

Critical Area Commission

STAFF REPORT

July 6, 2022

PROPOSAL: Updates to Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

COMMISSION ACTION: INFORMATION ONLY

STAFF: Lisa Hoerger

AFFECTED CHAPTERS OF COMAR:

COMAR 27.01.01 General Provisions
COMAR 27.01.02 Development in the Critical Area
COMAR 27.01.04 Shore Erosion Protection Works
COMAR 27.01.09 Habitat Protection Areas in the Critical Area
COMAR 27.01.14 Renewable Energy Generating Systems
COMAR 27.02.01 General Provisions
COMAR 27.02.05 State Agency Actions Resulting in
Development on State-Owned Lands

REVIEW:

Commission staff have been consistently working on revising and updating Title 27, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays regulations of the Code of Maryland Regulations (COMAR). Recall that Title 27 consists of three subtitles: Subtitle 01 Criteria for Local Critical Area Program Development; Subtitle 02 Development in the Critical Area Resulting from State and Local Agency Programs; and Subtitle 03 Project Applications. The current draft regulations focus primarily on the shore erosion protection works regulations in Subtitles .01 and .02.

The purpose of this draft is to modernize the drafting style, update, and where necessary, delete certain outdated provisions. This draft also includes a separate update related to growth allocation regarding how towns can utilize their growth allocation.

DISCUSSION:

Attached to this staff report is a copy of the current draft. Recall that brackets indicate text proposed to be repealed and italics indicate new text. The Commission staff worked closely with the Department of Environment (MDE) to ensure all updates to the regulations are correct. Also, any outdated regulations were also thoroughly screened by (MDE). Note that the companion shore erosion protection works regulations in Subtitle .02 were updated as well.

Shore Erosion Protection Works

The changes to regulations pertaining to shore erosion protection works primarily occur in COMAR 27.01.04 and COMAR 27.02.05 since these are the chapters that cover this land use.

Water-Dependent Facility Regulations

July 6, 2022

Page 2 of 2

The definition for “shore erosion protection works” was removed from COMAR 27.01.04 and COMAR 27.02.05 and replaced with a new definition for “shoreline stabilization measure” in COMAR 27.01.01.01 and 27.02.01.01.

An applicability clause was added to make clear that these chapters do not apply to structures that are associated with water-dependent facilities.

The policies in COMAR 27.01.04.02 were updated for style purposes and the criteria in COMAR 27.01.04.03 were similarly updated for style and content since the Department of the Environment updated its shoreline stabilization regulations.

Updates to COMAR 27.02.05.05, which are the regulations pertaining to State lands, mirrored the updates to COMAR 27.01.04.

The remaining changes in COMAR 27.01.02.06-1, 27.01.09.01, 27.01.09.01-2, .01-3, 27.01.14.06, and 27.02.05.15 all update the terminology from shoreline erosion control project to shoreline stabilization measures.

Growth Allocation Update

In COMAR 27.01.02.06-3 a clarification is proposed to highlight that towns can take advantage of using their full allotment of growth allocation acreage to convert to a resource conservation area. (Certain jurisdictions are limited to using only ½ of the allotted growth allocation for conversion from a resource conservation area to another Critical Area designation.)

STAKEHOLDER COMMENTS:

Commission staff is currently soliciting comments from the local governments, the Maryland Association of Counties (MACO), the Maryland Municipal League (MML) and the Chesapeake Bay Foundation (CBF).

COMMISSION ACTION:

This discussion is for informational purposes only and the Commission will not be asked to take any official action. If you have any questions or comments regarding the draft regulations prior to the meeting, please contact me at (410) 260-3478 (lisa.hoerger@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), and 8-1811, Annotated Code of Maryland

.01 Definitions.

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

B. Terms Defined.

(1) (text unchanged)

(2) Agricultural Best Management Practice.

(c) “Agricultural best management practice” does not include a shoreline [erosion control] *stabilization* measure authorized by the Department of the Environment under COMAR 26.24.04.

(2-1) — (62) (text unchanged)

(62-1) “Shoreline stabilization measure” includes:

(a) A nonstructural shoreline stabilization measure, as defined under COMAR 26.24.01.02; and

(b) A structural shoreline stabilization measure, as defined under COMAR 26.24.01.02.

(62) — (79) (text unchanged)

Chapter 02 Development in the Critical Area

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

.06-1 Growth Allocation Submittal Requirements.

A. (text unchanged)

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

(1)—(15) (text unchanged)

(16) A delineation of the [100-foot] buffer as measured from the mean high water line of tidal waters or the landward boundary of a tidal wetland or a tributary stream;

(17)—(24) (text unchanged)

(25) Location of any other proposed development feature, including an outlot, storm drain and outfall, utility connection, septic system, stormwater management system, [shore erosion control] *shoreline stabilization* measure, and pier;

(26)—(28) (text unchanged)

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

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

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

(a) — (e) (text unchanged)

(2) (text unchanged)

B. (text unchanged)

C. Except as provided in §D of this regulation, a local jurisdiction may not use more than 1/2 of its total allotted growth allocation acreage to convert a resource conservation area into a new limited development area or a new intensely developed area.

D. [In] *A local jurisdiction may use a standard that varies from §C of this regulation if:*

(1) *The local jurisdiction is a municipal corporation; or*

(2) *In Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne’s, St. Mary’s, Somerset, Talbot, Wicomico, and Worcester Counties, [if the county is unable to utilize a portion of its growth allocation in accordance with §C of this regulation then these counties may use a standard that varies from §C of this regulation] if:*

[(1)] (a) *The county is unable to utilize up to ½ of its of its total allotted growth allocation acreage;*

(b) (text unchanged)

[(2)] (c) (text unchanged)

[(3)] (d) (text unchanged)

Chapter 04 [Shore Erosion Protection Works] *Shoreline Stabilization Measures*

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

1
2 **.01 Definition.**

3 [A. "Shore erosion protection works" means those structures or measures constructed or installed to
4 prevent or minimize erosion of the shoreline in the Critical Area] *In this chapter, "shoreline stabilization*
5 *measure" has the meaning stated in COMAR 27.01.01.01.*

6 [B. The criteria below are not intended to apply to those structures necessarily associated with water-
7 dependent facilities in COMAR 27.01.03.]

8
9 **.01-1 Applicability.**

10 *The provisions of this chapter do not apply to a structure that is, by necessity, associated with a water-*
11 *dependent facility under COMAR 27.01.03.*

12 **.02 Policies.**

13 In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local*
14 *jurisdiction* shall follow these policies [in regard to shore erosion protection works] *when addressing*
15 *shoreline stabilization measures:*

16 A. *Encourage the preservation of the natural shoreline.*

17 B. Encourage [the protection of rapidly] *public and private landowners to protect significantly eroding*
18 *portions of the shoreline in the Critical Area [by public and private landowners]; and*

19 [B. Where such measures can effectively and practically reduce or prevent shore erosion, encourage
20 the use of nonstructural shore protection measures in order to conserve and protect plant, fish, and
21 wildlife habitat]

22 C. *In order to conserve and protect plant, fish, and wildlife habitat, encourage the use of appropriate*
23 *shoreline stabilization measures that effectively and practically reduce shore erosion.*

24
25 **.03 Criteria.**

26 In developing [their] *and updating its* Critical Area [programs, local jurisdictions] *program, a local*
27 *jurisdiction* shall [use] *satisfy* these criteria *when addressing shoreline stabilization measures:*

28 A. [Local jurisdictions, with assistance from the State, shall designate and map the following shoreline
29 areas:

30 (1) Shoreline areas where no significant shore erosion occurs,

31 (2) Other eroding areas where nonstructural measures would be a practical and effective method
32 of erosion control, and

33 (3) Eroding areas where only structural measures would provide effective and practical erosion
34 control;

1 B. Local jurisdictions shall adopt policies to be reflective of shoreline characteristics to accomplish the
2 following objectives:

3 (1) Provide that structural control measures only be used in areas designated in §A(3), above,
4 where nonstructural control measures would be impractical or ineffective,

5 (2) Provide that where structural erosion control is required, the measure that best provides for
6 conservation of fish and plant habitat, and which is practical and effective shall be used,

7 (3) Provide that nonstructural measures be utilized in areas of erosion as described in §A(2), above,

8 (4) Provide that structural erosion measures not be encouraged in areas where no significant
9 erosion occurs, and

10 (5) Provide that if significant alteration in the characteristics of a shoreline occurs, the measure that
11 best fits the change may be used for sites in that area.

12 C. A local jurisdiction shall provide the Commission with the approved buffer management plan for a
13 shore erosion control measure in accordance with COMAR 26.24.04.01-3 and 27.01.09.01-3] In
14 accordance with COMAR 26.24.04.01-1, adherence to the structural shoreline stabilization maps
15 developed and maintained by the Department of the Environment;

16 *B. In accordance with Environment Article, §16-201(c), Annotated Code of Maryland, and COMAR*
17 *26.24.04.01, prohibition of the use of a structural shoreline stabilization measure in an area where no*
18 *significant shore erosion occurs;*

19 *C. Performance of mitigation measures applicable to the type of shoreline stabilization measure to be*
20 *undertaken, as specified in the Commission form entitled "Shoreline Stabilization Measure Buffer*
21 *Management Plan"; and*

22 *D. In accordance with COMAR 26.24.04.01-3 and 27.01.09.01-3, delivery to the Commission of an*
23 *approved buffer management plan for each approved shoreline stabilization measure.*

25 **Chapter 09 Habitat Protection Areas in the Critical Area**

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

27 **.01 Buffer.**

28 A. — C. (text unchanged)

29 D. Authority of Secretary; Scope; Alternative Procedures and Requirements.

30 (1) (text unchanged)

31 (2) Except for a [shore erosion control project] *shoreline stabilization measure* in a modified buffer
32 area, the provisions of this regulation through Regulation .01-7 of this chapter do not apply within a
33 modified buffer area under Regulation .01-8 of this chapter.

34 (3) (text unchanged)

E. Buffer Standards.

(1) In conjunction with mitigation performed in accordance with an approved buffer management plan under Regulation .01-3 of this chapter, a local jurisdiction may authorize disturbance in the buffer for:

(a) (text unchanged)

(b) In accordance with COMAR 26.24.02, a [shore erosion control] *shoreline stabilization* measure under COMAR 27.01.04.

(2) —(8) (text unchanged)

.01-2 Mitigation and Planting Standards.

A. — G. (text unchanged)

H. Permanent Disturbance. In accordance with the applicable activity, a local jurisdiction shall require the following ratios of mitigation for each permanent disturbance:

Activity	Mitigation Ratio
Septic on a lot created before local program approval if located in existing grass or if clearing is not required	Not applicable
Septic system in a forest or developed woodland on a lot created before local program approval if clearing is required	1:1
[Shore erosion control] <i>A shoreline stabilization measure, unless otherwise authorized under COMAR 27.01.04.03</i>	1:1
Riparian water access	2:1
Development of a water-dependent facility or activity under COMAR 27.01.03	2:1
Variance	3:1
Violation	4:1

I. —S. (text unchanged)

.01-3 Buffer Management Plans.

- 1 A. (text unchanged)
- 2 B. A local jurisdiction shall require an applicant proposing a development activity to submit a buffer
- 3 management plan if:
- 4 (1) (text unchanged)
- 5 (2) Disturbance to the buffer will result from the issuance of *an authorization, including a:*
- 6 (a) — (c) (text unchanged)
- 7 (d) [Shore erosion control permit as required under COMAR 26.24.01] *Local approval of a*
- 8 *shoreline stabilization measure, as authorized by the Board of Public Works or the Department of the*
- 9 *Environment;*
- 10 (e) — (h) (text unchanged)
- 11 C. — J. (text unchanged)
- 12

13 Chapter 14 Renewable Energy Generating Systems

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

15

16 .06 Planting Plan Requirements.

17 A. Based on the constraints and opportunities presented by a project area, a local jurisdiction shall

18 select from the following options to address the requirements for a planting plan in Regulation .04D and

19 F of this chapter:

- 20 (1) (text unchanged)
- 21 (2) If a local jurisdiction has in [a] place an agreement with the Commission:
- 22 (a) (text unchanged)
- 23 (b) Create a wetland migration area, nonstructural shoreline [erosion control project]
- 24 *stabilization measure*, or other nature-based practice that naturally adjusts to changing environmental
- 25 conditions through the lifespan of the practice and is designed to address future sea level rise,
- 26 precipitation-induced flooding, or other climate change impacts;
- 27 (c) — (d) (text unchanged)
- 28 (3) (text unchanged)
- 29 B. — E. (text unchanged)

30 Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND

31 LOCAL AGENCY PROGRAMS

32 Chapter 01 General Provisions

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (48) (text unchanged)

(48-1) *“Shoreline stabilization measure” has the meaning stated in COMAR 27.01.01.01.*

(49) — (65) (text unchanged)

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

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

.05 [Shore Erosion Protection Works] Shoreline Stabilization Measures.

A. Definition [and Scope].

[(1) "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area] *In this regulation, “shoreline stabilization measure” has the meaning stated in COMAR 27.01.01.01.*

[(2) The criteria below are not intended to apply to those structures necessarily associated with water-dependent facilities in Regulation .04 of this chapter.]

B. [Criteria] *Applicability.*

[(1) If shore erosion protection is planned on State-owned lands, the agency proposing the protection shall determine which of the following characteristics describes the shoreline area:

(a) Shoreline areas where no significant shore erosion occurs;

(b) Other eroding areas where nonstructural measures would be a practical and effective method of erosion control; or

(c) Eroding areas where only structural measures would provide effective and practical erosion control.

(2) When shore erosion control is undertaken, the measures used shall be appropriate to accomplish the following objectives:

(a) Provide that structural control measures only be used in areas designated in §B(1)(c), above, where nonstructural control measures would be impractical or ineffective;

1 (b) Provide that where structural erosion control is required, the measure that best provides for
2 conservation of fish and plant habitat, and which is practical and effective shall be used;

3 (c) Provide that nonstructural measures be utilized in areas of erosion as described in §B(1)(b),
4 above;

5 (d) Provide that structural erosion control measures not be permitted in areas where no
6 significant erosion occurs; and

7 (e) Provide that if significant alteration in the characteristics of a shoreline occurs, the measure
8 that best fits the change may be used for sites in that area]

9 *The provisions of this regulation do not apply to a structure that is, by necessity, associated with a*
10 *water-dependent facility under COMAR 27.02.05.04--.04-3.*

11 *C. Policies.*

12 *An agency planning or proposing a shoreline stabilization measure on State-owned land shall follow*
13 *these policies:*

14 *(1) Prioritization of the preservation of the natural shoreline;*

15 *(2) Protection of significantly eroding portions of the shoreline in the Critical Area; and*

16 *(3) In order to conserve and protect plant, fish, and wildlife habitat, the use of appropriate shoreline*
17 *stabilization measures that effectively and practically reduce shore erosion.*

18 *D. Criteria.*

19 *An agency planning or proposing a shoreline stabilization measure on State-owned land shall satisfy*
20 *these criteria:*

21 *(1) In accordance with COMAR 26.24.04.01-1, adherence to the structural shoreline stabilization*
22 *maps developed and maintained by the Department of the Environment;*

23 *(2) In accordance with Environment Article, §16-201(c), Annotated Code of Maryland, and COMAR*
24 *26.24.04.01, prohibition of the use of a structural shoreline stabilization measure in an area where no*
25 *significant shore erosion occurs; and*

26 *(3) Performance of mitigation measures applicable to the type of shoreline stabilization measure to*
27 *be undertaken, as specified in the Commission form entitled "Shoreline Stabilization Measure Buffer*
28 *Management Plan."*

29
30 **.15-3 Planting Plan Requirements.**

31 A. Based on the constraints and opportunities presented by a project area, a State agency shall select
32 from the following options to address the planting plan requirements of Regulation .15-1D and F of this
33 chapter:

34 (1) (text unchanged)

1 (2) If approved by the Commission:

2 (a) (text unchanged)

3 (b) Create a wetland migration area, nonstructural shoreline [erosion control project]
4 *stabilization measure*, or other nature-based practice that naturally adjusts to changing environmental
5 conditions through the lifespan of the practice and is designed to address future sea level rise,
6 precipitation-induced flooding, or other climate change impacts;

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

9 (d) (text unchanged)

10 B.—D. (text unchanged)