Title 27
CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Notice of Proposed Action

[09-373-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to:

(1) Amend Regulations **.01** and **.02** under **COMAR 27.01.01 General Provisions**;

(2) Repeal Regulation **.01** and recodify existing Regulations **.02** and **.03** to be Regulations **.01** and **.02** under **COMAR 27.01.05 Forest and Woodland Protection**; and

(3) Amend Regulation **.01** and adopt new Regulations **.01-1—.01-7** under **COMAR 27.01.09 Habitat Protection Areas in the Critical Area**.

This action was considered and approved for promulgation by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on October 7, 2009, pursuant to State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish comprehensive standards and procedures, as authorized by Ch. 119, Acts of 2008, for the treatment of the Critical Area buffer.

Designated as the first 100 feet landward from the tidal edge of the Chesapeake and Atlantic Coastal Bays and their tributaries, the buffer is described as “an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances,” in Natural Resources Article, §8-1802, Annotated Code of Maryland. The current regulations are insufficient to protect the buffer adequately.

All aspects of buffer implementation, including buffer establishment, maintenance, measurement, mitigation, and enforcement, have proven to be inconsistently applied across the 64 local jurisdictions with approved Critical Area programs. The proposed regulations create greater specificity and ease of operation for local jurisdictions.

The proposed action amends the current regulations to include definitions that are new and pertinent to Critical Area programs as well as to enhance definitions that already exist within COMAR. This proposed action provides needed uniformity.

The proposed action creates standards for delineation of, and activity in, the buffer. procedures for measuring the mandatory 100-foot buffer as well as expansion requirements are included. Mitigation rates for authorized activities in the buffer have been established in order to facilitate a standardized mitigation ratio across the varying local jurisdictions.

The proposed action identifies how to establish the required buffer by supplying specific timetables and specific standards for buffer establishment.

This proposed action promulgates mitigation ratios, planting materials, and planting standards that will apply across the Critical Area. Ratios for mitigation will be based on the nature of a development activity and its location within the Critical

Area. Therefore, this regulatory proposal will clarify when a buffer management plan is required and, based on the extent of buffer disturbance, what type of plan is necessary.

Finally, this proposed action authorizes local jurisdictions to receive a fee in lieu of planting, which must be deposited in a separate fund, and specifies how a local jurisdiction may spend the money collected from fee-in-lieu projects.

This action also repeals the definition of “forest” and “developed woodland” in the Forest and Woodland Protection regulations, COMAR 27.01.05, since these definitions will be superseded by definitions in COMAR 27.01.01 that are consistent with the Forest Conservation Act definitions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. While the information below is provided for clarity, these regulations implement a portion of H.B. 1253 (Ch. 119, Acts of 2008) that relates to the establishment of comprehensive standards and procedures for buffer management, and any fiscal impact is a result of that legislation and not this proposed action. At the time the bill was drafted, the Department of Legislative Services determined that affected State agencies could handle the bill's changes with existing resources, but that there would be a potential increase in local expenditures for program administration. Nevertheless, we have provided an estimate of economic impact for the proposed regulations.

Under the provisions of the Act, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays is permitted to adopt regulations that require directives for local program development and implementation and require directives for State development activities. H.B. 1253, now Ch. 119, Acts of 2008, authorizes the Critical Area Commission to adopt regulations that establish comprehensive standards and procedures for buffer establishment, maintenance, measurement, mitigation, and enforcement.

These proposed buffer regulations will have economic impact on local governments, industries and trade groups, and the general public. The impacts to the issuing agency are primarily based on the shift of efforts from review and negotiation related to buffer planting plans to ensuring that the plans are consistent with the new regulations. To implement the new regulations, the Critical Area Commission intends to absorb the additional responsibilities and adjust work priorities accordingly utilizing existing staff.

There is no impact to other State agencies because they are not subject to any changes or additions to COMAR 27.01.

Local jurisdictions currently implementing stringent buffer regulations through their local codes will have minimal cost increases, while local jurisdictions needing to put in place new processes to comply with the proposed regulations will incur costs attributable to the possibility of additional staff time spent on review and implementation of buffer management plans. After an initial period of adjustment to the new regulations, it is possible that local staff will move away from project-to-project negotiation and instead have set specific standards that will be applied uniformly, saving local staff time. In addition, some local jurisdictions will require additional personnel and travel expenses to perform inspections, though all jurisdictions are currently responsible for this task through local Critical Area enforcement.

Impact to industries and trade groups will be positive due to the increased planting of trees, shrubs, and other materials that will be required under the proposed regulations. Any development activity on waterfront property will result in some planting requirement, increasing the demand for native trees, shrubs, and other materials. In addition, the requirement for buffer management plans by local jurisdictions will often necessitate the hiring of professionals to prepare the plans. This will include environmental consultants, land surveyors, landscape architects, tree experts, and plant nurseries.

The direct and indirect impact to the general public of Maryland will be positive in the form of enhanced water quality and habitat functions within the buffer. The current implementation of existing “guidelines” and “policies” has produced trends

that are unsustainable. Local program results vary wildly across jurisdictions and have not been adequate to effectuate change to the Chesapeake Bay and Atlantic Coastal Bays. The Chesapeake and Atlantic Coastal Bays are State resources, and, for the benefit of current and future generations, it is imperative that State Law protect irreplaceable State buffer resources and foster more sensitive development and more effective enforcement along the shoreline. This action is an important step toward this end.

Again, these proposed regulations implement a portion of H.B. 1253 (Ch. 119, Acts of 2008); therefore, any fiscal impact was reviewed and deemed acceptable when this legislation was approved by the General Assembly.

II. Types of Economic Impact.	Revenue (R+/R–) Expenditure (E+/E–)	Magnitude
A. On issuing agency: Salaries and wages	(E+)	Minimal
B. On other State agencies:	NONE	
C. On local governments:		
(1) Salaries and wages	(E+)	Negligible to substantial
(2) Travel	(E+)	Negligible to substantial
(3) Fee in lieu revenue	(R+)	Indeterminable
	Benefit (+) Cost (–)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:		
(1) Homebuilders and development community	(-)	Neglible
(2) Environmental consultants and surveyors	(+)	Negligible to substantial
(3) Wholesale and retail nurseries and landscape companies	(+)	Negligible to substantial
F. Direct and indirect effects on public:		
(1) Cost to development community and to consumer	(-)	Negligible
(2) Enhanced water quality, habitat, protection	(+)	Substantial

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Under existing regulations, the Critical Area Commission's primary responsibility is performing the oversight of 64 local Critical Area programs, offering technical assistance and education, and providing local and State project plan review. The Commission will continue to be responsible for these functions with the proposed regulatory revisions, and this work will be conducted by existing staff. Under existing practices, staff spends much time negotiating with applicants over issues such as buffer measurement, establishment, mitigation, and whether a fee-in-lieu is applicable. These proposed regulations will provide specific standards and procedures for all of the aspects of the buffer articulated above. This will allow staff to shift efforts away from negotiating with applicants over these issues to simply reviewing projects to ensure that the regulations are properly followed. Currently, staff can review the same development project five or more times. In a review, staff will write comments, receive a response from an applicant, and then provide additional comments, with most of the remarks relating to protecting and enhancing the buffer. Over time, set standards will eliminate questions and ultimately streamline the project review process.

The fee-in-lieu provision could result in a minimal increase in staff review time. The addition or modification of a local fee-in-lieu scheme will be addressed under the amendment review process already in place for all local jurisdictions that make amendments to their local Critical Area programs; however, no additional personnel will be required to implement this regulation.

B. These proposed changes to the buffer regulations in COMAR 27.01 are not applicable to State agencies. Parallel changes in COMAR 27.02 will likely be made in the future in a separate proposal. Subtitle .02 is applicable to State and local agency actions in the Critical Area.

C(1). Current regulations require local administration of Critical Area Programs. There are 64 local jurisdictions. Each must have sufficient staff resources to implement its local Critical Area program. This implementation includes reviewing permits and other development proposals, providing enforcement, and providing education to the public about the Critical Area. Local codes and ordinances must reflect at least the minimum standards set out in the State regulations. Current regulations require protection and establishment of the buffer yet lack any standards. Local implementation efforts through local codes range from nonexistent to extremely stringent. For example, several jurisdictions do not require any documentation or mitigation for disturbance within the buffer associated with a permitted shore erosion control activity. Others require a buffer management plan, mitigation for each tree removed, and a separate local permit. The impacts of the proposed regulations will be most substantial in those jurisdictions whose current rules are the most lenient. Stringent jurisdictions may not see any impact on staff resources.

In addition, the average number of projects per jurisdiction that impact the buffer varies greatly. Furthermore, the total number of projects across the Critical Area is heavily dependent on economic and development trends. The magnitude of economic impact again will vary from minimal in those jurisdictions that have little or no development activity in the Critical Area, to substantial in those jurisdictions that have a lot of activity. The busiest jurisdictions, however, already have the most staff dedicated to Critical Area implementation. Many of these jurisdictions will be able to absorb much of the work associated with this regulatory action using present staff resources. Similar obstacles to efficiency for Critical Area Commission staff reviewing local projects also exist for local staff. Much staff time at the local level is spent negotiating with developers and property owners due to a lack of specificity in current law. The additional specificity provided in the regulations will ultimately streamline review.

Currently, local governments review an application for development in the Critical Area, enter it into the system, and then forward the application for review and comment by the staff of the Critical Area Commission. Determining whether the project requires buffer establishment, and what degree of establishment is warranted, will be the preliminary responsibility of the local planner. The time spent on reviewing establishment requirements will be contingent on the number of projects in any given jurisdiction. This number varies widely over the various local governments. For example, the 5-year total project average for Anne Arundel County was 373 projects. This includes a high of 654 projects in 2006. On the opposite end of the spectrum, Worcester County had a 5-year average of 21 projects. This number includes a high of 44 projects in 2006. Assuming that the average salary of a local government worker is $29 per hour, it will cost, on average, $10,817 per year for Critical Area implementation within Anne Arundel County, and only $609 within Worcester County.

The first few projects that require establishment under the new regulations will require more local staff time to process; however, this initial increase will be offset over time as the local governments become more familiar with the requirements of establishment.

For jurisdictions that currently maintain a fee-in-lieu program, salary and wages will not change as a result of this regulation; however, in jurisdictions where no fee-in-lieu program currently exists, additional staff time may be required to estimate and collect fees from applicants who cannot plant the buffer on-site. Assuming an average wage for a local government employee of $29 per hour, and assuming the average time spent on reviewing a fee-in-lieu projects is 1 hour, it will cost $29 per project. Assuming that a local jurisdiction reviews ten fee-in-lieu projects on average per year, the total cost for salaries and wages is $290.

Staff in all jurisdictions may spend additional time educating the public on the new fee-in-lieu program. It is feasible, however, that any additional education may be incorporated into the education that is often already provided to the public by local governments in regard to development within the Critical Area.

In addition, local jurisdictions will have to purchase sites for which the fees will be utilized for planting, as well as to plant the sites; however, these costs are included as part of the fee-in-lieu rate itself, so no additional expenditures will be required.

C(2). Current regulations require local government staff to enforce their Critical Area Program and the rules protecting the buffer. With the proposed additional requirements for buffer establishment and buffer management plans, local jurisdictions will be required to do additional site inspections in order to release the required financial assurances associated with buffer management plans. Some jurisdictions already inspect every planting site after a specified period, while others do not require the financial assurance and therefore inspect only immediately after planting. Travel costs will vary depending on distance from the county or municipal offices. Some jurisdictions utilize existing inspectors for Critical Area implementation and will not see an increased travel need. Under existing policies and practices, plantings in the buffer are already required to be inspected for survivability by local governments. Under the new regulations, a greater range of development activities will require some form of buffer establishment. However, it is impossible to determine where these projects will be located and how many of these projects would have required planting inspections under the previously existing practices. These inspections will be conducted by existing staff.

The travel costs associated with this regulation are indeterminable, since the travel distances to potential sites where the jurisdiction may utilize the fees for plantings will vary. It is possible that this cost could be absorbed as part of routine site visits that are conducted for other Critical Area projects that the local jurisdiction is performing.

C(3). The total amount of revenue acquired from the fee-in-lieu program is indeterminable, as the number, size, and scope of projects that require use of the fee will vary by year as well as by jurisdiction. The amount of a revenue increase from the fee-in-lieu program will vary. This is because the current fee-in-lieu rate varies from jurisdiction to jurisdiction, if a fee-in-lieu program is present at all.

The variation in revenue increase can best be shown through an example. Suppose that an applicant applies for and is granted a variance to construct a 500-square-foot deck within the 100-foot buffer, but there is no area available on-site either inside or outside of the 100-foot buffer to plant the required mitigation (1,500 square feet), and no off-site planting area within the Critical Area is available. Consequently, the applicant will be required to pay $2,250 into a local jurisdiction's fee-in-lieu account. If this project were to occur within one Eastern Shore county, revenues will rise. This will result because of the increase in the fee-in-lieu rate (10 cents per square foot to $1.50 per square foot) from $150 to $2,250, or an increase in revenue of $2,100. Likewise, based on this regulation, the fee-in-lieu revenues will also rise in one Western Shore county. This will result because of the increase in rate ($1.20 per square foot to $1.50 per square foot) from $1,800 to $2,250, or an increase in revenue of $450. These numbers will vary on a project-by-project basis, depending on the mitigation requirements per project, and the existing fee in a particular jurisdiction. Additionally, the number of fee-in-lieu projects will vary across jurisdictions. Therefore, while it is certain that revenues will increase, it is difficult to determine accurately the magnitude of the increase.

The total amount of money acquired through the fee-in-lieu program will be used to provide plantings within the 100-foot buffer on other mitigation areas where planting is not a condition of development or redevelopment. This resulting increase

in planting will exponentially benefit water quality and habitat for the Chesapeake Bay. Using the examples above, the increase in revenues acquired on the Eastern Shore county will result in approximately 70 additional trees being planted; on the Western Shore, an additional ten trees will be planted. Given an average of ten fee-in-lieu projects per year, this results in over 700 trees in the Eastern Shore county, and 70 trees in the Western Shore county. The fees will cover planting materials, labor, land acquisition, planting maintenance, monitoring, and administration. In addition, the fees may be used for additional water quality and habitat enhancement projects, if approved by the Commission. We note that a jurisdiction may choose to maintain the fees in an account over time in order to be used on larger-scale buffer planting projects.

E(1). The estimated costs of the proposed regulations on regulated industries or trade groups are negligible. The proposed regulations will provide predictability and consistency related to buffer establishment. Numerous options will be provided in terms of meeting these requirements. In some jurisdictions, developers will see a significant cost savings since credit is being given for natural regeneration and small stock (that is, seedlings). Some jurisdictions currently allow only large stock material (trees of 2-inch caliper or greater) for buffer establishment, where a single tree can cost in excess of $100. The cost of buffer establishment and the cost of placing signs to delineate the buffer may be passed on in an increased home price to the future property owners.

E(2). There will be a positive economic impact on the environmental consulting, landscape architecture, land surveying, and the design and engineering communities from increased business due to the proposed regulations. There will be an increased need for this type of contractor to assist developers and other property owners who will now be required to establish the buffer on waterfront properties. There will be an increase in the number of buffer management plans required in all jurisdictions. The magnitude of the increase will be contingent on the difference between existing strictness of a local Critical Area Program and the standards proposed by the regulations. Additionally, the same economic and development trends that drive the number of projects will affect these contractors.

The regulated industry most heavily affected by the proposed regulations will be landscape architects. There will be some time required for these professionals to familiarize themselves with the new requirements; however, the time required to get acclimated with the new regulations will be offset by the increase in predictability they provide. The guess work of what is acceptable will be removed, thus eliminating the need for multiple submissions.

E(3). There will be a positive economic impact to the wholesale and retail nursery or greenhouse community as well as landscaping contractors. Similar to E(2) above, additional planting of trees and shrubs will occur within the buffer as a result of the proposed regulations. There will be an increased demand for native trees and shrubs from wholesale nurseries as well as retail establishments such as large home centers. While some property owners will install the plants themselves, others will hire landscape contractors to perform this work. The magnitude of the increase again depends on the strictness of the current local Critical Area program and the level of development activity.

Similar to the effect on landscape architects, the regulations will provide a increase in business to nursery and planting stock suppliers. The guidelines provided for buffer establishment within this regulation will provide insight for the nursery industry as to which plants are allowed to be placed in the buffer and thus allow for them to add these native species to their stock for consumption by the general public.

F(1). The estimated costs of the proposed regulations that will be passed to the final consumers are negligible. The Critical Area Law has been in effect for 25 years, and most local Programs have been in existence for 20 years. The principles of buffer establishment and mitigation have been part of the Critical Area law since inception.

Furthermore, for protection and enhancement of the buffer, the proposed regulations will provide consistent rules outlining how a developer is to provide buffer establishment prior to sale of lots. Currently, buffer establishment often falls to the buyer of the lot. The developer may pass on the costs to the buyer, but the costs should not exceed, and in many cases may be lower than, the costs to an individual lot buyer. Again, the increase or decrease in costs will be dependent upon the stringency of the local program.

This regulation will have a direct impact on applicants who cannot meet planting mitigation requirements either on-site or off-site and therefore must utilize the fee-in-lieu program. The cost per square foot as a result of the fee-in-lieu will be larger than what is currently required in most jurisdictions, and thus will result in a larger expenditure on the applicant. It should be

noted, however, that the fee-in-lieu program can only be utilized after the applicant has exhausted all opportunities to plant on-site or on an off-site property within the Critical Area, and the proposed rate constructed to adequately cover the articulated goals of a fee-in-lieu program such as: planting materials, labor, land acquisition, planting maintenance, and monitoring and administration.

F(2). There will be substantially positive direct and indirect effects of the proposed regulations on the general public. The stated purpose of the Critical Area Act is to establish a resource protection program for the Chesapeake and Atlantic Coastal Bays and their tributaries by fostering more sensitive development along the shoreline so impacts to water quality and natural habitats are minimized. It further requires the Commission to establish criteria to be implemented at the local level in a consistent and uniform manner. Current regulations do not provide the needed specificity for this goal to be accomplished; however, the proposed regulations will ensure that development activity along the shoreline increases the amount of native forest vegetation within the Critical Area. Forests, as a land use, are best for the Chesapeake and Atlantic Coastal Bays and their tributaries in terms of protecting water quality and conserving important wildlife habitats. Forests filter runoff, prevent sediments from entering water bodies and provide the basis for a healthy stream ecosystem. The State and Federal governments have spent millions of dollars in attempting to restore the State's resources and undo the harm of unsustainable development trends within the watershed. The proposed regulations will help prevent additional harm as the population within the Critical Area continues to grow, and will also work to lessen the impact of existing development. Once the resource is impacted, costs are astonishing. Stream restoration projects can cost thousands of dollars per linear foot of stream. The proposed regulations will help prevent degradation in the first place by protecting and enhancing buffers.

This regulation will provide indirect benefits to the public, as the additional plantings that will be created as a result of the fees collected will significantly enhance water quality and habitat within the Critical Area, specifically within the 100-foot buffer. Additionally, the fees may be used for other water quality and habitat enhancement projects, if approved by the Commission. All of these measures will exponentially increase the overall health of the Chesapeake and Atlantic Coastal Bays.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

The proposed action has a meaningful economic impact on small businesses. Many of the environmental consulting and landscape design firms that provide buffer management plan design services are small businesses. The Commission anticipates that the proposed regulatory changes will increase the number of buffer management plans prepared each year. Similarly, many local native plant nurseries and landscaping contractors are small businesses that will see an increase in sales and service contracts due to the additional planting that will be required for any development on waterfront property. This increase will have a positive impact on these smaller businesses that should continue for years to come. When considering these factors, the proposed buffer regulations will have a moderate to substantial positive impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Lisa Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, Maryland 21401, or call 410-260-3478, or email to lhoerger@dnr.state.md.us, or fax to 410-974-5338. Comments will be accepted through December 21, 2009. The Critical Area Commission will hold one hearing concerning the adoption of these proposed amendments. This hearing will be held on December 10, 2009, in the cafeteria of the Annapolis Senior High School, 2700 Riva Road, Annapolis, MD 21401. All interested persons are invited to attend the hearing and offer their views. Any hearing impaired persons may request an interpreter to be present at the hearing by giving 5 working days notice to Lisa Hoerger, Regulations Coordinator, at 410-260-3478.

27.01.01 General Provisions

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

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(7) (text unchanged)

(8) **[**"Buffer" means a naturally vegetated area or vegetated area, established or managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made disturbances.**]** *Buffer.*

(a) "Buffer" means an area that:

(i) Based on conditions present at the time of development, is immediately landward from mean high water of tidal waters, the edge of bank of a tributary stream, or the edge of a tidal wetland; and

(ii) Exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.

(b) "Buffer" includes an area of:

(i) At least 100 feet, even if that area was previously disturbed by human activity; and

(ii) Expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

(8-1)—(19) (text unchanged)

(20) "Developed woodlands" means **[**those areas of 1 acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses**]** *an area of trees and natural vegetation interspersed with residential, commercial, industrial, institutional, or recreational development.*

(21) **[**"Development activities" means the construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures.**]** *"Development activity" means human activity that results in disturbance to land, natural vegetation, or a structure.*

(21-1) (text unchanged)

(21-2) Disturbance.

(a) "Disturbance" means any alteration or change to the land.

(b) "Disturbance" includes any amount of clearing, grading, or construction activity.

(22)—(23) (text unchanged)

(23-1) "Establishment" means the creation of native vegetated cover throughout the buffer.

(24)—(25) (text unchanged)

(26) "Forest" **[**means a biological community dominated by trees and other woody plants covering a land area of 1 acre or more. This also includes forests that have been cut, but not cleared**]** *has the meaning stated in Natural Resources Article, §5-1601, Annotated Code of Maryland.*

(27)—(39) (text unchanged)

(39-1) "Mitigation" means an action taken to compensate for an adverse impact to the environment resulting from a development activity or a change in land use or intensity.

(40)—(78) (text unchanged)

.02 Explanation of Certain Terms.

A. Every provision of this subtitle constitutes part of the "criteria for program development" within the meaning and intent of Natural Resources Article, §8-1808(d), whether that provision is termed a "definition", "general policy", "policy", or "criteria".

B. Unless the context specifically provides otherwise or construction of the text would be rendered unreasonable, in this subtitle:

(1) All words importing one gender include and apply to the other gender; and

(2) The singular includes the plural and vice versa.

27.01.09 Habitat Protection Areas in the Critical Area

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

.01 Buffer.

A. **[**Definition. Buffer" means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.**]** *In this chapter, the following terms have the meanings indicated.*

B. Terms Defined.

(1) "Accessory" means a structure that is:

(a) Detached from a principal structure;

(b) Located on the same lot as the principal structure; and

(c) Customarily incidental and subordinate to the principal structure.

(2) "Addition" means a newly constructed area that increases the size of a structure.

(3) Buffer Management Plan.

(a) "Buffer management plan" means a narrative, graphic description, or plan of the buffer that is necessary when an applicant proposes a development activity that will:

(i) Affect a portion of the buffer;

(ii) Alter buffer vegetation; or

(iii) Require the establishment of a portion of the buffer in vegetation.

(b) "Buffer management plan" includes a major buffer management plan, a minor buffer management plan, and a simplified buffer management plan.

(4) "Caliper" has the meaning stated in COMAR 08.19.03.01.

(5) "Canopy tree" means a tree that, when mature, reaches a height of at least 35 feet.

(6) "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to a local jurisdiction.

(7) "In-kind replacement" means the removal of a structure and the construction of another structure that is smaller than or identical to the original structure in use, footprint area, width, and length.

(8) "Invasive species" means a type of plant that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

(9) "Landward edge" means the limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary stream.

(10) "Large shrub" means a shrub that, when mature, reaches a height of at least 6 feet.

(11) "Major buffer management plan" means a plan and supporting documentation required under Regulation .01-3J of this chapter.

(12) "Minor buffer management plan" means a plan and supporting documentation required under Regulation .01-3I of this chapter.

(13) "Native" means indigenous to the physiographic area in Maryland where the planting is proposed.

(14) "Natural regeneration" has the meaning stated in COMAR 08.19.03.01.

(15) "Simplified buffer management plan" means a plan required for an application under Regulation .01-3H of this chapter.

(16) "Small shrub" means a shrub that, when mature, reaches a height of up to 6 feet.

(17) "Structure" means building materials that are purposely joined together on or over land or water, including those that do not result in lot coverage.

(18) "Substantial alteration" means a repair, reconstruction, or improvement of a principal structure, with a proposed total footprint that is at least 50 percent greater than that of the existing principal structure.

(19) "Understory tree" means a tree that, when mature, reaches a height of 12 to 35 feet.

(20) "Upland boundary" means the landward edge of a tidal wetland or a nontidal wetland.

[B.**]** *C.* (text unchanged)

[C.**]** (proposed for repeal)

D. Buffer Standards.

(1) A local jurisdiction may authorize disturbance in the buffer for:

(a) A new development activity or a redevelopment activity:

(i) Associated with a water-dependent facility under COMAR 27.01.03; or

(ii) Located in an approved buffer exemption area under Regulation .01-7 of this chapter; or

(b) In accordance with COMAR 26.24.02, a shore erosion control measure under COMAR 27.01.04.

(2) Except as authorized under §D(1) of this regulation, a local jurisdiction may not authorize disturbance in the buffer.

(3) Except for the minimum buffer widths under §D(5)—(8) of this regulation, a local jurisdiction shall establish a buffer of at least 100 feet landward from:

(a) The mean high water line of tidal waters;

(b) The edge of each bank of a tributary stream; and

(c) The upland boundary of a tidal wetland.

(4) For purposes related to the calculation of the minimum buffer widths under §D(5)—(8) of this regulation, a local jurisdiction shall measure landward from the points specified under §D(3) and (4) of this regulation.

(5) Except as provided under §D(6) of this regulation, and in accordance with §D(4) of this regulation, if a local jurisdiction grants final local approval for a subdivision or a site plan in the Resource Conservation Area on or after July 1, 2008, the local jurisdiction shall establish:

(a) An expanded buffer in accordance with §D(7) and (8) of this regulation; and

(b) A buffer of at least 200 feet from tidal waters or a tidal wetland.

(6) The provisions of §D(5)(b) of this regulation do not apply if:

(a) The application for subdivision or site plan approval was submitted before July 1, 2008, and legally recorded by July 1, 2010;

(b) The application involves the use of growth allocation; or

(c) A local program procedure approved by the Commission provides for the reduction of the strict application of the minimum 200-foot buffer under §D(5)(b) of this regulation if that minimum would preclude a subdivision of the property at a density of one dwelling unit per 20 acres or an intra-family transfer authorized under Natural Resources Article, §8-1808.2, Annotated Code of Maryland.

(7) If a buffer is contiguous to a steep slope, a nontidal wetland, a nontidal wetland of special State concern under COMAR 26.23.06.01, a hydric soil, or a highly erodible soil, a local jurisdiction shall expand the minimum buffer required under §D(3) or (5) of this regulation and shall calculate the extent of that expansion in accordance with the following requirements:

(a) A steep slope at a rate of 4 feet for every 1 percent of slope or to the top of the slope, whichever is greater;

(b) A nontidal wetland of special State concern to include the wetland and its regulated 100-foot buffer;

(c) A nontidal wetland that is not a nontidal wetland of special State concern, to the upland boundary of the nontidal wetland; and

(d) A highly erodible soil on a slope less than 15 percent or a hydric soil, to the lesser of:

(i) The landward edge; or

(ii) 300 feet, including the minimum buffer required under §D(3) or (5) of this regulation.

(8) On a lot or parcel that was created before January 1, 2010, a local jurisdiction may authorize in the expanded buffer a development activity that impacts a highly erodible soil on a slope less than 15 percent or a hydric soil, if:

(a) The location of the development activity is in the expanded portion of the buffer, but not the 100-foot buffer;

(b) The entire buffer occupies at least 75 percent of the lot or parcel; and

(c) Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded buffer.

.01-1 Buffer Establishment.

A. Applicability.

(1) The requirements of this regulation are applicable to a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.

(2) The requirements of this regulation are not applicable to:

(a) An in-kind replacement of a principal structure; or

(b) Land that remains in agricultural use after subdivision in accordance with a buffer management plan under Regulation .01-3 of this chapter.

B. A local jurisdiction shall require an applicant to establish the buffer in vegetation in accordance with §C of this regulation and Regulation .01-2 of this chapter and to provide a buffer management plan under Regulation .01-3 of this chapter when an applicant applies for:

(1) Creation of a new subdivision or a new lot;

(2) Conversion from one land use to another land use on a lot or a parcel; or

(3) Development on a lot or a parcel created before January 1, 2010.

C. If the buffer is not fully forested at the time of application, an applicant shall establish the buffer to the extent required in the following table:

Development Category	*Lot Created Before Local Program Adoption*	*Lot Created After Local Program Adoption*
New development on a vacant lot	*Establish the buffer based on total lot coverage*	*Fully establish the buffer*
New subdivision or new lot	*Fully establish the buffer*	
New lot with an existing dwelling unit	*Establish the buffer based on total lot coverage*	
Conversion of a land use on a parcel or lot to another land use	*Fully establish the buffer*	
Addition or accessory structure	*Establish the buffer based on net increase in lot coverage*	
Substantial alteration	*Establish the buffer based on total lot coverage*	

D. For a buffer management plan required under Regulation .01-3J of this chapter that is related to the establishment of more than 1 acre, a local jurisdiction may approve natural regeneration up to 50 percent of the area required for establishment if:

(1) The plan does not include any new managed lawn or turf;

(2) All of the natural regeneration area is within 50 feet of a mature forest that contains a seed bank of native species adequate for natural regeneration;

(3) The plan includes a supplemental planting plan for subsequent implementation if the natural regeneration does not succeed; and

(4) The financial assurance provided for implementing the buffer management plan:

(a) Is sufficient to cover the cost of planting an equivalent area; and

(b) Specifies that release of the financial assurance may not occur until the later of 5 years after the date of plan approval or the areal coverage of the buffer is at least 300 native woody stems, on a per-acre basis, that are at least 4 feet in height.

E. At the end of 5 years after the date of approval of a natural regeneration plan, an applicant shall implement a supplemental planting plan for at least 2 years if the areal coverage of the buffer is not, on a per-acre basis, at least 300 native woody stems of at least 4 feet in height.

.01-2 Mitigation and Planting Standards.

A. As applicable to a site, a local jurisdiction shall require that a buffer management plan in accordance with Regulation .01-3 of this chapter satisfy the planting and mitigation standards of this regulation and satisfy the buffer establishment standards required under Regulation .01-1 of this chapter so as to:

(1) Prohibit the installation or cultivation of new lawn or turf on-site;

(2) Ensure the planting of native species in compliance with the amounts specified under §§B, F, and G of this regulation;

(3) Ensure coverage of the site with mulch or ground cover or both; and

(4) Provide optimum habitat and water quality benefits.

B. As applicable to a site, a local jurisdiction shall calculate the amount of buffer mitigation required in accordance with the following standards:

(1) For a development activity within the buffer, mitigation shall be based on the limits of disturbance and calculated in accordance with the ratios under §F of this regulation;

(2) For a development activity that results in the removal of an individual tree with a diameter of at least 2 inches when measured at 4.5 feet above the ground surface, mitigation shall be at a rate of 100 square feet for every 1 inch of diameter;

(3) For removal of a dead, diseased, or dying tree, mitigation shall be at least one 1-inch caliper tree for each tree removed; and

(4) For disturbance associated with invasive species control, replanting shall be equivalent to the size of the area disturbed and in accordance with the buffer management plan.

C. Except as authorized under §D of this regulation, if mitigation planting cannot be located on-site within the buffer because of site constraints, a local jurisdiction shall require planting in the following order of priority:

(1) On-site and adjacent to the buffer; and

(2) On-site elsewhere in the Critical Area.

D. A local jurisdiction may authorize payment of a fee in lieu of buffer mitigation under Regulation .01-4 of this chapter, but only if there is no feasible alternative.

E. A local jurisdiction may authorize off-site planting in the buffer if this option is part of a local Critical Area program approved by the Commission or the subject of a written agreement between the local jurisdiction and the Commission.

F. In accordance with the applicable activity, a local jurisdiction shall require the following ratios of mitigation:

Activity	Mitigation Ratio
Shore erosion control	1:1
Riparian water access	2:1
Development or redevelopment of water-dependent facilities	2:1
Variance	3:1
Violation	4:1

G. A local jurisdiction may authorize the combination of the planting and mitigation standards found in §G(3) and (4) of this regulation in accordance with the following table:

Requirement	*Amount*	*Options*
Establishment	*Less than ¼ acre*	*Landscaping stock according to §H of this regulation for the entire area*
	¼ acre to less than or equal to 1 acre	*At least 50 percent of area in landscaping stock according to §H of this regulation, the remainder according to §J of this regulation*
	Greater than 1 acre to less than or equal to 5 acres	*At least 25 percent of area in landscaping stock according to §H of this regulation, the remainder according to §J of this regulation*
	Greater than 5 acres	*At least 10 percent of area in landscaping stock according to §H of this regulation, the remainder according to §J of this regulation*
Mitigation	*Less than 1 acre*	*Landscaping stock according to §H of this regulation for the entire area*
	1 acre or greater	*At least 50 percent of area in landscaping stock according to §H of this regulation, the remainder according to §J of this regulation*

H. A local jurisdiction shall apply the following planting credits for the type and size of the vegetation proposed:

Vegetation Type	*Minimum Size Eligible for Credit*	*Maximum Credit Allowed (Square Feet)*	*Maximum Percent of Credit*
Canopy tree	*2-inch caliper and 8 feet high*	*200*	*Not applicable*
Canopy tree	*1-inch caliper and 6 feet high*	*100*	*Not applicable*
Understory tree	*1-inch caliper and 6 feet high*	*75*	*Not applicable*
Large shrub	*1 gallon and 4 feet high*	*50*	*30*
Small shrub	*1 gallon and 18 inches high*	*25*	*20*
*Herbaceous perennial**	*1 quart*	*2*	*10*
*Planting Cluster 1**	*1 canopy tree; and 3 large shrubs or 6 small shrubs of sizes listed above*	*300*	*Not applicable*
*Planting Cluster 2**	*2 understory trees; and 3 large shrubs or 6 small shrubs of sizes listed above*	*350*	*Not applicable*

** These options are available only for buffer establishment and buffer mitigation of less than 1 acre.*

I. All landscaping stock planted shall be 100 percent guaranteed for at least 2 years after planting is completed.

J. A local jurisdiction may use the following table to allow flexible stocking size when authorized under §G of this regulation:

Stock Size of Trees Only	*Required Number of Stems Per Acre*	*Survivability Requirement*	*Minimum Financial Assurance Period After Planting*
Bare-root seedling or whip	*700*	*50 percent*	*5 years*
½-inch to 1-inch container grown trees	*450*	*75 percent*	*2 years*
More than 1-inch container grown trees	*350*	*90 percent*	*2 years*

K. A local jurisdiction may not:

(1) Authorize a variance to the planting and mitigation standards under this regulation; or

(2) Issue a final use and occupancy permit for an application under Regulation .01-3B(2) of this chapter unless the applicant:

(a) Completes the implementation of a buffer management plan; or

(b) Provides financial assurance to cover the costs for:

(i) Materials and installation; and

(ii) Long-term survivability in accordance with the requirements of Regulation .01-3J(2)(d) of this chapter.

L. Before recordation of a final subdivision, an applicant shall:

(1) Post permanent signs delineating the upland boundary of the buffer at a ratio of at least one sign per lot or per 200 linear feet of shoreline, whichever is applicable; and

(2) Design each sign required under §L(1) of this regulation so that it:

(a) Is at least 11 inches in width and 15 inches in height;

(b) Is placed at a height of 4.5 feet, but not attached to a tree; and

(c) Clearly states "Critical Area Buffer—No clearing or disturbance permitted".

M. Concurrent with the recordation of a final plat, an applicant shall record a protective easement for the buffer.

N. A local jurisdiction may not approve a final subdivision application until the jurisdiction has reviewed and approved the buffer management plan.

.01-3 Buffer Management Plans.

A. The provisions of this regulation do not apply to maintenance of an existing grass lawn or an existing garden in the buffer.

B. A local jurisdiction shall require an applicant proposing a development activity to submit a buffer management plan if:

(1) The establishment of the buffer is required in accordance with Regulation .01-1 of this chapter; or

(2) Disturbance to the buffer will result from the issuance of a:

(a) Variance;

(b) Subdivision approval;

(c) Site plan approval;

(d) Shore erosion control permit as required under COMAR 26.24.01;

(e) Building permit;

(f) Grading permit; or

(g) Special exception.

C. In accordance with the requirements under Regulations .01-1 and .01-2 of this chapter, a local jurisdiction shall require an applicant to submit a:

(1) Simplified buffer management plan;

(2) Minor buffer management plan; or

(3) Major buffer management plan.

D. A local jurisdiction may not approve a buffer management plan unless:

(1) The plan clearly indicates that all planting standards under Regulation .01-2 of this chapter will be met; and

(2) Appropriate measures are in place for the long-term protection and maintenance of all buffer areas established under this regulation.

E. A local jurisdiction may not issue a permit for a development activity under Regulation .01-1 or .01-2 of this chapter unless the local jurisdiction has approved the buffer management plan submitted under §C of this regulation.

F. If an applicant fails to implement a buffer management plan, that failure shall constitute a violation of the local Critical Area program.

G. A local jurisdiction may not issue a permit on a property that is the subject of a violation under §F of this regulation.

H. Simplified Buffer Management Plan.

(1) Before the performance of an activity under this section in the buffer, a local jurisdiction shall require the applicant to submit a simplified buffer management plan as part of the application associated with any of the following activities:

(a) Providing access to a private pier or shoreline that is up to 3 feet wide;

(b) Manually removing invasive or noxious vegetation;

(c) Filling to maintain an existing grass lawn; or

(d) Except for an emergency situation under §H(2) of this regulation, cutting a tree that is in imminent danger of falling and causing damage to a dwelling or other structure, causing blockage to a stream, or accelerating shore erosion.

(2) If cutting a tree in the buffer is immediately necessary because of an emergency situation, the applicant shall submit a simplified buffer management plan to the local jurisdiction at the earliest possible time after the tree has been cut.

(3) A simplified buffer management plan shall include:

(a) A brief narrative describing the proposed activity, including the anticipated start date and method to be used;

(b) The proposed mitigation;

(c) The proposed planting date; and

(d) The signature of the party responsible for the proposed activity and for ensuring the survival of the planting.

I. Minor Buffer Management Plan.

(1) A local jurisdiction shall require an applicant to submit a minor buffer management plan for:

(a) Establishment of less than 5,000 square feet of the buffer for an application listed under Regulation .01-1 of this chapter; or

(b) A requested disturbance that requires less than 5,000 square feet of mitigation for an application listed under Regulation .01-2 of this chapter.

(2) A minor buffer management plan shall include:

(a) A plan that shows the proposed limit of disturbance, the total number and size of trees to be removed, if applicable, and the arrangement of the planting to be done;

(b) A landscape schedule that shows the proposed species type, the quantity of plants, the size of plants to be installed, and the planting date;

(c) A maintenance plan for the control of invasive species, pests, and predation that shows invasive species and pest control practices, the provision of at least 2 years of monitoring, and a reinforcement planting provision if survival rates fall below the standards in Regulation .01-2H of this chapter;

(d) An inspection agreement that grants permission to the local jurisdiction to inspect the plantings at appropriate times;

(e) If buffer establishment is required under Regulation .01-1 of this chapter, the information on which calculation of the amount of buffer to be planted was based;

(f) If buffer mitigation is required under Regulation .01-2 of this chapter, the information on which calculation of the amount of the buffer to be planted was based; and

(g) The signature of the party responsible for the proposed activity and for ensuring the survival of the planting.

J. Major Buffer Management Plan.

(1) A local jurisdiction shall require an applicant to submit a major buffer management plan for:

(a) Establishment of at least 5,000 square feet of the buffer for an application listed under Regulation .01-1 of this chapter; or

(b) A requested disturbance that requires at least 5,000 square feet of mitigation for an application listed under Regulation .01-2 of this chapter.

(2) A major buffer management plan shall include:

(a) A plan that shows the proposed limit of disturbance, the total number and size of trees to be removed, if applicable, and the arrangement of the planting to be done;

(b) A landscape schedule that shows the proposed species type, the quantity of plants, the size of plants to be installed, and the planting date;

(c) A maintenance plan for the control of invasive species, pests, and predation that shows invasive species and pest control practices, the provisions of at least 2 years of monitoring, and a reinforcement planting provision if survival rates fall below the standards in Regulation .01-2H of this chapter and §E(2)(d) of this regulation;

(d) A long-term protection plan that includes evidence of financial assurance that adequately covers the planting and survivability requirement, a provision for at least 2 years of monitoring as required in Regulation .01-2H of this chapter, and if planting, an anticipated planting date before construction or the sale of the lot;

(e) An inspection agreement that grants permission to the local jurisdiction to inspect the plantings at appropriate times;

(f) If buffer establishment is required under Regulation .01-1 of this chapter, the information on which calculation of the amount of buffer to be planted was based;

(g) If buffer mitigation is required under Regulation .01-2 of this chapter, the information on which calculation of the amount of the buffer to be planted was based; and

(h) The signature of the party responsible for the proposed activity and for the survival of the planting.

(3) For a major buffer management plan:

(a) A single species may not exceed 20 percent of the total planting requirement; and

(b) Shrubs may not exceed 50 percent of the total planting requirement.

.01-4 Fee In Lieu of Buffer Mitigation.

A. A local jurisdiction shall collect a fee in lieu of buffer mitigation if the planting requirements under Regulation .01-2 of this chapter cannot be met.

B. A local jurisdiction shall:

(1) Calculate the square footage of mitigation due in accordance with Regulation .01-2 of this chapter;

(2) Except as provided under §C of this regulation, collect at least $1.50 per square foot of mitigation required;

(3) Establish a special fund, which may not revert to the jurisdiction's general fund, for the collection of the fee in lieu of buffer mitigation; and

(4) Use money from that fund only:

(a) To establish the buffer on sites where planting is not a condition of development or redevelopment; or

(b) For water quality and habitat enhancement projects, as described in a local Critical Area program approved by the Commission or in an agreement between the local jurisdiction and the Commission.

C. A local jurisdiction may utilize a lesser fee in lieu of buffer mitigation that is based on an alternative to the amount required under §B of this regulation if:

(1) The jurisdiction demonstrates that its proposed alternative will ensure the receipt of funds sufficient to administer a financially sound fee in lieu of buffer mitigation program, based on the following costs in that jurisdiction:

(a) Planting materials;

(b) Labor;

(c) Land acquisition, either by fee simple or by easement;

(d) Planting maintenance; and

(e) Monitoring and administration of the special account; and

(2) The Commission approves the lesser alternative proposed.

D. Each year by April 1, on a form provided by the Commission, a local jurisdiction shall report to the Commission regarding the administration of its fee program and its special fund over the course of the previous calendar year, including:

(1) The number of projects for which a fee was collected and the amount of the fee per project;

(2) The total square footage of buffer impact that generated the fee;

(3) A short description of each planting project, including the amount spent on each project;

(4) The square footage area of buffer replanted;

(5) The account balance as of December 31; and

(6) If funds are purposely being held in the separate account in order to achieve a long-term purpose that is consistent with the local program polices and goals, the nature of that purpose and the projected time and funding that will be necessary to accomplish that purpose.

.01-5 Agricultural Activities.

A. The buffer is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices as required in COMAR 27.01.06.

B. Agricultural activities are permitted in the buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the mean high water line of tidal waters or tributary streams (excluding drainage ditches), or from the edge of tidal wetlands, whichever is further inland, is established, and further provided that:

(1) The filter strip shall be composed of either trees with a dense ground cover, or a thick sod of grass, and shall be so managed as to provide water quality benefits and habitat protection consistent with the policies stated in Regulation .01 of this chapter; noxious weeds, including Johnson grass, Canada thistle, and multiflora rose, which occur in the filter strip, may be controlled by authorized means;

(2) The filter strip shall be expanded by a distance of 4 feet for every 1 percent of slope, for slopes greater than 6 percent;

(3) The 25-foot vegetated filter strip shall be maintained until such time as the landowner is implementing, under an approved soil conservation and water quality plan, a program of best management practices for the specific purposes of improving water quality and protecting plant and wildlife habitat; and provided that the portion of the soil conservation and water quality plan being implemented achieves the water quality and habitat protection objectives of the 25-foot vegetated filter strip;

(4) The best management practices shall include a requirement for the implementation of a grassland and manure management program, where appropriate, and that the feeding or watering of livestock may not be permitted within 50 feet

of the mean high water line of tidal water and tributary streams, or from the edge of tidal wetlands, whichever is further inland;

(5) Clearing of existing natural vegetation in the buffer is not allowed; and

(6) Farming activities, including the grazing of livestock, do not disturb stream banks, tidal shorelines, or other habitat protection areas as described in this chapter.

.01-6 Tree Clearing and Timber Harvesting.

A. The buffer shall be managed to achieve or enhance the functions stated in Regulation .01 of this chapter. Cutting or clearing of trees within the buffer shall be prohibited except that commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands if:

(1) This cutting does not occur in the habitat protection areas described in COMAR 27.01.09.02, .03, .04, and .05; and

(2) The cutting is conducted pursuant to the requirements of COMAR 27.01.05 and in conformance with a buffer management plan prepared by a registered, professional forester and approved by the Forestry Programs and the Fish, Heritage and Wildlife Administration of the Department of Natural Resources.

B. The plan shall be required for all commercial harvests within the buffer, regardless of the size of the area to be cut, and shall contain the following minimum requirements:

(1) Disturbance to stream banks and shorelines shall be avoided;

(2) The area disturbed or cut shall be replanted or allowed to regenerate in a manner that assures the availability of cover and breeding sites for wildlife, and reestablishes the wildlife corridor function of the buffer; and

(3) The cutting does not involve the creation of logging roads and skid trails within the buffer.

C. Commercial harvesting of trees, by any method, may be permitted to the edge of intermittent streams provided that the cutting is conducted pursuant to the requirements of §A(1) of this regulation.

.01-7 Buffer Exemption Areas.

As part of the local Critical Area program to be submitted to the Commission, local jurisdictions may request an exemption of certain portions of the Critical Area from the buffer requirements where it can be sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area prevents the buffer from fulfilling the functions stated in Regulation .01 of this chapter. If an exemption is requested, local jurisdictions shall propose other measures for achieving the water quality and habitat protection objectives of the policies. These measures may include, but are not limited to, public education and urban forestry programs.

MARGARET G. McHALE
Chair
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays