

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Authority: Natural Resources Article, §§8-1806, 8-1808(c), 8-1808.4(a), and 8-1811, Annotated Code of Maryland

Chapter 01 General Provisions

.01 Definitions.

A. [As used in] *In* this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1)—(50) (text unchanged)

(51-1) *“Pier” has the meaning stated in Natural Resources Article, §8-1808.4(a), Annotated Code of Maryland.*

(52)—(78) (text unchanged)

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

Chapter 11 Directives for Updating Critical Area Maps

.04 Mapping Methodology for the Assessment of Physical Features.

A.—D. (text unchanged)

E. A local jurisdiction [shall] *may* not construe the mapping of an area as a wetland or an upland to affect the allowable density or the number of development rights of that newly mapped area as part of a map update, except in accordance with written requirements and procedures in a local jurisdiction’s Critical Area program.

F.—H. (text unchanged)

ALL NEW

Authority: Natural Resources Article, §8-1808.4, Annotated Code of Maryland; Ch. 492, Acts of 2013, §§1—4

Chapter 13 Nonwater-Dependent Projects

.01 Definition.

A. In this chapter, “nonwater-dependent project” means a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands.

B. “Nonwater-dependent project” includes:

(1) A dwelling unit on a pier;

(2) A restaurant, a shop, an office, or any other commercial building or use on a pier;

(3) A temporary or permanent roof or covering on a pier;

(4) A pier used to support a nonwater-dependent use; and

(5) A small-scale renewable energy system on a pier, including:

(a) A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;

(b) A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and

(c) A wind energy system and its wind turbine, tower, base, or other necessary equipment.

C. "Nonwater-dependent project" does not include:

- (1) A fuel pump or other fuel-dispensing equipment on a pier;
- (2) A sanitary sewage pump or other wastewater removal equipment on a pier; or
- (3) An office on a pier for managing marina operations, including monitoring vessel traffic,

registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.

.02 Applicability.

The provisions of this chapter do not apply to a nonwater-dependent project located on State or private wetlands within the Critical Area in Prince George's County.

.03 General Prohibitions.

Except as provided under Natural Resources Article, §8-1808.4, Annotated Code of Maryland and Regulations .04 through .06 of this chapter and notwithstanding any other provision of law, on or after July 1, 2013:

A. A person may not construct or establish a nonwater-dependent project on State or private wetlands within the Critical Area; and

B. A local jurisdiction may not issue a building permit, variance, or special exception or otherwise authorize a nonwater-dependent project constructed or established on State or private wetlands within the Critical Area.

.04 Authorization of a Nonwater-Dependent Project; Local Program Amendments; Local Options.

A. Subject to the prohibition under §E of this regulation, a local jurisdiction may issue a building permit, variance, special exception or otherwise authorize a nonwater-dependent project on State or private wetlands within the Critical Area if, on or after July 1, 2013, the Commission has approved a local program amendment covering the project, which may include a process for the retroactive consideration of the project.

B. Subject to the prohibition under §E of this regulation, the Commission may approve a local program amendment regarding a nonwater-dependent project if the project:

(1) Satisfies the requirements of:

- (a) A commercial nonwater-dependent project under Regulation .05 of this chapter; or
- (b) A small-scale renewable energy system under Regulation .06 of this chapter; or

(2) Was constructed or established on or after July 1, 2013 in the absence of, or in violation of, an approved local program amendment but satisfies the requirements under subsection (1)(a) or (b) of this section, and the local jurisdiction's program amendment establishes a process for the retroactive consideration of the project.

C. If a nonwater-dependent structure is constructed or established on or after July 1, 2013 in a local jurisdiction that has not received Commission approval of a local program amendment regarding retroactive consideration of a project, the local jurisdiction may:

(1) Submit to the Commission a local program amendment to establish a process for retroactive consideration of the project, and, pending the Commission's decision regarding the program amendment, may stay any enforcement procedures; or

(2) Provide written notification to the Commission of its decision not to submit a local program amendment under subsection (1) of this section, which shall activate the following enforcement procedures:

(a) A prohibition on the local jurisdiction's issuance of a building permit, variance, special exception, or any other retroactive authorization for the project;

(b) Complete removal of the project by, or under the supervision of, the local jurisdiction; and
(c) Any other legal and equitable remedies available to the local jurisdiction under State and local law.

D. If a local program amendment provides for requirements that are more restrictive than the State requirements regarding nonwater-dependent projects under Natural Resources Article, § 8-1808.4, Annotated Code of Maryland or under this chapter, the local jurisdiction may establish an alternative procedure for consideration, on a case-by case basis, of a modification of its more restrictive requirements.

E. Notwithstanding any other provision of law, a local jurisdiction may not issue a building permit, variance, special exception or otherwise authorize a nonwater-dependent project that fails to satisfy the State requirements established under Natural Resources Article, § 8-1808.4, Annotated Code of Maryland and this chapter.

.05 Criteria for a Commercial Nonwater-Dependent Project.

Subject to the requirements established under Regulation .04 of this chapter, a local jurisdiction may issue a building permit, variance, or special exception or otherwise authorize a nonwater-dependent project located on State or private wetlands within the Critical Area if the project:

- A. Involves a commercial activity that:
- (1) Is permitted as a secondary or accessory use to a permitted primary commercial use;
 - (2) Is not located on a pier that is attached to residentially, institutionally, or industrially used property;
 - (3) Is located in:
 - (a) An intensely developed area; or
 - (b) An area that has been excluded from a local Critical Area program, if the exclusion has been approved by the Commission;
 - (4) Is approved by the local planning and zoning authorities;
 - (5) Allows or enhances public access to State wetlands, if applicable;
 - (6) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;
 - (7) Has a height of up to 18 feet, unless the project is located at a marina; and
 - (8) Is up to 1,000 square feet in total area; or
- B. Is located on a pier that was in existence on or before December 31, 2012, and the project:
- (1) Satisfies all of the requirements under §A(1) through (7) of this regulation; and
 - (2) If applicable, has a temporary or permanent roof or covering that is up to 1,000 square feet in total area.

.06 Criteria for a Small-Scale Renewable Energy System.

Subject to the requirements established under Regulation .04 of this chapter, a local jurisdiction may issue a building permit, variance, or special exception or otherwise authorize a nonwater-dependent project for a small-scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:

- A. Is permitted as a secondary or accessory use on a pier that is authorized under Environment Article, Title 16, Annotated Code of Maryland;
- B. Is located in:
- (1) The Critical Area; or
 - (2) An area that has been excluded from local Critical Area program, if the exclusion has been approved by the Commission;
- C. Is approved by the local planning and zoning authorities; and

- D. Involves the installation or placement of:
- (1) A solar energy system attached to:
 - (a) A pier, if the device or equipment associated with that system does not extend more than 4 feet above or 18 inches below the deck of the pier or more than 1 foot beyond the length or width of the pier;
 - (b) A piling, if there is only one solar panel per boat slip; or
 - (c) A boathouse roof, if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;
 - (2) A closed-loop geothermal heat exchanger under a pier, if the geothermal heat exchanger or any associated devices or equipment do not:
 - (a) Extend beyond the length, width, or channelward encroachment of the pier;
 - (b) Deleteriously alter long shore drift; or
 - (c) Cause significant individual or cumulative thermal impacts to aquatic resources; or
 - (3) A wind energy system attached to a pier, if there is only one wind energy system per pier for which:
 - (a) The height from the deck of the pier to the blade extended at its highest point is up to 12 feet;
 - (b) The rotor diameter of the wind turbine is up to 4 feet; and
 - (c) The setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

.07 Penalties and Injunctive Relief.

A person that violates Regulation .03A of this chapter shall be subject to all penalties and injunctive relief applicable under:

- (1) Natural Resources Article, Title 8, Subtitle 18, Annotated Code of Maryland;
 - (2) COMAR Title 27; and
 - (3) The enforcement procedures adopted under the local program of the jurisdiction in which the violation occurred.
- END ALL NEW

Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS

Authority: Natural Resources Article, §§8-1806, 8-1808.4(a), and 8-1814, Annotated Code of Maryland

Chapter 01 General Provisions

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(40) (text unchanged)
 - (40-1) *“Pier” has the meaning stated in Natural Resources Article, §8-1808.4(a), Annotated Code of Maryland.*
 - (41)—(64) (text unchanged)

Subtitle 03 PROJECT APPLICATIONS

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

Chapter 01 Notification of Project Applications

.02 Application Requirements.

A.—D. (text unchanged)

E. After receipt of a copy of an application from the applicant or the local approving authority, the Commission shall send written notice of receipt to the applicant and to the local approving authority before the close of the [next] *fifth* business day. A failure of the Commission to send a timely notice shall render §F of this regulation inapplicable as to that application.

F. (text unchanged)