

.05-2 Environmental Report.

A. The environmental report required under Regulation .05-1A(5) of this chapter shall include:

- (1) A project description;
- (2) The subdivision history since December 1, 1985 in the Chesapeake Bay Critical Area and since June 1, 2002 in the Atlantic Coastal Bays Critical Area;
- (3) A brief narrative that describes:
 - (a) The type of project;
 - (b) The proposed change of Critical Area land classification; and
 - (c) How the growth allocation would support the jurisdiction's overall planning goals, including reference to the relevant sections of the local jurisdiction's adopted comprehensive plan, water and sewer plan, and adopted zoning ordinance;
- (4) Total acreage in the Critical Area and total acreage for which Critical Area designation is proposed to be changed;
- (5) Total forest, developed woodland, and vegetated area proposed to be cleared;
- (6) Method and description of proposed stormwater management, including all qualitative and quantitative management measures;
- (7) In the intensely developed area, the preliminary plan for compliance with the 10 percent pollutant reduction rule, including all worksheets and all supporting documentation;
- (8) Measures proposed for soil erosion and sediment control, including implementation strategy;
- (9) In the limited development area and resource conservation area, existing and proposed lot coverage information, calculated by square feet of coverage for each lot and total area of lot coverage within the limited development area and the total area of lot coverage within the resource conservation area;
- (10) Mitigation required for clearing of forest area, developed woodland, or vegetation in accordance with the requirements of COMAR 27.01.05 or the local program;
- (11) If applicable, the proposed afforestation area:

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(a) In the Chesapeake Bay Critical Area, in the limited development area and the resource conservation area; and

(b) In the Atlantic Coastal Bays Critical Area, in all land classifications;

(12) Identification of the local zoning district and that district's defining characteristics;

(13) A buffer management plan, consistent with §B of this regulation if:

(a) It is a condition of development that the buffer be established on the development site;

(b) A proposed development activity impacts the buffer; or

(c) The removal of trees or vegetation in the buffer, including invasive species, is proposed; and

(14) If the proposed development will impact an identified habitat protection area, a habitat protection plan that is consistent with §C of this regulation.

B. If §A(13) of this regulation is applicable, the local jurisdiction shall require the developer to prepare a buffer management plan that provides:

(1) The location and number of square feet of existing vegetation within the buffer;

(2) A general description of the species composition;

(3) The location and number of square feet of vegetation in the buffer that are proposed for removal;

(4) The location and number of square feet of disturbance proposed in the buffer that are associated with a development activity;

(5) A proposed plan that identifies the plantings necessary to establish the buffer or to mitigate for proposed impacts, including the size, species, and location of all proposed plantings;

(6) Any written description, specification, easement, or other protective agreement necessary to ensure implementation of the buffer management plan; and

(7) Bonding or any other financial surety necessary to ensure long-term protection and maintenance of vegetation in the buffer.

C. If §A(14) of this regulation is applicable, a local jurisdiction shall:

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(1) Require the developer to prepare a habitat protection plan that:

(a) Is based on consultation with the Department of Natural Resources and any other appropriate federal or State agency;

(b) Identifies any habitat or species on the project site, as set forth under COMAR 27.01.09; and

(c) Includes all protective measures necessary and appropriate to provide for long-term conservation of the identified habitat and species; and

(2) Ensure:

(a) That full implementation of the proposed protective measures can be achieved on the project site; and

(b) The execution of all necessary long-term protective agreements.

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.06 Location and Extent of Future Intensely Developed and Limited Development Areas.

A. Intensely developed and limited development areas may be increased subject to these guidelines:

(1) The area of expansion of intensely developed or limited development areas, or both, may not exceed an area equal to 5 percent of the county's portion of the resource conservation area lands that are not tidal wetlands or federally owned;

(2) When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected municipalities, shall establish a process to accommodate the growth needs of the municipalities.

B. When locating new intensely developed or limited development areas, local jurisdictions shall use these guidelines:

(1) New intensely developed areas should be located in limited development areas or adjacent to existing intensely developed areas;

(2) New limited development areas should be located adjacent to existing limited development areas or intensely developed areas;

(3) No more than one half of the allocated expansion may be located in resource conservation areas;

(4) New intensely developed areas and limited development areas should be located in order to minimize impacts to habitat protection areas as specified in COMAR 27.01.09 and in an area and in a manner that optimizes benefits to water quality;

(5) New intensely developed areas should be located where they minimize their impacts to the defined land uses of the resource conservation area;

(6) New intensely developed areas and limited development areas in the resource conservation area should be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than 1 year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 27.01.11.

B. Local jurisdictions shall establish grandfather provisions as part of their local Critical Area programs. Except as otherwise provided, local jurisdictions shall permit the types of land described in the following subsections to be developed in accordance with density requirements in effect prior to the adoption of the local Critical Area program notwithstanding the density provisions of this chapter. A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of program approval to be developed with a single family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of the approved local program.

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

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

(a) The local jurisdiction develops, as part of its program, procedures to bring these lands into conformance with the local Critical Area program insofar as possible, including the consolidation or reconfiguration of lots not individually owned, and these procedures are approved by the Commission, or

(b) If any such land has received a building permit subsequent to December 1, 1985 but prior to local program approval, and is located in a resource conservation area, that land shall be counted by the local jurisdiction against the growth increment permitted in that area under COMAR 27.01.02.06, unless the Commission determines at the time of program approval that steps had been taken to conform the development to the criteria in this subtitle insofar as possible;

(3) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval between June 1, 1984 and December 1, 1985; and

(4) Land that was subdivided into recorded, legally buildable lots, where the subdivision received the local jurisdiction's final approval after December 1, 1985,

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provided that either development of any such land conforms to the criteria in this subtitle, or the area of the land is counted by the local jurisdiction against the growth increment permitted under Regulation .06.

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

D. Nothing in this regulation may be interpreted as altering any requirements for development activities set out in COMAR 27.01.03 and 27.01.09 of this subtitle.

.08 Lot Consolidation and Reconfiguration.

A. Definition.

(1) In this regulation, the following term has the meaning indicated.

(2) Defined Term—Conforming.

(a) "Conforming" means a parcel or lot that meets all Critical Area requirements.

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

(i) For which a Critical Area variance is sought or has been issued;
or

(ii) That is in the Resource Conservation Area and is less than 20 acres.

B. Applicability.

(1) Except as provided under §C of this regulation, and notwithstanding the location of the affected parcels or lots in a modified buffer area, the provisions of this regulation shall apply to a consolidation or reconfiguration of:

(a) In the Chesapeake Bay Critical Area:

(i) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985;

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(ii) Land that was subdivided into recorded, legally buildable lots, if the subdivision received the local jurisdiction's final approval before June 1, 1984; and

(iii) Land that was subdivided into recorded, legally buildable lots, if the subdivision received the local jurisdiction's final approval after December 1, 1985, but not later than the date of the jurisdiction's program approval; and

(b) In the Atlantic Coastal Bays Critical Area:

(i) Any legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of June 1, 2002; and

(ii) Land that was subdivided into recorded legally buildable lots, if the subdivision received the local jurisdiction's final approval before June 1, 2002.

(2) The provisions of this regulation do not apply to a conforming parcel or lot.

C. A local jurisdiction may adopt alternative procedures and requirements for the consolidation or reconfiguration of legal parcels of land or recorded, legally buildable lots listed under §B of this regulation if:

(1) The alternative procedures and requirements are at least as effective as the Critical Area program under Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland, regulations adopted under the authority of that subtitle, and any additional requirements of the local program; and

(2) The Commission has approved those alternative procedures and requirements.

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

(1) Will, to the extent possible:

(a) Minimize adverse impacts to water quality;

(b) Conserve or create additional or enhanced fish, wildlife, and plant habitat; and

(c) Establish land use policies for development activities in the Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth and address the fact that, even if pollution is controlled, the

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number, movement, and activities of persons in that area can create adverse environmental impacts; and

(2) Will not increase or intensify development activities or human activities in the buffer or any other habitat protection area when compared with those activities that would result from the parcel or lot configuration in existence at the time of application for consolidation or reconfiguration.

E. An application to a local jurisdiction for the consolidation or reconfiguration of any legal parcels of land or recorded, legally buildable lots shall contain at least the following information:

(1) The date of recordation of each legal parcel of land or recorded, legally buildable lot to be consolidated or reconfigured;

(2) A plan drawn to scale in accordance with local procedures;

(3) A plan that shows all existing and proposed parcel or lot boundaries;

(4) A table that lists the number of all legal parcels of land or recorded, legally buildable lots and the number of proposed parcels or lots to be derived; and

(5) Information sufficient for the local jurisdiction to make the findings set forth in §F of this regulation.

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

(1) The proposed consolidation or reconfiguration will not result in a greater number of parcels, lots, or dwelling units in the Critical Area than the configuration in existence at the time of application would allow;

(2) In the limited development area or resource conservation area, the proposed consolidation or reconfiguration:

(a) Will not result in greater lot coverage than development activities within the configuration in existence at the time of application would allow; and

(b) Will not result in greater impact to a steep slope than development activities within the lot configuration in existence at the time of application would allow, if that steep slope is located outside the buffer or expanded buffer;

(3) The proposed consolidation or reconfiguration will not:

(a) Create an additional riparian parcel or lot, waterfront lot, or any other parcel or lot deeded with water access; or

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- (b) Intensify or increase impacts associated with riparian access;
- (4) The proposed consolidation or reconfiguration will not create:
 - (a) A parcel, lot, or portion of a parcel or lot that will serve development activities outside the Critical Area; or
 - (b) A resource conservation area parcel or lot that will serve development activities in the intensely developed area or limited development area;
- (5) The proposed consolidation or reconfiguration identifies each habitat protection area on site, and, if the proposal impacts a habitat protection area, the proposed protective and restoration measures provide for the least possible adverse impact;
- (6) The proposed consolidation or reconfiguration:
 - (a) Will not result in a greater impact to a habitat protection area than the impact that would result from development activities within the configuration in existence at the time of application; and
 - (b) Will minimize adverse impacts to the habitat protection area;
- (7) The proposed consolidation or reconfiguration provides:
 - (a) Stormwater management for all proposed development activities; and
 - (b) Benefits to fish, wildlife, and plant habitat that are clearly identified; and
- (8) The proposed consolidation or reconfiguration fully complies with the afforestation and reforestation requirements in COMAR 27.01.05 and 27.01.09, unless clearing is necessary to avoid a habitat protection area.

G. Final Written Decision or Order.

- (1) A local jurisdiction shall issue a final written decision or order granting or denying an application for a consolidation, reconfiguration, or a modification or reconsideration of a consolidation or reconfiguration.
- (2) After a final written decision or order is issued, the local jurisdiction shall send a copy of the decision or order and, if applicable, the approved development plan within 10 business days by U.S. mail to the Commission's business address.

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H. Appeal.

(1) The time period during which the Commission may file an appeal or a petition for judicial review begins on the date of the Commission's receipt of the final written decision or order.

(2) Unless a local ordinance or other local legal authority specifies a time period greater than 30 days, the Commission may file an appeal or a petition for judicial review within 30 days of the date of the Commission's receipt of the final decision or order.

I. A local jurisdiction may not issue a permit or approval of any type on a property affected by the final written decision or order until after the expiration of the time within which the Commission may file an appeal or a petition for judicial review.

Administrative History

Effective date: May 13, 1986 (12:24 Md. R. 2352)

COMAR 14.15 became effective upon the enactment of Resolution No. 37 (SJ 9), Acts of 1986.

COMAR 14.15.02 recodified to COMAR 27.01.02 in August, 1992

Regulation .03B amended as an emergency provision effective June 26, 2009 (36:15 Md. R. 1164); amended permanently effective September 21, 2009 (36:19 Md. R. 1438)

Regulation .03C, D amended effective February 8, 2010 (37:3 Md. R. 177); October 29, 2012 (39:21 Md. R. 1380)

Regulation .04 amended effective October 29, 2012 (39:21 Md. R. 1380)

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