

# *Critical Area Commission*

## **UPDATED STAFF REPORT**

December 18, 2024

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

**COMMISSION ACTION:** Vote

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

**STAFF:** Lisa Hoerger and 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 May 1, 2024 meeting, Commission staff presented a proposal to comprehensively update the Code of Maryland Regulations, Title 27, ‘Critical Area Commission for the Chesapeake and Atlantic Coastal Bays’. The proposed changes to the regulations were 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- Repeal outdated provisions or definitions that are not used in the text (the original provisions were enacted in 1986).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.

The staff also provided an update on comments received from local jurisdictions, one of which resulted in a proposal by staff to amend<sup>1</sup> the definition of clearing.

(9-1) Clearing.

- (a) “Clearing” means an activity that removes ~~trees and~~ a tree, forest, developed woodland, or vegetative cover from the land.
- (b) “Clearing” ~~may include~~ includes removing trees and leaving stumps ~~, only if leaving stumps is authorized under an approved timber harvest plan.~~

Subsequent discussion among the Commission resulted in two additional changes. One change was made to the definition of clearcutting, and other change was to the definition of stormwater.

- (9) “Clearcutting” means the removal of the entire stand of trees in one cutting with tree reproduction obtained of trees reproduced by natural seeding from adjacent stands or from trees that were cut, from advanced regeneration or stump sprouts, or from human activity in the planting of seeds or seedlings ~~by man.~~

- (67) “~~Steep slopes~~” ~~means slopes of 15 percent or greater incline~~ Stormwater.

- (a) “Stormwater” has the meaning stated in COMAR 26.17.02.02.
- (b) “Stormwater” includes runoff associated with:
  - (i) An increase in lot coverage onsite, including all additions to a building, road, or parking lot;
  - (ii) A change in permeability caused by compaction during construction or a modification in contour, including the filling or drainage of a small depression area;

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<sup>1</sup> All deletions are shown with strikethrough text. All new text shown with underlined text. All changes made since May 1, 2024 are shown with yellow highlight.

- (iii) Alteration of a drainageway or the regrading of a slope;
- (iv) Destruction of forest and developed woodland; and
- (v) Installation of a collection system to intercept street flow or to replace a swale or other drainageway.

The Commission voted to approve the changes to the regulations listed above, to authorize Commission staff 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.

**DISCUSSION:**

This proposal was published in the Maryland Register on November 1, 2024 and is attached to this staff report.

Commission staff requests that several non-substantive changes, listed below, be made to the proposal. The Assistant Attorney General has certified that these changes do not differ substantially from the proposed text. The Commission approved the correct text for all of the typographical errors listed below at the Commission Meeting on May 1, 2024.

1. 27.01.01.01 B (9-1): The definition of Clearing was not published correctly; therefore, it needs to be published as shown above on page 2 of this staff report.
2. 27.01.01.01 B (67-2): A typographical error was published, where the reference in the definition of Subdivision should be 8-1808.2 instead of 8-108.2.

(67-2) Subdivision.

- (a) “Subdivision” has the meaning stated in Land Use Article, §1-101, Annotated Code of Maryland.
  - (b) “Subdivision” includes division of a parcel under Natural Resources Article, ~~§8-108.2~~ §8-1808.2, Annotated Code of Maryland, and the creation of a condominium regime under Real Property Article, Title 11, Annotated Code of Maryland.
3. 27.01.09.04 C(2)(b)(vi): A typographical error was published, where the word “habitats” is repeated and a semicolon is missing.
    - (v) When development or cutting or clearing of trees occurs in a forest, a requirement that, to the extent practicable, corridors of existing forest or woodland vegetation be maintained to provide effective connections among wildlife habitats ~~;~~.
    - (vi) The protection of ~~plant and~~ wildlife and plant habitats considered to be locally significant ~~habitats. habitats;~~ habitats; and
  4. 27.01.12.06 A: A typographical error was published where the word “authorized” should be “unauthorized.”

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

5. 27.02.01.01B(1): A typographical error was published, where the word “state should be “stated.”

(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.

6. 27.02.01.01B(10): A typographical error was published where the word “commercial harvesting” was accidentally deleted.

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

7. 27.02.01.01B(54): A typographical error was published, where the word “slopes” was inadvertently repealed and should be reinserted as “slope.”

(54) ~~"Steep slopes" means slopes of 15 percent or greater incline~~ slope has the meaning stated in COMAR 27.01.01.01.

8. 27.02.07.04C: A typographical error was published, where the word “is” was inadvertently omitted from the first sentence.

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

9. 27.02.08.02A: A typographical error was published, where the citation should be 27.02.03.02F instead of 27.02.03.01F .

A. ~~Pursuant to~~ In accordance with COMAR 27.02.03.01A **27.02.03.01-02F**, 27.02.04.02E, and ~~27.02.05.02D~~ 27.02.05.02G, a State or local agency whose proposal for development has been disapproved by the Commission may appeal the disapproval

to the full Commission for reconsideration, within 30 days of receipt of the Commission's decision.

**STAKEHOLDER COMMENTS:**

The public comment period ran through December 2, 2024. No comments were received.

**COMMISSION ACTION:**

The Commission will be asked to vote to authorize the staff to publish these regulations as final regulations in the Maryland Register. If permission is granted, the final notice would appear in the January 10th edition of the Maryland Register with a final effective date of January 20, 2025.

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](mailto:lisa.hoerger@maryland.gov) or Kate Durant at (410) 260-3477 or at [kathryn.durant@maryland.gov](mailto:kathryn.durant@maryland.gov).