

Key

- Roman type indicates text already existing at the time of the proposed action.
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TITLE 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 24 Tidal Wetlands

Chapter 01 General

Authority: Environment Article, Title 16, Annotated Code of Maryland

.02 Definitions.

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

B. Terms Defined.

(1) — (2) (text unchanged)

[(3) “Aggrieved party” means an applicant, licensee, permittee, the Department, the county or municipal government where the proposed activity is located, or a person whose rights, duties, statutory entitlements, privileges, or other substantial interests may be directly impacted by the regulated activity.]

(3) “Aquaculture” [means the commercial rearing of fish including shellfish and aquatic plants listed in COMAR 08.02.14.07, or otherwise permitted by that chapter] *has the meaning stated in Natural Resources Article, §4-11A-01, Annotated Code of Maryland.*

(4) “Bathymetry” *means the water depth relative to the elevation of mean low water.*

(4-1) “Beach nourishment” *means a structural shoreline stabilization measure that is:*

(a) *Made by placing or pumping appropriately-sized sand from elsewhere onto an eroding shore; and*

(b) *Designed to:*

(i) *Create a new beach; or*

(ii) *Restore or widen an existing beach.*

(5) — (7) (text unchanged)

(7-1) “Breakwater” *means a structural shoreline stabilization measure comprised of a segmented or non-segmented stone structure that is:*

(a) *Typically placed offshore parallel to the shoreline; and*

(b) *Designed to dissipate wave energy and reduce erosion.*

(7-2) “Buffer management plan” *has the meaning stated in COMAR 27.01.09.01.*

(7-3) “Bulkhead” *means a structural shoreline stabilization measure comprised of a vertical retaining wall composed of wood, stone, concrete, plastic, steel or other similar material that is:*

(a) *Placed parallel to the shoreline; and*

(b) *Designed to control erosion.*

(8) (text unchanged)

1 (9) “Coastal [bays] *Bays*” means the estuaries situated between Maryland’s Atlantic Ocean
2 barrier islands and the opposing shoreline of the mainland which include Chincoteague Bay,
3 Sinepuxent Bay, Isle of Wight, Newport Bay, Assawoman Bay, and the St. Martin River.

4 (10) “Critical Area” [means the Chesapeake Bay Critical Area, including all waters and lands
5 designated under Natural Resources Article, §8-1807, Annotated Code of Maryland, consisting
6 of waters of and lands under the Chesapeake Bay and its tributaries to the head of the tide as
7 indicated on the State wetland boundary maps, and all State and private wetlands designated
8 under Environment Article, Title 16, and all land and water areas within 1,000 feet beyond the
9 landward boundaries of State or private wetlands, and the heads of tides designated under
10 Environment Article, Title 16, and the area beyond 1,000 feet designated by local critical area
11 programs to protect sensitive areas, except developed, urban areas excluded by a local
12 jurisdiction under a State-approved local critical area program] *has the meaning stated in*
13 *COMAR 27.01.01.01B.*

14 [(11) “Critical Area buffer” means a naturally vegetated area or vegetated area established or
15 managed to protect aquatic, wetland, shoreline, and terrestrial environments from man-made
16 disturbances as defined in the State-approved local critical area program, COMAR 27.01.01 and
17 27.02.01.]

18 (11) *Critical Area Buffer.*

19 (a) “Critical Area buffer” means an area in the Critical Area that:

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

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

25 (b) “Critical Area buffer” includes an area of:

26 (i) *At least 100 feet, even if that area was previously disturbed by human activity; and*
27 (ii) *Expansion for contiguous areas, including a steep slope, hydric soil, highly*
28 *erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in*
29 *COMAR 26.23.01.01.*

30 (11-1) “Critical Area Commission” means the Critical Area Commission for the Chesapeake
31 and Atlantic Coastal Bays, as established under the Natural Resources Article, Title 8, Subtitle
32 18, Annotated Code of Maryland.

33 (12) — (16) (text unchanged)

34 (17) “Endangered species” [means species of fish, wildlife, or plants designated by regulation
35 by the Secretary. Endangered species includes an endangered species designated under federal
36 law] *has the meaning stated in COMAR 08.03.08.01.*

37 (17-1) “Fetch” means the linear distance of open water over which wind-generated waves of
38 a certain direction, speed, and duration travel unobstructed before reaching a shoreline.

1 (18) Filling.

2 (a) “Filling” means the:

3 (i) Displacement of [tidal] *navigable* water by the depositing [into State or private
4 wetlands] of soil, sand, gravel, shells, or other materials, including pilings, piers, boathouses,
5 deadweights, or riprap *into State or private tidal wetlands*;

6 (ii) Artificial alteration of tidal water levels by any physical structure, drainage ditch,
7 or otherwise; or

8 (iii) [Storm drainage projects which flow] *Discharge of water from storm drainage*
9 *projects* directly into tidal waters of the State.

10 (b) (text unchanged)

11 (19) “Fish” [means a finfish, crustaceans, mollusks, amphibians, and reptiles which spend the
12 majority of their life cycles in water and any part, egg, offspring, or dead body of any of these
13 species] *has the meaning stated in Natural Resources Article, §4-401, Annotated Code of*
14 *Maryland.*

15 (20) (text unchanged)

16 (21) “General wetlands license” means written authorization from the Department [for
17 certain activities described in this subtitle and previously approved by the Board of Public
18 Works] *based on a standing authorization by the Board for recurrent or minimally disruptive*
19 *activities conducted in State tidal wetlands.*

20 (21-1) “General wetlands permit” means written authorization from the Department for
21 *activities conducted in private tidal wetlands that cause only minimal individual and cumulative*
22 *adverse impacts.*

23 (22) (text unchanged)

24 (22-1) “Groin” means a structural shoreline stabilization measure comprised of stone,
25 wood, plastic, steel, or other similar material that is:

26 (a) *Typically placed perpendicular to the shoreline; and*

27 (b) *Designed to trap sand and reduce erosion.*

28 (23) — (25) (text unchanged)

29 (25-1) “Jetty” means a structural shoreline stabilization measure comprised of stone, wood,
30 plastic, steel, or other similar material that is:

31 (a) *Placed at inlets; and*

32 (b) *Designed to:*

33 (i) *Stabilize the position of a channel;*

34 (ii) *Shield vessels from wave forces; and*

35 (iii) *Control the movement of sand along adjacent beaches by minimizing the*
36 *movement of sand into a channel.*

37 (26) (text unchanged)

1 (27) “License” means written authorization by the Board [of Public Works under
2 Environment Article, §16-202, Annotated Code of Maryland,] *or by the Department under*
3 *delegation from the Board* to dredge, fill, construct structures, or conduct other activities
4 involving State tidal wetlands which conveys a limited property interest.

5 (28) — (35) (text unchanged)

6 (35-1) *Nonstructural Shoreline Stabilization Measure.*

7 (a) “Nonstructural shoreline stabilization measure” means an erosion control measure
8 that is dominated by tidal wetland vegetation and is designed to preserve the natural shoreline,
9 minimize erosion, and establish aquatic habitat.

10 (b) “Nonstructural shoreline stabilization measure” includes a living shoreline.

11 (36) “Nontidal wetland” [means an area that is inundated or saturated by surface water or
12 ground water at a frequency and duration sufficient to support, and that under normal
13 circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil
14 conditions, commonly known as hydrophytic vegetation, and is determined according to the
15 Corps of Engineers Wetlands Delineation Manual, 1987] *has the meaning stated in COMAR*
16 *26.23.01.01.*

17 (37) — (39) (text unchanged)

18 (40) “Person” means any natural person, partnership, joint stock company, unincorporated
19 association or society, *the federal government*, the State, any unit of the State, a political
20 subdivision, or other corporation of any type.

21 (41) — (46) (text unchanged)

22 (47) “Revetment” means [an assemblage of stones or concrete, commonly known as riprap,
23 placed to prevent shore erosion, fortify a bulkhead, or stabilize an embankment] *a structural*
24 *shoreline stabilization measure comprised of stone, [[wood,]] broken concrete, or other similar*
25 *material that is:*

26 (a) *Typically placed parallel to the shoreline; and*

27 (b) *Designed to:*

28 (i) *Prevent erosion;*

29 (ii) *Fortify a bulkhead; or*

30 (iii) *Stabilize an embankment.*

31 (48) — (50) (text unchanged)

32 (51) “Species in need of conservation” [means species of fish, wildlife, or plants designated
33 by regulation by the Secretary] *has the meaning stated in COMAR 08.03.08.01.*

34 (52) (text unchanged)

35 [(53) “State water quality certification” means the certification issued by the Department of
36 the Environment under COMAR 26.08.02.]

1 (53) *Structural shoreline stabilization measure.*

2 (a) *“Structural shoreline stabilization measure” means an erosion control measure that*
3 *uses devices to armor and stabilize an area landward of the measure from further erosion.*

4 (b) *“Structural shoreline stabilization measure” includes the use of a bulkhead, gabion,*
5 *revetment, groin, breakwater, jetty, sand, beach nourishment, and any other similar structure, or*
6 *any other device for erosion control or vessel protection.*

7 [(54) *“Structures” means building or construction materials, or a combination of the*
8 *materials, assembled or joined together. “Structures” includes:*

9 (a) *Temporary or permanent fixed or floating piers, pilings, decks, walkways, dwellings,*
10 *buildings, boathouses, platforms, gazebos, or shelters for marine access, navigation, working,*
11 *eating, sleeping, or recreating; and*

12 (b) *Bulkheads, gabions, revetments, groins, breakwaters, jetties, beach beams, or other*
13 *devices for erosion control or protection of vessels.]*

14 (54) *Structure.*

15 (a) *“Structure” means building or construction materials, or a combination of those*
16 *materials, that are purposely assembled or joined together on or over land or water.*

17 (b) *“Structure” includes a temporary or permanent fixed or floating pier, piling, deck,*
18 *walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine*
19 *access, navigation, working, eating, sleeping, or recreating.*

20 (55) (text unchanged)

21 (56) *“Threatened species” [means species of fish, wildlife, or plants designated by regulation*
22 *by the Secretary] has the meaning stated in COMAR 08.03.08.01.*

23 (57) *“Tidal wetlands” means all State and private tidal wetlands, marshes, submerged aquatic*
24 *vegetation, lands, and open water [affected by the daily and periodic rise and fall of the tide]*
25 *within the Chesapeake Bay and its tidal tributaries, the [coastal bays adjacent to Maryland's*
26 *coastal barrier islands] Coastal Bays and their tidal tributaries, and the Atlantic Ocean to a*
27 *distance of 3 miles offshore of the low water mark.*

28 (58) — (61) (text unchanged)

29 (61-1) *“Waiver” means a decision by the Department that a person is not required to*
30 *construct a nonstructural shoreline stabilization measure.*

31 (62) (text unchanged)

32 (62-1) *“Water Quality Certification” means the certification required under COMAR*
33 *26.08.02.10.*

34 (62-2) *“Wetlands License” means written authorization by the Board to dredge, fill,*
35 *construct a structure, or conduct any other activity involving State tidal wetlands that does not*
36 *qualify for approval under a general wetlands license.*

37 (62-3) *“Wetlands Permit” means written authorization by the Department to dredge, fill,*
38 *remove, alter, pollute, or conduct any other activity involving private tidal wetlands that does*
39 *not qualify for approval under a general wetlands permit.*

1 **TITLE 26 DEPARTMENT OF THE ENVIRONMENT**

2 **Subtitle 24 Tidal Wetlands**

3 **Chapter 04 Structures**

4 Authority: Environment Article, Title 16, Annotated Code of Maryland

5 **.01 Shore Erosion Control.**

6 *A. The Department may not authorize an erosion control project if:*

7 *(1) There is no evidence of erosion and the applicant is unable to document a claim of*
8 *erosion;*

9 *(2) Existing State or private tidal wetlands are effectively preventing erosion; or*

10 *(3) The proposed project may adversely affect:*

11 *(a) An adjacent property;*

12 *(b) Navigation, and the applicant has not adequately offset these impacts;*

13 *(c) Threatened or endangered species, species in need of conservation, or significant*
14 *historic or archaeological resources; or*

15 *(d) Natural oyster bars or private oyster leases.*

16 *B. A person proposing a shoreline stabilization measure in State or private tidal wetlands that*
17 *requires a wetlands license from the Board or a general wetlands license, wetlands permit, or*
18 *general wetlands permit from the Department shall first consider:*

19 *(1) No action; and*

20 *(2) Relocation of structures threatened by erosion.*

21 *C. Except as authorized under §E of this regulation, if the Department is satisfied that neither*
22 *option listed under §B of this regulation is feasible, the person shall use a nonstructural*
23 *shoreline stabilization measure.*

24 *D. If a structural component is necessary in order to preserve the natural shore, minimize*
25 *erosion, and establish aquatic habitat, a nonstructural shoreline stabilization measure may*
26 *include the use of:*

27 *(1) A breakwater, sand containment structure, or sill that is acceptable to the Department; or*

28 *(2) A beach that is acceptable to the Department, when used for the purpose of habitat*
29 *enhancement.*

30 *E. A person may use a structural shoreline stabilization measure:*

31 *(1) In an area identified as appropriate for structural shoreline stabilization measures by the*
32 *Department, in coordination with the Maryland Department of Natural Resources, and shown on*
33 *a map approved by the Department under Regulation .01-1 of this chapter; or*

34 *(2) At a site where the person has obtained a waiver from the Department in accordance with*
35 *Regulation .01-2 of this chapter by demonstrating to the Department's satisfaction that a*
36 *nonstructural shoreline stabilization measure is not feasible.*

1 **.01-1 Structural Shoreline Stabilization Maps.**

2 A. *The Department shall develop and maintain maps on its website that:*

3 (1) *Display the areas that are appropriate for structural shoreline stabilization measures;*
4 *and*

5 (2) *Are readily available to the public.*

6 B. *When determining the areas appropriate for structural shoreline stabilization measures, the*
7 *Department shall consider:*

8 (1) *The presence or absence of a natural shoreline;*

9 (2) *Proximity to channels;*

10 (3) *As determined by the Department based on site conditions, the presence of high energy*
11 *waves or a severely eroding shore that would render a nonstructural stabilization measure*
12 *infeasible;*

13 (4) *The extent to which a water-dependent facility requires a bulkheaded shoreline for*
14 *loading and unloading operations, such as the berthing of commercial vessels;*

15 (5) *Impacts to rare, threatened and endangered species, and species in need of conservation;*
16 *and*

17 (6) *Any other site-specific factor, as determined relevant by the Department.*

18 **.01-2 Nonstructural Shoreline Stabilization Waiver Process.**

19 A. *A person who applies for a waiver from the requirement to construct a nonstructural*
20 *shoreline stabilization measure under Regulation .01C of this chapter shall:*

21 (1) *Use the form provided by the Department; and*

22 (2) *Complete the waiver process before submitting an application to obtain a wetlands*
23 *license from the Board or a general wetlands license, wetlands permit, or general wetlands*
24 *permit from the Department under COMAR 26.24.02.*

25 B. *When evaluating a person's request for a waiver, the Department shall determine whether the*
26 *site is suitable to support a nonstructural shoreline stabilization measure by considering:*

27 (1) *The width of the waterway;*

28 (2) *The bottom elevation and slope at mean low water;*

29 (3) *The bottom substrate;*

30 (4) *The fetch;*

31 (5) *The bank elevation and orientation;*

32 (6) *The degree of erosion;*

33 (7) *The height and regularity of tides;*

34 (8) *Any other physical constraints that would impede or prevent successful establishment of a*
35 *nonstructural shoreline stabilization measure; and*

1 (9) Any other relevant environmental resources, including a Critical Area buffer and other
2 plant, fish, and wildlife habitat, and the likely adverse or protective impact of a nonstructural
3 shoreline stabilization measure on those resources in comparison to the likely adverse or
4 protective impact of a structural shoreline stabilization measure on those resources.

5 C. A person may obtain a waiver from the requirement to use a nonstructural shoreline
6 stabilization measure if, to the Department's satisfaction, a structural shoreline stabilization
7 measure is the only feasible alternative that will protect and maintain the person's shoreline.

8 **.01-3 Application Requirements.**

9 A. In addition to the requirements of COMAR 26.24.02.02, a person proposing a shoreline
10 stabilization measure shall submit the following information at the time of application:

11 (1) An 8 ½ by 11-inch plan, with dimensions, of the proposed project showing:

12 (a) Location;

13 (b) Land ownership;

14 (c) Existing and proposed contours;

15 (d) Existing mean high water line and, if applicable, existing landward boundary of State
16 and private tidal wetlands, each as field-verified by the applicant;

17 (e) For a nonstructural shoreline stabilization measure, the proposed mean high water
18 line and the proposed landward boundary of State and private tidal wetlands;

19 (f) Existing and proposed structures, including:

20 (i) A septic system;

21 (ii) A utility-related structure;

22 (iii) A building;

23 (iv) A road;

24 (v) Drainage features; and

25 (vi) An equipment storage area;

26 (g) Adjacent shoreline features;

27 (h) Best management practices to control any upland runoff which contributes to erosion;

28 (i) Type of materials to be used in construction; and

29 (j) Site bathymetry;

30 (2) A waiver, if the project qualifies for a structural shoreline stabilization measure under
31 Regulation .01-2 of this chapter;

32 (3) Photographs of the project site, the adjoining shoreline, and existing structures;

33 (4) In accordance with the requirements of COMAR 27.01.09.01-3, the proposed major or
34 minor buffer management plan that will address disturbance of the buffer, including any
35 disturbance to stabilize a bank or slope or to control erosion above mean high water;

1 (5) [*Proof of delivery to the Critical Area Commission and the applicable local jurisdiction*
2 *of the:*

3 (a) *Information required in §§(1)-(4) of this regulation; and*

4 (b)]] *Critical Area Buffer Notification Form signed by the property owner;*

5 (6) *If required by the Department, a design report that includes:*

6 (a) *A foundation investigation;*

7 (b) *A structural analysis;*

8 (c) *The structural properties of the materials to be used to construct the proposed*
9 *project;*

10 (d) *The estimated economic, environmental, and other benefits to be derived from the*
11 *project;*

12 (e) *The design life expectancy of the project;*

13 (f) *The sequence of construction;*

14 (g) *A description of the method of construction that includes:*

15 (i) *Estimated beginning and completion dates;*

16 (ii) *The equipment to be used;*

17 (iii) *The proposed access to the site;*

18 (iv) *The foundation excavations;*

19 (v) *The means for diverting water away from the project during construction; and*

20 (vi) *The means for controlling the dewatering discharges;*

21 (h) *Specific references and benchmarks used by the designer;*

22 (i) *Estimated impact, if any, of the project on adjacent properties;*

23 (j) *Estimated impact, if any, of the project on public access to the shore;*

24 (k) *Written specifications for the quality of the materials and methods of construction to*
25 *ensure that design criteria will be met or exceeded;*

26 (l) *A description of how the reclamation of lost upland meets the requirements of*
27 *COMAR 26.24.03.06C, if applicable; and*

28 (m) *A description of measures to be taken to avoid and minimize impacts to plant, fish,*
29 *and wildlife habitat before, during, and after construction; and*

30 (7) *If required by the Department, an alternatives analysis, including:*

31 (a) *The justification for rejecting the options required to be considered under COMAR*
32 *26.24.04.01B;*

33 (b) *The justification for the selected shoreline stabilization measure; and*

1 (c) For a structural shoreline stabilization measure, proof of consideration of each
2 alternative, including an analysis of habitat impact for each alternative, in the following order of
3 preference:

4 (i) Beach nourishment;

5 (ii) Breakwater;

6 (iii) Groin, jetty, or a similar structure;

7 (iv) Revetment; and

8 (v) Bulkhead.

9 B. Based on project size and scope, environmental sensitivity of the project site, and potential
10 adverse impacts to State or private tidal wetlands, the Department may, with notice to the
11 applicant by telephone, letter, email, or meeting, require information in addition to §A of this
12 regulation.

13 **.01-4 Design of Structural Shoreline Stabilization Measures.**

14 A. A person proposing a structural shoreline stabilization measure that employs a jetty, groin,
15 breakwater, or other offshore structure, shall design the project to:

16 (1) Allow natural littoral movement of sand along the shore;

17 (2) Minimize erosion and undesirable shoaling;

18 (3) Use materials that are:

19 (a) Of adequate size, weight, and strength to function as intended;

20 (b) Free of protruding objects, debris, and contaminants; and

21 (c) Selected to minimize impacts to water quality and plant, fish, and wildlife habitat;

22 (4) Use backfill material free of litter, refuse, junk, metal, tree stumps, logs, or other
23 unsuitable materials;

24 (5) Prevent damage due to scour; and

25 (6) Minimize grading and other impacts on riparian habitat.

26 B. The Department may not authorize encroachment into State or private tidal wetlands unless:

27 (1) The encroachment is limited to that which is structurally necessary and is verified by a
28 design report or other documentation, as required by the Department; and

29 (2) For a bulkhead:

30 (a) The encroachment is three feet or less beyond the mean high water line; and

31 (b) Other nonstructural and structural shoreline stabilization measures are infeasible, as
32 determined by the Department.

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