject materials as piled or deposited during surface mining] *Repealed*.
- (53)—(60) (text unchanged)
- (61) ["Wash plant" means a facility where sand and gravel is washed during processing] *Repealed*.
- (62)—(64) (text unchanged)

## 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

### [.08 Surface Mining.

A. Definition.

- (1) "Surface mining" means:
  - (a) The breaking of the surface soil in order to extract or remove minerals in the Critical Area;
  - (b) Any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location in the Critical Area;
  - (c) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities.
- (2) For the purposes of this chapter, surface mining also means:
  - (a) Operations engaged in processing minerals at the site of extraction;
  - (b) Removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity, or quality of any natural deposit; and
  - (c) Mining operations, if the affected land exceeds 1 acre or more in area.

B. Criteria. When surface mining occurs on State-owned lands, the agency administering these lands shall assure that the operations are conducted according to the following criteria:

- (1) Assure that all available measures be taken to protect the Critical Area from all sources of pollution from surface mining operations including, but not limited to, sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of wastes, dusts, and spoils.
- (2) Assure that mining is conducted in a way to permit the reclamation of the site as soon as possible and to the extent possible.
- (3) Provide that future sand and gravel operations do not occur in areas unsuitable for mining. Areas unsuitable occur where:
  - (a) Important natural resources such as threatened and endangered species, areas of scientific value, or rare assemblages of species occur as discussed in Regulations .09—.13 of this chapter;
  - (b) Areas where highly erodible soils exist;
  - (c) The use of renewable resource lands would result in the substantial loss of long range (that is, 25 years or more) productivity of forest and agriculture, or would result in a degrading of water quality or a loss of vital habitat; or
  - (d) The lands are within 100 feet of the mean high water line of tidal waters or the edge of streams.

(4) Future wash plants including ponds, spoil piles, and equipment may not be located within the Buffer as defined in Regulation .09.

(5) Existing wash ponds shall be reclaimed as soon as possible after the cessation of a sand and gravel operation.

(6) To the fullest extent possible, existing sand and gravel operations shall conduct their extraction activities so as to provide, at a minimum, a 100-foot buffer of natural vegetation between the operation and the mean high water line of tidal waters or the edges of streams, and tidal wetlands, whichever is further inland.]

#### ***.08 Surface Mining -- Definitions.***

*A. In this regulation and in Regulations .08-1 through .08-3 of this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

(1) "Affected land" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(2) "Borrow pit" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(3) "Mineral" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(4) "Overburden" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(5) "Reclamation" has the meaning stated in COMAR 27.01.07.01.

(6) "Spoil pile" has the meaning stated in Environment Article, §15-801, Annotated Code of Maryland.

(7) "Surface mining" has the meaning stated in COMAR 27.01.07.01.

(8) "Wash plant" has the meaning stated in COMAR 27.01.07.01.

#### ***.08-1 Surface Mining – Applicability and Construction.***

*A. The provisions of Regulations .08 through .08-3 of this chapter are applicable in addition to any other statutory or regulatory requirement applicable under federal or State law.*

*B. Notwithstanding any other provision of law, the provisions of Regulations .08 through .08-3 of this chapter may not be construed to prohibit the location or use of a water dependent facility, as covered in Regulation .04 of this chapter, for the transport of a surface mining product or by-product.*

#### ***.08-2 Surface Mining – Policies.***

*When surface mining occurs on State-owned land, the agency administering the land shall assure that due consideration is accorded to:*

*A. When locating a surface mining activity, avoidance, or, in the alternative, minimization, of:*

*(1) The substantial loss of renewable resource land; and*

*(2) The degradation of water quality; and*

*B. When conducting a surface mining activity:*

*(1) Utilization of all available measures to protect the Critical Area from all sources of pollution resulting from that activity, including sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of waste, dust, or spoil; and*

*(2) Facilitation of site reclamation, including renewable resource land, as soon as possible and to the maximum extent possible.*

### **.08-3 Surface Mining - Criteria**

*When surface mining occurs on State-owned land, the agency administering the land shall:*

*A. Designate each portion of the Critical Area that is unsuitable for surface mining and prohibit surface mining in those locations, including:*

- (1) In accordance with the provisions of COMAR 27.01.09, a habitat protection area;*
- (2) An area where highly erodible soil exists; and*
- (3) An area that is within 100 feet immediately landward from mean high water of tidal waters or from the edge of a bank of a tributary stream, unless:*

*(a) A license, permit, or other approval to conduct a specific aspect of surface mining was issued before June 11, 1988; and*

*(b) If expansion of the scope or size of the surface mining activity has occurred since June 11, 1988, the expansion complies with State law and local program requirements;*

*B. Require the reclamation of a wash pond in accordance with State law and local program requirements;*

*C. Prohibit the location of a wash plant within the buffer, as covered in COMAR 27.01.09; and*

*D. If applicable, assure that a lessee of the affected land obtains all licenses, permits, and other approvals in accordance with State law and local program requirements.*