

Critical Area Commission

STAFF REPORT

May 1, 2024

PROPOSAL: Permission to Publish as Proposed Regulations Comprehensive Updates to Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approve

STAFF: Lisa Hoerger, Kate Durant

AFFECTED CHAPTERS OF COMAR:

COMAR 27.01.01 General Provisions
COMAR 27.01.02 Development in the Critical Area
COMAR 27.01.03 Water-Dependent Facilities and Activities
COMAR 27.01.05 Forest and Woodland Protection
COMAR 27.01.06 Agriculture
COMAR 27.01.07 Surface Mining in the Critical Area
COMAR 27.01.08 Natural Parks
COMAR 27.01.09 Habitat Protection Areas in the Critical Area
COMAR 27.01.10 Directive for Local Program Development
COMAR 27.01.11 Directives for Updating Critical Area Maps
COMAR 27.01.12 Variances
COMAR 27.01.14 Renewable Energy Generating Systems
COMAR 27.02.01 General Provisions
COMAR 27.02.02 State and Local Agency Actions Resulting in Minor Development on Private Lands or Lands Owned by Local Jurisdictions
COMAR 27.02.03 General Approval of State and Local Agency Programs Which Result in Minor Development on Private Lands or Lands Owned by Local Jurisdictions
COMAR 27.02.04 State or Local Agency Actions Resulting in Major Development on Private Lands or Lands Owned by Local Jurisdictions
COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands
COMAR 27.02.06 Conditional Approval of State of Local Agency Programs in the Critical Area
COMAR 27.02.07 Commission Review, Decision Process, and Time Frames
COMAR 27.02.08 Appeals
COMAR 27.03.01 Notification of Project Applications

APPLICABLE LAW/REGULATIONS:

Natural Resources Article, §8-1806

REVIEW:

At its March 20, 2024 meeting, Commission staff provided a presentation on the draft comprehensive update regulations. The proposed changes to the regulations can be categorized as follows:

- Repeal outdated provisions or definitions that are not used in the text (the original provisions were enacted in 1986).
- Perform stylistic changes (bring text up to current Division of State Documents standards).
- Add new definitions.
- Clarify or make corrective changes.

DISCUSSION:

As discussed at the March 20, 2024 meeting, a final comprehensive update is required to capture and modernize all the text. This regulatory update proposal to Title 27 is the most comprehensive proposal to date and occurs throughout all three subtitles.

STAKEHOLDER COMMENTS:

Commission staff provided the draft to the local governments for comment. Prince George’s County provided comments and Commission staff answered their questions and comments. Many were editing comments and questions that did not require changes to the draft. No other comments were received.

COMMISSION ACTION:

The Commission will be asked to vote to forward the draft regulations to the Administrative, Executive, & Legislative Review Committee and subsequently to publish these regulations as proposed regulations in the Maryland Register.

If you have any questions or comments regarding the draft regulations prior to the meeting, please contact me at (410) 260-3478 or at lisa.hoerger@maryland.gov or Kate Durant at (410) 260-3477 or at kathryn.durant@maryland.gov.

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), 8-1808.4(a),8-1808.5(a), and 8-1811, Annotated Code of Maryland

.01 Definitions.

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

B. Terms Defined.

(1) Afforestation" [means the establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover] *has the meaning stated in Natural Resources Article, §5-1601(b), Annotated Code of Maryland.*

(2)—(3) (text unchanged)

(4) *Anadromous Fish.*

(a) "Anadromous fish" means *a species of fish that [travel] spawns in freshwaters by traveling upstream [(from their] from its primary ocean habitat [in the ocean) to freshwaters in order to spawn].*

(b) "*Anadromous fish*" includes *rockfish, yellow perch, white perch, shad, and river herring.*

(5) (text unchanged)

(6) ["Barren land" means unmanaged land having sparse vegetation.]

(7) (text unchanged)

1 (8) Buffer.

2 (a) "Buffer" means an area that:

3 (i) Based on conditions present at the time of development, is
4 [immediately] landward from *the* mean high water *line* of tidal waters, [the edge of each bank
5 of a tributary stream, or] *from* the landward boundary of a tidal wetland, *or from the edge of*
6 *each bank of a tributary stream*; and

7 (b) (text unchanged)

8 (8-1) "*Chair*" means the *Chair of the Critical Area Commission for the Chesapeake and*
9 *Atlantic Coastal Bays*.

10 (9) "Clearcutting" means the removal of the entire stand of trees in one cutting with tree
11 reproduction obtained by natural seeding from adjacent stands or from trees that were cut, from
12 advanced regeneration or stump sprouts, or from *human activity in the planting of seeds or*
13 *seedlings [by man]*.

14 (9-1) *Clearing*.

15 (a) "*Clearing*" means an activity that removes trees and vegetative cover from the
16 *land*.

17 (b) "*Clearing*" may include removing trees and leaving stumps, only if leaving stumps
18 *is authorized under an approved timber harvest plan*.

19 (10)—(14) (text unchanged)

20 (15) *Comprehensive Plan*.

21 (a) "Comprehensive [or master] plan" means a compilation of policy statements, goals,
22 standards, maps, and pertinent data relative to the past, present, and future trends of the local
23 jurisdiction including[, but not limited to,] its population, housing, economics, social patterns,
24 land use, water resources and their use, transportation facilities, and public facilities, *that is*
25 *prepared by or for the planning board, agency, or office*.

26 (b) "Comprehensive plan" includes a general plan and a master plan.

27 (16)—(21-1) (text unchanged)

28 (21-2) *Disturbance*.

29 (a) (text unchanged)

30 (b) "*Disturbance*" includes any amount of *cutting*, clearing, grading, or construction
31 *activity*.

1 (c) (text unchanged)

2 (22) (text unchanged)

3 (23) ["Ecosystem" means a more or less self-contained biological community together with
4 the physical environment in which the community's organisms occur.

5 (23-1)] (text unchanged)

6 [(23-2)] (23-1) (text unchanged)

7 (24) ["Excess stormwater runoff" means all increases in stormwater resulting from:

8 (a) An increase in the lot coverage on the site, including all additions to buildings, roads,
9 and parking lots;

10 (b) Changes in permeability caused by compaction during construction or modifications
11 in contours, including the filling or drainage of small depression areas;

12 (c) Alteration of drainageways or regrading of slopes;

13 (d) Destruction of forest; or

14 (e) Installation of collection systems to intercept street flows or to replace swales or other
15 drainageways.

16 (24-1)] (text unchanged)

17 (25)—(27) (text unchanged)

18 (28) "Forest management" means the protection, manipulation, and utilization of the forest
19 to provide multiple benefits, [such as] *including* timber harvesting, water transpiration, *and*
20 wildlife [habitat, etc] *and plant habitats*.

21 (29) ["Forest practice" means the alteration of the forest either through tree removal or
22 replacement in order to improve the timber, wildlife, recreational, aesthetic, or water quality
23 values.

24 (29-1)] Habitat Protection Area.

25 (a) (text unchanged)

26 (b) "Habitat protection area" includes:

27 (i) The [Buffer] *buffer*, as [described in COMAR 27.01.01.01B(8)] *defined in this*
28 *regulation and set forth in COMAR 27.01.09;*

29 (ii) A nontidal wetland, as defined in [COMAR 26.24.01.02B] *Environment Article,*
30 *§5-901, Annotated Code of Maryland, and as applied by the Department of the Environment;*

31 (iii) A habitat of a threatened species, as defined in *this regulation and set forth in*
32 *COMAR [27.01.09.03A] 27.01.09.03;*

1 (iv) A habitat of an endangered species, as defined in *this regulation and set forth in*
2 COMAR [27.01.09.03A] 27.01.09.03;

3 (v) A habitat of a species in need of conservation, as defined in *this regulation and as*
4 *forth in* COMAR [27.01.09.03A] 27.01.09.03;

5 (vi) A plant habitat, as defined in *this regulation and set forth in* COMAR
6 [27.01.09.04A] 27.01.09.04;

7 (vii) A wildlife habitat, as defined in *this regulation and set forth in* COMAR
8 [27.01.09.04A] 27.01.09.04; and

9 (viii) Anadromous fish propagation waters, as defined *and set forth in* COMAR
10 [27.01.09.05A] 27.01.09.05.

11 (30) "Highly erodible [soils] *soil*" means [those soils with a] *a soil with:*

12 (a) *A slope greater than 15 percent [or those soils with a K value]; or*

13 (b) *A K-factor greater than 0.35 and [with slopes] a slope greater than 5 percent.*

14 (31) (text unchanged)

15 (32) "Hydric [soils] *soil*" means [soils that are] *a soil that is* wet frequently enough to
16 periodically produce anaerobic conditions, thereby influencing the species composition or
17 growth, or both, of plants on those soils.

18 (33) ["Hydrophytic vegetation" means those plants cited in "Vascular Plant Species
19 Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in
20 water or on a substrate that is at least periodically deficient in oxygen as a result of excessive
21 water content (plants typically found in wet habitats)] *Intensely Developed Area.*

22 (a) *"Intensely developed area" has the meaning stated in Natural Resources Article,*
23 *§8-1802(a), Annotated Code of Maryland.*

24 (b) *"Intensely developed area" includes the provisions of COMAR 27.01.02.03.*

25 (34) (text unchanged)

26 (35) ["Land-based aquaculture" means the raising of fish or shell fish in any natural or
27 man-made, enclosed or impounded, water body] *"Landward edge" means the limit of a site*
28 *feature that is farthest away from the mean high water line of tidal waters, from the landward*
29 *boundary of a tidal wetland, or from the edge of a bank of a tributary stream.*

30 (36) ["Land clearing" means any activity that removes the vegetative ground cover.]

31 (37) ["Landforms" means features of the earth's surface created by natural causes] *Limited*
32 *Development Area.*

1 (a) "Limited development area" has the meaning stated in Natural Resources Article,
2 §8-1802(a), Annotated Code of Maryland.

3 (b) "Limited development area" includes the provisions of COMAR 27.01.02.04.

4 (37-1) "Locally significant habitat" means a [plant or wildlife] *wildlife or plant* habitat that
5 may not be of Statewide significance but, in a local jurisdiction's Critical Area program, is
6 considered to be significant in a local or regional context because the habitat contains a
7 species:

8 (a)—(b) (text unchanged)

9 (37-2)—(39-1) (text unchanged)

10 (39-2) Modified Buffer Area.

11 (a) "Modified buffer area" means an area of land:

12 (i) Where a pattern of residential, industrial, commercial, *institutional*, or recreational
13 development existed in the [100-foot Buffer] *first 100 feet of the buffer* on December 1, 1985
14 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical
15 Area; and

16 (ii) (text unchanged)

17 (b) (text unchanged)

18 (40) "Natural features" means components and processes present in or produced by nature,
19 including[, but not limited to,] soil types, geology, slopes, vegetation, surface water, drainage
20 patterns, aquifers, recharge areas, climate, [flood plains, aquatic life, and wildlife] *a floodplain,*
21 *and fish, wildlife, and plant habitats.*

22 (41) "Natural heritage area" [means any communities of plants or animals which are
23 considered to be among the best Statewide examples of their kind, and are designated by
24 regulation by the Secretary of the Department of Natural Resources] *has the meaning stated in*
25 *COMAR 08.03.08.01, as designated in COMAR 08.03.08.10.*

26 (42) "Natural vegetation" means [those plant communities that develop] *a plant community*
27 *that develops* in the absence of human [activities] *activity.*

28 (43) (text unchanged)

29 (44) "Nonpoint source pollution" means [pollution generated by diffuse land use activities
30 rather than from an identifiable or discrete facility. It is conveyed to waterways through natural
31 processes, such as rainfall, storm runoff, or ground water seepage rather than by deliberate
32 discharge. Nonpoint source pollution is not generally corrected by "end-of-pipe" treatment, but
33 rather, by changes in land management practices] *the introduction of a contaminant into the*
34 *natural environment that is generated by diffuse land use activities and is conveyed to a*
35 *waterway through natural processes, such as stormwater or groundwater seepage.*

36 (45) (text unchanged)

1 (46) "Nontidal wetland" has the meaning stated in [COMAR 26.23.01.01] *Environment*
2 *Article, §5-901, Annotated Code of Maryland, and as applied by the Department of the*
3 *Environment.*

4 (47)—(50) (text unchanged)

5 (51) ["Physiographic features" means the soils, topography, land slope and aspect, and
6 local climate that influence the form and species composition of plant communities.

7 (51-1)] (text unchanged)

8 [(51-2)] (51-1) (text unchanged)

9 (52) (text unchanged)

10 (53) ["Private harvesting" means the cutting and removal of trees for personal use.]

11 (54)—(57) (text unchanged)

12 (58) "Reforestation" [means the establishment of a forest through artificial reproduction or
13 natural regeneration] *has the meaning stated in Natural Resources Article, §5-1601, Annotated*
14 *Code of Maryland.*

15 (59) *Resource Conservation Area.*

16 (a) "Resource conservation area" *has the meaning stated in Natural Resources Article,*
17 *§8-1802(a), Annotated Code of Maryland.*

18 (b) "Resource conservation area" *includes the provisions of COMAR 27.01.02.05.*

19 (60)—(60-1) (text unchanged)

20 (61) ["Seasonally flooded water regime" means a condition where surface water is present
21 for extended periods, especially early in the growing season, and when surface water is absent,
22 the water table is often near the land surface.]

23 (62)—(62-1) (text unchanged)

24 (63) ["Significantly eroding areas" means areas that erode 2 feet or more per year.]

25 (64)—(65) (text unchanged)

26 (66) "Steep slope" *means a slope with an incline of at least 15 percent.*

27 (67) ["Steep slopes" means slopes of 15 percent or greater incline] *Stormwater.*

28 (a) "Stormwater" *has the meaning stated in COMAR 26.17.02.02.*

29 (b) "Stormwater" *includes runoff associated with:*

30 (i) *An increase in lot coverage onsite, including all additions to a building,*

1 road, or parking lot;

2 (ii) A change in permeability caused by compaction during construction or

3 a modification in contour, including the filling or drainage of a small depression area;

4 (iii) Alteration of a drainageway or the regrading of a slope;

5 (iv) Destruction of forest; and

6 (v) Installation of a collection system to intercept street flow or to replace a swale or

7 other drainageway.

8 (67-1) (text unchanged)

9 (67-2) Subdivision.

10 (a) "Subdivision" has the meaning stated in Land Use Article, §1-101, Annotated Code

11 of Maryland.

12 (b) "Subdivision" includes division of a parcel under Natural Resources Article, §8-

13 1808.2, Annotated Code of Maryland, and the creation of a condominium regime under Real

14 Property Article, Title 11, Annotated Code of Maryland.

15 (68)—(70) (text unchanged)

16 (71) "Transportation [facilities] means anything that is built, installed, or established to

17 provide a means of transport from one place to another] facility" has the meaning stated in

18 Transportation Article, §3-101, Annotated Code of Maryland.

19 (71-1)—(72) (text unchanged)

20 (72-1) "Upland" has the meaning stated in COMAR 26.24.01.02B.

21 (73) Utility Transmission Facility.

22 (a) "Utility transmission [facilities] facility" means a fixed [structures that convey or

23 distribute] structure that conveys or distributes resources, wastes, or both, including[, but not

24 limited to,] electric lines, water conduits, and sewer lines.

25 (b) "Utility transmission facility" does not include a power plant.

26 (73-1)—(77-1) (text unchanged)

27 (78) Wildlife Corridor.

28 (a) "Wildlife corridor" means [a strip of land having vegetation that provides habitat

29 and a safe passageway for wildlife] an area of vegetation that connects wildlife habitats and

30 provides wildlife habitat and passage.

1 (b) “Wildlife corridor” includes a habitat protection area, as defined in this regulation,
2 and a wetland migration area, as defined in COMAR 27.01.14.01.

3 (79) (text unchanged)

4 Chapter 02 Development in the Critical Area

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

8 .01 Definition.

9 In this chapter, “300-foot setback” means an area that is at least 300 feet [in width, as
10 measured from the] landward [boundary] *from the mean high water line* of tidal waters or
11 [wetlands,] *from the landward boundary of a tidal wetland* that is provided on a growth
12 allocation site in order to provide habitat and stormwater benefits to supplement benefits
13 required in accordance with COMAR 27.01.09.

15 .01-1 Introduction.

16 The Commission is charged with the development of criteria that will accommodate growth,
17 and [also] provide for the conservation of habitat and the protection of water quality in the
18 Critical Area. In this chapter, criteria are proposed for directing, managing, and controlling
19 development [(e.g., residential, commercial, industrial and related facilities)], *including*
20 *residential, commercial, institutional, industrial, and related facilities*, so that the adverse
21 impacts of growth in the Critical Area are minimized. These criteria are based on the general
22 policies [found] in Regulation .02 of this chapter.

23 .02 General Policies.

24 A. [In order to recognize already existing land uses and development in the Critical Area, the
25 Commission recognizes these three types of development areas:

- 26 (1) Intensely developed areas;
- 27 (2) Limited development areas; and
- 28 (3) Resource conservation areas.

29 B. Within each jurisdiction, intense development should be directed outside the Critical Area.
30 Future intense development activities, when proposed in the Critical Area, shall be directed
31 towards the intensely developed areas.

32 C. Additional low intensity development may be permitted in the limited development areas,
33 but shall be subject to strict regulation to prevent adverse impacts on habitat and water quality.

34 D. Development shall be limited in the resource conservation area, which shall be chiefly
35 designated for agriculture, forestry, fisheries activities, other resource utilization activities and
36 for habitat protection.

1 E. Local jurisdictions shall identify each of the three areas within their jurisdiction based on
2 the criteria to follow, and develop policies and programs to achieve the objectives as proposed
3 by the Commission.

4 F. Activities Not Permitted

5 (1) Certain new development, or redevelopment activities or facilities, because of their
6 intrinsic nature, or because of their potential for adversely affecting habitats or water quality,
7 may not be permitted in the Critical Area except in intensely developed areas under Regulation
8 .03 of this chapter, and only after the activity or facility has demonstrated to all appropriate
9 local and State permitting agencies that there will be a net improvement in water quality to the
10 adjacent body of water. These activities include the following:

11 (a) Nonmaritime heavy industry;

12 (b) Transportation facilities and utility transmission facilities, except those necessary to
13 serve permitted uses, or where regional or interstate facilities must cross tidal waters (utility
14 transmission facilities do not include power plants); or

15 (c) Permanent sludge handling, storage, and disposal facilities, other than those
16 associated with wastewater treatment facilities. However, agricultural or horticultural use of
17 sludge under appropriate approvals when applied by an approved method at approved
18 application rates may be permitted in the Critical Area, except in the 100-foot Buffer.

19 (2) Local jurisdictions may preclude additional development activities that they consider
20 detrimental to water quality or fish, wildlife, or plant habitats within their jurisdictions.

21 G. Certain new development activities or facilities, or the expansion of certain existing
22 facilities, because of their intrinsic nature, or because of their potential for adversely affecting
23 habitat and water quality, may not be permitted in the Critical Area unless no environmentally
24 acceptable alternative exists outside the Critical Area, and these development activities or
25 facilities are needed in order to correct an existing water quality or wastewater management
26 problem. These include:

27 (1) Solid or hazardous waste collection or disposal facilities; or

28 (2) Sanitary landfills.

29 H. Existing, permitted facilities of the type noted in §G(1) and (2), above, shall be subject to
30 the standards and requirements of the Maryland Department of the Environment, under
31 COMAR Title 26] *The Commission recognizes these types of land classifications:*

32 (1) *Intensely developed areas;*

33 (2) *Limited development areas; and*

34 (3) *Resource conservation areas.*

35 B. *A local jurisdiction shall:*

1 (1) Based on the criteria stated in Natural Resources Article, Title 8, Subtitle 18,
2 Annotated Code of Maryland, and in this subtitle, identify each of the land classifications
3 within its jurisdiction; and

4 (2) Develop policies and programs to achieve the objectives proposed by the Commission.

5 C. The policies and programs developed under §B(2) of this regulation shall include all of
6 the following provisions:

7 (1) Development in each type of land classification shall be subject to strict criteria in
8 order to prevent adverse impacts on water quality or fish, wildlife, or plant habitat;

9 (2) It is preferable to direct intense development activities outside the Critical Area;

10 (3) If proposed in the Critical Area, an intense development activity is appropriately
11 located in an intensely developed area;

12 (4) Low intensity development may be authorized in a limited development area;

13 (5) Land uses in a resource conservation area are primarily designated for nature-
14 dominated environments, such as wetlands, forests, and abandoned fields, and resource-
15 utilization activities, such as agriculture, forestry, and fishery activities; and

16 (6) It is a priority to improve the quality of stormwater entering the Chesapeake or Atlantic
17 Coastal Bays or their tributary streams.

18
19 **.02-1 General Criteria.**

20 A. A local jurisdiction shall maintain areas of public access to the shoreline, and, if possible,
21 encourage the establishment of additional areas of shoreline access for public use, such as foot
22 paths, scenic drives, and other public recreational facilities.

23 B. In developing and updating its Critical Area program, a local jurisdiction shall refer to all
24 of the following complementary State statutes and regulations, including:

25 (1) For soil erosion and sediment control, management measures shall be consistent with
26 the requirements of Environment Article, §§4-101—4-116, Annotated Code of Maryland, and
27 COMAR 26.17.01;

28 (2) For stormwater runoff, stormwater management measures shall be consistent with the
29 requirements of Environment Article, §§4-201—4-215, Annotated Code of Maryland, and
30 COMAR 26.17.02;

1 (3) For shore erosion, shoreline stabilization measures shall be consistent with the
2 requirements of Environment Article, Title 16, Annotated Code of Maryland, and COMAR
3 26.24.04; and

4 (4) Any other applicable State statute or regulation.

5 **.02-2 Restricted Activities.**

6 *A. Applicability.*

7 *The provisions of this regulation may not be construed to limit a local jurisdiction from*
8 *restricting an activity or facility if the local jurisdiction considers the activity or facility to be*
9 *detrimental to its water quality, or fish, wildlife, or plant habitat.*

10 *B. A local jurisdiction may not authorize a development activity or facility in the Critical*
11 *Area if, by its intrinsic nature, the activity or facility has the potential to cause an adverse*
12 *effect on water quality, or fish, wildlife, or plant habitat, unless:*

13 (1) *For an activity or facility such as nonmaritime heavy industry:*

14 (a) *It is located within an intensely developed area;*

15 (b) *It fully complies with all requirements under Regulation .03 of this chapter;*

16 *and*

17 (c) *The owner or operator of the activity or facility demonstrates to all*
18 *applicable State and local agencies that there will be a net improvement in water quality to the*
19 *adjacent body of water; or*

20 (2) *For an activity or facility such as a sanitary landfill or a solid or hazardous waste*
21 *collection or disposal facility:*

22 (a) *There is no environmentally acceptable alternative outside the Critical*
23 *Area; and*

24 (b) *The activity or facility is necessary in order to correct a water quality or*
25 *wastewater management problem.*

26 *C. In addition to the requirements of §B(1) of this regulation, a local jurisdiction may not*
27 *authorize a development activity or facility in the Critical Area such as a transportation*
28 *facility or a utility transmission facility, unless it is:*

29 (1) *A facility that serves a use identified under the local jurisdiction's Critical Area*
30 *program;*

31 (2) *A linear regional or interstate transportation facility that must cross tidal*

1 waters; or

2 (3) A linear regional or interstate utility transmission facility that must cross tidal
3 waters.

4 D. In addition to the requirements of §B(1)(c) of this regulation, a local jurisdiction may not
5 authorize a development activity or facility in the Critical Area such as a permanent sludge
6 handling, storage, or disposal activity or facility, unless:

7 (1) The activity or facility is associated with a wastewater treatment facility; or

8 (2) In accordance with an approved nutrient management plan under Agriculture
9 Article, Title 8, Subtitle 8, Annotated Code of Maryland, and COMAR 15.20.04 and .06 -- .08,
10 sludge is applied on agricultural land that is not in the buffer.

11

12 **.03 Intensely Developed Areas.**

13 A. Intensely developed areas are those areas where residential, commercial, institutional,
14 [and/or industrial,] or industrial developed land uses predominate, and where relatively little
15 natural habitat occurs. [These areas] *This land classification* shall have at least one of the
16 following features:

17 (1) Housing density [equal to or greater than] *is at least* four dwelling units per acre;

18 (2) (text unchanged)

19 (3) Public sewer and water collection and distribution systems are currently serving the
20 area, and housing density is greater than three dwelling units per acre.

21 B. (text unchanged)

22 C. In developing [their] and updating its Critical Area [programs, local jurisdictions]
23 program, a local jurisdiction shall follow all of these policies when addressing intensely
24 developed areas:

25 (1) Improve the quality of [runoff] *stormwater* from developed areas that enters the
26 Chesapeake or Atlantic Coastal Bays or their tributary streams;

27 (2) Accommodate additional development of the type and intensity designated by the local
28 jurisdiction [provided that] *if* water quality is not impaired;

29 (3) Minimize the expansion of intensely developed areas into portions of the Critical Area
30 designated as [Habitat Protection Areas] *habitat protection areas* under COMAR 27.01.09 and
31 resource conservation areas under Regulation .05 of this chapter;

1 (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in COMAR
2 27.01.09, [to the extent possible,] within intensely developed areas;

3 (5) [Prohibit the location of a road, bridge, or utility in any portion of the Critical Area
4 designated as a habitat protection area under COMAR 27.01.09, unless there is no feasible
5 alternative;

6 (6) If the location of a road, bridge, or utility in a habitat protection area is authorized
7 under §C(5) of this regulation, design, construct, and maintain the road, bridge, or utility so as
8 to:

9 (a) Provide maximum erosion protection;

10 (b) Minimize negative impact on wildlife, aquatic life, and their habitats; and

11 (c) Maintain hydrologic processes and water quality;

12 (7) Prohibit the location of a development activity if that development or any related
13 activity would cross or affect a stream, unless there is no feasible alternative;

14 (8) If the location of a development activity is authorized under §C(7) of this regulation,
15 design and construct the development activity so as to:

16 (a) Prevent increases in flood frequency and severity that are attributable to
17 development;

18 (b) Retain tree canopy and maintain stream water temperature within normal variation;
19 and

20 (c) Provide a natural substrate for affected streambeds;

21 (9)] Minimize the adverse water quality and quantity impact of stormwater and encourage
22 the use of retrofitting measures to address existing stormwater management problems; [and]

23 [(10)] (6) Cluster future development as a means to reduce lot coverage and to maximize
24 areas of natural vegetation; *and*

25 (7) *With assistance from the State, establish programs to enhance biological resources that*
26 *provide positive effects on water quality and urban wildlife habitat within the Critical Area,*
27 *such as urban forestry, landscaping, gardens, wetlands, and aquatic habitat restoration*
28 *elements.*

29 D. In developing [their] *and updating its* Critical Area [programs, local jurisdictions]
30 *program, a local jurisdiction shall use all of the following criteria for intensely developed*
31 *areas:*

1 (1) [Local jurisdictions] *A local jurisdiction* shall develop a strategy to reduce the impacts
2 on water quality that are generated by existing development. This shall include an assessment
3 of water quality and impacts to biological resources prompted by community redevelopment
4 plans and programs and may further include a public education program, the implementation of
5 urban best management practices, and the use of such techniques as are outlined in §D(9)(a)[,
6 below.] *of this regulation*;

7 (2) Development and redevelopment shall be subject to the habitat protection area criteria
8 prescribed in COMAR 27.01.09[.];

9 (3) [Stormwater.

10 (a) The] *A local jurisdiction* shall require, at the time of development or [redevelopment,
11 technologies] *redevelopment*:

12 (a) *Stormwater best management practices*, as required by applicable State and local
13 ordinances to minimize adverse impacts to water quality caused by stormwater[.];

14 (b) [In the case of redevelopment, if these technologies] *If stormwater best management*
15 *practices* do not reduce pollutant loadings by at least 10 percent below the level of pollution on
16 the site prior to *development or redevelopment*, then [offsets shall be provided.] *the local*
17 *jurisdiction shall require appropriate offsets*; and

18 (c) [In the case of new development, offsets as determined by the local jurisdiction shall
19 be used if they reduce pollutant loadings by at least 10 percent of the predevelopment levels.

20 (d)] Offsets may be provided either on or off site[, provided that water] *if*:

21 (i) *Water* quality benefits are equivalent[, that their benefits];

22 (ii) *Benefits* are obtained within the same watershed[, and that the benefits can be];

23 *and*

24 (iii) *Benefits* are determined through the use of modeling, monitoring, or other
25 computation of mitigation measures[.];

26 (4) [Areas of public access to the shoreline, such as foot paths, scenic drives, and other
27 public recreational facilities, should be maintained and, if possible, encouraged to be
28 established within intensely developed areas.

29 (5)] *A local jurisdiction shall prohibit the location of a road, bridge, or utility in any*
30 *portion of the Critical Area designated as a habitat protection area under COMAR 27.01.09,*
31 *unless there is no feasible alternative*;

1 (5) If the location of a road, bridge, or utility in a habitat protection area is authorized
2 under §D(4) of this regulation, a local jurisdiction shall ensure that the design, construction,
3 and maintenance of the road, bridge, or utility:

4 (a) Provides maximum erosion protection;

5 (b) Minimizes negative impact on wildlife, aquatic life, and their habitats; and

6 (c) Maintains hydrologic processes and water quality;

7 (6) A local jurisdiction shall prohibit the location of a development activity if that
8 development or any related activity would cross or affect a stream, unless there is no feasible
9 alternative;

10 (7) If the location of a development activity is authorized under §D(6) of this regulation, a
11 local jurisdiction shall ensure that the design and construction of the development activity:

12 (a) Prevents increases in flood frequency and severity that are attributable to the
13 development;

14 (b) Retains tree canopy and maintains stream water temperature within normal
15 variation; and

16 (c) Provides a natural substrate for affected streambeds;

17 (8) Ports and industries which use water for transportation and derive economic benefits
18 from shore [access,] access shall be located near existing port facilities. Local jurisdictions
19 may identify other sites for planned future port facility development and use if this use will
20 provide significant economic benefit to the State or local jurisdiction and is consistent with the
21 provisions of COMAR 27.01.03.03—.05 and 27.01.09, and other State and federal
22 regulations[.]; and

23 [(6) Local jurisdictions shall be encouraged to establish, with assistance from the State,
24 programs for the enhancement of biological resources within the Critical Area for their positive
25 effects on water quality and urban wildlife habitat. These programs may include urban forestry,
26 landscaping, gardens, wetland, and aquatic habitat restoration elements.

27 (7)] (9) When the cutting or clearing of trees in forests and developed woodland areas is
28 associated with current or planned development activities, all of the following shall be
29 required:

30 (a) Establishment of programs for the enhancement of forest and developed woodland
31 [resources such as programs for urban forestry (for example,] resources such as urban forestry
32 programs, including street tree plantings, gardens, landscaping, and open land buffer plantings
33 []];

1 (b)—(c) (text unchanged)

2 **.04 Limited Development Areas.**

3 A. Limited development areas are those areas which are currently developed in low or
4 moderate intensity uses. They also contain areas of natural [plant and animal] *wildlife and*
5 *plant* habitats, and the quality of [runoff] *stormwater* from these areas has not been
6 substantially altered or impaired. [These areas] *This land classification* shall have at least one
7 of the following features:

8 (1)—(2) (text unchanged)

9 (3) Areas meeting the conditions of Regulation .03A, but not .03B, of this [regulation]
10 *chapter; or*

11 (4) (text unchanged)

12 B. In developing [their] *and updating its* Critical Area [programs, local jurisdictions]
13 *program, a local jurisdiction* shall follow *all of* these policies when addressing limited
14 development areas:

15 (1) [Maintain or, if possible, improve the quality of runoff and ground water entering the
16 Chesapeake Bay and its tributaries;

17 (2)] Maintain, to the extent practicable, existing areas of natural habitat;

18 [(3)] (2) Accommodate additional low or moderate intensity development if:

19 (a) This development conforms to the water quality and habitat protection criteria in [§C,
20 below] §§ C and D of this regulation; and

21 (b) (text unchanged)

22 [(4)] (3) Reduce the extent of lot coverage and maximize areas of natural vegetation
23 through consideration of cluster development when planning for future development.

24 C. In developing [their] *and updating its* Critical Area [programs, local jurisdictions]
25 *program, a local jurisdiction* shall [use all of the following criteria] *require that a developer*
26 *incorporate all of the following general environmental protection criteria for each*
27 *development activity in a limited development [areas] area:*

28 (1) [For all development activities in the limited development areas, the jurisdiction shall
29 require that the developer identify any of the following environmental or natural features and
30 meet all of the following standards of environmental protection:

1 (a) Criteria as provided for the habitat protection areas in COMAR 27.01.09, and those
2 for the water-dependent facilities in COMAR 27.01.03.

3 (b) Prohibition on the location of a road, bridge, or utility in any portion of the Critical
4 Area designated as a habitat protection area under COMAR 27.01.09, unless there is no
5 feasible alternative.

6 (c) If the location of a road, bridge, or utility in a habitat protection area is authorized
7 under [§C(1)(b)] §D(1)(b) of this regulation, *the* design, construction, and maintenance of the
8 road, bridge, or utility so as to:

9 [(i)] (a) Provide maximum erosion protection;

10 [(ii)] (b) Minimize negative impact on *fish*, wildlife, [aquatic life,] and their habitats;
11 and

12 [(iii)] (c) Maintain hydrologic processes and water quality[.];

13 [(d)] (2) Prohibition on the location of a development activity if that development or any
14 related activity would cross or affect a stream, unless there is no feasible alternative[.];

15 [(e)] (3) If the location of a development activity is authorized under [§C(1)(d)] §C(2) of
16 this regulation, *the* design and construction of the development activity so as to:

17 [(i)] (a) Reduce increases in flood frequency and severity that are attributable to
18 development;

19 [(ii)] (b) Retain tree canopy so as to maintain stream water temperature within normal
20 variation;

21 [(iii)] (c) Provide a natural substrate for streambeds; and

22 [(iv)] (d) Minimize the adverse water quality and quantity impact of stormwater[.];

23 [(f)] (4) All development sites shall incorporate a wildlife corridor system that connects
24 the largest undeveloped, or most vegetated tracts of land within and adjacent to the site in order
25 to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife
26 corridor system may include habitat protection areas identified in COMAR 27.01.09. [Local
27 jurisdictions] *A local jurisdiction* shall ensure the maintenance of the wildlife corridors by
28 requiring the establishment of conservation easements, restrictive covenants, or similar
29 instruments through which the corridor is preserved by public or private groups, including
30 [homeowners] *homeowner* associations, nature trusts, and other organizations[.];

31 [(2)] (5) For the cutting or clearing of trees in [forests] *forest* and developed woodland
32 areas which are associated with current or planned development activities in the limited
33 development area, [all jurisdictions] *a local jurisdiction* shall:

1 (a) Require that the developer consider the recommendations of the [Forestry Programs
2 and the Fish, Heritage and Wildlife Administration of the] Department of Natural Resources
3 when planning development on forested lands;

4 (b) [Provide regulations] *Require* that development activities be designed and
5 implemented to minimize destruction of woodland vegetation; and

6 (c) Provide protection for forests and developed woodlands identified as habitat
7 protection areas in COMAR 27.01.09[.];

8 [(3)] (6) For the alteration of forest and developed [woodlands] *woodland areas* in the
9 limited development area, [the] *a local jurisdiction* shall apply all of the following criteria:

10 (a) The total acreage in forest and developed [woodlands] *woodland* within a
11 jurisdiction in the Critical Area shall be maintained or, preferably, increased;

12 (b) (text unchanged)

13 (c) If a developer is authorized to clear more than 20 percent of a forest or
14 developed [woodlands] *woodland* on a lot or parcel, the developer shall replace the forest or
15 developed [woodlands] *woodland* at 1.5 times the areal extent of the forest or developed
16 [woodlands] *woodland* cleared, including the first 20 percent of the forest or developed
17 [woodlands] *woodland* cleared;

18 (d) A developer may not clear more than 30 percent of a forest or developed
19 [woodlands] *woodland* on a lot or parcel, unless the local jurisdiction:(i)—(ii) (text unchanged)

20 (e) If a developer is authorized to clear any percentage of forest or developed
21 [woodlands] *woodland* from forest use under [§C(3)]§C(6) of this regulation, the remaining
22 percentage shall be maintained through recorded, restrictive covenants or similar
23 instruments[.];

24 [(4) In addition] (7) *For forest and woodland development, a local [jurisdictions]*
25 *jurisdiction* shall adhere to *all of* the following criteria [for forest and woodland development]:

26 (a) [Local programs] *A local program* shall make provision for surety to be provided
27 by owners or developers in an amount acceptable to the local jurisdiction and suitable to assure
28 satisfactory replacement as required by [§C(3)]§C(6) of this regulation;

29 (b) Local permits *or approvals* shall be required before forest or developed
30 woodland is cleared;

31 (c) Forests and developed woodlands which have been cleared before obtaining a
32 local permit *or approval*, or that exceed the maximum clearing allowed in [§C(3)]§C(6) of this

1 regulation shall be replanted at three times the areal extent of the cleared forest and developed
2 woodlands;

3 (d) If the areal extent of the site limits the application of [§C(3)]§C(6) and [(4)(c)]
4 (7)(c) of this regulation, *a local jurisdiction may develop* alternative provisions or reforestation
5 guidelines [may be developed by the local jurisdiction, if they are consistent] *that*:

6 (i) *In accordance* with the intent *and requirements* of COMAR 27.01.05, [to]
7 conserve the forest and developed woodland resources of the Critical Area; [alternative
8 provisions may] *and*

9 (ii) *May* include fees-in-lieu provisions if the fee is adequate to ensure the
10 restoration or establishment of an equivalent forest or developed woodland area;

11 (f) All forests designated on development plans shall be [maintained] *maintained*, to
12 the extent practicable, through conservation easements, restrictive covenants, or other
13 protective instruments;

14 (g) (text unchanged)

15 (h) The afforested area shall be maintained as forest cover through easements,
16 restrictive covenants, or other protective [instruments.] *instruments*;

17 [(5) Development] (8) *Disturbance* on [slopes equal to or greater than] *a slope*
18 *measuring at least 15 percent*, as measured before [development] *disturbance*, shall be
19 prohibited unless the [project] *disturbance* is the only effective way to [maintain or improve
20 the stability of] *stabilize* the slope and is consistent with the policies in §B of this regulation[.];

21 [(6)] (9) A local jurisdiction shall limit lot coverage on a parcel in accordance with *all of*
22 the following maximums:

23 (a)—(b) (text unchanged)

24 (c) In the case of a growth allocation award:

25 (i) (text unchanged)

26 (ii) 15 percent of the acreage proposed for growth allocation deduction[.]; *and*

27 [(7) Local jurisdictions shall allow for modifications in road standards to reduce
28 potential impact to the site and Critical Area resources, where the reduced standards do not
29 significantly affect safety.

1 (8) Development may be allowed] (10) A local jurisdiction may authorize development
2 activity on soils having development constraints if [it] the jurisdiction includes mitigation
3 measures that [adequately]:

4 (a) Adequately address the identified constraints; and [that will]

5 (b) Will not have significant adverse impacts on water quality or [plant, fish, or
6 wildlife] fish, wildlife, or plant habitat.

7 D. In [developing their Critical Area programs, the local jurisdictions shall refer to all of the
8 following complementary existing State laws and regulations:

9 (1) For soil erosion and sediment control, management measures shall be consistent with
10 the requirements of Environment Article, §§4-101—4-116, Annotated Code of Maryland, and
11 COMAR 26.17.01; and

12 (2) For stormwater runoff, stormwater management measures shall be consistent with the
13 requirements of Environment Article, §§4-201—4-215, Annotated Code of Maryland, and
14 COMAR 26.17.02] addition to the general environmental protection criteria required under
15 §C of this regulation, a local jurisdiction shall require that a developer incorporate all of the
16 following criteria, as applicable to each development activity in a limited development area:

17 (1) For a habitat protection area:

18 (a) Criteria as provided in §C(5)(c) of this regulation and in COMAR 27.01.09;

19 and

20 (b) Prohibition on the location of a road, bridge, or utility in any portion of the
21 Critical Area designated as a habitat protection area under COMAR 27.01.09, unless there is
22 no feasible alternative; and

23 (2) For a water-dependent facility or activity, criteria as provided in COMAR 27.01.03.
24

25 **.05 Resource Conservation Areas.**

26 A. Resource conservation areas are those areas characterized by nature-dominated
27 environments [(that is], such as wetlands, forests, or abandoned fields)], and resource-
28 utilization activities [(that is], such as agriculture, forestry, fisheries activities, or

1 aquaculture[]). [These areas] *This land classification* shall have at least one of the following
2 features:

3 (1)—(2) (text unchanged)

4 B. In developing [their] *and updating its* Critical Area [programs, local jurisdictions]
5 *program, a local jurisdiction* shall follow *all of* these policies when addressing resource
6 conservation areas:

7 (1) (text unchanged)

8 (2) Provide adequate breeding, feeding, and wintering habitats for [those] wildlife
9 populations that require the Chesapeake [Bay, its] *and Atlantic Coastal Bays, their* tributaries,
10 or coastal habitats in order to sustain [populations of those] *their* species;

11 (3) Conserve the land and water resource base that is necessary to maintain and support
12 land uses such as agriculture, forestry, fisheries activities, and aquaculture; [and]

13 (4) Conserve the existing developed woodlands [and forests], *forests, and riparian areas*
14 for the water quality benefits that they provide;

15 (5) *Promote agricultural and conservation easements;*

16 (6) *Encourage tax incentives or other incentive or disincentive programs that promote the*
17 *continuation of agriculture, forestry, and natural habitats; and*

1 (7) Consider cluster development, transfer of development rights, maximum lot size
2 provisions, and any other means likely to maintain the land area necessary to support the
3 protective uses.

4 C. In developing [their] and updating its Critical Area [programs, local jurisdictions]
5 program, a local jurisdiction shall use all of the following criteria for resource conservation
6 areas:

7 (1) Land use management practices shall be consistent with the policies and criteria for
8 habitat protection areas in COMAR 27.01.09, the policies and criteria for agriculture in
9 COMAR 27.01.06, and the policies and criteria [on] for forestry in COMAR 27.01.05[.];

10 (2) [Agricultural and conservation easements shall be promoted in resource conservation
11 areas.

12 (3) Local jurisdictions are encouraged to develop tax or other incentive/disincentive
13 programs to promote the continuation of agriculture, forestry, and natural habitats in resource
14 conservation areas.

15 (4) Land within the resource conservation area may be developed for residential uses at a
16 density not to exceed one dwelling unit per 20 acres. A local jurisdiction [may]:

17 (a) Shall calculate and track density rights that are to be recorded on a subdivision
18 plat; and

19 (b) May not authorize a variance to the maximum density of one dwelling unit per 20
20 [acres. Within this limit of overall density, minimum lot sizes may be determined by the local

1 jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster
2 development, transfer of development rights, maximum lot size provisions, and/or additional
3 means to maintain the land area necessary to support the protective uses.] *acres*;

4 [(5)] (3) Existing industrial and commercial facilities, including those that directly support
5 agriculture, forestry, aquaculture, or residential development not exceeding the density
6 specified in [§C(4),] §C(2) of this regulation, shall be allowed in resource conservation
7 areas[.];

8 [(6)] (4) Additional industrial or commercial facilities may not be located in the resource
9 conservation area unless the use is authorized by a local program[.];

10 [(7)] (5) Institutional facilities may not be located in the resource conservation area unless
11 the use is authorized by a local program[.];

12 [(8)] (6) A commercial, institutional, or industrial solar energy generating system may be
13 [permitted] *authorized* in accordance with COMAR 27.01.14[.];

14 [(9)] (7) [Local jurisdictions] *A local jurisdiction* shall develop a program to assure that the
15 overall acreage of forest and woodland within [their] *its* resource conservation areas does not
16 decrease[.];

17 [(10)] (8) Development activity within the resource conservation area shall be consistent
18 with the criteria for limited development areas in Regulation .04 of this chapter[.]; *and*

19 [(11)] (9) Limitations on lot coverage on a parcel shall be in accordance, *as applicable*,
20 with the following maximums:

1 (a)—(b) (text unchanged)

2 D. [Nothing in this regulation shall limit the ability of a participant in the Agricultural
3 Easement Program to convey real property impressed with such an easement to family
4 members provided that no such conveyance will result in a density greater than 1 dwelling unit
5 per 20 acres] *Notwithstanding any other provision of law, a participant in an agricultural*
6 *easement program may convey real property impressed with an agricultural easement to a*
7 *family member, if the conveyance will not result in a density greater than one dwelling unit per*
8 *20 acres.*

9
10
11 **.06 Growth Allocation — Minimum Local Program Requirements**

12 A. A local jurisdiction shall calculate its growth allocation based on 5 percent of the total
13 resource conservation area in its [critical area] *Critical Area* at the time of original approval of
14 the local jurisdiction’s program by the Commission, excluding:

15 (1)—(2) (text unchanged)

16 B.—C. (text unchanged)

17 D. If a local jurisdiction has within its territorial limits an area that is subject to the
18 Chesapeake Bay Critical Area program and an area that is subject to the Atlantic Coastal Bays
19 Critical Area program, the growth allocation for that jurisdiction may be utilized within either
20 [critical area] *Critical Area* in accordance with Natural Resources Article, §8-1808.1(d),
21 Annotated Code of Maryland.

22 E. (text unchanged)

23 **.06-1 Growth Allocation Submittal Requirements.**

24 A. The Commission may not accept for processing a growth allocation request unless all of
25 the following are provided at the time of submittal:

26 (1)—(5) (text unchanged)

27 (6) For the following resources, as appropriate for the project site and each government
28 agency, a preliminary review and comment from the Department of the Environment,

1 Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of
2 Engineers regarding:

3 (a)—(c) (text unchanged)

4 (d) [Plant and wildlife habitat] *Wildlife and plant habitats* and waterfowl staging and
5 concentration areas;

6 (e)—(g) (text unchanged)

7 (7)—(8) (text unchanged)

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

10 (1)—(15) (text unchanged)

11 (16) A delineation of the buffer [as measured from the mean high water line of
12 tidal waters or the landward boundary of a tidal wetland or a tributary stream];

13 (17)—(18) (text unchanged)

14 (19) [Unless the Commission determines an otherwise acceptable period of time, a] *A*
15 field-delineated location and description of the extent of a nontidal wetland, *including the*
16 *buffer from that nontidal wetland, that is [less]:*

17 (i) *In accordance with the provisions of COMAR 26.23.01; and*

18 (ii) *Unless the Commission determines an otherwise acceptable period of time,*
19 *less than 2 years old], including the 25-foot buffer from that nontidal wetland];*

20 (20)—(28) (text unchanged)

21
22 **.06-2 Environmental Report.**

23 A. The environmental report required under Regulation .06-1A(5) of this chapter shall
24 include *all of the following*:

25 (1)—(14) (text unchanged)

26 B.—C. (text unchanged)

27
28 **.06-3 Requirements for New Intensely Developed Areas and Limited Development Areas.**

29 A. Definition. In §§E, F, and G(1) of this regulation, “consistency with” or “consistent with”
30 a jurisdiction’s adopted comprehensive plan means that a standard or factor will further, and
31 not be contrary to:

32 (1) For a growth allocation application that is to be located in a priority funding area, in
33 accordance with State Finance and Procurement Article, §§5-7B-02 and 5-7B-03, Annotated
34 Code of Maryland, *all of the following* items in the plan:

1 (a)—(e) (text unchanged)

2 (2) For a growth allocation application that is not to be located in a priority funding area,
3 *all of* the following items in the plan:

4 (a)—(c) (text unchanged)

5 B.—D. (text unchanged)

6 E. [A] *Except as authorized under §F of this regulation, a local jurisdiction shall use all of*
7 *the following standards when locating new intensely developed areas or limited development*
8 *areas:*

9 (1)—(3) (text unchanged)

10 (4) Locate a new intensely developed area or limited development area in a resource
11 conservation area at least 300 feet [beyond the landward boundary of tidal wetlands or tidal
12 waters] *landward from the mean high water line of tidal waters or from the landward*
13 *boundary of a tidal wetland, unless the local jurisdiction proposes, and the Commission*
14 *approves, alternative measures for enhancement of water quality and habitat that provide*
15 *greater benefits to the resources; and*

16 F. (text unchanged)

17 G. When reviewing a map amendment or refinement involving the use of growth allocation,
18 the Commission shall consider *all of* the following factors:

19 (1)—(8) (text unchanged)

20 H. (text unchanged)

21 **.07 Grandfathering.**

22 A. After program approval, local jurisdictions shall [permit] *allow* the continuation, but not
23 necessarily the intensification or expansion, of any use in existence on the date of program
24 approval, unless the use has been abandoned for more than 1 year or is otherwise restricted by
25 existing local ordinances. If any existing use does not conform with the provisions of a local
26 program, its intensification or expansion may be [permitted] *authorized* only in accordance
27 with the variance procedures outlined in COMAR 27.01.12.

28 B. Local jurisdictions shall establish grandfather provisions as part of their local Critical
29 Area programs. Except as otherwise provided, local jurisdictions shall [permit the types of land
30 described in the following subsections to be developed] *allow the development of the types of*
31 *land described in the following subsections* in accordance with density requirements in effect
32 prior to the adoption of the local Critical Area [program] *program*, notwithstanding the density
33 provisions of this [chapter. A local jurisdiction shall permit a] *chapter:*

34 (1) *A single lot or parcel of land that was legally of record on the date of program approval*
35 *to be developed with a single family dwelling, if a dwelling is not already placed there,*
36 *notwithstanding that [such development] the single family dwelling may be inconsistent with*
37 *the density provisions of the approved local program[.];*

1 [(1)] (2) Any land on which development activity has progressed to the point of the
2 pouring of foundation footings or the installation of structural members;

3 [(2)] (3) Any legal parcel of land, not being part of a recorded or approved subdivision,
4 that was recorded as of December 1, 1985, and land that was subdivided into recorded, legally
5 buildable lots, where the subdivision received the local jurisdiction's final approval prior to
6 June 1, 1984, [provided that] *if*:

7 (a) (text unchanged)

8 (b) [If any such] *The* land has received a building permit subsequent to December 1,
9 1985 but prior to local program approval, and is located in a resource conservation area, *then*
10 *the acreage of* that land shall be [counted by the local jurisdiction against the growth increment
11 permitted in that area] *deducted from the total growth allocation allotted to the local*
12 *jurisdiction* under [COMAR 27.01.02.06] *Regulation .06 of this chapter*, unless the
13 Commission determines at the time of program approval that steps had been taken to conform
14 the development to the criteria in this subtitle insofar as possible;

15 [(3) Land] (4) *In accordance with Natural Resources Article, §8-1813, Annotated Code of*
16 *Maryland*, land that was subdivided into recorded, legally buildable lots, where the subdivision
17 received the local jurisdiction's final approval between June 1, 1984 and December 1, 1985;
18 and

19 [(4)] (5) Land that was subdivided into recorded, legally buildable lots, where the
20 subdivision received the local jurisdiction's final approval after December 1, 1985, [provided
21 that either development] *if*:

22 (i) *Development* of any such land conforms to the criteria in this subtitle[, or the area of
23 the land is counted by the local jurisdiction against the growth increment permitted]; *or*

24 (ii) *The acreage of that land is deducted from the total growth allocation allotted to the*
25 *local jurisdiction* under Regulation .06 of this chapter.

26 C. For purposes of implementing this regulation, a local jurisdiction shall have determined,
27 based on land uses and development in existence on December 1, 1985, which land areas fall
28 within the three types of [development areas] *land classifications* described in this chapter.

29 D. (text unchanged)

30 **.08 Lot Consolidation and Reconfiguration.**

31 A. Definition.

32 (1) In this regulation, the following term has the meaning [indicated] *stated*.

33 (2) [Defined Term—Conforming] *Conforming*.

34 (a) (text unchanged)

35 (b) "Conforming" does not include a parcel or lot:

36 (i) (text unchanged)

1 (ii) That is in the [Resource Conservation Area] *resource conservation area* and is less
2 than 20 acres.

3 B.—C. (text unchanged)

4 D. A local jurisdiction shall include in its local Critical Area program specific, written
5 procedures and requirements for the consolidation and reconfiguration of any legal parcels of
6 land and recorded, legally buildable lots that demonstrate how the proposed consolidation or
7 reconfiguration:

8 (1) Will, to the extent possible:

9 (a) (text unchanged)

10 (b) Conserve or create additional or enhanced fish, wildlife, and plant [habitat] *habitats*;
11 and

12 (c) (text unchanged)

13 (2) (text unchanged)

14 E. (text unchanged)

15 F. A local jurisdiction may not approve a proposed parcel or lot consolidation or
16 reconfiguration unless the local jurisdiction makes written findings that:

17 (1)—(6) (text unchanged)

18 (7) The proposed consolidation or reconfiguration provides:

19 (a) (text unchanged)

20 (b) Benefits to fish, wildlife, and plant [habitat] *habitats* that are clearly identified; and

21 (8) (text unchanged)

22 G. Final Written Decision or Order.

23 (1) (text unchanged)

24 (2) [After] *Within 10 business days after the issuance of* a final written decision or order [is
25 issued], the local jurisdiction shall send *to the Commission* a copy of the decision or order and,
26 if applicable, the approved development plan [within 10 business days by U.S. mail to the
27 Commission's business address].

28 H.—I. (text unchanged)

29 **Chapter 03 Water-Dependent Facilities and Activities**

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

31

32

1 **.02 Policy.**

2 In developing and updating its Critical Area program, a local jurisdiction shall provide
3 design and locational criteria to assure that a water-dependent facility or activity has minimal
4 individual and cumulative impact on water quality and fish, wildlife, and plant [habitat]
5 *habitats* in the Critical Area.

6
7 **.03 General Criteria.**

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

9 A. (text unchanged)

10 B. Except as otherwise provided in this chapter, may approve a water-dependent facility or
11 activity in the buffer of an intensely developed area or a limited development area if:

12 (1)—(2) (text unchanged)

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

15 (4) (text unchanged)

16 C.—E. (text unchanged)

17 **.04 General Requirements for the Location of Water-Dependent Facilities or Activities.**

18 A.—B. (text unchanged)

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

21 (1)—(3) (text unchanged)

22 (4) The avoidance or, if [unavoidable] *avoidance is not possible*, the minimization of:

23 (a) Disturbance to:

24 (i)—(iii) (text unchanged)

25 (iv) In accordance with COMAR [26.08.02.04-1] *26.08.02.04-2*, a water body
26 identified by the Department of the Environment as a Tier II, high quality water body and its
27 watershed; [and]

28 (v) *In accordance with COMAR 26.08.02.04-3, a water body identified by the*
29 *Department of the Environment as a Tier III, outstanding natural resource water body and its*
30 *watershed; and*

31 (vi) A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01
32 and .04, and COMAR [26.23.06.01] *26.23.06*; and

1 (b) Adverse impact on water quality that would likely result from the facility or activity,
2 such as nonpoint source [runoff] *pollution*, sewage discharge, or other pollution related to
3 vessel maintenance.

4 5 **Chapter 05 Forest and Woodland Protection**

6 Authority: Natural Resources Article, §§8-1806 and [8-1808(d)] *8-1808*, Annotated Code of Maryland

7 **.01 Policies.**

8 In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program*,
9 *a local jurisdiction* shall follow *all of* these policies in regard to forest and developed woodland
10 protection:

11 A.—B. (text unchanged)

12 C. Provide that the removal of trees associated with development activities [shall be] *is*
13 minimized and, where appropriate, [shall be] mitigated; and

14 D. Recognize that forests are a protective land use [and should] *to* be managed [in such a
15 manner] so that maximum values for [wildlife,] water quality, *wildlife*, timber, recreation, and
16 other resources [can be] *are* maintained, recognizing that, in some cases, these uses may be
17 mutually exclusive.

18 **.02 Criteria.**

19 In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program*,
20 *a local jurisdiction* shall use *all of* the following criteria:

21 A. Where forests or developed woodlands occur within *a local* [jurisdictions] *jurisdiction*,
22 the local [jurisdictions] *jurisdiction* shall develop a forest preservation plan as part of [their] *its*
23 Critical Area program. These plans are to be developed in cooperation with the [Forestry
24 Programs and the Fish, Heritage and Wildlife Administration of the] Department of Natural
25 Resources and other appropriate agencies.

26 B. (text unchanged)

27 C. Where forests or developed woodland occur within the local jurisdiction's Critical Area,
28 local policies and programs for tree cultural operations in the Critical Area shall include all of
29 the following:

30 (1) A forest management plan shall be required for all timber harvesting occurring within
31 any 1-year interval and affecting 1 or more acres in forests and developed woodland in the
32 Critical Area. The plans shall be prepared by a registered professional forester and be reviewed
33 and approved by [the Forestry Programs and the Fish, Heritage and Wildlife Administration of]

1 the Department of Natural Resources through the [District Forestry Boards] *district forestry*
2 *boards* and the project forester, and filed with an appropriate designated agency within their
3 local jurisdiction. Plans shall include measures to protect surface and ground water quality and
4 identify whether the activities will disturb or affect habitat protection areas as identified in
5 COMAR 27.01.09, and incorporate protection measures for these areas as specified by the
6 local jurisdictions. To provide for the continuity of habitat, the plans shall address mitigation
7 through forest management techniques which include scheduling size, timing and intensity of
8 harvest cuts, afforestation, and reforestation.

9 (2) A sediment control plan shall be required for all harvests of *at least* 5,000 square feet
10 [or more] of disturbed area in the Critical Area, including harvesting on agricultural lands. This
11 plan shall be developed according to the State guidelines entitled: "Standard Erosion and
12 Sediment Control Plan for Forest Harvest Operations." The operations shall be implemented in
13 accordance with specifications set out by [the Forestry Programs and the Fish, Heritage and
14 Wildlife Administration of] the Department of Natural Resources[,] and enforced by the
15 Department of Natural Resources or the local jurisdictions.

16 (3) The cutting or clearing of trees within the [100-foot Buffer] *buffer*, as described in
17 COMAR 27.01.09, shall be in accordance with that chapter.

18 19 **Chapter 06 Agriculture**

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

21 22 **.02 Policies.**

23 In developing and updating its Critical Area program, a local jurisdiction shall follow these
24 policies when addressing agriculture:

25 A. (text unchanged)

26 B. Recognize that agriculture is a protective land use that should be properly managed so that
27 it minimizes its contribution to pollutant loadings to the Chesapeake and Atlantic [coastal bays]
28 *Coastal Bays* and their tributaries.

29 30 **.03 Criteria.**

31 A.—B. (text unchanged)

32 C. Each agricultural protection plan developed under §B of this regulation shall:

33 (1) Consist of:

34 (a)—(b) (text unchanged)

1 (c) A program to maintain agricultural land in agricultural use and to protect water
2 quality and plant and wildlife [habitat] *habitats*, which shall at least include:

3 (i)—(iii) (text unchanged)

4 (2) (text unchanged)

5 Chapter 07 Surface Mining in the Critical Area

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

7 .02 Policies.

8 In developing and updating its Critical Area program, a local jurisdiction shall ensure that
9 due consideration is accorded to:

10 A. When locating a surface mining activity, avoidance or, [in the alternative] *if unavoidable*,
11 minimization of:

12 (1)—(2) (text unchanged)

13 B. (text unchanged)

14 .03 Criteria.

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

16 A. (text unchanged)

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

19 (1)—(2) (text unchanged)

20 (3) An area that is within 100 feet [immediately] landward from *the* mean high water
21 *line* of tidal waters, *from the landward boundary of a tidal wetland*, or from the edge of [a]
22 *each* bank of a tributary stream, unless:

23 (a)—(b) (text unchanged)

24 C.—D. (text unchanged)

25 Chapter 08 Natural Parks

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

27 .03 Criteria.

28 In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program*,
29 *a local jurisdiction* shall use all of the following criteria:

1 A. [Local jurisdictions] *A local jurisdiction* shall identify areas within [their] *its* Critical Area
2 where natural parks could be established, and consider conserving these features through
3 acquisitions, easements, designation, or other appropriate means. Parks should not be chosen to
4 preserve only natural curiosities, but they should be planned to include examples of coastal
5 ecosystems that are found within the jurisdiction, each with its geological and biological
6 resources intact. Park boundaries should be based on biological necessity rather than
7 administrative convenience.

8 B. [Any plans] *Plans* developed for the use of parks should recognize that all natural terrain
9 has a finite capacity to tolerate human disturbances and, therefore, [should give utmost
10 attention to limiting] *should limit* the number of park visitors in any park at any one time or in
11 the course of a season.

12 Chapter 09 Habitat Protection Areas in the Critical Area

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

14 .01 Buffer.

15 A. (text unchanged)

16 B. Terms Defined.

17 (1)—(5) (text unchanged)

18 (5-1) *“Ecosystem” means a more or less self-contained biological community together with*
19 *the physical environment in which the community's organisms occur.*

20 (6)—(8) (text unchanged)

21 (9) *“Landward edge” means the limit of a site feature that is farthest away from a tidal*
22 *water, tidal wetland, or tributary stream.]*

23 (10)—(19) (text unchanged)

24 (20) *“Upland boundary” means the landward edge of a tidal wetland or a nontidal*
25 *wetland.]*

26 C. Policies. In developing [their] *and updating its* Critical Area [programs, local
27 jurisdictions] *program, a local jurisdiction* shall use *all of* the following policies with regard to
28 the buffer:

29 (1) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or
30 toxic substances in runoff entering the [Bay and its] *Chesapeake and Atlantic Coastal Bays or*
31 *their* tributaries;

32 (2)—(5) (text unchanged)

33 D. (text unchanged)

1 E. Buffer Standards.

2 (1)—(2) (text unchanged)

3 (3) Except for the buffer widths under §E(5)--(7) of this regulation and based on existing
4 field conditions, a local jurisdiction shall require the measurement of a buffer of at least 100
5 feet [landward from]:

6 (a) [The] *Landward from the mean high water line of tidal waters;*

7 (b) [The edge] *From the landward boundary of [each bank of a tributary stream] a tidal*
8 *wetland;* and

9 (c) [The upland boundary of a tidal wetland] *From the edge of each bank of a tributary*
10 *stream.*

11 (4) To calculate the buffer widths under §E(5)--(7) of this regulation, a local jurisdiction
12 shall require the measurement of the buffer [landward] from the points specified under §E(3)
13 of this regulation.

14 (5) If a local jurisdiction grants final local approval for a subdivision or a site plan in [the
15 Resource Conservation Area] *a resource conservation area* on or after July 1, 2008, the local
16 jurisdiction shall require:

17 (a) A buffer of at least 200 feet *landward from the mean high water line of tidal waters*
18 *or from the landward boundary of a tidal wetland;* and

19 (b) (text unchanged)

20 (6) (text unchanged)

21 (7) If a buffer is contiguous to a steep slope, a nontidal wetland, a nontidal wetland of
22 special State concern under COMAR [26.23.06.01] 26.23.06, a hydric soil, or a highly erodible
23 soil, a local jurisdiction shall expand the buffer width required under §E(3) or (5)(a) of this
24 regulation and shall calculate the extent of that expansion in accordance with *all of the*
25 *following requirements:*

26 (a) (text unchanged)

27 (b) [A nontidal wetland of special State concern to include the wetland and its regulated
28 100-foot buffer;

29 (c) *In accordance with COMAR 26.23.01.01B:*

30 (i) A nontidal wetland [that is not a nontidal wetland of special State concern,] to
31 [the] *its* upland boundary [of the nontidal wetland]; and

32 (ii) *A nontidal wetland of special State concern to include the wetland and its*
33 *regulated 100-foot buffer; and*

34 [(d)] (c) A highly erodible soil on a slope less than 15 percent or a hydric soil, to the
35 lesser of:

36 (i) The landward [edge] *boundary;* or

1 (ii) (text unchanged)

2 (8) (text unchanged)

3 **.01-1 Buffer Establishment.**

4 A. Applicability.

5 (1) The requirements of this regulation are applicable to:

6 (a) A development or redevelopment activity that occurs on a lot or parcel
7 that includes a buffer [to tidal waters, a tidal wetland, or a tributary stream] if that development
8 or redevelopment activity is located outside the buffer; and

9 (b) The approval of a subdivision that includes a buffer [to tidal waters,
10 a tidal wetland, or a tributary stream].

11 (2)—(3) (text unchanged)

12 B.—D. (text unchanged)

13 **.01-2 Mitigation and Planting Standards.**

14 A. Applicability. The requirements of this regulation are applicable to a development or
15 redevelopment activity that occurs on a lot or parcel that includes a buffer [to tidal waters, a
16 tidal wetland, or a tributary stream] when that development or redevelopment activity is
17 located inside the buffer.

18 B.—S. (text unchanged)

19 **.01-3 Buffer Management Plans.**

20 A. (text unchanged)

21 B. A local jurisdiction shall require an applicant proposing a development activity to submit
22 a buffer management plan if:

23 (1) (text unchanged)

24 (2) Disturbance to the buffer will result from the issuance of an authorization, including a:

25 (a)—(g) (text unchanged)

26 (h) Permit *or other approval* by a local health department for the installation, repair, or
27 replacement of a septic system.

28 C.—D. (text unchanged)

29 E. A local jurisdiction may not issue a permit *or other approval* for a development activity
30 under Regulation .01-1 or .01-2 of this chapter unless the local jurisdiction has approved the
31 buffer management plan submitted under §C of this regulation.

32 F.—J. (text unchanged)

1 **.01-6 Agricultural Activities.**

2 A. (text unchanged)

3 B. Agriculture is authorized in the buffer, if, as a minimum agricultural best management
4 practice, a vegetated filter strip of at least 25 feet, measured landward from the mean high
5 water line of tidal [waters or tributary streams or from the edge of tidal wetlands] *waters, from*
6 *the landward boundary of a tidal wetland, or from the edge of each bank of a tributary stream,*
7 whichever is [further] *farther* inland, is established, and if:

8 (1)—(2) (text unchanged)

9 (3) The filter strip is maintained until the landowner is implementing, under a soil
10 conservation and water quality plan, a program of agricultural best management practices for
11 the specific purposes of improving water quality and protecting [plant and] wildlife [habitat
12 *and plant habitats,* and if the portion of the soil conservation and water quality plan being
13 implemented achieves the water quality and habitat protection objectives of the filter strip;

14 (4) The feeding or watering of livestock does not occur within 50 feet [of] *measured*
15 *landward from* the mean high water line of tidal [water and tributary streams or from the edge
16 of tidal wetlands] *waters, from the landward boundary of a tidal wetland, or from the edge of*
17 *each bank of a tributary stream,* whichever is [further] *farther* inland;

18 (5)—(6) (text unchanged)

19 **.01-7 Tree Clearing and Timber Harvesting.**

20 A. [The] *In accordance with all of the following requirements, the* buffer shall be managed to
21 achieve or enhance the functions stated in Regulation .01 of this [chapter. Cutting or clearing
22 of trees within the buffer shall be prohibited except that commercial harvesting] *chapter:*

23 (1) *Except as authorized under §A(2) of this regulation, a person may not cut or clear trees*
24 *within the buffer; and*

25 (2) *The commercial harvesting* of trees [by selection or by the clearcutting of loblolly pine
26 and tulip poplar] may be [permitted to within 50 feet of the landward edge of the mean high
27 water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands]
28 *authorized if:*

29 (a) *The commercial harvesting is by:*

30 (i) *Selection cutting; or*

31 (ii) *The clearcutting of loblolly pine or tulip poplar;*

32 (b) *The cutting or clearing is at least 50 feet:*

33 (i) *Landward from the mean high water line of tidal waters;*

1 (ii) From the landward boundary of a tidal wetland; and

2 (iii) From the edge of each bank of a tributary stream;

3 [(1) This] (c) The cutting does not occur in the habitat protection areas described in
4 COMAR [27.01.09.02, .03, .04, and .05] 27.01.09.02--.05; and

5 [(2)] (d) The cutting is conducted [pursuant to] *in conformance with* the requirements of
6 COMAR 27.01.05 and in conformance with a buffer management plan prepared by a
7 registered, professional forester and approved by the [Forestry Programs and the Fish, Heritage
8 and Wildlife Administration of the] Department of Natural Resources.

9 B. The *buffer management* plan shall be required for all commercial harvests within the
10 buffer, regardless of the size of the area to be cut, and shall contain the following minimum
11 requirements:

12 (1)—(3) (text unchanged)

13 C. Commercial harvesting of trees, by any method, may be [permitted] *authorized up to the*
14 *edge of each bank of an* intermittent [streams provided that] *stream if* the cutting is conducted
15 [pursuant to] *in conformance with* the requirements of [§A(1)] §A(2)(c) of this regulation.

16
17 **.02 Nontidal Wetlands.**

18 The provisions of COMAR 26.23.01 apply to nontidal wetlands in the Critical Area. A
19 person conducting a regulated activity within nontidal wetlands in the Critical Area shall obtain
20 a permit *or other authorization* from the Department of the Environment. Nothing in this
21 regulation may be interpreted as altering any requirements for development activities set out in
22 this subtitle.

23
24 **.03 Threatened and Endangered Species and Species in Need of Conservation.**

25 C. Criteria. In developing and updating its Critical Area program, a local jurisdiction shall
26 use *all of* the following criteria:

27 (1) Protection of the habitats of threatened and endangered species and species in need of
28 conservation in cooperation with the expertise of the Department of Natural Resources and
29 other appropriate public agencies and private [organizations.] *organizations; and*

30
31 **.04 [Plant Habitat and] Wildlife Habitat and Plant Habitat.**

32 B. Policies. In developing and updating its Critical Area program, a local jurisdiction shall
33 use *all of the following policies*:

34 (1) Conserve [plant and] wildlife *and plant* habitats in the Critical Area;

1 (2) Protect [plant and] wildlife *and plant* habitats that tend to be least abundant or which
2 may become less abundant in the future if current land use trends continue;

3 (3) Protect [plant and] wildlife *and plant* habitats which are required to support the
4 continued presence of species protected under the provisions of Natural Resources Article,
5 Title 8, Subtitle 18, Annotated Code of Maryland, and this title;

6 (4) Protect [plant and] wildlife *and plant* habitats which are determined to be locally
7 significant habitats; and

8 C. Criteria. In developing and updating its Critical Area program, a local jurisdiction shall
9 *use all of the following criteria:*

10 (1) Include a [plant and] wildlife *and plant* habitat protection program as an element of its
11 Critical Area program. Each program shall be developed using the expertise of the Department
12 of Natural Resources, the U.S. Fish and Wildlife Service, other appropriate agencies, and
13 adjacent [jurisdictions.] *jurisdictions;*

14 (2) Ensure that each [plant and] wildlife *and plant* habitat protection program consists of:

15 (a) Identification of the following [plant and] wildlife *and plant* habitats in the Critical
16 Area:

17 (iv) Forests utilized as breeding areas by forest interior dwelling birds and other
18 wildlife species, such as relatively mature forests within the Critical Area of *at least* 100 acres
19 [or more,] or forest connected with these breeding areas;

20 (v) Other areas which may in the future be identified by State and federal agencies as
21 important [plant or] wildlife *or plant* habitat;

22 (vi) Other [plant and] wildlife *and plant* habitats determined to be of local
23 significance; and

24 (vii) Designated natural heritage [areas.] *areas;*

25 (b) Programs to conserve or protect the [plant and] wildlife *and plant* habitats identified
26 in §C(2)(a) of this regulation[. Program objectives should] *that* include:

27 (i) The establishment of buffers for nesting sites of colonial nesting water birds so that
28 these sites are protected from the adverse impacts of development and from disturbance during
29 the breeding [season.] *season;*

30 (ii) The location of new water-dependent facilities so as to prevent disturbance to sites
31 of significance to wildlife, such as aquatic staging and concentration areas for [waterfowl.]
32 *waterfowl;*

33 (iii) Protection measures, including a buffer where appropriate, for other [plant and]
34 wildlife *and plant* habitats identified in §C(2)(a)(v) of this [regulation.] *regulation;*

35 (iv) Protection and conservation of forests required to support wildlife species
36 identified in §C(2)(a)(iii) and (iv) of this regulation by developing management programs
37 which have as their objective the conservation of wildlife that inhabit or use the areas. The
38 programs should assure that development or the clearing or cutting of trees is conducted so as

1 to conserve riparian habitat and forest interior dwelling birds and their habitat. Management
2 measures may include incorporating appropriate wildlife protection elements into forest
3 management plans, cluster zoning, or other site design criteria which provide for the
4 conservation of [plant and] wildlife [habitat] *and plant habitats*. Measures may also include
5 soil conservation plans that have [plant and] wildlife *and plant* habitat protection provisions
6 appropriate to the areas identified in §C(2)(a)(iii) and (iv) of this regulation and incentive
7 programs which use the acquisition of easements and other similar [techniques.] *techniques*;

8 (v) When development or cutting or clearing of trees occurs in a forest, a requirement
9 that, to the extent practicable, corridors of existing forest or woodland vegetation be
10 maintained to provide effective connections among wildlife [habitats.] *habitats*;

11 (vi) The protection of [plant and] wildlife *and plant* habitats considered to be locally
12 significant [habitats.] *habitats*; *and*

13 (vii) The protection of a natural heritage area from alteration resulting from
14 development or cutting or clearing so that the structure and species composition of the area are
15 [maintained.] *maintained*; *and*

16 (c) The determination of the existence and extent of [plant and] wildlife *and plant*
17 habitats and the development of appropriate protection measures for these habitats shall result
18 from a cooperative effort among a local jurisdiction, public agencies, and private organizations.

20 **.05 Anadromous Fish Propagation Waters.**

21 A. [Definition. "Anadromous fish propagation waters" means those streams that are tributary
22 to the Chesapeake Bay where spawning of anadromous species of fish (e.g., rockfish, yellow
23 perch, white perch, shad, and river herring) occurs or has occurred. The streams are designated
24 by the Tidewater Administration. For purposes of this regulation, "streams" refers to
25 designated anadromous fish propagation waters within the Critical Area] *Definitions. In this*
26 *regulation, the following terms have the meanings indicated.*

27 (1) *"Anadromous fish propagation waters" means a tributary stream of the Chesapeake*
28 *Bay or the Atlantic Coastal Bays that has been designated by the Department of Natural*
29 *Resources as waters in which the spawning of an anadromous species occurs or has occurred.*

30 (2) *"Stream" means anadromous fish propagation waters in the Critical Area that have*
31 *been designated by the Department of Natural Resources.*

32 B. Policies. In developing [their] *and updating its* Critical Area [programs, local
33 jurisdictions] *program, a local jurisdiction* shall use *all of* the following policies with regard to
34 anadromous fish:

35 C. Criteria.

1 (1) In developing [their] *and updating its* Critical Area [programs, local jurisdictions]
2 *program, a local jurisdiction shall use all of the following criteria:*

3 (a) The installation or introduction of concrete riprap or other artificial surfaces onto the
4 bottom of natural streams shall be prohibited unless it can be demonstrated that water quality
5 and fisheries habitat can be [improved.] *improved;*

6 (b) Channelization or other physical alterations which may change the course or
7 circulation of a stream and thereby interfere with the movement of fish shall be [prohibited.]
8 *prohibited;*

9 (c) [Local jurisdictions] *A local jurisdiction shall develop policies and programs for*
10 *avoiding adverse impacts of any activities occurring on those portions of any watershed within*
11 *the Critical Area which drain into anadromous fish spawning [streams] streams. These policies*
12 *and programs shall address at least the following objectives:*

13 (ii) [Maintain or, if practicable, improve] *Improve or, if improvement is not possible,*
14 *maintain water quality and habitat in streams;*

15 (iv) [Maintain or, if practicable, increase] *Increase or, if an increase is not possible,*
16 *maintain the natural vegetation of the [watershed.] watershed; and*

17 (d) [Local jurisdictions are] *Each local jurisdiction is encouraged to adopt [land-use]*
18 *land use policies and programs in watersheds outside the Critical Area to minimize the impacts*
19 *of any activities on anadromous fish spawning streams.*

20 (2) In developing [their] *and updating its* Critical Area [programs, local jurisdictions]
21 *program, a local jurisdiction shall use all of the following complementary State [laws] statutes*
22 *and regulations:*

23 (a) *Environment Article, Title 5, Subtitle 5, Annotated Code of Maryland;*

24 (b) [The] *In accordance with COMAR 26.17.04.05, the construction or placement of*
25 *dams or other structures that would interfere with or prevent the movement of spawning fish or*
26 *larval forms in streams shall be prohibited. If practical, the removal of existing barriers shall be*
27 *effected [(COMAR 08.05.03.05).];*

28 [(b) Local jurisdictions] (c) *A local jurisdiction shall assure that the construction, repair,*
29 *or maintenance activities associated with bridges or other stream crossings or with utilities and*
30 *roads, which involve disturbance within the [Buffer] buffer or which occur instream, as*
31 *described in COMAR [08.05.03.11B(5)] 26.17.04.11B(5), shall be prohibited between March*
32 *[1] 15 and [May] June 15, inclusive; and*

33 (d) *Any other applicable State statute or regulation.*

34

Chapter 10 Directives for Local Program Development

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

.01 [Criteria] Program Elements Required.

In developing [and], updating, *and implementing* its Critical Area program, a local jurisdiction shall use *all of* the following general program criteria:

A. The minimum standards of the program elements set forth under Natural Resources Article, §8-1808(c), Annotated Code of Maryland, shall be applicable;

B. In accordance with all of the following requirements, each jurisdiction shall inventory or map, or both, or identify the most recently completed inventory or map, or both, of a federal or State agency in order to monitor the natural resources and resource-based uses located within its Critical Area:

(1) The inventory shall include:

(i) [Plant and wildlife] *Wildlife and plant habitats;*

(2) Mapping of resources and resource-based uses listed under [§A(1)] *§B(1)* of this regulation shall be at a scale that is relevant to the local jurisdiction and of sufficient detail to assess the potential impacts of proposed land use changes on the quality and quantity of local water resources and on local wildlife and plant [habitats.] *habitats;*

[B.] *C. The mapping of intensely developed, limited development, and resource conservation areas shall be in accordance with Natural Resources Article, §8-1807, Annotated Code of Maryland, and COMAR [27.01.02.] 27.01.02;*

[C. Local] *D. Each local permitting and approval [processes] process shall be coordinated so that cumulative impacts of regulated activities can be readily [assessed.] assessed;*

[D. Local jurisdictions] *E. Each local jurisdiction shall maintain records of the area of land that converts from resource conservation area to intensely developed or limited development areas and that converts from limited development areas to intensely developed [areas.] areas;*

[E.] *F. The local program document shall, if applicable, include[, but not be limited to]:*

(5) [A water-dependent facilities] *In accordance with COMAR 27.01.03, a planning process [for identifying] to identify suitable [areas.] areas for water-dependent facilities and activities;*

[F. Jurisdictions] *G. Each local jurisdiction shall review and revise local ordinances, plans, programs, and regulations that are inconsistent with the intent of the policies and criteria in this subtitle. At a minimum, and if applicable, the review and revisions shall include:*

(1) Comprehensive [or master] plans;

1 (3) Comprehensive solid waste plans and any other [health/environment-related plans and
2 ordinances, for example, regulation for] *health or environmental ordinances, plans, programs,*
3 *and regulations, such as* septic system placement;

4 (7) Growth management [ordinances.] *ordinances;*

5 [G.] *H.* The local program document shall include a statement of the local agencies involved,
6 their responsibilities and their coordination with each other and appropriate State, federal, or
7 private [organizations.] *organizations;*

8 [H. Local jurisdictions] *I.* Each local jurisdiction shall demonstrate that [the] *its* local
9 [regulations and programs] *ordinances, plans, programs, and regulations* proposed to meet the
10 criteria in this regulation are [enforceable.] *enforceable; and*

11 [I. Each jurisdiction shall attempt to establish cooperative arrangements with adjacent
12 jurisdictions and with State and federal agencies concerning the policies and objectives for
13 lands within and adjoining the jurisdiction's Critical Area.

14 J. Local jurisdictions are encouraged to apply protection measures similar to those contained
15 in their Critical Area program to land disturbances beyond the Critical Area boundary in an
16 effort to protect or enhance water quality and to conserve plant and animal habitats of the
17 Critical Area.

18 K. Local jurisdictions are encouraged to establish a program that provides tax benefits to
19 landowners who wish to donate conservation easements, and consider other financial
20 incentives as provided for in Maryland State law, and are encouraged to identify other
21 appropriate protection measures which may include: acceptance of donations, acquisition of
22 easements, or fee simple purchase. Funding mechanisms for this protection may include, but
23 not be limited to, federal and State programs, local bonding authority, or donations from
24 private organizations.

25 L. Local jurisdictions are encouraged to establish an education program as a means by which
26 landowners in the Critical Area may be informed of the intent of the law, the status of the local
27 program, and sources of additional information and assistance.

28 M. The establishment of buffer areas around sites of special significance (that is, habitat
29 protection areas) is not intended to restrict or affect, beyond any existing local, State, or federal
30 laws or regulations or on private land, any private restrictions, such activities as
31 noncommercial passive recreation (for example, hiking and nature photography), educational
32 pursuits, scientific observation, or hunting, trapping, or fishing.

33 N. The program] *J.* Each local jurisdiction shall require that all project approvals [shall be]
34 *are* based on findings that [projects are] *each project is* consistent with the following goals of
35 the Critical Area Law and Program, as stated in *Natural Resources Article, Title 8, Subtitle 18,*
36 *Annotated Code of Maryland, COMAR Title 27, and any local program provision approved by*
37 *the Commission:*

38 (1) Minimize adverse impacts on water quality that result from pollutants [that are] *or*
39 *stormwater* discharged from structures [or conveyances or that have runoff from],
40 *conveyances, or surrounding lands;*

1 (2) Conserve fish, wildlife, and plant [habitat] *habitats*; and

2 [O. Counties and municipalities within their political boundaries are encouraged to develop
3 their Critical Area protection programs cooperatively so that programs can be developed more
4 efficiently and so that common land use objectives can be realized.]

5
6 **.02 Policies.**

7 *A. Each local jurisdiction is encouraged to establish:*

8 (1) *Cooperative arrangements with adjacent jurisdictions and with State and federal*
9 *agencies concerning the policies and objectives for lands within and adjoining the*
10 *jurisdiction's Critical Area;*

11 (2) *A program that provides tax benefits to landowners who donate conservation*
12 *easements or who may consider other financial incentives available under State or local law.*
13 *Each local jurisdiction is encouraged to identify other appropriate protection measures which*
14 *may include acceptance of donations, acquisition of easements, or fee simple purchase.*
15 *Funding mechanisms for this protection may include federal and State programs, local*
16 *bonding authority, or donations from private organizations; and*

17 (3) *An education program as a means by which landowners in the Critical Area may be*
18 *informed of the intent of the law, the status of the local program, and sources of additional*
19 *information and assistance.*

20 *B. Each local jurisdiction is encouraged to apply protection measures similar to those*
21 *contained in their Critical Area program to land disturbances beyond the Critical Area*
22 *boundary in an effort to protect or enhance water quality and to conserve wildlife and plant*
23 *habitats of the Critical Area.*

24 *C. Counties and municipalities within their political boundaries are encouraged to develop*
25 *their Critical Area protection programs cooperatively so that programs can be developed more*
26 *efficiently and so that common land use objectives can be realized.*

27
28 **Chapter 11 Directives for Updating Critical Area Maps**

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

30
31 **.04 Mapping Methodology for the Assessment of Physical Features.**

32 A. Using the source information under Regulation .03 of this chapter, the Department and
33 the Commission shall digitize the shoreline and the [edge of tidal wetlands] *landward*
34 *boundary of a tidal wetland.*

1 G. The Department and the Commission, in collaboration with a local jurisdiction, shall
2 maintain the Critical Area layer of the Statewide Base [map] *Map*.

3 H. Each map of the Critical Area layer of the Statewide Base [map] *Map* shall include:
4

5 **.05 Mapping Methodology for Critical Area Classifications.**

6 A. The Department, the Commission, and the local jurisdiction shall:

7 (1) In accordance with the standards under Regulation .04 of this chapter and in
8 cooperation with the Department of the Environment, review the digitized shoreline and the
9 landward [edge] *boundaries* of tidal wetlands that are indicated on the working draft map;
10

11 **.06 Process for Approval of an Updated Critical Area Map.**


12 A. Upon completion of a local jurisdiction's review of a working draft map, including its
13 proposed [critical area] *Critical Area* classifications for all areas newly included in the Critical
14 Area, the Department and the Commission shall incorporate all necessary revisions and prepare
15 a summary draft map for the local jurisdiction.

16 B. The Department and the Commission shall deliver to the local jurisdiction a summary
17 draft map of that jurisdiction's Critical Area that:

18 (1) Identifies the shoreline and landward [boundary] *boundaries* of tidal
19 wetlands by use of the most recent aerial imagery or the best available aerial imagery of
20 comparable scale; and

21 F. Upon the completion of all public hearings and the comment period, the local
22 jurisdiction shall amend its local Critical Area program by approving all elements of the
23 summary draft map, including;

24 (1) The shoreline and landward [boundary] *boundaries* of tidal wetlands;
25

26  **Chapter 12 Variances**

27 Authority: Natural Resources Article, §§8-1806 and [8-1808] *8-1808(d)*, Annotated Code of Maryland
28

29 **.06 After-the-Fact Variance Procedures.**

30 A. A local jurisdiction may not accept an application for a variance to legalize a violation of
31 this subtitle, including an unpermitted *or otherwise unauthorized* structure or other
32 development activity, until the local [jurisdiction;] *jurisdiction*:

1
2 **.07 Variance Appeals.**

3 B. An appeal may be filed by:

4 (2) The [Chairman] *Chair*, even if the [Chairman] *Chair* was not a party to or is not
5 specifically aggrieved by the action or decision.

6 C. A local jurisdiction may not issue a permit *or any other type of authorization* for the
7 activity that was the subject of the variance application until the applicable 30-day appeal
8 period has elapsed.

9
10 **Chapter 14 Renewable Energy Generating Systems**

11 Authority: Natural Resources Article, §8-1806(b), Annotated Code of Maryland

12
13 **.03 General Provisions.**

14 A. On or after April 1, 2021, a local jurisdiction may authorize:

15 (3) A small residential accessory solar energy generating system in the buffer or in a
16 modified buffer area if:

17 (c) [Provided mitigation] *Mitigation* is required at a 1:1 ratio.

18 C. A local jurisdiction may authorize a major and minor solar energy generating system in a
19 modified buffer area in accordance with a local Critical Area program [provided] *if* the project
20 is located over existing legally developed lot coverage as described in Natural Resources
21 Article, §8-1808.3, Annotated Code of Maryland.

22 **.05 Criteria for a Major Solar Energy Generating System in the Resource Conservation**
23 **Area.**

24 B. Except for access allowed in accordance with Regulation .04C of this chapter and in
25 accordance with the provisions in COMAR 27.01.06, a local jurisdiction shall restrict forest
26 clearing within 300 feet [beyond the] landward [boundary] *from the mean high water line* of
27 tidal [waters or tidal wetlands] *waters, from the landward boundary of a tidal wetland, or from*
28 the edge of each bank of a tributary stream.

29
30 **.06 Planting Plan Requirements.**

31 A. Based on the constraints and opportunities presented by a project area, a local jurisdiction
32 shall select from the following options to address the requirements for a planting plan in
33 Regulation [.04D] .04E and F of this chapter:

1 (1) Plant on-site in one of the following planting areas:

2 (a) The area within 300 feet [beyond the] landward [boundary] *from the mean high*
3 *water line* of tidal [waters or tidal wetlands] *waters, from the landward boundary of a tidal*
4 *wetland, or from the edge of each bank of a tributary stream;*

5 (2) If a local jurisdiction has in place an agreement with the Commission:

6 (c) Create, restore, or enhance a nontidal wetland that results in habitat and water quality
7 benefits [provided] *if it is authorized by the [Maryland] Department of the Environment; or*

8
9 **Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA**
10 **RESULTING FROM STATE AND LOCAL AGENCY**
11 **PROGRAMS**

12
13 **Chapter 01 General Provisions**

14 Authority: Natural Resources Article, §§8-701, 8-1806, [8-1808(c)] *8-1808*, 8-1808.4(a), and 8-1814, Annotated
15 Code of Maryland

16
17 **.01 Definitions.**

18 A. (text unchanged)

19 B. Terms Defined.

20 (1) “Afforestation” [means the establishment of a tree crop on an area from which it has
21 always or very long been absent, or the planting of open areas which are not presently in forest
22 cover] *has the meaning stated in Natural Resources Article, §5-1601(b), Annotated Code of*
23 *Maryland.*

24 (1-1)—(2) (text unchanged)

25 (3) “Anadromous fish” [means fish that travel upstream (from their primary habitat in the
26 ocean) to freshwaters in order to spawn] *has the meaning stated in COMAR 27.01.01.01.*

27 (4)—(5) (text unchanged)

28 (6) [Buffer.

1 (a) “Buffer” [means an area that:

2 (i) Based on conditions present at the time of development, is immediately landward
3 from mean high water of tidal waters, the edge of each bank of a tributary stream, or the
4 landward boundary of a tidal wetland; and

5 (ii) Exists or may be established in natural vegetation to protect a stream, tidal wetland,
6 tidal waters, or terrestrial environment from human disturbance.

7 (b) “Buffer” includes an area of:

8 (i) At least 100 feet, even if that area was previously disturbed by human activity; and

9 (ii) Expansion for contiguous areas, including a steep slope, hydric soil, highly
10 erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in
11 COMAR 26.23.01.01] *has the meaning stated in COMAR 27.01.01.01.*

12 (6-1) “Chair” *has the meaning stated in COMAR 27.01.01.01.*

13 (7) “Clearcutting” [means the removal of the entire stand of trees in one cutting with tree
14 reproduction obtained by natural seeding from adjacent stands or from trees that were cut, from
15 advanced regeneration or stump sprouts, or from planting of seeds or seedlings by man] *has the*
16 *meaning stated in COMAR 27.01.01.01.*

17 (7-1) “Clearing” *has the meaning stated in COMAR 27.01.01.01.*

18 (7-2) “Climate” means a long-term trend in weather that extends over multiple decades.

19 [(7-2)](7-3) “Climate resilient practice” means a management measure that, in the context
20 of sea level rise, increasing tidal inundation, increasing average temperatures, precipitation
21 changes, and coastal and riverine flooding:

22 (a) Guides and informs decisions regarding the siting, design, construction, or
23 reconstruction of a development project; and

24 (b) Enables a natural system to absorb disturbance and adapt while undergoing change,
25 so as to retain essentially the same identity, structure, and function.

26 (8) “Cluster development” [means a residential development in which dwelling units are
27 concentrated in a selected area or selected areas of the development tract so as to provide
28 natural habitat or other open space uses on the remainder] *has the meaning stated in COMAR*
29 *27.01.01.01.*

30 (8-1)—(9) (text unchanged)

31 (10) “Commercial harvesting” [means a commercial operation that would alter the existing
32 composition or profile, or both, of a forest, including all commercial cutting operations done by
33 companies and private individuals for economic gain] *has the meaning stated in COMAR*
34 *27.01.01.01.*

1 (11) “Commission” [means the Critical Area Commission for the Chesapeake and Atlantic
2 Coastal Bays] *has the meaning stated in COMAR 27.01.01.01.*

3 (12) (text unchanged)

4 (13) [Critical Area.

5 (a)] “Critical Area” [means the Chesapeake Bay Critical Area and the Atlantic Coastal
6 Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d),
7 Annotated Code of Maryland.

8 (b) “Critical Area” includes:

9 (i) The initial planning area of the Chesapeake Bay Critical Area consisting of all
10 waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as
11 indicated on the State wetlands maps, and all State and private wetlands designated under
12 Environment Article, Title 16, Annotated Code of Maryland;

13 (ii) The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all
14 waters of and lands under the coastal bays and their tributaries to the head of tide as indicated
15 on the State wetlands maps, and all State and private wetlands designated under Title 16 of the
16 Environment Article;

17 (iii) Except in accordance with §B(13)(b)(iv) of this regulation, all water and land
18 areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the
19 heads of tides designated under Environment Article, Title 16, Annotated Code of Maryland;

20 (iv) All water and land areas within 1,000 feet beyond the landward boundaries of
21 State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119,
22 Acts of 2008, where the process of transition from reliance on the State wetlands maps to the
23 Statewide base maps has occurred and these maps were approved by the Commission; and

24 (v) Modification to these areas through inclusions or exclusions proposed by local
25 jurisdictions and approved by the Commission as specified in Natural Resources Article, 8-
26 1807, Annotated Code of Maryland] *has the meaning stated in COMAR 27.01.01.01.*

27 (13-1)—(14) (text unchanged)

28 (15) “Developed woodlands” [means an area of trees or an area of trees and natural
29 vegetation that is interspersed with residential, commercial, industrial, institutional, or
30 recreational development] *has the meaning stated in COMAR 27.01.01.01.*

31 (16) [“Ecosystem” means a more or less self-contained biological community together
32 with the physical environment in which the community's organisms occur.]

33 (17) (text unchanged)

34 [(17-1)] (18) “Energy generating system” has the meaning stated in Land Use Article, §4-
35 211, Annotated Code of Maryland.

36 [(18) “Excess stormwater run-off” means all increases in stormwater resulting from:

1 (a) An increase in the lot coverage on the site, including all additions to buildings, roads,
2 and parking lots;

3 (b) Changes in permeability caused by compaction during construction or modifications
4 in contours, including the filling or drainage of small depression areas;

5 (c) Alteration of drainageways or regrading of slopes;

6 (d) Destruction of forest; or

7 (e) Installation of collection systems to intercept street flows or to replace swales or other
8 drainageways.]

9 (19)—(21) (text unchanged)

10 (22) “Forest management” [means the protection, manipulation, and utilization of the
11 forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife
12 habitat, etc] *has the meaning stated in COMAR 27.01.01.01.*

13 (23) [“Forest practice” means the alteration of the forest either through tree removal or
14 replacement in order to improve the timber, wildlife, recreational, or water quality values]
15 *“Habitat protection area” has the meaning stated in COMAR 27.01.01.01.*

16 (24) “Highly erodible [soils” means those soils with:

17 (a) Slopes greater than 15 percent; or

18 (b) A K value greater than 0.35 and with slopes greater than 5 percent] *soil” has the*
19 *meaning stated in COMAR 27.01.01.01.*

20 (25) “Hydric [soils” means soils that are wet frequently enough to periodically produce
21 anaerobic conditions, thereby influencing the species composition or growth, or both, of plants
22 on those soils] *soil” has the meaning stated in COMAR 27.01.01.01.*

23 (26) [“Hydrophytic vegetation” means those plants cited in "Vascular Plant Species
24 Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in
25 water on a substrate that is at least periodically deficient in oxygen as a result of excessive
26 water content (plants typically found in wet habitats).]

27 (27) (text unchanged)

28 (28) [“Land clearing” means any activity that removes the vegetative ground cover]
29 *“Landward edge” has the meaning stated in COMAR 27.01.01.01.*

30 (29) (text unchanged)

31 (29-1) *Major Development.*

32 (a) *“Major development” means development on a scale that may cause:*

33 (i) *Statewide, regional, or interjurisdictional environmental or economic effects in*
34 *the Critical Area; or*

35 (ii) *Substantial impact on the Critical Area program of a local jurisdiction.*

1 (b) “Major development” includes:

2 (i) An airport, power plant, major solar energy generating system, wastewater
3 treatment plant, highway, port, regional utility transmission facility, prison, hospital, public
4 housing project, public beach, and an intensely developed park and recreation facility; and

5 (ii) A development or project authorized by the Public Service Commission under a
6 Certificate of Public Convenience and Necessity.

7 (30) (text unchanged)

8 (31) “Mean high water line” [means the average level of high tides at a given location] *has*
9 *the meaning stated in COMAR 27.01.01.01.*

10 (31-1) “Minor development” means development of a reduced scale that:

11 (a) Causes environmental or economic consequences that are largely confined to the
12 immediate area of the parcel of land on which the development is located;

13 (b) Is consistent with the local Critical Area program;

14 (c) Does not substantially affect the Critical Area program of the local jurisdiction; and

15 (d) Is not considered by the Commission to be major development.

16 (32) [“Natural Heritage Area” means any communities of plants or animals which are
17 considered to be among the best Statewide examples of their kind, and are designated by
18 regulation by the Secretary of Natural Resources.

19 (33) “Natural vegetation” means those plant communities that develop in the absence of
20 human activities.

21 (34) [“Natural features” [means components and processes present in or produced by
22 nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water,
23 drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife] *has*
24 *the meaning stated in COMAR 27.01.01.01.*

25 (33) “Natural heritage area” *has the meaning stated in COMAR 08.03.08.01, as*
26 *designated in COMAR 08.03.08.10.*

27 (34) “Natural vegetation” *has the meaning stated in COMAR 27.01.01.01.*

28 (35) “Nonpoint source pollution” [means pollution generated by diffuse land use activities
29 rather than from an identifiable or discrete facility. It is conveyed to waterways through natural
30 processes, such as rainfall, storm runoff, or ground water seepage rather than by deliberate
31 discharge. Nonpoint source pollution is not generally corrected by "end-of-pipe" treatment, but
32 rather, by changes in land management practices] *has the meaning stated in COMAR*
33 *27.01.01.01.*

34 (36) “Nontidal wetland” has the meaning stated in [COMAR 26.23.01.01] *Environment*
35 *Article, §5-901, Annotated Code of Maryland, and as applied by the Department of the*
36 *Environment.*

1 (37) “Offsets” [means structures or actions that compensate for undesirable impacts] *has*
2 *the meaning stated in COMAR 27.01.01.01.*

3 (38)—(39) (text unchanged)

4 (40) [“Physiographic features” means the soils, topography, land slope and aspect, and
5 local climate that influence the form and species composition of plant communities.

6 (40-1)] “Pier” has the meaning stated in Natural Resources Article, §8-1808.4(a),
7 Annotated Code of Maryland.

8 [(40-2)] (40-1) “Plant habitat” has the meaning stated in COMAR 27.01.01.01.

9 (41) (text unchanged)

10 (42) “Public water-oriented recreation” [means shore-dependent recreation facilities or
11 activities provided by public agencies which are available to the general public] *has the*
12 *meaning stated in COMAR 27.01.01.01.*

13 (43) (text unchanged)

14 (44) “Redevelopment” [means the process of developing land which is or has been
15 developed] *has the meaning stated in COMAR 27.01.01.01.*

16 (45) “Reforestation” [means the establishment of a forest through artificial reproduction or
17 natural regeneration] *has the meaning stated in Natural Resources Article, §5-1601, Annotated*
18 *Code of Maryland.*

19 (46) “Riparian habitat” [means a habitat that is strongly influenced by water and which
20 occurs adjacent to streams, shorelines, and wetlands] *has the meaning stated in COMAR*
21 *27.01.01.01.*

22 (46-1)—(46-2) (text unchanged)

23 (47) [“Seasonally flooded water regime” means a condition where surface water is present
24 for extended periods, especially early in the growing season, and when surface water is absent,
25 the water table is often near the land surface.]

26 (48) “Selection” [means the removal of single, scattered, mature trees or other trees from
27 uneven-aged stands by frequent and periodic cutting operations] *has the meaning stated in*
28 *COMAR 27.01.01.01.*

29 (48-1) (text unchanged)

30 (49) [“Significantly eroding areas” means areas that erode 2 feet or more per year.]

31 (50)—(52) (text unchanged)

32 (53) State and Local Agency Actions.

33 (a) (text unchanged)

34 (b) “State and local agency actions” [includes] *include:*

1 (i) The issuance of a Certificate of Public Convenience and Necessity by the Maryland
2 Public Service Commission that results in development within the Critical Area; *and*

3 (ii) (text unchanged)

4 (c) “State and local agency actions” do not include [the following]:

5 (i) Actions required or specifically provided for by the Critical Area criteria, including
6 construction or installation of structures or measures [pursuant to implementing] *in order to*
7 *implement* approved stormwater management, grading, or sediment control plans, and the
8 construction or installation of structures or measures on farms *in order to* implement approved
9 soil conservation and water quality plans;

10 (ii) (text unchanged)

11 (iii) Dredging of any waterway in the Critical Area that is conducted [pursuant to] *in*
12 *accordance with* applicable State and federal laws, rules, and regulations.

13 (54) “Steep [slopes” means slopes of 15 percent or greater incline] *slope” has the meaning*
14 *stated in COMAR 27.01.01.01.*

15 (55) [“Threatened species” has the meaning stated in COMAR 27.01.01.01] *“Stormwater”*
16 *has the meaning stated in COMAR 27.01.01.01.*

17 (56) [“Topography” means the existing configuration of the earth's surface including the
18 relative relief, elevation, and position of land features.]

19 (57) [“Transitional habitat” means a plant community whose species are adapted to the
20 diverse and varying environmental conditions that occur along the boundary that separates
21 aquatic and terrestrial areas.]

22 (58) “Transportation [facilities” means anything that is built, installed, or established to
23 provide a means of travel from one place to another] *facility” has the meaning stated in*
24 *Transportation Article, §3-101, Annotated Code of Maryland.*

25 (58-1) *“Tree” has the meaning stated in Natural Resources Article, §5-1601, Annotated*
26 *Code of Maryland.*

27 (59) (text unchanged)

28 (60) “Utility transmission [facilities” means fixed structures that convey or distribute
29 resources, wastes, or both, including, but not limited to, electric lines, water conduits, and
30 sewer lines] *facility” has the meaning stated in COMAR 27.01.01.01.*

31 (61)—(63) (text unchanged)

32 [(63-1) “Waterfowl staging and concentration area” has the meaning stated in COMAR
33 27.01.01.01.

34 (63-2) “Wetland migration area” means an area that will likely be suitable for future
35 wetland establishment in response to a change in sea level.]

36 (64) [Wildlife Corridor.

1 (a) “Wildlife corridor” means a habitat area that is necessary to connect areas, on a
2 seasonal basis or longer, that are used by an animal or plant species for:

3 (i) The survival and reproduction of the species; and

4 (ii) The maintenance or increase of the essential genetic and demographic connections
5 of its population.

6 (b) “Wildlife corridor” [includes a habitat protection area, as defined under COMAR
7 27.01.01.01, and a wetland migration area, as defined under §B(63-1) of this regulation] *has*
8 *the meaning stated in COMAR 27.01.01.01.*

9
10 **Chapter 02 State and Local Agency Actions Resulting in *Minor Development***
11 **[of Local Significance] on Private Lands or Lands Owned by Local**
12 **Jurisdictions**

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

14
15 **.01 [Definition] *Definitions.***

16 ["Local significance" means development of a minor scale which:

17 A. Causes environmental or economic consequences that are largely confined to the
18 immediate area of the parcel of land on which the development is located;

19 B. Does not substantially affect the Critical Area program of the local jurisdiction; and

20 C. Is not considered by the Commission as major development as defined in COMAR
21 27.02.04]

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

23 *B. “Major development” has the meaning stated in COMAR 27.02.01.01.*

24 *C. “Minor development” has the meaning stated in COMAR 27.02.01.01.*

25
26 **.02 Criteria.**

27 A. [Development of local significance] *Minor development* on private land or lands owned
28 by local jurisdictions, which is caused by State or local agency actions, shall be consistent with
29 the provisions and requirements of the Critical Area program of the local jurisdiction within
30 which the development is proposed.

1 B. (text unchanged)

2 C. If the Commission determines that [the] *a* proposed development *project* is major
3 [development] *development*, [as defined in COMAR 27.02.04,] then the Commission will
4 review, and may give approval to, the [projects according to the provisions of that chapter]
5 *project in accordance with the provisions of COMAR 27.02.04*. The Commission shall notify a
6 local jurisdiction within 15 days of receipt of the request for local certification if it determines
7 that the project is a major development.

8 D.—E. (text unchanged)

9

10 **Chapter 03 General Approval of State and Local Agency Programs Which**
11 **Result in *Minor* Development [of Local Significance] on Private Lands or**
12 **Lands Owned by Local Jurisdictions**

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

14 **.01 Definition.**

15 *In this chapter, “minor development” has the meaning stated in COMAR 27.02.01.01.*

16 **.02 Criteria.**

17 A. Rather than obtaining certification for an individual project or action, as provided in
18 COMAR 27.02.02, a State or local agency may seek a general approval from the Commission
19 for a program or class of activities that will result in *minor* development [of local significance]
20 in the Critical Area [, such as forest management plans and soil conservation and water quality
21 plans].

22 B.—D. (text unchanged)

23 E. The Commission may revoke a general approval with 90 days notice to the affected State
24 or local agency, if the Commission finds that the agency has failed to follow the process
25 described in §B(3)[, above] *of this regulation*.

26 F. (text unchanged)

27

28 **Chapter 04 State or Local Agency Actions Resulting in Major Development**
29 **on Private Lands or Lands Owned by Local Jurisdictions**

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

1

2 **.01 Definitions.**

3 A. (text unchanged)

4 B. Terms Defined.

5 (1) “Major development” [means development of a scale that may cause State-wide,
6 regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or
7 which may cause substantial impacts on the Critical Area program of a local jurisdiction. This
8 development includes airports, power plants, major solar energy generating systems,
9 wastewater treatment plants, highways, regional utility transmission facilities, prisons,
10 hospitals, public housing projects, public beaches, and intensely developed park and recreation
11 facilities, and any development or project authorized by the Public Service Commission under
12 a Certificate of Public Convenience and Necessity] *has the meaning stated in COMAR*
13 *27.02.01.01.*

14 (2) (text unchanged)

15

16 **.02 Criteria.**

17 A.—F. (text unchanged)

18 G. When the Public Service Commission is reviewing an application for a Certificate of
19 Public Convenience and Necessity for development within the Critical Area, the *Critical Area*
20 Commission or [the Commission Chairman] *its Chair* shall:

21 (1) (text unchanged)

22 (2) Provide comments on the Critical Area impacts to the Power Plant Research Program
23 *of the Department of Natural Resources* and request the comments be incorporated as
24 recommended conditions to the Public Service Commission; and

25 (3) (text unchanged)

26 H.—I. (text unchanged)

27

28 **Chapter 05 State Agency Actions Resulting in Development on State-Owned**
29 **Lands**

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

31

32 **.01 General Provisions.**

33 A. Definitions.

1 (1) (text unchanged)

2 (2) Terms Defined.

3 [(a) “Intensely developed area” has the meaning stated under COMAR 27.01.02.03.

4 (b) “Limited development area” has the meaning stated under COMAR 27.01.02.04]

5 (a) *Intensely Developed Area.*

6 (i) “*Intensely developed area*” has the meaning stated in *Natural Resources Article,*
7 *§8-1802(a), Annotated Code of Maryland.*

8 (ii) “*Intensely developed area*” includes the provisions of COMAR 27.01.02.03.

9 (b) *Limited Development Area.*

10 (i) “*Limited development area*” has the meaning stated in *Natural Resources Article,*
11 *§8-1802(a), Annotated Code of Maryland.*

12 (ii) “*Limited development area*” includes the provisions of COMAR 27.01.02.04.

13 (c) (text unchanged)

14 [(d) “Resource conservation area” has the meaning stated under COMAR 27.01.02.05]

15 (d) *Resource Conservation Area.*

16 (i) “*Resource conservation area*” has the meaning stated in *Natural Resources Article,*
17 *§8-1802(a), Annotated Code of Maryland.*

18 (ii) “*Resource conservation area*” includes the provisions of COMAR 27.01.02.05.

19 (e) (text unchanged)

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

21 B.—F. (text unchanged)

22

23 **.03 Criteria for Development by a State Agency on State-Owned Land.**

24 A. (text unchanged)

25 B. When a State agency proposes development on State-owned land in the Critical Area, the
26 agency:

27 (1)—(2) (text unchanged)

- 1 (3) Shall, to the maximum extent practicable:
- 2 (a) Incorporate and maintain a wildlife corridor system, including all habitat protection
3 areas near the development project, so as to connect the largest, most vegetated tracts of land
4 within, adjacent to, or near the development project and provide continuity of existing wildlife
5 and plant [habitat] *habitats* with other off-site habitat areas;
- 6 (b)—(d) (text unchanged)
- 7 (e) Increase or, [in the alternative] *if an increase is not possible*, maintain the total
8 acreage of forest cover in the Critical Area; and
- 9 (f) (text unchanged)
- 10 (4)—(8) (text unchanged)
- 11 (9) Shall demonstrate to the Commission that:
- 12 (a) (text unchanged)
- 13 (b) The development identifies and incorporates climate resilient practices in order to
14 avoid or, [in the alternative] *if avoidance is not possible*, minimize environmental and
15 structural damage associated with a coastal hazard, an extreme weather event, sea level rise,
16 and other impacts; and
- 17 (10) (text unchanged)
- 18 C.—D. (text unchanged)
- 19 E. A State agency may locate:
- 20 (1) Development on a site where the project would cross or impact a stream if:
- 21 (a) (text unchanged)
- 22 (b) The agency designs, builds, and maintains the development project so as to:
- 23 (i) Prevent or, [in the alternative] *if prevention is not possible*, accommodate an
24 increase in flood frequency and severity that is attributable to the development project;
- 25 (ii)—(v) (text unchanged)
- 26 (2) A road, bridge, or utility in a habitat protection area if:
- 27 (a) (text unchanged)
- 28 (b) The agency designs, builds, and maintains the road, bridge, or utility so as to:
- 29 (i) (text unchanged)
- 30 (ii) Avoid or, [in the alternative] *if avoidance is not possible*, minimize negative
31 impacts on *fish*, wildlife, [aquatic life,] plants, and their habitats; and
- 32 (iii) (text unchanged)

33

1 **.03-1 Development in an Intensely Developed Area.**

2 A.—D. (text unchanged)

3 E. Uses Authorized Only in Intensely Developed Areas.

4 (1) Subject to the requirements under §E(2) of this regulation, a State agency may locate a
5 new facility or other new development that has the potential for adversely affecting *water*
6 *quality or fish*, [plant, and wildlife habitat or water quality] *wildlife, and plant habitats* in the
7 Critical Area only if the facility or development is located in an intensely developed area.

8 (2) (text unchanged)

9
10 **.03-2 Development in a Limited Development Area.**

11 A.—B. (text unchanged)

12 C. For development proposed on State-owned land that is in a limited development area, a
13 State agency:

14 (1) (text unchanged)

15 (2) On a slope measuring at least 15 percent, as measured before development, may not
16 propose a [development project] *disturbance*, unless the [project] *disturbance* is the only
17 effective way to [improve or, in the alternative, maintain the stability of] *stabilize* the slope;

18 (3)—(4) (text unchanged)

19 D. (text unchanged)

20 **.04-1 Water-Dependent Facilities and Activities — General Criteria.**

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

23 A. (text unchanged)

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

26 (1)—(2) (text unchanged)

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

29 (4) (text unchanged)

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

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

3 (a)—(d) (text unchanged)

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

6 (f) (text unchanged)

7 (2) (text unchanged)

8 D. (text unchanged)

9
10 **.04-2 Water-Dependent Facilities and Activities — General Location Requirements.**

11 A. (text unchanged)

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

15 (1)—(3) (text unchanged)

16 (4) Avoidance or, if [unavoidable] *avoidance is not possible*, minimization of:

17 (a) Disturbance to:

18 (i)—(iii) (text unchanged)

19 (iv) In accordance with COMAR [26.08.02.04-1] *26.08.02.04-2*, a water body
20 identified by the Department of the Environment as a Tier II, high quality water body and its
21 watershed; and

22 (v) *In accordance with COMAR 26.08.02.04-3, a water body identified by the*
23 *Department of the Environment as a Tier III, outstanding natural resource water body and its*
24 *watershed; and*

25 (vi) A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01
26 and .04, and COMAR [26.23.06.01] *26.23.06*; and

27 (b) Adverse impact on water quality that would likely result from the facility or activity,
28 such as nonpoint source [runoff] *pollution*, sewage discharge, or other pollution related to
29 vessel maintenance.

30 **.06 Forest and Woodland Protection.**

31 A. [Definitions.

32 (1) "Developed woodlands" means those areas of 1 acre or more in size which
33 predominantly contain trees and natural vegetation and which also include residential,
34 commercial, or industrial structures and uses.

1 (2) "Forests" means biological communities dominated by trees and other woody plants
2 covering a land area of 1 acre or more.]

3 B. Criteria. The agency administering State-owned lands on which timber harvesting is
4 planned shall use *all of* the following criteria:

5 (1) A forest management plan shall be required for all timber harvesting occurring within
6 any 1-year interval and affecting *at least* 1 acre [or more in forests] *of forest* and developed
7 woodland in the Critical Area. The plans shall be prepared by a registered professional forester
8 and be reviewed and approved by [the Forestry Programs and Fish, Heritage and Wildlife
9 Administration of] the Department of Natural Resources. Plans shall include measures to
10 protect surface and ground water quality, identify whether the activities will disturb or affect
11 habitat protection areas as identified in Regulations .09--.13 of this chapter, and incorporate
12 protection measures for these areas. To provide for the continuity of habitat, the plans shall
13 address mitigation through forest management techniques which include scheduling size,
14 timing and intensity of harvest cuts, afforestation, and [reforestation.] *reforestation*;

15 (2) A sediment control plan shall be required for all harvests of *at least* 5,000 square feet
16 [or more] of disturbed area in the Critical Area, including harvesting on agricultural lands. This
17 plan shall be developed according to the guidelines established by the [Maryland] Department
18 of Natural Resources. The operations shall be implemented in accordance with specifications
19 set out by the local soil conservation district and [the Forestry Programs and Fish, Heritage and
20 Wildlife Administration of] the Department of Natural [Resources.] *Resources; and*

21 (3) The cutting or clearing of trees within the [100-foot Buffer] *buffer*, as described in
22 Regulation .09 of this chapter, shall be in accordance with that regulation.

23
24 **.07 Agriculture.**

25 A. Applicability. The provisions of this regulation do not apply to an agricultural activity that
26 is conducted for an experimental purpose on State-owned land in the Critical Area if:

27 (1) (text unchanged)

28 (2) The experimental activity is approved by the [Maryland] *State* Department of
29 Agriculture and the University of Maryland.

30 B. (text unchanged)

31
32 **08-2 Surface Mining — Policies.**

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

35 A. When locating a surface mining activity, avoidance or, [in the alternative] *if avoidance is*
36 *not possible*, minimization of:

37 (1)—(2) (text unchanged)

1 B. (text unchanged)

2 **.08-3 Surface Mining Criteria.**

3

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

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

7 (1)—(2) (text unchanged)

8 (3) An area that is within 100 feet [immediately] landward from *the* mean high water
9 *line* of tidal [waters] *waters, from the landward boundary of a tidal wetland,* or from the edge
10 of [a] *each* bank of a tributary stream, unless:

11 (a)—(b) (text unchanged)

12 B.—D. (text unchanged)

13 **.09 Buffer.**

14 A. (text unchanged)

15 B. Criteria. In planning or proposing development on State-owned lands, the agency
16 proposing the development shall use *all of* the following criteria:

17 (1) [The] *In accordance with the requirements of COMAR 27.01.09.01E(3)—(7), the*
18 *agency shall measure the buffer at least 100 feet [landward from the]:*

19 (a) *Landward from the mean high water line of tidal [waters,] waters;*

20 (b) *From the landward boundary of [tributary streams, and tidal wetlands.] a tidal*
21 *wetland; and*

22 (c) *From the edge of each bank of a tributary stream;*

23 (2) Development activities, including structures, roads, parking areas, and other lot
24 coverage areas, mining and related facilities, and septic systems, are not authorized in the
25 buffer, except for those necessarily associated with water-dependent facilities or activities as
26 defined in Regulation .04 of this [chapter.] *chapter;*

27 (3) The buffer shall be maintained in natural vegetation, but may include planted
28 vegetation where necessary to protect, stabilize, or enhance the [shoreline.] *shoreline;*

29 (4) Agriculture is authorized in the buffer, if, as a minimum agricultural best management
30 practice, a vegetated filter strip of at least 25 feet, measured landward from the mean high
31 water line of tidal [waters or tributary streams or from the edge of tidal wetlands] *waters, from*
32 *the landward boundary of a tidal wetland, or from the edge of each bank of a tributary stream,*
33 *whichever is [further] farther* inland, is established, and if:

34 (a)—(c) (text unchanged)

1 (d) The feeding or watering of livestock [does not occur within] *occurs at least* 50 feet
2 [of] *landward from* the mean high water line of tidal [water and tributary streams or from the
3 edge of tidal wetlands] *waters, from the landward boundary of a tidal wetland, or from the*
4 *edge of each bank of a tributary stream, whichever is [further] farther inland;*

5 (f) Agricultural activities, including the grazing of livestock, do not disturb stream
6 banks, tidal shorelines, or other habitat protection areas covered, as applicable, in this
7 regulation or in Regulations .10—.13 of this [chapter.] *chapter;*

8 (5) The [Buffer] *buffer* shall be managed to achieve or enhance the functions stated in
9 COMAR [27.01.09.01B(1)—(5)] *27.01.09.01C. [Cutting or clearing of] A person may not cut*
10 *or clear trees within the [Buffer shall be prohibited] buffer, except that:*

11 (a) Commercial harvesting of trees [by selection or by the clearcutting of loblolly pine
12 and tulip poplar] may be [permitted to within 50 feet of the landward edge of the mean high
13 water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands,
14 provided that the] *authorized if:*

15 (i) *The commercial harvesting is by selection cutting or by the clearcutting of loblolly*
16 *pine or tulip poplar;*

17 (ii) *The cutting or clearing is at least 50 feet landward from the mean high water*
18 *line of tidal waters, at least 50 feet from the landward boundary of a tidal wetland, and at least*
19 *50 feet from the edge of each bank of a tributary stream;*

20 (iii) *The cutting does not occur in the habitat protection areas described in Regulations*
21 *.10—.13 of this [chapter, and that the] chapter;*

22 (iv) *The cutting is conducted [pursuant to] in conformance with the requirements of*
23 *Regulation .06 of this [chapter.] chapter and in conformance with a [Buffer] buffer*
24 *management plan prepared by a registered, professional forester and approved by the*
25 *[Forestry Programs and the Fish, Heritage and Wildlife Administration of the] Department of*
26 *Natural [Resources.] Resources;*

27 (v) *The buffer management plan [shall be] is required for all commercial harvests*
28 *within the [Buffer] buffer, regardless of the size of the area to be [cut, and shall contain the*
29 *following minimum requirements:] cut;*

30 [(i) That disturbance] (vi) *Disturbance to stream banks and shorelines [shall be] is*
31 *avoided;*

32 [(ii) That the] (vii) *The area disturbed or cut [shall be replanted,] is replanted or*
33 *allowed to regenerate in a manner that assures the availability of cover and breeding sites for*
34 *wildlife, and reestablishes the wildlife corridor function of the [Buffer] buffer; and*

1 [(iii) That the] (viii) *The cutting [may] does not involve the creation of logging roads*
2 *and skid trails within the [Buffer.] buffer;*

3 (b) Commercial harvesting of trees, by any method, may be [permitted] *authorized up to*
4 *the edge of each bank of an intermittent [streams provided that] stream if the cutting is*
5 *conducted [pursuant to] in conformance with the requirements of [§B(5)(a),] §B(5)(a)(iii) of*
6 *this [regulation.] regulation;*

7 (c) Cutting of trees or removal of natural vegetation may be [permitted] *authorized*
8 *where necessary to provide access to private or government piers, or to install or construct a*
9 *[shore erosion protection device or measure,] shoreline stabilization measure or a water-*
10 *dependent facility or activity, [providing] if the [device,] pier, measure, [or] facility, or activity*
11 *has received all necessary State and federal [permits.] permits;*

12 (d) Individual trees may be removed which are in danger of falling and causing damage
13 *to dwellings or other structures, or which are in danger of falling and thereby causing the*
14 *blockage of streams, or resulting in accelerated shore [erosion.] erosion;*

15 (e) Horticultural practices may be used to maintain the health of individual [trees.] *trees;*
16 *and*

17 (f) Other cutting techniques may be undertaken within the [Buffer] *buffer* and under the
18 *advice and guidance of the [Maryland Departments] State Department of Agriculture and the*
19 *Department of Natural Resources, if necessary to preserve the forest from extensive pest or*
20 *disease infestation or threat from [fire.] fire;*

21 (6) When agricultural use of lands within the area of the [Buffer] *buffer* ceases and the
22 *lands are proposed to be converted to other uses, the [Buffer] buffer shall be established. In*
23 *establishing the [Buffer] buffer, management measures shall be undertaken to provide forest*
24 *vegetation that assures the [Buffer] buffer functions as set forth in the policies stated in*
25 *COMAR [27.01.09.01B(1)—(5).] 27.01.09.01C;*

26 (7) The agency shall expand the [Buffer] *buffer* beyond 100 feet to include contiguous,
27 *sensitive areas, such as steep slopes, hydric soils, or highly erodible soils, whose development*
28 *or disturbance may impact streams, wetlands, or other aquatic environments. In the case of*
29 *contiguous slopes of 15 percent or greater, the [Buffer] buffer shall be expanded 4 feet for*
30 *every 1 percent of slope, or to the top of the slope, whichever is greater in [extent.] extent; and*

31 (8) The agency may request [an exemption] from the [Commission,] *Commission a*
32 *modification of [certain portions of] the Critical [Area, from the Buffer] Area buffer*
33 *requirements if it can be sufficiently demonstrated that the existing pattern of development in*
34 *the Critical Area prevents the [Buffer] buffer from fulfilling the functions stated in COMAR*
35 *[27.01.09.01B(1)—(5)] 27.01.09.01C. If [an exemption] a modification is requested, the*
36 *agency shall propose other measures for achieving the water quality and habitat protection*
37 *objectives of the policies. [An exemption shall also be requested from the Commission if the*
38 *Buffer area is proposed to be used for industrial and port-related water-dependent facilities,*

1 water-use industries, and the intake and outfall structures of power plants and sewage treatment
2 plants.]

3
4 **.10 Nontidal Wetlands.**

5 The provisions of COMAR 26.23.01 apply to nontidal wetlands in the Critical Area. A
6 person conducting a regulated activity within nontidal wetlands in the Critical Area shall obtain
7 a permit *or other authorization* from the Department of the Environment. Nothing in this
8 regulation may be interpreted as altering any requirements for development activities set out in
9 this subtitle.

10
11 **.11 Threatened and Endangered Species and Species in Need of Conservation.**

12
13 A. (text unchanged)

14 B. Criteria. When planning or proposing development on State-owned lands within the
15 Critical Area, the agency proposing the development shall *use all of the following criteria*:

16 (1)—(3) (text unchanged)

17
18 **.12 [Plant Habitat and] Wildlife Habitat *and Plant Habitat.***

19 A. (text unchanged)

20 B. Criteria. When planning or proposing development on State-owned lands within the
21 Critical Area, the agency proposing the development shall use *all of the following criteria* [for
22 plant and wildlife habitat]:

23 (1) With the assistance of the Department of Natural Resources, identify the following
24 [plant and] wildlife *and plant* habitats that may be affected by the development:

25 (a)—(c) (text unchanged)

26 (d) Forest areas utilized as breeding areas by forest interior dwelling birds and other
27 wildlife species, such as relatively mature forested areas within the Critical Area of *at least* 100
28 acres [or more,] or forest connected with these areas;

29 (e) Other areas which may in the future be identified by State and federal agencies as
30 important [plant or] wildlife *or plant* habitat; and

31 (f) (text unchanged)

32 (2) The agency shall develop protection measures for the [plant and] wildlife *and plant*
33 habitats identified [above] *under §B(1) of this regulation* as follows:

1 (a) Establish buffer areas for colonial *nesting* water bird [(heron, egret, tern, and glossy
2 ibis)] nesting sites so that these sites are protected from the adverse impacts of development
3 activities and from disturbance during the breeding [season.] *season*;

4 (b) Provide that new water-dependent facilities or activities, as defined in Regulation .04
5 of this chapter, are so located as to prevent disturbance to sites of significance to wildlife such
6 as [historic,] *historic* aquatic staging and concentration areas for [waterfowl.] *waterfowl*;

7 (c) Provide protection measures including a buffer area, if appropriate, for other [plant
8 and] wildlife *and plant* habitat sites identified in §B(1)(e) of this [regulation.] *regulation*;

9 (d) Protect and conserve those forested areas required to support wildlife species, *as*
10 identified in §B(1)(c) and (d) of this regulation, by developing management programs which
11 have as their objective[, conserving] the *conservation of* wildlife that inhabit or use the areas.
12 The programs [should] *shall* assure that development [activities,] *activities* or the clearing or
13 cutting of trees which might occur in the [areas,] *areas* is conducted so as to conserve riparian
14 [habitat,] *habitat and* forest interior wildlife [species,] *species* and their habitat. Management
15 measures may include incorporating appropriate wildlife protection elements into forest
16 management [plans,] *plans* and cluster development or other site design criteria which provide
17 for the conservation of wildlife [habitat.] *habitat*;

18 (e) Require to the extent practical [that,] *that* when development [activities,] *activities* or
19 the cutting or clearing of [trees,] *trees* occurs in forested areas, corridors of existing forest or
20 woodland vegetation are maintained to provide effective connections between wildlife habitat
21 [areas.] *areas*; *and*

22 (f) Protect natural heritage areas from alteration due to development activities or cutting
23 or clearing so that the structure and species composition of the [Areas] *areas* are maintained.

24 25 **.13 Anadromous Fish Propagation Waters.**

26 A. [Definition. "Anadromous fish propagation waters" means those streams that are a
27 tributary to the Chesapeake Bay where spawning of anadromous species of fish (for example,
28 rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred. The
29 streams are designated by the Tidewater Administration of the Department of Natural
30 Resources. For purposes of this regulation, "streams" refers to designated anadromous fish
31 propagation waters within the Critical Area] *Definitions. In this regulation, the following*
32 *terms have the meanings indicated.*

33 (1) "*Anadromous fish propagation waters*" means a tributary stream of the Chesapeake
34 Bay or the Atlantic Coastal Bays that has been designated by the Department of Natural
35 Resources as waters in which the spawning of an anadromous species occurs or has occurred.

36 (2) "*Stream*" means anadromous fish propagation waters in the Critical Area that have
37 been designated by the Department of Natural Resources.

1 B. Criteria. When planning or proposing development on State-owned lands within the
2 Critical Area, the agency proposing the development shall use *all of* the following criteria:

3 (1) The agency shall, with the assistance of the Department of Natural Resources, identify
4 whether the development will occur in the watersheds of anadromous fish spawning [streams.]
5 *streams;*

6 (2) If the development will occur in those watersheds, *all of* the following measures shall
7 be used:

8 (a) The installation or introduction of concrete riprap or other artificial surfaces onto the
9 bottom of natural streams shall be prohibited unless it can be demonstrated that water quality
10 and fisheries habitat can be [improved.] *improved;*

11 (b) Channelization or other physical alterations which may change the course or
12 circulation of a stream and thereby interfere with the movement of fish shall be [prohibited.]
13 *prohibited; and*

14 (c) The agency shall develop measures for avoiding adverse impacts of any activities
15 occurring on those portions of any watershed within the Critical Area which drain into
16 anadromous fish spawning streams. These measures shall address at least the following
17 objectives:

18 (i) (text unchanged)

19 (ii) [Maintain, or if practicable, improve] *Improve or, if improvement is not possible,*
20 *maintain* water quality in streams;

21 (iii) (text unchanged)

22 (iv) [Maintain, or if practicable, increase] *Increase or, if an increase is not possible,*
23 *maintain* the natural vegetation of the [watershed.] *watershed; and*

24 (3) State agencies shall [also] use all of the following complementary State [laws] *statutes*
25 and regulations:

26 (a) *Environment Article, Title 5, Subtitle 5, Annotated Code of Maryland;*

27 (b) [The] *In accordance with COMAR 26.17.04.05, the* construction or placement of
28 dams or other structures that would interfere with or prevent the movement of spawning fish or
29 larval forms in streams shall be prohibited. If practical, the removal of existing barriers shall be
30 effected [(COMAR 08.05.03.05).];

31 [(b)] (c) The agency shall assure that the construction, repair, or maintenance activities
32 associated with bridges, or other stream crossings or with utilities and roads, which involve
33 disturbance within the [Buffer] *buffer* or which occur instream, as described in COMAR

1 [08.05.03.11B(5)] 26.17.04.11B(5), shall be prohibited between March [1] 15 and [May] June
2 15, inclusive; and

3 (d) Any other applicable State statute or regulation.

4
5 **.15 Solar Energy Generating Systems.**

6 A. Definitions.

7 (1) In this *regulation and in Regulations .15-1 through .15-3 of this chapter*, the following
8 [words] *terms* have the meanings indicated.

9 (2) Terms Defined.

10 (a)—(b) (text unchanged)

11 (c) “Modified buffer area” has the meaning stated in COMAR 27.01.01.01.

12 (d) “Planting plan” has the meaning stated in COMAR 27.01.14.01.

13 [(d)] (e)—[(e)] (f) (text unchanged)

14 [(f)] “Wetland migration area” has the meaning stated in COMAR 27.01.14.01.]

15 B. (text unchanged)

16 C. General Provisions.

17 (1)—(2) (text unchanged)

18 (3) A State agency may locate a solar energy generating system in a modified buffer area
19 [provided] *if* the project is located over existing, legally developed lot coverage as described in
20 Natural Resources Article, §8-1808.3, Annotated Code of Maryland.

21 (4) Except for a regulated activity that is authorized by the [Maryland] Department of the
22 Environment in accordance with COMAR 26.23.02, a State agency may not locate a solar
23 energy generating system:

24 (a)—(b) (text unchanged)

25 **.15-1 General Criteria for a Solar Energy Generating System.**

26 A. (text unchanged)

27 B. The area of a solar panel shall not count as lot coverage and:

28 (1) For a minor solar energy generating system, the solar panel [is] *shall be*:

29 (a) (text unchanged)

30 (b) Elevated above the ground and the area under the solar panel [is] *shall be* maintained
31 as an area of existing grass, established grass, or other natural vegetation; and

1 (2) For a major solar energy generating system the solar panel [is] *shall be*:

2 (a) (text unchanged)

3 (b) Elevated above the ground and the area under the panel [is] *shall be* maintained in
4 accordance with the planting plan requirements of Regulation .15-3 of this chapter as:

5 (i)—(iii) (text unchanged)

6 C. (text unchanged)

7 D. Except when a project area is in an intensely developed area, a State agency shall
8 minimize the clearing of forest and developed woodlands and *may* not exceed the following
9 standards:

10 (1)—(2) (text unchanged)

11 E.—J. (text unchanged)

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

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

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

22 B. (text unchanged)

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

24 A. Based on the constraints and opportunities presented by a project area, a State agency
25 shall select from the following options to address the planting plan requirements of Regulation
26 [.15-1D] *.15-1E* and F of this chapter:

27 (1) Plant on-site in one of the following planting areas:

28 (a) The area within 300 feet [beyond the] landward [boundary] *from the mean high*
29 *water line* of tidal [waters or tidal wetlands] *waters, from the landward boundary of a tidal*
30 *wetland, or from the edge of each bank of a tributary stream;*

31 (b)—(c) (text unchanged)

32 (2) (text unchanged)

33 B.—D. (text unchanged)

1 **Chapter 06 Conditional Approval of State or Local Agency Programs in the**
2 **Critical Area**

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

4
5
6 **.01 Criteria.**

7 A. (text unchanged)

8 B. In order to qualify for consideration by the Commission for conditional approval, it shall
9 be shown by the proposing or sponsoring agency that the project or program has *all of the*
10 following characteristics:

11 (1) (text unchanged)

12 (2) That the project or program otherwise provides substantial public benefits to the
13 Chesapeake [Bay] *and Atlantic Coastal Bays* Critical Area Program; and

14 C.—D. (text unchanged)

15 E. The Commission shall approve, deny, or request modifications to the request for
16 conditional approval based on *all of the* following factors:

17 (1)—(2) (text unchanged)

18 (3) The extent to which the project or program, including any mitigation measures,
19 provides substantial public benefits to the overall Chesapeake [Bay] *and Atlantic Coastal Bays*
20 Critical Area Program.

21 **Chapter 07 Commission Review, Decision Process, and Time Frames**

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

23
24 **.01 Types of Development.**

25 The Commission shall receive and review proposals for development by local and State
26 agencies, including [consistency]:

27 A. *Consistency* certifications as described in COMAR [27.02.02.02B, requests]
28 27.02.02.02B;

29
30 B. *Requests* for general approval as described in COMAR [27.02.03.01B,
31 proposals] 27.02.03.01B;
32

1 C. *Proposals* for major development as described in COMAR [27.02.04.02C,
2 proposals] 27.02.04.02C;

3
4 D. *Proposals* for development on State-owned lands as described in COMAR
5 [27.02.05,] 27.02.05; and [requests]

6
7 E. *Requests* for conditional approval as described in COMAR 27.02.06.
8

9 **.02 Additional Critical Area Requirements for a Certificate of Public Convenience and**
10 **Necessity.**

11 In accordance with COMAR 20.79.01, an applicant for a Certificate of Public Convenience
12 and Necessity shall include within its environmental review document or on a site plan *all of*
13 the following information:

14 A.—C. (text unchanged)

15 D. Field determination of the [100-foot] buffer [and, when applicable, expanded buffer for
16 hydric soils, highly erodible soils, and steep slopes] *in accordance with all provisions in*
17 *COMAR 27.01.09.01*;

18 E. [When applicable, the 300-foot setback from tidal waters, tidal wetlands, and tributary
19 streams in accordance with COMAR 27.01.14.05B;

20 F.] The identification and location of habitat protection areas in COMAR 27.01.09.03—.05;

21 [G. The identification and location of existing forest and developed woodlands acreage] F.
22 *Field determination of forest within 300 feet beyond the landward boundary of tidal waters or*
23 *a tidal wetland, or the edge of each bank of a tributary stream in accordance with COMAR*
24 *27.01.14.05B*;

25 [H.] G.—[J.] I. (text unchanged)

26 [K.] J. For a project [or] *on* locally owned land or privately owned lands, calculations
27 demonstrating compliance with the Critical Area stormwater pollutant reduction requirements
28 of COMAR 27.01.02.03;

29 [L.] K. —[N.] M. (text unchanged)

30 **.02-1 Review Procedures.**

31 A. For the purpose of reviewing the development proposals listed in Regulation .01 of this
32 chapter, *and in accordance with Regulation .03 of this chapter*, the Commission may establish
33 panels, [pursuant to Regulation .03 of this chapter,] or it may undertake reviews by the full
34 Commission.

35 B. The Commission may seek public comment on proposals for development and may hold
36 public hearings for this [purpose] *purpose*, except that any proposed development that
37 adversely affects the growth allocation of a local jurisdiction, as described in COMAR
38 27.01.02.06, shall require a public hearing.

1 C. If appropriate, public hearings shall be held in the local jurisdiction in which the proposed
2 development would be located. If the development is located in, or would affect, more than one
3 jurisdiction, the [Chairman] *Chair* shall decide in which of the jurisdictions the hearing
4 [should] *will* be held.

5 D. (text unchanged)

6 E. For purposes of reviewing an application for a Certificate of Public Convenience and
7 Necessity in the Critical [Area] *Area*, *all of* the following apply:

8 (1) In accordance with Public Utilities Article, 3-106, Annotated Code of Maryland, the
9 [Chairman] *Chair* may request to become a party in a proceeding before the Public Service
10 Commission and shall provide notice to the *Critical Area* Commission; and

11 (2) The [Chairman] *Chair* shall review an application in accordance with COMAR
12 27.02.04.02G.

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

15 (1)—(2) (text unchanged)

16 G. The [Chairman] *Chair* shall refer to the Commission an application for a State or local
17 major solar energy generating system in the Critical Area in the resource conservation area.

18 **.03 Panels.**

19 A. The [Chairman] *Chair* may appoint a panel of the Commission to review any of the
20 development proposals listed in Regulation .01[, above,] *of this chapter* and to make
21 recommendations to the full Commission concerning approval, denial, or conditioning of the
22 proposal. The panel shall consist of five Commission members to be appointed by the
23 [Chairman] *Chair*.

24 B. A panel may conduct public hearings on a proposal for development in accordance with
25 the provisions of Regulation .02B, C, and D[, above] *of this chapter*. The panel shall keep and
26 provide to the full Commission a record of the proceedings.

27 C. The panel shall make its recommendations on the proposal known to the full Commission,
28 which shall make the final determination by majority vote of approval, disapproval, or
29 conditional approval within the time frames stated in Regulation .04[, below] *of this chapter*.

30 D. The cabinet secretary, or that secretary's designee, of the State department or agency
31 which is the sponsor of the proposed development, may not sit on the panel considering that
32 agency's proposed development. If a local project is the subject of this regulation, the local
33 elected or appointed official from the subject jurisdiction, who also sits as a [Commissioner]
34 *Commission member*, may not sit on the panel appointed to consider that proposed
35 development.

36 **.04 Time Frame for Commission Review.**

1 A. The Commission shall notify the agency proposing development of its decision to
2 approve, deny, or approve with conditions the proposal in the time frames shown in
3 [Regulation .04B(1)—(5), below] §B of this regulation. [Failure to make this notice shall
4 permit] *If the Commission fails to provide this notice*, the development [to] *may* proceed as
5 proposed without further Commission comment or approval.

6 B. The Commission shall give notice of *its* decision to the proposing agency within the
7 number of days of receipt of the development proposal as specified below:

8 (1) A *minor* development proposal [of local significance] and the local certification as
9 provided in COMAR 27.02.02.02B: 30 days;

10 (2) A determination that a *minor* development proposal [of local significance] is major
11 development that requires Commission review under the [provision/ provisions] of COMAR
12 27.02.04: 15 days;

13 (3)—(4) (text unchanged)

14 (5) A proposal for development on State-owned lands as provided for in COMAR
15 27.02.05: 30 days, except that when the development will result in adverse effects on any local
16 jurisdiction's growth allocation, the Commission shall be afforded 90 days in which to notify
17 the sponsoring agency of its decision; *and*

18 (6) (text unchanged)

19 C. Certain development projects of substantial complexity and potential adverse impact on
20 the Critical Area may require additional time for review than *is* provided for in §B[, above] *of*
21 *this regulation*. In these cases, the Commission shall notify the sponsoring agency within 15
22 days of receipt of the development proposal of the expected time frame needed to review the
23 proposal. The additional time afforded to the Commission for review may not exceed 60 days
24 beyond that provided in §B[, above] *of this regulation*, unless expressly agreed to by the
25 proposing agency.

26 D. Certain development projects, in order to be undertaken, may require Commission review
27 and approval within a time frame less than that provided in §B[, above] *of this regulation*. In
28 these cases, the [Chairman shall be authorized to] *Chair may* approve, deny, or condition the
29 request for development and shall notify the full Commission and any affected local
30 jurisdiction of [his] *this* decision within 15 days.

31 32 Chapter 08 Appeals

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

1 **.01 State Agency Appeals of Local Denials of Certification.**

2 A. [Pursuant to] *In accordance with* COMAR 27.02.02, for *minor* State development
3 proposals [which are of local significance only, and] which occur on private lands or lands
4 owned by local jurisdictions, the sponsoring agency shall provide to the Commission the local
5 jurisdiction's certification of consistency with the local Critical Area program. Local denial of
6 the certification may be appealed to the Commission by the sponsoring State agency under the
7 following provisions:

8 (1) The State agency sponsor whose certification has been denied by the local jurisdiction
9 may file an appeal of the denial with the Commission within 30 days of the receipt by that
10 State agency of official notice of [denial.] *denial*;

11 (2) The [Chairman] *Chair* shall, within 15 days of receipt of a notice of State agency
12 appeal, appoint a panel of five [Commissioners] *Commission members* to hear and make
13 recommendations to the full Commission concerning the [appeal.] *appeal*;

14 (3) The panel shall meet within 30 days of its appointment, shall hear a presentation by the
15 State agency which has been denied certification, and shall, within 30 days of its meeting or at
16 the next scheduled Commission meeting, whichever is later, make its recommendations known
17 to the full [Commission.] *Commission*;

18 (4) In considering the matter of local certification, the panel and the Commission shall
19 utilize as criteria the relevant portions of the approved local Critical Area program, and may
20 not substitute their judgment for that of the local certifying authority. If, on the other hand, it
21 appears that the local certifying authority has failed to apply its own program criteria in a
22 rational and reasonable [manner,] *manner* or has been arbitrary and capricious in the
23 application of those criteria to the proposed development, the panel may recommend, and the
24 Commission by majority vote may act, to certify the proposed development. The Commission's
25 final decision shall be in [writing.] *writing*; *and*

26 (5) (text unchanged)

27
28 **.02 Appeals from Commission Disapproval of Proposed Development.**

29 A. [Pursuant to] *In accordance with* COMAR [27.02.03.01A] *27.02.03.01F*, 27.02.04.02E,
30 and [27.02.05.02D] *27.02.05.02G*, a State or local agency whose proposal for development has
31 been disapproved by the Commission may appeal the disapproval to the full Commission for
32 reconsideration, within 30 days of receipt of the Commission's decision.

33 B.—C. (text unchanged)

34 **Subtitle 03 PROJECT APPLICATIONS**

35 **Chapter 01 Notification of Project Applications**

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

1 **.01 Definitions.**

2 A. (text unchanged)

3 B. Terms Defined.

4 (1) Application.

5 (a) "Application" means [whatever] initial forms, documents, plats or other materials,
6 including buffer management plans, that are officially submitted to [the] a local authority for
7 [the]:

8 (i) *The approval of subdivision plats, consolidations, reconfigurations, site plans,*
9 *grading permits, or rezoning [(including the consideration of areas within floating zones), the],*
10 *which may include consideration of an area within a floating zone; or*

11 (ii) *The issuance of zoning permits, special exceptions, or conditional use permits.*

12 (b) "Application" includes substantial changes to the items in [§B(1)(a),] §B(1)(a) of this
13 regulation.

14 (c) "Application" does not include [those] materials submitted for the approval of
15 building permits.

16 (2) [Buffer.

17 (a) "Buffer" [means an area that:

18 (i) Based on conditions present at the time of development, is immediately landward
19 from mean high water of tidal waters, the edge of each bank of a tributary stream, or the
20 landward boundary of a tidal wetland; and

21 (ii) Exists or may be established in natural vegetation to protect a stream, tidal wetland,
22 tidal waters, or terrestrial environment from human disturbance.

23 (b) "Buffer" includes an area of:

24 (i) At least 100 feet, even if that area was previously disturbed by human activity; and

25 (ii) Expansion for contiguous areas, including a steep slope, hydric soil, highly
26 erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in
27 COMAR 26.23.01.01] *has the meaning stated in COMAR 27.01.01.01.*

28 (3) ["Business unit" means a nonresidential building used for office space, wholesale, or
29 retail marketing.]

1 (4) "[Chairman] *Chair*" [means the Chairman of the Critical Area Commission for the
2 Chesapeake and Atlantic Coastal Bays] *has the meaning stated in COMAR 27.01.01.01.*

3 (5) "Commission" [means the Critical Area Commission for the Chesapeake and Atlantic
4 Coastal Bays] *has the meaning stated in COMAR 27.01.01.01.*

5 (6) [Critical Area.

6 (a) "Critical Area" [means the Chesapeake Bay Critical Area and the Atlantic Coastal
7 Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d),
8 Annotated Code of Maryland.

9 (b) "Critical Area" includes:

10 (i) The initial planning area of the Chesapeake Bay Critical Area consisting of all
11 waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as
12 indicated on the State wetlands maps, and all State and private wetlands designated under
13 Environment Article, Title 16, Annotated Code of Maryland;

14 (ii) The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all
15 waters of and lands under the coastal bays and their tributaries to the head of tide as indicated
16 on the State wetlands maps, and all State and private wetlands designated under Environment
17 Article, Title 16, Annotated Code of Maryland;

18 (iii) Except in accordance with §B(6)(b)(iv) of this regulation, all water and land areas
19 within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of
20 tides designated under Title 16 of the Environment Article;

21 (iv) All water and land areas within 1,000 feet beyond the landward boundaries of
22 State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119,
23 Acts of 2008, where the process of transition from reliance on the State wetlands maps to the
24 Statewide base maps has occurred and these maps were approved by the Commission; and

25 (v) Modification to these areas through inclusions or exclusions proposed by local
26 jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-
27 1807, Annotated Code of Maryland] *has the meaning stated in COMAR 27.01.01.01.*

28 (7) "Development" [means any construction, reconstruction, modification, extension, or
29 expansion of buildings or structures, land excavation, land clearing for nonagricultural or
30 nonforestry purposes, land improvements, or any combination of these. The activities shall
31 materially affect the condition or use of dry land, land under water, or any structure] *has the*
32 *meaning stated in COMAR 27.01.01.01.*

33 (8) (text unchanged)

1 [(9) "IDA" means those properties that were designated by the local jurisdiction and
2 approved by the Critical Area Commission as intensely developed areas.

3 (10) "LDA" means those properties that were designated by the local jurisdiction and
4 approved by the Critical Area Commission as limited development areas]

5 (9) *Intensely Developed Area.*

6 (a) *"Intensely developed area" has the meaning stated in Natural Resources Article,*
7 *§8-1802(a), Annotated Code of Maryland.*

8 (b) *"Intensely developed area" includes the provisions of COMAR 27.01.02.03.*

9 (10) *Limited Development Area.*

10 (a) *"Limited development area" has the meaning stated in Natural Resources Article,*
11 *§8-1802(a), Annotated Code of Maryland.*

12 (b) *"Limited development area" includes the provisions of COMAR 27.01.02.04.*

13 (10-1) *"Local approving authority" means the department or unit of a local jurisdiction*
14 *that implements the local Critical Area program.*

15 (10-2) *"Minor development" has the meaning stated in COMAR 27.02.01.01.*

16 (11) ["RCA" means those properties that were designated by the local jurisdiction and
17 approved by the Critical Area Commission as resource conservation areas] *"Redevelopment"*
18 *has the meaning stated in COMAR 27.01.01.01.*

19 (12) ["Residential use" means the use of a structure by one or more persons for the purpose
20 of maintaining a common household. The cooking or sanitary facilities of the structure are only
21 for the use of the occupants of the structure.] *Resource Conservation Area.*

22 (a) *"Resource conservation area" has the meaning stated in Natural Resources Article,*
23 *§8-1802(a), Annotated Code of Maryland.*

24 (b) *"Resource conservation area" includes the provisions of COMAR 27.01.02.05.*

25 (12-1) (text unchanged)

26 (13) ["Subdivision" means the division of a parcel of land into two or more lots for the
27 purpose of transfer of ownership or for development. This includes subdivision pursuant to
28 Natural Resources Article, §8-1808.2, Annotated Code of Maryland, and the creation of a
29 condominium regime pursuant to Real Property Article, §11-101 et seq., Annotated Code of
30 Maryland] *Subdivision.*

1 (a) "Subdivision" has the meaning stated in Land Use Article, §1-101, Annotated Code
2 of Maryland.

3 (b) "Subdivision" includes division of a parcel under Natural Resources Article, §8-
4 1808.2, Annotated Code of Maryland, and the creation of a condominium regime under Real
5 Property Article, Title 11, Annotated Code of Maryland.

6 (14) (text unchanged)

8 **.02 Application Requirements.**

9 A. The [applicant or] local approving authority shall *electronically* submit a [copy of a] local
10 application *and any required supporting material* to the Executive Director for all categories
11 set forth in Regulation .04 of this chapter.

12 B. [The application shall be accompanied by a completed cover sheet on a form to be
13 developed by the staff of the Commission. This form shall be revised by the staff at any time
14 with the approval of the Chairman or the Executive Director.

15 C.] The [Chairman] *Chair* or Executive Director may, at any time, request additional
16 information from [either] the local approving authority [or the applicant] if it is necessary for
17 accurate evaluation of the proposed action.

18 [D.] C. Once an application [is] *has been* submitted to the Executive Director [pursuant to
19 these] *in accordance with the regulations of this chapter*, the [Chairman] *Chair*, Executive
20 Director, and staff may, after notifying and obtaining approval of the property owner, inspect
21 the subject property.

22 [E.] D. After receipt of [a copy of] an application [from the applicant or the local approving
23 authority], the Commission shall send written notice of receipt to [the applicant and to] the
24 local approving authority before the close of the fifth business day. A failure of the
25 Commission to send a timely notice shall render [§F] *§E* of this regulation inapplicable as to
26 that application.

27 [F.] E. The local approving authority may not process an application which has been [sent]
28 *submitted* to the Commission for notification until it has received notice of receipt from the
29 Commission. [To expedite this process, the local jurisdiction may telephone the Commission to
30 verify receipt of any given application.] Any action of the local approving authority in
31 violation of this section shall be void.

32 **.03 Notice Requirements for State Agency and Local Agency Development.**

33 A. The requirements of this regulation do not apply to development that a State agency or
34 local agency proposes in the Critical Area if:

35 (1) As provided under COMAR 27.02.02, the development is:

1 (a) A State agency action that results in *minor* development [of local significance] on
2 private lands or lands owned by a local jurisdiction; or

3 (b) A local agency action that results in *minor* development [of local significance] on
4 private lands or lands owned by a local jurisdiction;

5 (2) The development is included in a general approval, as provided under COMAR
6 27.02.03 [or 27.02.05.02F]; or

7 (3) (text unchanged)

8 B.—D. (text unchanged)

9 **.04 Categories of Applications [of Which the Commission Wishes to Receive Notification]**
10 ***to be Submitted to the Executive Director.***

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

12 (1) The local approving authority shall [send copies of applications for all developments,
13 subdivisions, and site plans] *electronically submit to the Executive Director each application*
14 *for a development, subdivision, and site plan that is located wholly or partially within the*
15 *[critical area] Critical Area*, except those specified in [§A(2),] §A(2) of this regulation.

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

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

21 (i) (text unchanged)

22 (ii) A structure which is necessary to a single family dwelling unit which may include[,
23 but is not limited to,] a pool, garage, porch, shed, or tennis courts;

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

26 (iv) Subdivisions resulting in [10 lots or less,] *up to ten lots* or [10 dwelling units or
27 less] *up to ten dwelling units*;

28 (b) The following developments, subdivisions, or site plans that would occur wholly or
29 partially within [LDAs] *a limited development area*:

30 (i) Those listed in [§A(2)(a)(i)—(iii),] §A(2)(a)(i)—(iii) of this regulation; *and*

1 (ii) A subdivision resulting in *up to* three lots [or less which] *that* does not affect the
2 local jurisdiction's growth allocation; *and*

3 (c) Developments, [Subdivisions] *subdivisions*, or site plans occurring wholly or partially
4 within [RCAs] *a resource conservation area* for which the land disturbance does not exceed
5 5,000 square feet.

6 B. [Rezoning, Including Floating Zones. The local approving authority shall submit a copy of
7 all initial and subsequent applications for rezoning and floating zones that would occur wholly
8 or partially within the critical area.

9 C. Special Exceptions, Conditional Uses, or Zoning Variances. The local approving authority
10 shall submit a copy of all applications for special exceptions or conditional uses which allow
11 industrial, commercial, institutional, nonresidential, or multifamily uses that would occur
12 wholly or partially within an LDA or an RCA.

13 D. Variances. The local approving authority shall submit a copy of all applications for
14 variances from the local critical area program.

15 E. Buffer Management Plans. The local approving authority shall submit a copy of the
16 proposed major buffer management plan and the approved major buffer management plan for
17 those categories of applications in §A(1) of this regulation and for critical area variances.

18 F. Shore Erosion Control Plans. The local approving authority shall submit a copy of the
19 approved buffer management plan in accordance with COMAR 26.24.04.01-3A(4) and
20 COMAR 27.01.09.01-3B.

21 G. Major and Minor Solar Energy Generating Systems. The local approving authority shall
22 submit a copy of any application for a major or a minor solar energy generating system that
23 would occur wholly or partially in a limited development area and resource conservation area
24 in accordance with COMAR 27.01.14 and COMAR 27.02.07, and a copy of the final approved
25 application for a major solar energy generating system.] *Other Applications. The local*
26 *approving authority shall electronically submit to the Executive Director:*

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

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

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

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

4 C. *Approvals. The local approving authority shall electronically submit to the Executive*
5 *Director:*

6 (1) *Each final approval of a major solar energy generating system; and*

7 (2) *In accordance with COMAR 27.01.04.03 and 27.01.09.01-3, for each category of*
8 *application under §A(1) of this regulation and for each Critical Area variance application:*

9 (a) *Each approved major buffer management plan; and*

10 (b) *As applicable, each approved Commission form entitled “Shoreline Stabilization*
11 *Measure Buffer Management Plan.”*

12
13 **.05 [Requirements for Semi-Annual Information on Developments and Subdivisions**
14 **Within a Critical Area.**

15 A. The local jurisdiction shall submit to the Executive Director on a semi-annual basis (by
16 January 1st, and by June 30th), a summary of all applications which have been approved for
17 developments or subdivisions within the critical area (including those developments and
18 subdivisions which were exempted by Regulation .03A(2) of this chapter).

19 B. The summary in §A shall include at least the following information for each:

20 (1) Development on an existing parcel:

21 (a) Name and address of property owner;

22 (b) Tax map, block and parcel data of development property;

23 (c) Designation of property before development (IDA, LDA, RCA);

24 (d) Total acreage of property;

25 (e) Total acreage of land disturbed on developed property;

26 (f) Type of development proposed which may include, but is not limited to, residential,
27 business, industrial, redevelopment, or mixed.

28 (2) Subdivision for development purposes where buildable lots are created:

29 (a) Name and address of property owner;

30 (b) Name and address of developer;

31 (c) Tax map, block and parcel data of property before subdivision;

- 1 (d) Designation of property before subdivision (IDA, LDA, RCA);
- 2 (e) Total acreage of property before subdivision;
- 3 (f) Total number of lots created;
- 4 (g) Total number of building lots created;
- 5 (h) Total number of dwelling units to be developed;
- 6 (i) Range of lot sizes (acres);
- 7 (j) Average size of building lots (acres);
- 8 (k) Linear waterfrontage, in feet, of property before subdivision;
- 9 (l) Type of development proposed which may include, but is not limited to, residential,
- 10 business, industrial, or mixed;
- 11 (m) Total number of acres disturbed or to be disturbed as a result of development.
- 12 (3) Subdivision for nondevelopment purposes where building lots are not created:
- 13 (a) Name and address of property owner;
- 14 (b) Tax map, block and parcel data of property before subdivision;
- 15 (c) Parcel and tax map ID number of property before subdivision;
- 16 (d) Designation of subject property (IDA, LDA, RCA);
- 17 (e) Total acreage of property before subdivision;
- 18 (f) Total number of lots created as a result of subdivision;
- 19 (g) Range of lot sizes;

20 C. The local jurisdiction shall summarize all approved applications which affect its growth
21 allocation. Information shall be given on the amount of growth used and the amount of growth
22 allocation remaining for the local jurisdiction.]