

Critical Area Commission

STAFF REPORT

June 4, 2025

PROPOSAL:	Permission to Publish Proposed Regulations: New Chapter 15, Enforcement of Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays
COMMISSION ACTION:	Vote
STAFF:	Kate Durant
NEW CHAPTER OF COMAR:	COMAR 27.01.15, Enforcement
APPLICABLE LAW/ REGULATIONS:	Natural Resources Article, §8-1806

DISCUSSION:

At the direction of Chair Fisher, Commission staff are proposing to create a new chapter of regulations, COMAR 27.01.15, to address the following provisions related to enforcement:

- Property access;
- Active violations and stop work orders;
- Notices of violation;
- Fees and penalties;
- Abatement, restoration, and mitigation plans;
- Timeframes for notifying the property owner of a violation;
- Deadlines for response to a violation from the property owner;
- Appeals process; and
- Processes for local jurisdictions to request enforcement assistance from the Commission Chair.

At its April 23, 2025 meeting, Commission staff provided a presentation on the new draft enforcement regulations.

Necessity for Regulations

As discussed at the April 23, 2025 meeting, these proposed regulations are intended to consolidate existing language for enforcement and further specify several requirements of the current statute. The majority of the language used for the proposed enforcement regulations comes directly from the statute, and additional specificity is provided for timelines and notice (See Attachment – page 2, line 17-18; and page 3, lines 4-6). Local resolutions to outstanding enforcement actions have varied across jurisdictions in terms of timelines. These new regulations will provide the tools and processes to foster consistent enforcement of the Critical Area law across all jurisdictions.

STAKEHOLDER COMMENTS:

Commission staff provided the draft to the local governments and the environmental community for comment. Any comments received by staff will be provided at the June 4th, 2025 Critical Area Commission meeting.

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) 260-3477 or at kathryn.durant@maryland.gov.

1 **DRAFT 5/5/2025**

2 Title 27

3 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL
4 BAY

5 Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

6 Chapter 15 Enforcement

7
8 Authority: Natural Resources Article, §§8-1806, 1808(c), 1809, 1815, 1815.1, Annotated Code
9 of Maryland

10
11 .01 Definitions.

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

13 B. Terms Defined.

14 (1) Abatement.

15 (a) “Abatement” means the elimination of the violation;

16 (b) “Abatement “ includes stabilization of the site.

17 (2) “Restoration” means returning the affected area to its previous condition prior to the
18 violation.

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

21 (4) Violation.

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

24 (b) “Violation” includes:

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

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

30
31 .02 Applicability.

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

1 B. In the event that a provision of this chapter conflicts with a provision of a local program,
2 the stricter provision applies.

3
4 .03 Minimum Requirements for Enforcement Program.

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

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

8 (1) Identify or verify a suspected violation;

9 (2) Restrain a development activity; or

10 (3) Issue a notice of violation if a local jurisdiction has reason to believe that a violation
11 of the local program has occurred or is occurring.

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

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

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

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

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

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

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

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

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

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

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

31 (c) If the violation is a clearing violation, a requirement that the alleged violator
32 replant trees where the cutting or clearing occurred in accordance with a plan prepared by the
33 State Forester, a registered professional forester, or a registered landscape architect;

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

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

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

1 F. The local jurisdiction shall:

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

3 (2) Communicate in writing if an alleged violator fails to meet the initial deadline; and

4 (3) Perform one of the following actions if the alleged violator does not resolve the
5 violation as required by the notice of violation, and fails to respond to the local jurisdiction's
6 written communication for 30 days:

7 (a) Request assistance from the Commission;

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

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

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

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

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

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

21 (1) Abatement;

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

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

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

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

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

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

34
35 .04 Fees and Penalties.

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

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

- 1 (1) Each violation constitutes a separate offense;
2 (2) Each calendar day that a violation continues constitutes a separate offense; and,
3 (3) Fines for a continuing violation shall accrue without a requirement for an additional
4 assessment, notice, or opportunity for hearing for each separate offense.

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

- 6 (1) The gravity of the violation;
7 (2) Any willfulness or negligence involved in the violation;
8 (3) The environmental impact of the violation; and
9 (4) The cost of restoration of the resource affected by the violation and mitigation for
10 damage to that resource.

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

13
14 .05 Request for Assistance from the Chair of the Commission or the Attorney General.

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

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

19
20 .06 Timeframes.

21 A. A local jurisdiction shall require any additional mitigation as a condition of approval for a
22 permit, approval, variance, or special exception be completed within 90 days of issuance of the
23 permit, approval, variance, or special exception.

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