

## **Renewable Energy Regulations Frequently Asked Questions**

### **EFFECTIVE DATE**

- 1) When do these regulations take effect?

The regulations are effective as of April 1, 2021.

### **GENERAL QUESTIONS FOR LOCAL GOVERNMENTS**

- 1) My jurisdiction does not have renewable energy provisions. What do I need to do now?

These regulations apply in the Critical Area whether or not your jurisdiction has renewable energy provisions. We encourage you to adopt these regulations into your local code or Critical Area program to aid in implementation and be consistent with your local format and structure. You may want to consider certain alternatives, as allowed.

- 2) If my jurisdiction does not have any renewable energy provisions, am I required to incorporate these regulations into my local Critical Area program or Code?

No, but these regulations apply to renewable energy projects in the Critical Area whether or not you incorporate them into your local Critical Area program. We would encourage you to review these regulations and consider adopting them into your local Critical Area program. You may want to consider certain alternatives to these regulations, as allowed.

- 3) My jurisdiction already has renewable energy provisions. What do I need to know?

If you have existing renewable energy regulations, you need to contact the Critical Area Commission to discuss the most appropriate way to proceed. As stated above, these new State regulations apply to all land in the Critical Area. The Commission's regulations are detailed and may present inconsistencies with existing local requirements. Therefore, an initial consultation with the Commission will help determine whether adjustments to local provisions as they apply in the Critical Area are necessary.

- 4) Can alternative provisions be submitted to the Commission?

Yes, a local jurisdiction may submit alternatives for certain provisions. However, the regulations specifically do not allow alternatives to the forest clearing provisions, the lot coverage provisions, planting plan provisions, or the growth allocation provision that prohibits the use of growth allocation for siting large solar projects in the LDA or RCA.

- 5) Can my jurisdiction prohibit **major** solar energy generating systems in the Resource Conservation Area?

The Critical Area renewable energy regulations do not limit the exclusive authority of the Public Service Commission to site solar energy generating systems. A prohibition on major solar energy generating systems in the RCA may be in direct conflict with the exclusive authority of the Public Service Commission to site solar energy generating systems, if the system requires a Certificate of Public Convenience and Necessity (CPCN).

In general, local jurisdictions may propose stricter Critical Area requirements so long as they do not directly conflict with Critical Area statute or regulations. A prohibition on major solar energy generating systems in the RCA is likely not in direct conflict with the Critical Area statute or regulations.

- 6) Can my jurisdiction prohibit **minor** solar energy generating systems in the Resource Conservation Area?

Yes. Unlike the siting of a major solar energy generating system, the siting of a minor solar energy generating system does not require a CPCN from the Public Service Commission. In general, local jurisdictions may propose stricter Critical Area requirements so long as they do not directly conflict with Critical Area statute or regulations.

## **PROCESS QUESTIONS FOR LOCAL GOVERNMENTS**

- 1) What plan review process is required for a major solar energy generating system?

Regardless of the local jurisdiction's review and approval process, a Critical Area site plan is required for all major solar energy generating systems in the Critical Area. The site plan must include all the information listed on the Solar Energy

Generating Facility Site Plan Checklist (link?). Further, the local jurisdiction must adhere to the notification regulations in COMAR 27.03.01.04.\*

Major solar energy generating systems that require PSC approval require a review by the Commission staff and in some cases, the full Commission, which may offer conditions to the CPCN. Major solar energy systems that do not require a CPCN will receive Commission staff comments during the local review process.

- 2) What plan review process is required for a minor solar energy generating system?

A local jurisdiction may require a site plan for a minor solar energy generating system. However, per COMAR 27.03.01.04, the local jurisdiction is required to submit a minor application to the Commission.\*

\*Even if only a portion of the project area is inside the Critical Area, a major or minor solar energy generating system is still required to be submitted to the Commission.

### **BUFFER PROVISIONS**

- 1) Can I propose to construct a major or minor solar energy generating system in the Buffer?

No. Other than for one access point through the Buffer, a solar energy generating system may not be located in the Buffer. However, see Buffer Provision #4 below for small residential accessory systems.

- 2) Can I propose to construct a major or minor solar energy generating system over existing lot coverage in the Buffer?

Only proposals in a Modified Buffer Area (MBA) are permitted in the Buffer over existing, legally developed lot coverage.

- 3) Can I propose to construct a major or minor solar energy generating system in a Modified Buffer Area (MBA)?

Yes, a solar energy generating system may be located in an MBA, but only if the project is located over existing, legally developed lot coverage.

- 4) Can a small residential accessory solar energy generating system be located in the Buffer?

Yes, if the system:

- a. Supports the energy for the principal use of a residential property on the same lot or parcel as the principal use;
  - b. Is located on a grandfathered lot that is  $\frac{1}{4}$  acre or less where there is no alternative location except in the Buffer; and
  - c. Mitigation is provided at a 1:1 ratio.
- 5) In addition to the Buffer, are there other areas where solar panels and projects are restricted?

In general, solar energy generating systems are prohibited in:

- a. Habitat Protection Areas such as Forest Interior Dwelling Bird habitats;
- b. Steep slopes;
- c. Highly erodible soils; and
- d. Forested areas within 300 feet of tidal waters, tidal wetlands, or tributary streams.

The only exception to this prohibition is if the project receives authorization from MDE for impacts to nontidal wetlands.

### **FOREST AND DEVELOPED WOODLAND CLEARING PROVISIONS**

- 1) Are there forest and developed woodland clearing restrictions applicable to solar energy generating systems?

Yes. Although there are no forest or developed woodland clearing restrictions in the IDA, there are clearing restrictions for a major and minor solar energy generating system in the LDA and RCA on the parcel or parcels on which the project area is located.

- 2) Do the forest and developed woodland clearing restrictions vary by Critical Area designation (IDA, LDA, and RCA)?

Yes.

LDA: 20% of the entirety of forest and developed woodlands.  
RCA: 10 acres, or 20% of the entirety of forest and developed woodlands,  
whichever is less.

- 3) Are there instances where forest and developed woodland clearing is prohibited?

Yes. Clearing is prohibited within Forest Interior Dwelling Bird (FIDS) habitat.

Clearing is prohibited within 300 feet of tidal waters, tidal wetlands, and tributary streams for major solar energy generating systems.

- 4) What are the requirements when forest and developed woodland clearing is proposed to accommodate a solar energy generating system?

All forest and developed woodland clearing requires 1:1 mitigation and submission of a planting plan. Mitigation can be met by planting on-site, by planting off-site, or through payment of a fee-in-lieu to the local jurisdiction.

### **GROWTH ALLOCATION**

- 1) Does a solar energy generating system require the use of growth allocation if it is located in the RCA or LDA

No, growth allocation is not used for solar energy generating systems. Under the State regulations, growth allocation is not authorized to accommodate the development of a major or minor solar energy generating system in the LDA or RCA.

### **SOLAR ENERGY GENERATING SYSTEMS IN THE RESOURCE CONSERVATION AREA**

- 1) What is a reservation of resource conservation area density right? And how does it work?

A Reservation of Resource Conservation Area Density right (RDR) is a means for putting density or development rights in reserve for a certain period of time. An RDR is required for major solar energy projects (greater than 2 MW) in the Resource Conservation Area. The number of development rights required to be set aside for the duration of a solar project is calculated based on the number of acres used on each parcel.

- 2) How do you calculate the number of RDRs required for a solar energy generating system in the RCA?

You calculate the number of RDRs required for a solar energy generating system in the RCA by evaluating each RCA parcel, parcel size, RCA development rights associated with each parcel, and the project area as defined in the regulations.

Below are a few examples of how to determine the number of RDRs required for a solar energy generating system and the number of remaining available development rights:

### **Scenario 1**

One Parcel, 60 acres in size (3 RCA development rights)

Size of the solar energy generating system project area: 60 acres

Three (3) RDRs would be set aside for the duration of the project until that project is decommissioned.

Zero (0) development rights would remain available for current use.

### **Scenario 2**

One parcel, 95 acres in size (4 RCA development rights)

Size of the solar energy generating system project area: 41 acres

Three (3) RDRs would be set aside for the duration of the project until that project is decommissioned.

One (1) development right would remain available for current use.

### **Scenario 3**

Three parcels totaling 120 acres in size.

Parcel A: 95 acres (4 RCA development rights)

Parcel B: 20 acres (1 RCA development right)

Parcel C: 5 acres (1 RCA development right)

Size of the solar project area: 60 acres.

Parcel A: 41 acres used of the parcel's 95 total acres.

Parcel B: 14 acres used of the parcel's 20 total acres.

Parcel C: the entirety of the parcel's 5 acres used.

For Example 3, of the 6 original RCA development rights, 5 RDRs would be set aside until the solar project is decommissioned.

On Parcel A: 3 RDRs

On Parcel B: 1 RDR

On Parcel C; 1 RDR

One development right, on Parcel A, would remain available for current use.

**Table 1: Reservation of Resource Conservation Area Density Rights (RCA-RDRs) Scenarios**

<b>Scenario 1:</b>					
<b>Parcel</b>	<b>Parcel Acreage</b>	<b>Project Area Acreage</b>	<b>RCA Development Rights</b>	<b>RCA-RDRs Required</b>	<b>Remaining DRs</b>
A	60	60	3	3	0
<b>Total</b>	<b>60</b>	<b>60</b>	<b>3</b>	<b>3</b>	<b>0</b>
<b>Scenario 2:</b>					
<b>Parcel</b>	<b>Parcel Acreage</b>	<b>Project Area Acreage</b>	<b>RCA Development Rights</b>	<b>RCA-RDRs Required</b>	<b>Remaining DRs</b>
A	40	40	2	2	0
B	20	20	1	1	0
<b>Total</b>	<b>60</b>	<b>60</b>	<b>3</b>	<b>3</b>	<b>0</b>
<b>Scenario 3:</b>					
<b>Parcel</b>	<b>Parcel Acreage</b>	<b>Project Area Acreage</b>	<b>RCA Development Rights</b>	<b>RCA-RDRs Required</b>	<b>Remaining DRs</b>
A	95	41	4	3	1
B	20	14	1	1	0
C	5	5	1	1	0
<b>Total</b>	<b>120</b>	<b>60</b>	<b>6</b>	<b>5</b>	<b>1</b>

**LOT COVERAGE PROVISIONS**

1) Does a solar panel count as lot coverage?

A solar panel for a minor solar energy generating system does not count as lot coverage. Solar panels must be:

- a. Located over existing, legally developed lot coverage; OR
- b. Elevated above the ground and the area under the solar panel is maintained as an area of existing grass, established grass or other natural vegetation or as an agricultural use.

A solar panel for a major solar energy generating system does not count as lot coverage. Solar panels must be:

- a. Located over existing, legally developed lot coverage; OR
- b. Elevated above the ground and the area under the solar panel is maintained as pollinator habitat, native vegetation other than pollinator habitat, or an agricultural use.

Small residential accessory solar panels would be governed by local lot coverage rules.

2) What are the planting requirements associated with solar panels?

A planting plan is required if the area is established as pollinator habitat or native vegetation.

**STORMWATER MANAGEMENT AND 10% POLLUTANT REDUCTION PROVISIONS**

1) Is Critical Area 10% stormwater management required for solar energy generating systems in the IDA?

No. Stormwater must be completed in accordance with MDE's stormwater management regulations (§§4-201—4-215, *Annotated Code of Maryland*, and *COMAR 26.17.02*.) The same applies to LDAs and RCAs.

**VARIANCES**

1) Can I obtain a variance or other modification to any of the provisions in the regulations?

No, a jurisdiction cannot authorize a variance, waiver, modification, or other local procedure that alters the requirements of the regulations. However a jurisdiction may establish certain alternative requirements for solar energy

generating systems. Those alternative requirements must be at least as effective as existing regulations and approved by the Critical Area Commission.

### **DECOMMISSIONING PLANS**

- 1) Do I need a decommissioning plan as part of my application?

Yes, a decommissioning plan is required for a minor or major solar energy generating system. A decommissioning plan is not required for a small residential accessory solar energy generating system.

### **MINOR PROJECTS AND RESIDENTIAL PROJECTS**

- 1) Is a minor solar energy generating system limited to certain uses?

No, the definition of a minor solar energy generating system applies to all projects that are 2MW or less, including community solar projects, commercial accessory solar projects and other types of accessory projects.

- 2) Would individual property owners who want to install solar panels for their residential use at their property have to comply with the requirements of a minor solar energy generating system?

No. But the regulations include certain limited provisions applicable to small residential accessory solar energy generating systems. See question #1 under the lot coverage provisions section.