

Appendix A:
Environmental Article, Title 17, Annotated Code of Maryland

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§17–101.

- (a) In this title the following words have the meanings indicated.
- (b) “Board” means the Marine Contractors Licensing Board.
- (c) “Entity” means a business with its principal office in the State that employs more than one individual to provide marine contractor services in the State.
- (d) “License” means a professional license issued by the Board to an individual or entity to perform marine contractor services in the State.
- (e) “Licensed marine contractor” means an individual or entity that has received a license from the Board to perform marine contractor services.
- (f) (1) “Marine contractor services” means construction, demolition, installation, alteration, repair, or salvage activities located in, on, or under State or private tidal wetlands.
 - (2) “Marine contractor services” includes:
 - (i) Dredging and filling;
 - (ii) The construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs; and
 - (iii) The construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects.

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§17–201.

- (a) There is a Marine Contractors Licensing Board in the Department.
- (b) Subject to the provisions of this title, the Board is responsible for the licensing and regulation of individuals and entities that provide marine contractor services in the State.

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§17–202.

(a) (1) The Board consists of seven members appointed by the Governor, with the advice of the Secretary, and with the advice and consent of the Senate.

(2) Of the seven members:

(i) One shall be employed by the Department;

(ii) One shall be employed by the Department of Natural Resources;

(iii) Three shall be licensed marine contractors and shall include:

1. One from Anne Arundel, Calvert, Charles, Prince George's, or St. Mary's counties;

2. One from Baltimore City, or Baltimore, Cecil, Harford, Kent, or Queen Anne's counties; and

3. One from Caroline, Dorchester, Somerset, Talbot, Wicomico, or Worcester counties; and

(iv) Two shall be private citizens, appointed at large, who represent diverse interests, and shall include:

1. One from Baltimore City, or Anne Arundel, Baltimore, Calvert, Charles, Harford, Prince George's, or St. Mary's counties; and

2. One from Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester counties.

(b) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The term of a member of the Board is 3 years.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) The Governor may remove a member from the Board for incompetence, misconduct, neglect of duty, or other sufficient cause.

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§17–203.

(a) From among its members, the Board shall elect a chair, vice chair, and secretary annually.

(b) The Board shall determine the manner of the election of officers.

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§17–204.

(a) The Board shall meet at least twice a year, at the times and places that the Board determines.

(b) Each member of the Board is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Board may employ staff in accordance with the State budget.

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§17–205.

(a) The Board may:

(1) Recommend regulations for adoption by the Secretary to carry out the provisions of this title; and

(2) Make inquiries and conduct an investigation regarding any applicant for a license.

(b) The Board shall:

(1) Carry out the provisions of this title;

(2) Collect and account for the fees provided for under this title; and

(3) Keep a current record of all individuals and entities licensed under this title, including:

(i) The names of individuals and entities that are licensed;

(ii) The issuance and expiration dates of the licenses; and

(iii) Any other information that the Board considers appropriate.

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§17–206.

(a) (1) The Board shall set reasonable fees for the issuance and renewal of licenses and other services that the Board provides.

(2) The fees imposed by the Board shall be set so as to produce funds to approximate the costs of maintaining the Board.

(b) The Board shall pay all funds collected under this title into the Wetlands and Waterways Program Fund under § 5–203.1 of this article for the administration of the Board.

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§17–301.

(a) Except as otherwise provided in this title, a person shall be licensed by the Board as a marine contractor or be employed by an individual or entity that is licensed as a marine contractor before the person may:

- (1) Perform marine contractor services in the State; or
- (2) Solicit to perform marine contractor services in the State.

(b) An individual, an entity, or a unit of local government may qualify for a license.

(c) An individual who is employed by an agency of the federal government or the State may perform marine contractor services while in the performance of the duties of their employment without having to obtain a license from the Board under this title.

(d) A residential or commercial property owner may perform marine contractor services on the property owner's own property without having to obtain a license from the Board under this title.

(e) (1) This subsection applies to an individual who is employed by a county or municipality in the State.

(2) An individual who performs marine contractor services while in the performance of the duties of their employment is not required to pay a fee for:

- (i) The issuance or renewal of a license; or
- (ii) A test administered by the Board.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, an individual may perform marine contractor services while in the performance of the duties of their employment without having to obtain a license from the Board under this title if the individual is performing marine contractor services that:

1. Would present a de minimis risk to human health or the environment;

2. Do not require a federal or State permit; and

3. If the marine contractor services involve an existing structure, do not increase the footprint of the structure.

(ii) If an individual is performing marine contractor services for the routine maintenance or repair of an existing shore erosion control structure, the individual shall obtain a license from the Board under this title.

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§17-302.

(a) To qualify for a license, an applicant shall meet the requirements of this section and any regulations adopted under this section.

(b) If the applicant is an entity, the entity shall appoint a member of the entity as the representative member to make the application on behalf of the entity.

(c) An individual applicant or, if the applicant is an entity, the representative member shall:

(1) Have at least 2 years of experience as a full-time marine contractor or demonstrate similar contractor experience;

(2) Pass a written marine contractor test recognized by the Board;

(3) Have a federal tax identification number; and

(4) Carry:

(i) Commercial general liability insurance with a \$300,000 total aggregate minimum; and

(ii) Workers' compensation insurance, unless exempt by law.

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§17–303.

(a) (1) To apply for a license, an applicant shall:

Board provides;

(i) Submit to the Board an application on the form that the

(ii) Submit the documents required under this section; and

(iii) Pay to the Board the required application fee set by the

Board.

(2) If the applicant is an entity, the representative member shall complete the application form and otherwise be responsible for the entity's compliance with this section.

(b) (1) If the applicant is an individual, the application form provided by the Board shall require:

(i) The name of the applicant;

(ii) The address of the applicant; and

(iii) The current and previous employment of the applicant relevant to the field of marine contracting.

(2) If the applicant is an entity, the application form provided by the Board shall require:

(i) A list of the entity's owners; and

(ii) For each entity owner, the same information required regarding an individual applicant under paragraph (1) of this subsection.

(3) For all applicants, the application form shall require:

(i) The address of the applicant's proposed principal place of business and of each proposed branch office;

(ii) All trade or fictitious names that the applicant intends to use while performing marine contractor services; and

(iii) As the Board considers appropriate, any other information to assist in the evaluation of:

1. An individual applicant; or
2. If the applicant is an entity, any entity member.

(c) The application form provided by the Board shall contain a statement advising the applicant of the penalties for violation of this title provided under § 17–403 of this title.

(d) (1) If the applicant is an individual, the individual shall sign the application form under oath.

(2) If the applicant is an entity, the representative member of the entity shall sign the application form under oath, and shall provide proof to the Board that the representative member is a member of the entity.

(e) An applicant for a license shall submit with the application proof of the insurance required under § 17–302(c)(4) of this subtitle.

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§17-304.

The Board may not issue a license to an applicant whose trade or fictitious name or trademark is so similar to that used by another licensee that the public may be confused or misled by the similarity.

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§17–305.

(a) The Board shall issue a license that is valid for 2 years to any applicant who meets the requirements of this title and any regulation adopted under this title.

(b) The Board, by regulation, may establish license categories that specify the marine contractor services each license authorizes a licensee to perform.

(c) The Board shall include on each license that the Board issues:

- (1) The license category;
- (2) The full name of the licensee;
- (3) The license number;
- (4) The location of the principal office and of each branch office if the licensee is an entity;
- (5) The date of issuance of the license;
- (6) The date on which the license expires; and
- (7) The name of the representative member if the licensee is an entity.

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§17–306.

While a license to an entity is in effect, the license authorizes the entity to:

(1) Employ as marine contractors individuals who are not licensed marine contractors to provide marine contractor services to the public on behalf of the licensee; and

(2) Represent itself to the public as a licensed marine contractor entity.

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§17-307.

A licensed marine contractor shall:

(1) Include the contractor's marine contractor license number in all advertising related to the provision of marine contractor services; and

(2) Prominently display the contractor's marine contractor license number on all large equipment used in the course of the licensee's work as a marine contractor.

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§17–308.

(a) The Secretary shall adopt regulations to stagger the terms of the licenses.

(b) A license expires on the date the Secretary sets, in accordance with subsection (a) of this section.

(c) At least 2 months before a license expires, the Board shall send to the licensee, by first-class mail or electronically, to the last known address of the licensee:

(1) A renewal application form; and

(2) A notice that states:

(i) The date on which the current license expires;

(ii) The date by which the Board must receive the renewal application for the renewal to be issued and mailed before the license expires; and

(iii) The amount of the renewal fee.

(d) Before a license expires, the licensee may renew the license for an additional 2-year term if the licensee:

(1) Is otherwise entitled to be licensed;

(2) Pays to the Board:

(i) The required renewal fee set by the Board; and

(ii) Any outstanding fees; and

(3) Submits to the Board:

(i) Satisfactory evidence of compliance with the continuing education requirements established under subsection (e) of this section;

(ii) Satisfactory evidence of compliance with the insurance requirements established under § 17–302 of this subtitle;

(iii) Satisfactory evidence of the resolution of any license violations, suspensions, denials, revocations, or other Board actions taken under this title; and

(iv) A renewal application on the form that the Board provides.

(e) (1) A licensee shall complete 12 hours of continuing education instruction covering marine contractor subject matter approved by the Board.

(2) (i) The Board shall approve the substance and form of a continuing education course if the course is:

1. Offered by a qualified instructor; or

2. Conducted by an educational institution approved by the Board.

(ii) The licensee is responsible for the cost of any continuing education course.

(f) The Board shall renew the license of each licensee who meets the requirements of this section.

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§17-309.

Within 5 days after the change, a licensee shall submit to the Board written notice of:

- (1) If the licensee is an individual or entity, any change in the address or telephone number of an existing office or principal place of business; and
- (2) If the licensee is an entity, the addition of a branch office.

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§17–310.

(a) Except as otherwise provided in § 10–226 of the State Government Article, and subject to the notice and hearing requirements in subsection (c) of this section, the Board may deny, refuse to renew, suspend, or revoke a license if the applicant or licensee:

(1) Violates any provision of this title or any regulation adopted under this title;

(2) Fraudulently or deceptively obtains or attempts to obtain a license for the licensee or for another person;

(3) Fraudulently or deceptively uses a license;

(4) Commits any gross negligence, incompetence, or misconduct while practicing marine contractor services;

(5) Fails to comply with the terms of a tidal wetlands authorization issued under § 16–202 or § 16–307 of this article;

(6) Violates any provision of, or regulations adopted under, § 16–202 or § 16–307 of this article; or

(7) In the Chesapeake and Atlantic Coastal Bays Critical Area, as defined under § 8–1802 of the Natural Resources Article, fails to comply with:

(i) The terms of a State or local permit, license, or approval;
or

(ii) Any State or local law, an approved plan, or other legal requirement.

(b) The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, established under Title 8, Subtitle 18 of the Natural Resources Article, shall notify the Board of any licensed marine contractor or applicant for a license that fails to comply with any requirement under subsection (a)(7) of this section.

(c) (1) Before the Board takes any final action under subsection (a) of this section, the Board shall give the applicant or licensee against whom the action is contemplated notice and the opportunity for a hearing before the Board.

(2) The Board shall provide notice and hold a hearing in accordance with the Administrative Procedure Act.

(3) At least 30 days before the hearing, the hearing notice shall be:

(i) Served personally on the individual; or

(ii) Sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the individual or entity.

(4) If, after due notice, the applicant or licensee against whom the action is contemplated fails or refuses to appear, the Board may hear and determine the matter.

(d) Except as provided under subsection (c) of this section, any person aggrieved by a final decision of the Board may take an appeal as authorized under §§ 10–222 and 10–223 of the State Government Article.

(e) For purposes of this section, an act or omission of any principal, agent, or employee of an applicant or licensee may be construed to be the act or omission of the applicant or licensee, as well as of the principal, agent, or employee.

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§17-401.

An individual or entity may not conduct, attempt to conduct, or offer to conduct any marine contractor services unless the individual or entity is licensed by the Board to perform the services.

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§17-402.

Unless authorized to perform marine contractor services under this title, an individual or entity may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the individual or entity is authorized to perform marine contractor services in the State.

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§17-403.

(a) (1) A person who violates any provision of this title or any regulation adopted under this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both.

(2) Each day that a person conducts marine contractor services without a license constitutes a separate offense.

(b) (1) In addition to any other sanction under this subtitle, a civil action may be brought against a person for a violation of this title, or any regulation adopted under this title.

(2) A person may be liable for a civil penalty under this subsection not to exceed \$10,000 for each violation.

(c) Any penalties collected under this section shall be paid into the Wetlands and Waterways Program Fund, established under § 5-203.1 of this article, to be used for the administration of the Board.

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§17-501.

Subject to the Maryland Program Evaluation Act, the provisions of this title and all regulations adopted under this title creating the Marine Contractors Licensing Board and relating to the regulation of marine contractors are of no effect and may not be enforced after July 1, 2031.

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Appendix B:
Code of Maryland Regulations (COMAR) Title 26 Subtitle 30

Subtitle 30 MARINE CONTRACTORS LICENSING BOARD

Chapter 01 General Regulations

Administrative History

Effective date: March 18, 2024 (51:5 Md. R. 233)

Authority

Environment Article, Title 17, Subtitles 1—5, Annotated Code of Maryland

.01 Definitions.

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

B. Terms Defined.

- (1) “Approved continuing education” means courses of study or programs of instruction in an area of marine construction and related subjects that are designed to improve, advance, or extend professional skill and knowledge relating to the practices of a marine contractor and that are approved by the Board in accordance with the requirements of this subtitle.
- (2) “Board” means the Marine Contractors Licensing Board.
- (3) “Credit hour” means the amount of time, usually 1 hour per 50 minutes of instruction, that is accredited by the Board or the institution sponsoring the continuing education.
- (4) “Entity” means a business with its principal office in the State that employs more than one individual and provides marine contractor services in the State.

- (5) “Gross negligence” means an intentional failure of a licensee or applicant for a license to perform an action or inaction as expected by the profession under the same circumstances, in reckless disregard of the consequences as affecting the life or property of another.
- (6) “Hours of approved continuing education” means the value given by the Board for participation in continuing education.
- (7) “Incompetence” means an action or inaction by a licensee or an applicant for a license which demonstrates a general lack of knowledge or ability to perform marine contractor services.
- (8) “License” means a professional license issued by the Board under this subtitle to an individual or entity to perform marine contractor services in the State.
- (9) “License renewal period” means the 24-month period immediately preceding the expiration date of the license.
- (10) “Licensed marine contractor” means an individual or entity that has received a license from the Board to perform marine contractor services.
- (11) “Licensee” means licensed marine contractor.
- (12) Marine Contractor Services.
 - (a) “Marine contractor services” means construction, demolition, installation, alteration, repair, or salvage activities located in, on, or under State or private tidal wetlands.
 - (b) “Marine contractor services” includes:
 - (i) Dredging and filling;
 - (ii) The construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs;

- (iii) The construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects; and
 - (iv) Activities that require authorization under [Environment Article, Title 16, Annotated Code of Maryland](#).
- (13) “Misconduct” means an action or inaction by a licensee or an applicant for a license that is deficient from the action or inaction expected by the profession under the same circumstances.
- (14) “Representative member” means the individual member of an entity appointed for the purposes of submitting an application for a license on behalf of the entity.
- (15) “Similar contractor experience” means construction, demolition, installation, alteration, repair, or salvage activities located above the mean high tide and requiring authorization from the Department, in accordance with Environment Article, Title 5, Subtitles 5 and 9, Annotated Code of Maryland.
- (16) Solicit to Perform.
 - (a) “Solicit to perform” means to try to obtain either directly or indirectly a job from a customer or potential customer to perform marine contractor services.
 - (b) “Solicit to perform” does not include responding to a request for a proposal or a bid solicitation issued by an agency of the federal, State, or local government or a general contractor.

.02 License Required; Exceptions.

- A. Except as provided in [§B of this regulation](#), a person shall be licensed by the Board as a marine contractor or be employed by an individual or entity that is licensed by the Board before the individual or entity may:
 - (1) Perform marine contractor services in the State; or

(2) Solicit to perform marine contractor services in the State.

B. Exceptions.

- (1) An individual who is employed by an agency of the federal government or the State may perform marine contractor services while in the performance of the duties of their employment without having to obtain a license from the Board.
- (2) A residential or commercial property owner may perform marine contractor services on the property owner's own property without having to obtain a license from the Board.
- (3) An individual who performs marine contractor services while in the performance of the duties of their employment on behalf of a county or municipality in the State is not required to pay a fee for the issuance or renewal of a license or a test administered by the Board.
- (4) An individual who performs marine contractor services while in the performance of the duties of their employment on behalf of a county or municipality in the State may do so without having to obtain a license from the Board if the individual is performing marine contractor services that:
 - (a) Would present a de minimis risk to human health or the environment;
 - (b) Do not require a federal or State permit; and
 - (c) If the marine contract services involve an existing structure, except a shore erosion control structure, do not increase the footprint of the structure.

.03 Qualifications and Licensure.

- A. The Board may not issue a license to an applicant whose trade or fictitious name or trademark is so similar to that used by another licensed marine contractor that the public may be confused or misled by the similarity.
- B. Except as provided in [§A of this regulation](#), the Board shall license an applicant if the applicant:

- (1) Submits an application for a license on the form required by the Board;
- (2) Is eligible to take the examination as provided in [§D of this regulation](#);
- (3) Takes and passes the written marine contractor examination for the appropriate license category, as recognized by the Board;
- (4) Provides the Board with satisfactory evidence that the liability insurance and workers' compensation insurance requirements of COMAR 26.28.02.01B have been satisfied;
- (5) Has a federal tax identification number;
- (6) If applicable, submits satisfactory evidence of the resolution of any acts which may subject the applicant to disciplinary action under [COMAR 26.28.04](#); and
- (7) Pays the required license issuance fee.

C. Either an individual or an entity may apply for a license.

D. An applicant is eligible to take the examination if the applicant has at least 2 years of approved experience as a full-time marine contractor or demonstrates similar contractor experience as documented in the application and accepted by the Board. An applicant shall demonstrate the necessary experience in marine contractor services relevant to and included in the license category for which they are applying, in accordance with COMAR 26.28.01.05.

E. If the applicant is an entity, the entity shall appoint a member of the entity as the representative member to make the application and take the examination on behalf of the entity.

Cross References

[26.30.01.06C](#)

.04 Scope of License to Entity.

While a license to an entity is in effect, a licensed entity may:

- A. Employ individuals who are not licensed marine contractors to provide marine contractor services to the public on behalf of the licensed marine contractor entity; and
- B. Represent itself to the public as a licensed marine contractor entity.

.05 License Categories.

A. General.

- (1) A license issued by the Board only authorizes the performance or solicitation of marine contractor services as described by the applicable license category.
- (2) Any licensed marine contractor that performs, or solicits to perform, marine contractor services outside the scope of their applicable license category shall be considered to be performing marine contractor without a license, and subject to disciplinary action by the Board, pursuant to [COMAR 26.28.04.01A](#).

B. License Categories.

- (1) Category 1: Heavy Marine Construction. This license category is suitable for contractors who perform, or solicit to perform, the following marine contractor services:
 - (a) Bridges and highways, large scale commercial development, commercial dredging, cargo and naval wharfs, beach renourishment, heavy salvage, and any other large scale marine services, as approved by the Board.
 - (b) Marine contractors licensed under Category 1 may also perform any of the marine contractor services authorized under Categories 2, 3, and 4 of this section.
- (2) Category 2: Residential and Commercial Marine Construction. This license category is suitable for contractors who perform, or solicit to perform, the following marine contractor services:
 - (a) Piers, docks, wharfs, marinas, boathouses, pile driving, moorings, boat lifts, floating docks, riprap revetments, bulkheads, weirs, seawalls, boat ramps, living shorelines, beach nourishment, dunes, dredging, salvage, and any other medium to small scale marine contractor services, as approved by the Board.

(b) Marine contractors licensed under Category 2 may also perform any of the marine contractor services authorized under Categories 3 and 4 of this section.

(3) Category 3: Limited Marine Construction. This license category is suitable for contractors who only perform, or solicit to perform, a limited subset of the marine contractor services listed in Category 2. A Category 3 License only authorizes the specific marine contractor services identified in the license, as issued by the Board.

(4) Category 4: Incidental Marine Contractor Services. This license category is suitable for contractors who perform, or solicit to perform, the following marine contractor services: directional boring, aquaculture, submerged aquatic vegetation and wetland grass planting, and any other related marine contractor services, as approved by the Board.

.06 Duration of License.

- A. A license is valid for 2 years from the date of issuance.
- B. A license is invalid after the expiration date of the current license, if not renewed in accordance with the requirements of COMAR 26.28.02.06.
- C. An expired license may not be reinstated, and the former licensee shall meet the qualifications for a new license as described in [Regulation .03 of this chapter](#).

.07 Identification of Licensed Marine Contractor.

- A. The Board shall provide each licensed marine contractor with a license that includes the:
 - (1) License category;
 - (2) Name of the licensed marine contractor;
 - (3) License number;
 - (4) Address of the principal office and each branch office, if the licensee is an entity;
 - (5) Issuance date of the license;

(6) Expiration date of the license; and

(7) Representative member, if the licensee is an entity.

B. License Number.

(1) A licensed marine contractor shall include the license number:

(a) In all advertising related to the provision of marine contractor services; and

(b) On all large equipment used in the course of the licensee's work as a marine contractor.

(2) The license number shall be set out in at least 3-inch block lettering.

.08 Other Authorizations Required.

A license under this subtitle does not allow a licensed marine contractor to perform any work in, on, or under State or private tidal wetlands for which all required authorizations have not been obtained, including authorization under [Environment Article, Title 16, Annotated Code of Maryland](#).

Chapter 02 Licensing Procedures and Fees

Administrative History

Effective date: March 18, 2024 (51:5 Md. R. 233)

Authority

Environment Article, Title 17, Subtitles 1—5, Annotated Code of Maryland

.01 Application Procedures.

A. An application for a license shall be:

(1) Made on the form provided by the Board; and

- (2) Completed fully and signed under oath by the individual applicant or representative member, if the applicant is an entity.
- B. In addition to satisfying the requirements of [§A of this regulation](#), each application shall be accompanied by supporting documentation, including:
 - (1) Whatever evidence the Board deems necessary to establish professional qualifications and experience; and
 - (2) Certificates of insurance verifying that the applicant carries:
 - (a) Commercial general liability insurance with a \$300,000 total aggregate minimum; and
 - (b) Workers' compensation insurance, unless exempt by law.

.02 Application Form.

- A. For all applicants, the application form shall require:
 - (1) The name of the applicant;
 - (2) The license category being applied for;
 - (3) The address of the applicant's principal place of business and each branch office;
 - (4) Current and previous employment of the individual applicant or representative member, if the applicant is an entity, relevant to the field of marine contracting;
 - (5) All trade or fictitious names the applicant intends to use while performing marine contractor services; and
 - (6) A federal tax identification number.
- B. For entity applicants, in addition to the requirements in [§A of this regulation](#), the application form shall require:
 - (1) A list of the entity's owners, members, or partners;

- (2) A designated representative member for the purpose of the application and examination;
and
- (3) Verification that the representative member is a member of or employed by the entity.

.03 Incomplete Application.

- A. An application is not complete until all required application documents, including the fee and supporting documentation, have been received by the Board.
- B. The Board may return an application to the applicant with a statement of the reason for rejection if the Board determines that the application does not contain:
 - (1) The name and address for each individual applicant or entity owner;
 - (2) The current and previous employment of the applicant relevant to the field of marine contracting;
 - (3) The address of the applicant's proposed principal place of business and each proposed branch office;
 - (4) All trade or fictitious names that the applicant intends to use while performing marine contractor services; or
 - (5) The application fee.
- C. The Board shall withhold final consideration of the application until the application is complete. If all requested supporting documents are not received within 90 days of receipt of the application, the Board shall notify the applicant of the missing documents.
- D. Applications for a license shall be held for 1 year from the date of the initial receipt, after which time the application will be terminated and the application fee forfeited.

Cross References

[26.30.02.04A](#)

.04 Action on an Application.

- A. Except as provided in [Regulation .03 of this chapter](#), the Board shall review all applications within 60 days of receipt of the completed application.
- B. Action on an application includes one of the following:
 - (1) Return of the application if the Board determines that it is incomplete;
 - (2) Approval of the applicant for examination for the appropriate category, as determined by the Board; or
 - (3) Denial of the application for a license.
- C. Notification. The Board shall give written notification to an applicant of any action taken by the Board on the applicant's application.
- D. Denial of Application for License.
 - (1) The Board may deny an application for a license if the Board determines that the applicant has:
 - (a) Failed to demonstrate that the applicant is eligible for examination under [COMAR 26.28.01.03](#); or
 - (b) Committed any act that would be a basis for disciplinary action under [COMAR 26.28.04.01](#).
 - (2) The Board shall notify an applicant of the basis for the denial by first-class mail.
- E. Reconsideration and Appeal of Application Denial.
 - (1) An applicant may appeal the denial of the application under [§D of this regulation](#) by notifying the Board in writing by certified mail within 30 days of receipt of the Board's decision.

(2) In the case of a denial under [§D\(1\)\(a\) of this regulation](#), an applicant may appeal the denial of the Board in writing by certified mail within 30 days of receipt of the Board's decision by:

(a) Submitting new or additional evidence to clarify or amplify the applicant's qualifications; or

(b) Requesting an informal meeting with the Board.

(3) In the case of a denial under [§D\(1\)\(b\) of this regulation](#), the applicant may appeal the denial by requesting a hearing in accordance with the procedures outlined in [COMAR 26.28.04](#).

.05 Examination.

A. The Board shall notify the applicant of the applicant's eligibility to take an examination for the appropriate license category at least 30 days before the next scheduled examination.

B. The Board shall offer a written examination at least three times a year.

C. The times and places within the State for the written examination shall be announced by the Board.

D. The passing score for the examination is 70 percent.

E. Except as provided in [§F of this regulation](#), an applicant who fails the examination may apply for reexamination by submitting the examination fee.

F. An applicant who has failed the examination three times may be required to appear in person before the Board and satisfy any additional requirements approved by the Board before reexamination

.06 License Issuance Fee.

A. After an applicant passes the examination, the applicant shall pay the license issuance fee as determined by the Board.

B. Within 30 days of the receipt of the license issuance fee, the Board shall issue the license.

.07 License Renewal.

- A. At least 2 months before a license expires, the Board shall send to the licensed marine contractor by first-class mail or electronically:
 - (1) A renewal application; and
 - (2) A notice that states:
 - (a) The date on which the current license expires;
 - (b) The date by which the Board must receive the renewal application for the renewal to be issued and mailed before the license expires; and
 - (c) The amount of the license renewal fee.
- B. Failure to notify the licensed marine contractor does not relieve the licensee of the licensee's obligation to renew the license, nor does it affect the expiration of the license.
- C. A license may be renewed for a 2-year period by the Board if the licensed marine contractor has:
 - (1) Submitted an application for renewal before expiration date of the license;
 - (2) Paid the license renewal fee established by [Regulation .09 of this chapter](#);
 - (3) Completed the necessary continuing education as required by [COMAR 26.28.03](#) and submitted satisfactory evidence of compliance with the continuing education requirements;
 - (4) Submitted satisfactory evidence of compliance with the insurance requirements as required by [COMAR 26.28.02.01](#); and
 - (5) If applicable, submitted satisfactory evidence of the resolution of any license violations, suspensions, denials, revocations, or other Board actions taken under this subtitle.

.08 Keeping Information Current; Change of Representative Member.

- A. A licensed marine contractor shall keep its contact information current with the Board.
- B. Within 5 business days after any change of contact information, a licensed marine contractor shall submit to the Board written notice of:
 - (1) Any change in the address or telephone number of an existing office or principal place of business; and
 - (2) If the licensee is an entity, the addition of a branch office.
- C. A licensed entity shall keep current with the Board the identity of the person designated as the representative member.
- D. Within 5 business days after the change, a licensed entity shall submit to the Board a written request to designate a new representative member, which shall include:
 - (1) The name of the newly designated representative member;
 - (2) Verification that the newly designated representative member is a member of, or employed by, the entity; and
 - (3) The qualifications of the newly designated representative member, as required under COMAR 26.28.01.03D.
- E. If the Board determines that a newly designated representative member is eligible to take the examination, the representative member shall take the examination on the next date on which the examination is scheduled.

.09 License Replacement or Modification.

- A. A licensed marine contractor may obtain a duplicate license to replace a license that has been lost, destroyed, or mutilated if the licensee:
 - (1) Makes a written request to the Board, and
 - (2) Pays the license replacement fee to the Board.

B. A licensed marine contractor may obtain a license modification, if the licensee:

- (1) Makes a written request to the Board, stating the reason for the request;
- (2) Provides the new or changed information to the Board, for example, an address change or, if the licensee is an entity, a name change; and
- (3) Pays the license modification fee to the Board.

Cross References

[26.30.02.07C\(2\)](#)

Chapter 03 Continuing Education

Administrative History

Effective date: March 18, 2024 (51:5 Md. R. 233)

Authority

Environment Article, Title 17, Subtitles 1—5, Annotated Code of Maryland

.01 General.

In order to renew a license, a licensed marine contractor shall submit to the Board satisfactory proof of the completion of at least 12 credit hours of approved continuing education.

Cross References

[26.30.03.02B](#)

.02 Approval of Continuing Education.

- A. Approved continuing education shall be designed to improve, advance, or extend the licensee's professional skill and knowledge relating to the provision of marine contractor services.
- B. The Board shall approve courses for purposes of satisfying the continuing education requirements in [Regulation .01 of this chapter](#), based on the following:
 - (1) Course objectives;
 - (2) Course outline;
 - (3) Training material;
 - (4) Instructor credentials;
 - (5) Student evaluation methods and criteria; and
 - (6) Relevance to the applicable license category.
- C. Approved continuing education may consist of participation in any of the following, provided there is satisfactory proof of completion acceptable to the Board:
 - (1) College-level or postgraduate course work given by an accredited college or university;
 - (2) Courses, seminars, workshops, or lectures;
 - (3) Extension studies and correspondence courses;
 - (4) Papers published in professional journals and requiring peer review;
 - (5) Instruction of approved continuing education courses; or
 - (6) Other continuing education acceptable to the Board.
- D. The Board shall maintain a current list of all continuing education that has been approved by the Board.
- E. The Board shall determine the credit hours of approved continuing education as follows:

- (1) Credits shall be approved in not less than ½ hour increments;
 - (2) Credits shall be approved on an hour-for-hour basis for attendance at an approved continuing education program; and
 - (3) Credits are approved on a two-for-one hour basis for the instructor of an approved continuing education program.
- F. The sponsor of a continuing education course or a licensed marine contractor may request that the Board approve a course by submitting a request for approval on a form provided by the Board.

Cross References

[26.30.03.03A](#)

.03 Proof of Continuing Education.

- A. Approved continuing education obtained within the appropriate license renewal period shall be credited as provided under [Regulation .02E of this chapter](#).
- B. Each licensed marine contractor is responsible for the submission of proof of all approved continuing education to the Board.
- C. Proof of continuing education consists of:
 - (1) Official transcripts from the educational institution;
 - (2) A certificate or other documentation signed by the instructor or sponsor of the continuing education, attesting to the satisfactory completion of the continuing education; or
 - (3) Other documentation determined by the Board to be adequate, in light of the nature of the continuing education, to establish that the continuing education was actually received by the licensed marine contractor.

Chapter 04 Disciplinary Action

Administrative History

Effective date: March 18, 2024 (51:5 Md. R. 233)

Authority

Environment Article, Title 17, Subtitles 1—5, Annotated Code of Maryland

.01 Denials, Reprimands, Suspensions, and Revocations.

- A. Subject to the hearing provisions of [Regulation .02 of this chapter](#), the Board may deny, refuse to renew, suspend, or revoke a license if the applicant or licensed marine contractor:
- (1) Performs or solicits to perform marine contractor services without a license;
 - (2) Unless authorized to perform marine contractor services under this title, represents to the public by title, by description of services, methods, or procedures, or otherwise that the individual or entity is authorized to perform marine contractor services in the State;
 - (3) Violates a provision of [Environment Article, Title 17, Annotated Code of Maryland](#) , or a regulation under this subtitle;
 - (4) Fraudulently or deceptively obtains or attempts to obtain a license for the licensed marine contractor or for another individual or entity;
 - (5) Fraudulently or deceptively uses a license;
 - (6) Commits any gross negligence, incompetence, or misconduct while practicing marine contractor services;
 - (7) Fails to comply with the terms of a tidal wetlands authorization issued under [Environment Article, §16-202](#)  or 16-307, Annotated Code of Maryland;

- (8) Violates any provision of, or regulations adopted under, [Environment Article, §16-202](#) or 16-307, Annotated Code of Maryland; or
- (9) In the Chesapeake and Atlantic Coastal Bays Critical Area, as defined under [Natural Resources Article, §8-1802, Annotated Code of Maryland](#), fails to comply with:
 - (a) The terms of a State or local permit, license, or approval; or
 - (b) Any State or local law, an approved plan, or other legal requirement.
- B. For the purpose of this regulation, an act or omission of any principal, agent, or employee of an applicant or licensed marine contractor may be construed to be the act or omission of the applicant or licensed marine contractor, as well as of the principal, agent, or employee.

Cross References

[26.30.04.02A](#)

.02 Procedures for Disciplinary Action.

- A. Before taking any action pursuant to [Regulation .01 of this chapter](#) or COMAR 26.28.02.04C(2), the Board shall refer a proposed decision to the Secretary, or their designee, for final approval pursuant to [State Government Article, §8-205](#).1, Annotated Code of Maryland. Once a final decision has been made by the Secretary, or their designee, the Board shall give the applicant or licensed marine contractor against whom the action is contemplated notice and the opportunity for contested case hearing.
- B. At least 30 days before the hearing, the hearing notice shall be:
 - (1) Served personally; or
 - (2) Sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the individual or entity.
- C. The notice of hearing and hearing shall conform to the provisions of the Administrative Procedures Act, [State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland](#).

- D. If, after due notice, the individual or entity against whom the action is contemplated fails or refuses to appear, the Board nevertheless may hear and determine the matter.
- E. A person aggrieved by a final decision of the Board is entitled to judicial review in accordance with State Government Article, §§[10-222](#) and [10-223](#), Annotated Code of Maryland.

Cross References

[26.30.04.01A](#)

Appendix C:
Environmental Article, Title 16, Annotated Code of Maryland

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§16–101.

- (a) In this title the following words have the meanings indicated.
- (b) “Board” means the Board of Public Works.
- (c) “County” includes Baltimore City unless otherwise indicated.
- (d) “Department” means the Department of the Environment.
- (e) “Dredging” means the removal or displacement by any means of soil, sand, gravel, shells, or other material, whether or not of intrinsic value, from any State or private wetlands.
- (f) (1) “Filling” means:
 - (i) The displacement of navigable water by the depositing into State or private wetlands of soil, sand, gravel, shells, or other materials; or
 - (ii) The artificial alteration of navigable water levels by any physical structure, drainage ditch, or otherwise.
- (2) “Filling” includes storm drain projects which flow directly into tidal waters of the State.
- (3) “Filling” does not include:
 - (i) Drainage of agricultural land;
 - (ii) In-place replacement or repair of shore erosion control structures using substantially similar materials and construction design; or
 - (iii) Planting of wetlands vegetation when no grading or fill in State or private wetlands is necessary.
- (g) “Landward boundary of wetlands” means the common boundary between wetlands, as defined in this section, and lands not included within the definitions of wetlands appearing in this section.

(h) “Licensed marine contractor” has the meaning stated in Title 17, Subtitle 3 of this article.

(i) (1) “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.

(2) “Nonwater–dependent project” includes:

- (i) A dwelling unit on a pier;
- (ii) A restaurant, a shop, an office, or any other commercial building or use on a pier;
- (iii) A temporary or permanent roof or covering on a pier;
- (iv) A pier used to support a nonwater–dependent use; and
- (v) A small–scale renewable energy system on a pier, including:

1. A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;

2. A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and

3. A wind energy system and its wind turbine, tower, base, or other necessary equipment.

(3) “Nonwater–dependent project” does not include:

- (i) A fuel pump or other fuel–dispensing equipment on a pier;
- (ii) A sanitary sewage pump or other wastewater removal equipment on a pier;
- (iii) A pump, a pipe, or any other equipment attached to a pier and associated with a shellfish nursery operation under a permit issued by the Department of Natural Resources under § 4–11A–23 of the Natural Resources Article; or

(iv) 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.

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

(k) (1) “Pier” means any pier, wharf, dock, walkway, bulkhead, breakwater, piles, or other similar structure.

(2) “Pier” does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

(l) (1) “Private wetlands” means any land not considered “State wetland” bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth.

(2) “Private wetlands” includes wetlands, transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred.

(m) (1) “Public notice” means the public notice and public informational hearing procedures established in § 5–204(b) through (e) of this article.

(2) “Public notice” does not mean notice as provided for in § 16–303 of this title.

(n) “Regular or periodic tidal action” means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by wind or any other circumstance.

(o) “Secretary” means the Secretary of the Environment.

(p) “State wetlands” means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Wetlands of this category which have been transferred by the State by valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights shall be considered “private wetland” to the extent of the interest transferred.

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§16–102.

(a) In many areas of the State much of the wetlands have been lost or despoiled by unregulated dredging, dumping, filling, and like activities, and the remaining wetlands are in jeopardy of being lost or despoiled by these and other activities. The loss or despoliation:

(1) Will affect adversely, if not eliminate entirely, the value of the wetlands as a source of nutrient to finfish, crustacea, and shellfish of significant economic value;

(2) Will destroy the wetlands as a habitat for plants and animals of significant economic value and eliminate or substantially reduce marine commerce, recreation, and aesthetic enjoyment;

(3) In most cases, will affect the natural ability of tidal wetlands to reduce flood damage and affect adversely the public health and welfare; and

(4) Will reduce substantially the capacity of the wetlands to absorb silt and result in increased silting of channel and harbor areas to the detriment of free navigation.

(b) It is the public policy of the State, taking into account varying ecological, economic, developmental, recreational, and aesthetic values, to preserve the wetlands and prevent their despoliation and destruction.

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§16–103.

(a) Except as specifically provided in this title, a riparian owner may not be deprived of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970.

(b) The provisions of this title do not transfer the title or ownership of any land or interest in land.

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§16–104.

(a) This section does not apply to a nonwater–dependent project located on State or private wetlands in Prince George’s County.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection and notwithstanding any other provision of law, the Board of Public Works may not issue a license to authorize a nonwater–dependent project located on State wetlands.

(2) The Board of Public Works may issue a license to authorize a nonwater–dependent project located on State wetlands if the project:

(i) 1. Involves a commercial activity that 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. Avoids and minimizes impacts to State or private wetlands and other aquatic resources;

4. Is located in:

A. An intensely developed area and the project is authorized under a program amendment to a local jurisdiction’s critical area program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to the local jurisdiction’s zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or

B. An area that has been excluded from a local critical area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;

5. Is approved by the local planning and zoning authorities after the local jurisdiction’s program amendment under item 4A of this item, if applicable, has been approved;

6. Allows or enhances public access to State wetlands;

7. Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;

8. Has a height of up to 18 feet unless the project is located at a marina and the Secretary recommends additional height;

9. Is up to 1,000 square feet in total area;

10. Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, or an area with rare, threatened, or endangered species or species in need of conservation; and

11. Does not adversely impact a fish spawning or nursery area or an historic waterfowl staging area; or

(ii) 1. Is located on a pier that was in existence on or before December 31, 2012;

2. Satisfies all of the requirements under item (i)1 through 8 of this paragraph; and

3. If applicable, has a temporary or permanent roof or covering that is up to 1,000 square feet in total area.

(3) (i) The Board of Public Works may issue a license to authorize a nonwater-dependent project for a small-scale renewable energy system on a pier located on State wetlands if the project:

1. Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under this title;

2. Avoids and minimizes impacts to State or private wetlands and other aquatic resources;

3. Is located in:

A. The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under a program amendment to a local jurisdiction's critical area program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to the local jurisdiction's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or

B. An area that has been excluded from a local critical area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;

4. Is approved by the local planning and zoning authorities after the local jurisdiction's program amendment under item 3A of this subparagraph, if applicable, has been approved;

5. Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, or an area with rare, threatened, or endangered species or species in need of conservation; and

6. Does not adversely impact a fish spawning or nursery area or an historic waterfowl staging area.

(ii) A license issued under subparagraph (i) of this paragraph may include the installation or placement of:

1. A solar energy system attached to a pier if the device or equipment associated with that system does not extend more than:

A. 4 feet above or 18 inches below the deck of the pier;
or

B. 1 foot beyond the length or width of the pier;

2. A solar energy system attached to a piling if there is only one solar panel per boat slip;

3. A solar energy system attached to 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;

4. 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

5. 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.

(c) (1) Except as provided in paragraph (2) of this subsection and notwithstanding any other provision of law, the Secretary may not issue a permit to authorize a nonwater-dependent project located on private wetlands.

(2) Except for the public access requirement under subsection (b)(2)(i)6 of this section, the Secretary may issue a permit to authorize a nonwater-dependent project located on private wetlands if the project satisfies all of the requirements under subsection (b)(2) or (3) of this section.

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§16–105.

(a) The Department, jointly with the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, shall:

(1) Review existing regulations applicable to the construction of piers and bulkheads in the tidal wetlands of the State and in the Chesapeake Bay Critical Area; and

(2) By regulation, develop a procedure to avoid duplication of regulatory jurisdiction by the State and local jurisdictions concerning the construction of piers and bulkheads in the tidal wetlands of the State and in the Chesapeake Bay Critical Area.

(b) The procedure that the Department and Commission develop under subsection (a) of this section shall include provision for recognition of:

(1) State jurisdiction over the construction of piers and bulkheads in State and private wetlands designated under this title; and

(2) Local jurisdiction over:

(i) The construction of piers and bulkheads landward of the boundary lines of State and private wetlands as mapped under this title; and

(ii) Zoning divisional lines and building codes.

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§16–106.

(a) (1) A person that undertakes or authorizes an activity that requires a license or permit under this title shall:

- (i) Hire a licensed marine contractor to do the work; or
- (ii) Be a licensed marine contractor.

(2) Notwithstanding any other provision of law, a residential or commercial property owner shall be exempt from the requirement to be or to hire a licensed marine contractor under subsection (a) of this section if:

(i) The property owner performs marine contractor services on the property owner's own property; and

(ii) The property owner obtains the necessary tidal wetlands licenses or permits required under this title.

(b) (1) A person who violates subsection (a) of this section or any regulation adopted under this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both.

(2) Each day that a person conducts marine contractor services without a license constitutes a separate offense.

(c) (1) In addition to any other sanction under this section, a civil action may be brought against a person for a violation of subsection (a) of this section or any regulation adopted under this section.

(2) A person may be liable for a civil penalty under this subsection not to exceed \$10,000 for each violation.

(d) Any penalties collected under this section shall be paid into the Wetlands and Waterways Program Fund established under § 5–203.1 of this article, for the administration of the Marine Contractors Licensing Board established under Title 17 of this article.

(e) The Department shall adopt regulations to administer and enforce the provisions of this section.

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§16–107.

(a) (1) This section applies to a development project to expand a marina that historically operated as a working marina for the sole purpose of supporting aquaculture or seafood operations.

(2) This section does not apply to a development project to expand a marina if the existing or expanded marina is used to allow a person to moor, dock, or store recreational or pleasure vessels.

(b) (1) Except as provided in subsection (c) of this section, the Board may issue a license under this title for a development project to expand a marina that is located in an area where the water depth is less than 4 1/2 feet at mean low water and on a waterway without strong flushing if the development project:

(i) Enhances aquaculture activities or seafood operations;

(ii) Is located in a marina or seafood operation at a marina operated by a nonprofit organization to promote aquaculture activities or oyster restoration in the State;

(iii) Does not adversely impact submerged aquatic vegetation;
and

(iv) Will further the policies of the State related to aquaculture.

(2) The license authorized under paragraph (1) of this subsection may authorize dredging to improve navigational access to the marina or marina facility operations.

(c) The Board may not issue a license under this title unless the applicant for the license has obtained the following authorizations if required by local, State, or federal law:

(1) Local planning or zoning authorization;

(2) An aquaculture lease;

(3) A water column lease or a submerged land lease issued by the Department of Natural Resources; and

(4) A permit issued by the U.S. Army Corps of Engineers under § 404 of the federal Clean Water Act or under § 10 of the federal Rivers and Harbors Act.

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§16–201.

(a) A person who is the owner of land bounding on navigable water is entitled to any natural accretion to the person's land, to reclaim fast land lost by erosion or avulsion during the person's ownership of the land to the extent of provable existing boundaries. The person may make improvements into the water in front of the land to preserve that person's access to the navigable water or, subject to subsection (c), protect the shore of that person against erosion. After an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. A right covered in this subtitle does not preclude the owner from developing any other use approved by the Board. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972, and the burden of proof that the loss occurred after this date is on the owner of the land.

(b) The rights of any person, as defined in this subtitle, which existed prior to July 1, 1973 in relation to natural accretion of land are deemed to have continued to be in existence subsequent to July 1, 1973 to July 1, 1978.

(c) (1) Improvements to protect a person's property against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation, except:

(i) In areas designated by Department mapping as appropriate for structural shoreline stabilization measures; and

(ii) In areas where the person can demonstrate to the Department's satisfaction that such measures are not feasible, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures.

(2) (i) Subject to subparagraph (ii) of this paragraph, in consultation with the Department of Natural Resources, the Department shall adopt regulations to implement the provisions of this subsection.

(ii) Regulations adopted by the Department under subparagraph (i) of this paragraph shall include a waiver process that exempts a person from the requirements of paragraph (1) of this subsection on a demonstration to the Department's satisfaction that nonstructural shoreline stabilization measures are not feasible for the person's property.

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§16–202.

- (a) A person may not dredge or fill on State wetlands without a license.
- (b) To apply for a license, the applicant shall submit a delineation of the affected tidal wetlands and all other information required by the Department.
- (c)
 - (1) Subject to paragraph (3) of this subsection, within 45 days from receipt of the application, the Department shall notify the applicant whether the application is complete and whether the delineation is correct.
 - (2) Subject to paragraph (3) of this subsection, if the Department fails to notify the applicant about the application or delineation within 45 days, the delineation shall be treated by the Department as correct, and the application shall be treated as complete.
 - (3) Upon written notice to the applicant, the Department may provide for an extension of the deadline under this subsection if the following extenuating circumstances prevent consideration of the application:
 - (i) Inclement weather conditions;
 - (ii) A review is required by a federal, State, or local government agency; or
 - (iii) A request is made by an applicant.
- (d)
 - (1) Subject to paragraph (2) of this subsection, once the application is complete in accordance with subsection (c) of this section, the Department shall grant, deny, or condition a license within 45 days if:
 - (i) The application is not subject to public notice and hearing requirements under subsection (g) of this section; or
 - (ii) The application does not require an action by the Board.
 - (2) Upon written notice to the applicant, the Department may provide for a 30–day extension of the deadline under this subsection for the following extenuating circumstances:

(i) A review is required by a federal, State, or local government agency; or

(ii) A request is made by an applicant.

(e) (1) Once the application is complete under subsection (c) of this section, the Department shall issue public notice of an opportunity to submit written comments or to request a hearing in accordance with § 5-204(b) through (e) of this article.

(2) A hearing requested under paragraph (1) of this subsection shall be held within 45 days of the hearing request, unless extenuating circumstances justify an extension of time.

(3) The hearing that may be requested under this subsection is not a contested case hearing under Title 10, Subtitle 2 of the State Government Article.

(f) The Secretary shall assist the Board in determining whether to issue a license to dredge or fill State wetlands. The Secretary shall submit a report indicating whether the license should be granted and, if so, the terms, conditions, and consideration required after consultation with any interested federal, State, and local unit, and after issuing public notice, holding any requested hearing, and taking any evidence the Secretary thinks advisable.

(g) (1) Upon receipt of a report by the Secretary, the Board shall decide if issuance of the license is in the best interest of the State, taking into account the varying ecological, economic, developmental, recreational, and aesthetic values each application presents. If the Board decides to issue the license, the issuance of the license shall be for consideration and on terms and conditions the Board determines. Every license shall be in writing.

(2) With respect to an application for a license to fill or construct a shore erosion control structure other than riprap on State wetlands, the Board may issue the license without public notice if the fill area is less than 300 feet in length parallel to the fast land as close to the fast land as structurally feasible but not more than 10 feet channelward of the mean high water line and if after a site visit the report of the Secretary recommends that the license be granted. The Board may issue a license without public notice where an emergency exists caused by act of God, natural disaster, catastrophe, or other similar natural event when the health, safety, or welfare of the citizens of the State would be jeopardized by a delay caused by time requirements for public notice. However, the license may be granted by the Board only with the concurrence of the Secretary. The Secretary shall provide prompt public notice of the emergency license issuance and the opportunity to submit written comments or to request a hearing to determine whether the emergency license shall

be revoked or made permanent. If a hearing is requested, the hearing shall be scheduled within 30 days of the emergency issuance of the license.

(3) If the report of the Secretary recommends that a license be granted, the Board may issue the license without public notice:

(i) To fill or construct a shore erosion control structure of riprap on State wetlands if the fill area is less than 500 feet in length parallel to the fast land as close to the fast land as structurally feasible but not more than 10 feet channelward of the mean high water line;

(ii) To repair or replace a bulkhead for the purpose of shore erosion control where the bulkhead is presently functional, but is deteriorating or damaged, provided that the repair or replacement structure does not extend more than 18 inches channelward of the existing structure. Repair or replacement may include riprap placed along the base of the bulkhead, provided that the riprap shall not extend more than 10 feet channelward of the bulkhead;

(iii) To fill near shore shallow water bottom extending no more than 35 feet channelward of the mean high water line provided the fill area is less than 500 feet in length parallel to the fast land for the purpose of shore erosion control by landscaping and wetland plant establishment;

(iv) To construct or repair a private noncommercial boat ramp provided the ramp does not exceed 12 feet in width and extend more than 30 feet channelward of the mean high water line; or

(v) To maintenance dredge a mooring, private or commercial boat ramp, mobile boat hoist slip, or marine railway when no more than 100 cubic yards of material nor an area greater than 1,500 square feet need to be dredged.

(4) With respect to the maintenance dredging of projects in State wetlands for which a license is to be issued, the license may include provision for periodic maintenance dredging if recommended by the report of the Secretary provided that the maintenance dredging be effected:

(i) Within the area, depth, and in conformity with other limitations contained in the license;

(ii) That no more than 500 cubic yards of material be dredged at each maintenance dredging to restore licensed works;

(iii) That the material from maintenance dredging be deposited upon the designated or other upland site approved by the Secretary; and

(iv) That the Secretary be notified and approve of each maintenance dredging operation.

(5) The provisions for periodic maintenance dredging under paragraph (4) of this subsection shall be effective for no more than 6 years beyond the date of issuance of the license.

(6) If the licensee desires to continue maintenance dredging beyond the expiration date authorized in paragraph (5) of this subsection, the licensee must obtain a new license by submitting an application to the Board for review in accordance with the procedures of this section.

(h) The provisions of this section do not apply to any operation for:

(1) Dredging and filling being conducted as of July 1, 1970, as authorized under the terms of an appropriate permit or license granted under the provisions of existing State and federal law;

(2) Dredging of seafood products by any licensed operator, harvesting of seaweed, or mosquito control and abatement as approved by the Department of Agriculture;

(3) Improvement of wildlife habitat or agricultural drainage ditches as approved by an appropriate unit;

(4) Routine maintenance or repair of existing bulkheads, provided that there is no addition or channelward encroachment;

(5) Aquaculture activities occurring under a lease issued by the Department of Natural Resources under Title 4, Subtitle 11A of the Natural Resources Article; or

(6) Installing a pump, a pipe, or any other equipment attached to a pier for the cultivation of shellfish seed in a shellfish nursery under a permit issued by the Department of Natural Resources under § 4–11A–23 of the Natural Resources Article, provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier.

(i) (1) Subject to paragraph (3) of this subsection, the Board may not approve a license or an amendment to a license authorizing the dredge material deposited in the Hart–Miller Island Dredged Material Containment Facility to exceed an elevation of:

and (i) 44 feet above the mean low water mark in the north cell;

(ii) 28 feet above the mean low water mark in the south cell.

(2) Subject to paragraph (3) of this subsection, on or after January 1, 2010, the Board may not approve a license or an amendment to a license authorizing the deposit of dredge material at the Hart–Miller Island Dredged Material Containment Facility.

(3) (i) In this paragraph, “large redevelopment site” has the meaning stated in § 4–101.1 of this article.

(ii) Notwithstanding any other law, on or before December 31, 2027, the Board may approve a license or an amendment to a license authorizing the deposit of dredged material at the Hart–Miller Island Dredged Material Containment Facility if:

1. The dredged material is from a location within 1 mile of the shoreline of a large redevelopment site; and

2. The person undertaking the dredging project has, after consultation with the Hart–Miller–Pleasure Island Citizens Oversight Committee, entered into an enforceable community benefits agreement, in accordance with § 5–1103(b)(3)(iii)2 of this article.

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§16–203.

Notwithstanding any other provision of law, a landowner shall be exempt from all local permit requirements to perform routine maintenance and repair of a bulkhead.

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§16–204.

(a) Any person that satisfies subsection (b) of this section may petition the circuit court in the county where the land is located within 30 days after receiving the decision of the Board. The appeal shall be heard on the record compiled before the Board.

(b) A party has standing to file a petition under subsection (a) of this section if the party:

(1) Meets the threshold standing requirements under federal law;
and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(c) (1) A contested case hearing may not occur on a decision of the Board in accordance with § 16–202 of this subtitle.

(2) Judicial review under this section shall be conducted in accordance with Title 1, Subtitle 6 of this article.

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§16–205.

(a) The Board may require as a condition to issuance of a wetlands license that compensation be made to the State, of a kind and in an amount deemed appropriate by the Board.

(b) (1) The Board shall establish a compensation rate for cables, pipelines, or similar structures in accordance with this subsection.

(2) The minimum compensation rate:

(i) Is \$2.50 per linear foot per year for cables, pipelines, or similar structures;

(ii) Applies to each individual cable, pipeline, or similar structure; and

(iii) Applies to all new and existing authorizations beginning July 2, 2012.

(3) The Board may:

(i) Increase the compensation rate as considered appropriate; and

(ii) Adjust the compensation rate to reflect changes in the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor or by an appropriate method selected by the Board.

(c) (1) The Board shall establish an annual compensation rate for nonwater-dependent projects authorized under § 16–104(b)(2) of this title.

(2) The Board shall assess an annual compensation rate for a nonwater-dependent project that is:

(i) Based on the most recent data provided by the State Department of Assessments and Taxation in the assessment record for the real property to which the nonwater-dependent project is attached; and

(ii) Computed by:

1. Multiplying the total square footage of the nonwater-dependent project by a fraction, the denominator of which is the total square footage of the land area of the real property to which the nonwater-dependent project is attached, and the numerator of which is the assessed land value of the real property to which the nonwater-dependent project is attached; and

2. Multiplying the rate calculated under item 1 of this item by a percentage considered appropriate by the Board not to exceed 100%.

(3) In determining the appropriate percentage under paragraph (2)(ii)2 of this subsection, the Board may consider:

(i) The extent to which the nonwater-dependent project is used on a seasonal or year-round basis;

(ii) The extent of the economic impact of the nonwater-dependent project on the local jurisdiction;

(iii) The nature and extent of the environmental impact of the nonwater-dependent project;

(iv) The extent to which the nonwater-dependent project and, if applicable, its roof or covering, are permanent or temporary;

(v) Any history of violation of this title by the licensee;

(vi) Any real property lease rates for the area for a commercial activity similar to the licensee's or any real property appraisals obtained by the licensee; and

(vii) Any other factor that the Board considers relevant.

(4) The Board may periodically recalculate the annual compensation rate to reflect:

(i) Any change to the data provided by the State Department of Assessments and Taxation under paragraph (2)(i) of this subsection; or

(ii) A change in any factor the Board considers under paragraph (3) of this subsection.

(d) Monetary compensation received by the State in conjunction with a wetlands license may not be applied to the State Annuity Bond Fund Account.

(e) (1) There is created a special fund, known as the Tidal Wetlands Compensation Fund.

(2) The following money shall be deposited in the Tidal Wetlands Compensation Fund:

(i) Any monetary payment by a licensee in lieu of creating, restoring, or enhancing tidal wetlands that is required by the Department or the Board as a condition of a permit or license;

(ii) Any penalty imposed by a court in accordance with this title; and

(iii) Any penalty imposed by the Department under this title.

(f) Funds in the Tidal Wetlands Compensation Fund may be appropriated only for the creation, restoration, or enhancement of tidal wetlands, including:

(1) Acquisition of land or easements;

(2) Maintenance of mitigation sites;

(3) Purchase of credits in mitigation banks;

(4) Management of invasive or nuisance species identified by the Department;

(5) Cost sharing assistance to landowners in the management and control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and

(6) Contractual services necessary to accomplish the intent of this subsection.

(g) Funds credited and any interest accrued to the Fund:

(1) Shall remain available until expended; and

(2) May not revert to the General Fund under any other provision of law.

(h) All monetary compensation paid to the State in conjunction with a wetlands license other than that specified under subsection (e)(2) of this section shall

be deposited in the Wetlands and Waterways Program Fund established under § 5–203.1 of this article.

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§16–301.

(a) The Secretary shall promptly delineate the landward boundaries of any wetlands in the State. The landward boundaries of the wetlands shall be shown on suitable maps or aerial photographs on a scale of 1 inch to 200 feet. The maps shall cover an entire political subdivision of the State as determined by the Secretary.

(b) The Secretary shall hold a public hearing in the county of the affected wetlands on completion of the boundary map required in subsection (a) of this section and adoption of proposed regulations provided in § 16-302 of this subtitle. The Secretary shall give notice of the hearing by registered or certified mail not less than 30 days prior to the hearing date, to each owner shown on tax records as an owner of land designated on the map as a wetland. The notice shall include the proposed regulations. The Secretary shall publish notice of the hearing at least once not more than 30 days and not fewer than 10 days before the date of the hearing in a newspaper published within and having a general circulation in every county where the wetlands are located.

(c) After considering the testimony at the hearing and any other pertinent fact, considering the rights of every affected property owner, and the purposes of this subtitle, the Secretary shall establish by order the landward bounds of each wetland and the regulations applicable to the wetland. A copy of the order, together with a copy of the map depicting the boundary lines, shall be filed among the land records in accordance with subsection (d) of this section in every county affected after final appeal has been completed. The Secretary shall give notice of the order to each owner of record of any land designated as wetlands by mailing a copy of the order to the owner by registered or certified mail. The Secretary also shall publish the order in a newspaper published within and having a general circulation in every county where the wetlands are located.

(d) Filing among the land records means that the clerk of the circuit court for each affected county shall maintain all wetlands maps and regulations so as to be accessible to the public and shall display prominently to the public an index map prepared by the Department, which shall indicate the location of each wetlands map within the county, referenced by number corresponding to the map on file. Filing of maps and regulations in accordance with this subsection shall be deemed to constitute notice at all times, to the public and to all property owners affected by this subtitle, of the applicability to the wetlands areas indicated on the maps, regardless of ownership, of the requirement to obtain a permit before dredging or filling private wetlands.

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§16–302.

(a) To promote the public safety, health, welfare, wildlife, and marine fisheries, the Secretary may adopt regulations governing dredging, filling, removing, or otherwise altering or polluting private wetlands. The regulations may vary as to specific tracts of wetlands because of the character of the wetlands.

(b) The regulations shall be adopted with the advice and consent of the Maryland Agricultural Commission, and in consultation with any appropriate unit in the affected political subdivision.

(c) The Secretary shall transmit a copy of any proposed regulations to the Maryland Agricultural Commission. Within 60 days from the receipt of the copy, the Maryland Agricultural Commission shall inform the Secretary of the Commission's decision as to the acceptance or rejection of the regulations. Failure to so inform the Secretary shall be considered approval of the regulations by the Commission.

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§16–303.

(a) The Secretary may:

(1) Modify, correct, or update the boundary maps established under § 16-301 of this subtitle; or

(2) Amend the regulations adopted under § 16-302 of this subtitle.

(b) The Secretary shall notify members of the public and affected property owners of proposed changes to wetlands maps or regulations as follows:

(1) A public hearing on proposed changes shall be held in each county in which affected wetlands are located; and

(2) Notice of proposed changes and of the public hearing shall be:

(i) Published in the Maryland Register;

(ii) Published at least once not more than 30 days and not fewer than 10 days before the date of the hearing in at least 1 newspaper published within and having a general circulation in every county where the affected wetlands are located, according to the advice of the county executive or president of the county commissioners;

(iii) Posted by the Department in the offices of each county government at locations that will best inform the public according to the advice of the county executive or president of the county commissioners; and

(iv) For proposed changes to wetlands maps and not for proposed changes to regulations, mailed by the Department by certified mail not less than 30 days before the public hearing to each owner shown on the tax records as an owner of land affected by a modification, correction, or update of the boundary map.

(c) Each revised map and amended regulation shall be filed among the land records in accordance with § 16-301(d) of this subtitle.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, the amendment of a wetlands boundary map under this section may not be deemed to

alter the boundaries of the Chesapeake Bay Critical Area designated under § 8-1807 of the Natural Resources Article.

(2) The boundaries of the Critical Area may be amended under § 8-1809 of the Natural Resources Article.

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§16–304.

Notwithstanding any regulation adopted by the Secretary to protect private wetlands, the following uses are lawful on private wetlands:

- (1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;
- (2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted;
- (3) Exercise of riparian rights to improve land bounding on navigable water, to preserve access to the navigable water, or to protect the shore against erosion;
- (4) Reclamation of fast land owned by a natural person and lost during the person's ownership of the land by erosion or avulsion to the extent of provable preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the land;
- (5) Routine maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment; and
- (6) Installing a pump, a pipe, or any other equipment attached to a pier for the cultivation of shellfish seed in a shellfish nursery under a permit issued by the Department of Natural Resources under § 4–11A–23 of the Natural Resources Article, provided that the pump, pipe, or other equipment does not require increasing the length, width, or channelward encroachment of the pier.

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§16–305.

Notwithstanding any other provision of law, a landowner shall be exempt from all local permit requirements to perform routine maintenance and repair of a bulkhead.

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§16–306.

(a) (1) Any person who has a recorded interest in land affected by any regulation adopted under this subtitle may appeal the regulation or designation of the person's land as wetland to the circuit court in the county where the land is located.

(2) The appeal shall be filed within 30 days after the later to occur:

(i) Notice that the Department's final adoption of the regulation has been published in the Maryland Register under § 10–114 of the State Government Article; or

(ii) Notice that the Department's final adoption of the regulation or designation of the person's land as wetland has been filed among the land records under § 16–303 of this subtitle.

(b) (1) The court shall review the administrative record of the Department's promulgation of the regulation or designation of the person's land as wetland.

(2) The court shall declare the regulation or designation invalid if the court finds that:

(i) The regulation or designation violates any provision of the United States or Maryland Constitution;

(ii) The regulation or designation exceeds the statutory authority of the Department; or

(iii) The Department failed to comply with statutory requirements for adoption of the regulation or designation of the person's land as wetland.

(c) If the court finds the regulation is invalid, the court shall enter a finding that the regulation does not apply to the petitioner. However, the finding may not affect any land other than that of the petitioner. The Secretary shall record a copy of the finding among the land records in the county.

(d) The person who appealed to the circuit court or the Department may appeal the decision of the circuit court to the Appellate Court of Maryland.

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§16–307.

(a) (1) Any person proposing to conduct on any wetland an activity not authorized by the regulations adopted under the provisions of § 16–302 of this subtitle shall apply for a permit with the Secretary, on the form the Secretary prescribes.

(2) The application shall include a detailed description of the proposed work and a map showing the areas of wetland directly affected, the location of the proposed work, and the names of the owners of record of adjacent land, and every claimant of water rights in or adjacent to the wetland known to the applicant.

(3) (i) Within 30 days after receipt of an application, the Secretary shall notify the applicant, in writing, of the extent of State wetlands involved in the proposed activity and indicate the method of compliance with the license requirements of § 16–202 of this title.

(ii) If the applicant claims that any part of the designated State wetlands is private wetlands by virtue of the existence of a valid grant, lease, or patent, or a grant confirmed by Article 5 of the Maryland Declaration of Rights, the Secretary shall investigate and determine the validity of the claim and notify the applicant of the Secretary's determination.

(iii) If, within 30 days after receipt of the Secretary's determination, the applicant files with the Secretary a written objection to the determination, the Secretary shall promptly institute an appropriate judicial proceeding to determine whether the land or part of the land covered by the application in dispute, is State or private wetland. The State shall bear the cost of the proceeding.

(4) The Secretary shall mail a copy of the application to the chief administrative officer in the county where the proposed work or any portion is located.

(5) (i) No later than 30 days after receipt of the application, the Secretary shall issue public notice of the opportunity to submit written comments or to request a hearing.

(ii) A hearing shall be held if requested.

(iii) A hearing required under this section may be held using teleconference or Internet-based conferencing technology.

(iv) If an electric company, as defined in § 1–101 of the Public Utilities Article, applies to the Public Service Commission for a certificate of public convenience associated with power plant construction which involves private wetlands, the hearing and permit procedure shall be in accordance with § 3–306 of the Natural Resources Article.

(v) At a requested hearing any person may appear and give testimony.

(6) Every permit application, map, or document shall be open for public inspection at the offices of the Secretary and the chief administrative officer in the county.

(7) A person may not reapply until after the expiration of 18 months from the date of the denial of a prior application or the final determination of an appeal from the denial.

(b) In granting, denying, or limiting any permit, the Secretary or the Secretary's designated hearing officer shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, economic benefits, the protection of life and property from flood, hurricane, and any other natural disaster, and the public policy set forth in this title. In granting a permit the Secretary may impose conditions or limitations designed to carry out the public policy set forth in this title. The Secretary may require a bond in an amount and with surety and conditions satisfactory to the Secretary, to secure compliance with any condition or limitation in the permit. The Secretary may suspend or revoke a permit if the Secretary finds that the applicant has not complied with any condition or limitation in the permit or has exceeded the scope of the work as set forth in the application. The Secretary shall state on the record the Secretary's findings and reasons for any action taken under this subsection.

(c) The Secretary shall render a decision within 30 days after the public comment period. Failure to act in conformance with either of these requirements is automatic approval of the application for permit as submitted.

(d) The Secretary shall provide opportunity for judicial review in accordance with the provisions of § 5–204 of this article.

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§16–309.

The court may order the State to pay court costs of any appeal in accordance with the provisions of § 16–306 of this subtitle if the court finds that the financial situation of the person appealing warrants this action.

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§16–310.

The court exercising equity jurisdiction in the county where the land or any part of the land is located may restrain any violation of this subtitle in an action brought by the Department or any authorized unit or officer of the Department.

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§16–401.

This subtitle does not affect any past or future accretion to land under private ownership bounding on or surrounded by the waters of the Chincoteague, Isle of Wight, or Sinepuxent Bay.

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§16–402.

(a) Any island created or formed within the confines of Sinepuxent, Isle of Wight, or Chincoteague Bay by the dumping or depositing of excavated material from dredging or any other artificial means employed by the State or the United States or both during the construction or maintenance of the Ocean City inlet and the channel in the bays, together with any accretion to any of those islands, in the past or future, are natural resources of the State and title to them is retained for the use of the Department.

(b) The Commissioner of Land Patents may not issue any patent for land created in the Chincoteague, Isle of Wight, or Sinepuxent Bay.

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§16–403.

Subject to the approval of the Board, the Department may use the land described in this subtitle for conservation purposes in the manner and under the regulations the Department deems in the best interest of the State. However, any person who may lawfully hunt or fish in Worcester County may hunt or fish on these lands during the open season for hunting or fishing.

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§16–501.

(a) Any person who violates any provision of this title is guilty of a misdemeanor. Unless another penalty is specifically provided elsewhere in this title, the person, upon conviction, is subject to a fine not exceeding \$10,000, with costs imposed in the discretion of the court.

(b) Any person found guilty of a second or subsequent violation of any provision of this title, unless another penalty is specifically provided elsewhere in this title, is subject to a fine not exceeding \$25,000, or imprisonment not exceeding 1 year, or both with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is a violation which has occurred within 2 years of any prior violation of this title.

(c) In addition to any administrative penalty provided in this title, violation of any provision of any permit or license issued under this title or of any regulation adopted by any unit within the Department under the provisions of this title is a misdemeanor and is punishable as provided in subsections (a) and (b) of this section.

(d) Any person who knowingly violates any provision of this title is liable to the State for restoration of the affected wetland to its condition prior to the violation, if possible. The court shall specify a reasonable time for completion of the restoration.

(e) (1) The provisions of this title are enforceable against any person charged with dredging or filling private wetlands without a permit, notwithstanding a defense that pertinent wetlands maps and regulations had not been properly filed among the land records, if the court finds that the person charged had actual notice of the applicable regulatory requirements before the person dredged or filled the private wetlands.

(2) This subsection shall apply only to dredging or filling activities occurring after July 1, 1981.

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§16–502.

(a) (1) A person who violates any provision of this title or any regulation, permit, license, or order issued under this title shall be liable for a penalty not exceeding \$10,000, which may be recovered in a civil action.

(2) In imposing a penalty under this subsection, the court may consider the factors in § 9-342(b)(2)(ii) of this article and any other relevant factors.

(b) The circuit court may issue an injunction requiring the person to cease the violation and restore the area unlawfully dredged or filled.

(c) Before taking any civil action to recover a penalty under subsection (a) of this section, the Department shall provide the person alleged to have violated this title with written notice of the proposed penalty and an opportunity for an informal meeting concerning settlement of the proposed civil action.

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§16–503.

(a) Whenever the Department believes a violation of any provision of this title or any regulation has occurred, the Department shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provision of law or regulation allegedly violated and the alleged fact that constitutes the violation. Subsequent to or concurrent with service of the complaint as provided in subsection (c) of this section, the Department may issue an order requiring necessary corrective action be taken within the time prescribed in its order.

(b) Any person named in the order may request in writing a hearing before the Department not later than 10 days after the date the order is served, in which case a hearing shall be scheduled within 10 days from the receipt of the request. A decision shall be rendered within 30 days from the date of the hearing. Notice of a hearing shall be served on the alleged violator in accordance with the provisions of subsection (c) of this section not less than 10 days before the time set for the hearing. The order shall become effective immediately according to its terms upon service.

(c) Except as otherwise provided, any notice, order, or other instrument issued by or under authority of the Department shall be served in accordance with § 1–204 of this article. Where service is made by mailing, proof of service may be made by the sworn statement or affidavit of the person who mailed the notice, order, or other instrument. The sworn statement or affidavit shall be filed with the Department.

(d) A verbatim record of the proceedings of hearings may be taken when necessary or advisable by the Department. A subpoenaed witness shall receive the same fees and mileage as in any civil action. If a witness refuses to obey a notice of hearing or subpoena issued under this section, any circuit court, upon the application of the Department, may issue an order requiring the person to appear, testify, or produce evidence as required. The failure to obey a court order may be punished by the court as contempt.

(e) (1) A person aggrieved by an order may appeal to the circuit court of the county in which the land is located.

(2) The court shall review the administrative record of the Department's order.

(3) The court shall declare the Department's order invalid if the court finds that the order:

- (i) Is unconstitutional;
- (ii) Exceeds the statutory authority or jurisdiction of the Department;
- (iii) Results from an unlawful procedure;
- (iv) Is affected by any other error of law;
- (v) Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
- (vi) Is arbitrary or capricious.

[\[Previous\]](#)[\[Next\]](#)

Appendix D:
Instruction Booklet for the Abbreviated Joint Federal/State
Application for the Alteration of any Tidal Wetland and/or Tidal
Waters in Maryland

INSTRUCTION BOOKLET for the Abbreviated Joint Federal/State Application for the Alteration of any Tidal Wetland and/or Tidal Waters in Maryland



Photo: Team SWAMP, University of Maryland

**Maryland Department of the Environment
Wetlands and Waterways Program**

Prepared by:



**US Army Corps
of Engineers®**



Maryland
Department of
the Environment

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GUIDE AND INSTRUCTIONS FOR COMPLETING

The ABBREVIATED JOINT FEDERAL / STATE APPLICATION FOR THE ALTERATION OF ANY TIDAL WETLAND AND/OR TIDAL WATERS IN MARYLAND

The following instructions and information are designed to assist you in applying for permits or licenses from Federal and State agencies for work in tidal waters and/or tidal wetlands within the State of Maryland. The intent is to provide general information on the permit process, not to act as a complete legal and technical reference.

This Abbreviated Joint Permit Application (JPA) is used to apply for federal and State authorization under the Maryland State Programmatic General Permit (MDSPGP) for work in tidal waters of the U.S. (including tidal wetlands) from the Baltimore District U.S. Army Corps of Engineers and the Maryland Department of the Environment (MDE) within the State of Maryland.

Please refer to the current version of the United States Army Corps of Engineers (USACE) MDSPGP to determine the project limits and conditions that are eligible for authorization under the MDSPGP. Some activities that may be eligible to use the Abbreviated JPA include private piers, boat lifts, marina pier reconfiguration, boat ramps, maintenance dredging of previously authorized dredged areas, general maintenance activities, private landowner oyster gardening activities, toe protection for new or existing bulkheads, low-profile sills, and groins. Projects that do not meet the activity-specific impact limits and requirements of the current version of the MDSPGP must use the Standard Joint Permit Application.

New commercial* shellfish aquaculture activities** should use the Joint State/Federal Application for a Commercial Shellfish Aquaculture Lease and Federal permit. This is available for download at:

<http://dnr.maryland.gov/fisheries/Documents/Commercial-Shellfish-Lease-Application.pdf>

<http://www.nab.usace.army.mil/Missions/Regulatory/Aquaculture.aspx>

Instructions for the Commercial Shellfish Lease Application is available for download at:

<http://dnr.maryland.gov/fisheries/Documents/Shellfish-Lease-Application-Instructions.pdf>

*Aquaculture activities proposed for any other purpose than commercial i.e. experimental, research, educational, etc. must apply for federal and State authorization using this Abbreviated JPA and submit the application to MDE. Applicable State application review fees shall be required.

** Any structure (e.g., piers, upwellers, mooring pilings, work platforms, etc.) proposed and associated with the new commercial shellfish aquaculture activity must also apply for federal and State authorization for those structures using this Abbreviated JPA and submit the application to MDE. Applicable State application review fees shall be required.



Read the instructions carefully to determine how many application copies must be submitted to MDE, who acts as the clearinghouse for permit applications. Permit applicants may obtain paper copies of the Abbreviated JPA by downloading from the MDE website or by calling the Regulatory Services Coordination Office at 410-537-3762 or 1-800-876-0200. The abbreviated JPA is available for download at:

<http://mde.maryland.gov/programs/Water/WetlandsandWaterways/PermitsandApplications/Pages/tidalpermits.aspx>

WETLANDS & WATERS DELINEATIONS

DO NOT USE THIS FORM if you are requesting **a Jurisdictional Determination (JD) only** to determine the presence of jurisdictional waters of the United States, including wetlands regulated by USACE under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act. The identification and location of jurisdictional Waters of the United States including wetlands must be performed using a multi-parameter approach defined in Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual, dated January 1987, and applicable supplemental guidance. Contact the Baltimore District USACE to obtain a delineation verification by referencing the Contact Information on the Baltimore District Corps regulatory webpage at:

<http://www.nab.usace.army.mil/Missions/Regulatory/Contacts.aspx>

Additional information on jurisdictional determinations may be found at:

<http://www.nab.usace.army.mil/Missions/Regulatory/JurisdictionalDeterminations.aspx>

PRE-APPLICATION MEETING SCHEDULING

Pre-application meetings are strongly encouraged to assist riparian property owners and applicants in compiling accurate and complete information required as part of the application package. All applicants for proposed structural shoreline control projects are required to submit the Living Shoreline Waiver Request Form on Page 21 (2 copies) and an **MDE approved waiver**. A pre-application meeting will enable you to obtain the waiver, if granted, prior to submittal of the application package. The pre-application meeting can ensure that all the required information necessary for the plans is depicted and that all the regulated resources are properly identified. A complete application is processed more quickly than an application that requires additional or corrected information. The pre-application meeting request form may be found at:

<http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/PreApplicationIntroduction.aspx>

Professional consultants/technical contacts that are completing the application are expected to understand how to properly calculate and itemize permanent and temporary impacts by resource type. They are expected to have a thorough understanding of the laws, regulations, policies, and requirements needed to submit a complete application which includes plans for all proposed activities.



Agency Use Only:

Please leave the top grey section labeled, **FOR AGENCY USE ONLY**, blank. This section is to be filled out by the agencies when your application is received.

Pre-Application meeting:

If a meeting with MDE and/or the USACE was conducted, prior to submitting this application, regarding potential activities or resources on the parcel(s) or address named in this application, please indicate by checking the box next to the agency (ies) met with and provide the name of the reviewer(s) from the respective agency (ies). Please provide the Agency Interest Number (AI#), if you met with a reviewer from MDE and they provided you with that number.

Pre-Application Meeting Held? ☐ with MDE ☐ with USACE	AI#(if given):	*MAILING INSTRUCTIONS LOCATED ON 2 ND PAGE OF THIS APPLICATION*
Reviewer's Name(s):		

Reason for application:

Indicate by checking the appropriate box if the application is for authorization of a proposed project or a modification of an existing and currently active license. A State tidal wetland license that has expired shall not be modified and any proposed work will require a new application, appropriate fee, and the applicable State and federal authorizations.

Applying for:	☐ Authorization ☐ Modification	MDE APPLICATION REVIEW FEE REQUIRED: PLEASE REFER TO THE MDE WEBSITE: http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/Fee-Schedule-July2017.pdf
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An MDE Tidal Wetland authorization is active for 3 years from the date of issuance. The date of issuance can be found on the License. A modification to an active authorization does not extend the length of time that the authorization is active; a modified authorization will still expire 3 years from the date of the original authorization that is being modified. **MDE Tidal Wetland General License authorizations can be extended for an additional 3 years.** A request to extend an active License for an additional 3 years should be received no earlier than 6 months prior to expiration and no later than 1 month from expiration. If an authorization has expired than a new application including all applicable fees will be required.

The MDSPGP is authorized for a period of five years from the date of issuance. Please note that the construction period expires for individual projects verified/authorized by the MDSPGP when the MDSPGP expires, is suspended, or revoked, whichever date occurs sooner. It is incumbent for the public to remain informed of changes to the MDSPGP. The USACE will issue a public notice announcing the changes when they occur. Activities authorized under the MDSPGP that have commenced construction or that are under contract to commence construction, prior to the expiration, modification, or revocation date of the MDSPGP itself, will remain authorized, provided the activity is completed within 12 months of the date of the MDSPGP's expiration, modification, or revocation. This provision does not apply if a specific MDSPGP verification has been modified, suspended, or revoked.



MDE required fees:

MDE requires an **application review fee** to be submitted in conjunction with the submittal of all applications in order to process the application and forward it to the appropriate State reviewer(s) and forward the application to the USACE. Please be aware that the application review fee (with a copy of the front page of the application) is sent directly to the bank for processing. The bank sends notification to MDE only after it has processed the check through their system. The application review process does not begin until the bank notification is received by the Wetlands and Waterways Program's Regulatory Services Division.

Please note the separate addresses to send the complete application and plans and the appropriate fee and first page of the application below:

PLEASE MAIL SEVEN COPIES OF THE APPLICATION, SITE PLAN, AND VICINITY MAP (WITH PROJECT LOCATION PINPOINTED) TO: MDE/WATER AND SCIENCE ADMINISTRATION REGULATORY SERVICES COORDINATION OFFICE MONTGOMERY PARK BUSINESS CENTER – ST 430 1800 WASHINGTON BOULEVARD BALTIMORE, MD 21230-1708 (410) 537-3762 OR 1-800-876-0200	SEND THE APPLICABLE APPLICATION FEE, ALONG WITH A <u>COPY OF THE FIRST PAGE OF THE APPLICATION</u> TO: MDE P.O. BOX 2057 BALTIMORE, MD 21203-2057 PCA: 13910 OBJ: 4142 PLEASE REFER TO OUR WEBSITE http://mde.maryland.gov/programs/Water/WetlandsandWaterways FOR FURTHER INSTRUCTIONS.
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In general, proposed project(s) that are considered residential activities by the State require an MDE processing review fee of \$750.00 for an application for State authorization and an activity processing review fee of \$250.00 for an application to modify an existing active State license.

In General, proposed project(s) that are considered commercial activities by the State require an MDE processing review fee of \$1,500.00 for an application for State authorization and to modify an existing active State license. Additional processing fees based on project size for commercial activities are required.

Additionally, there are projects that are exempt from the full MDE processing fee, but still require a reduced processing fee. The fee tables are below:

Wetlands and Waterways Program Application Fee Schedule and Guidelines

FEE EXEMPT PROJECTS (APPLICATION REQUIRED)
WETLANDS AND WATERWAY PROGRAM
TYPE OF ACTIVITY
1. Any activity proposed by the State, a municipal corporation, county, bi-county or multicounty agency.
2. Performance of agricultural best management practices approved by a Soil Conservation District.
3. Performance of forestry best management practices prepared by a registered forester and approved by a Soil Conservation District.
4. Stream restoration, vegetative shoreline stabilization, wetland creation, or other project in which the primary effect is to enhance the State's wetland or water resources.
5. Aquaculture activities for which DNR has issued a permit under Title 4, Subtitle 11A of the Natural Resources Article.



FEE SCHEDULE A -Fees are not additive; use the highest fee for the activity(ies) proposed- (If the proposed nontidal wetland and waterway activity is not listed in this table, then use FEE SCHEDULE C)			
NONTIDAL WETLAND AND WATERWAY PROJECTS			
ACTIVITY	ACTIVITY PARAMETERS	APPLICATION REQUIRED	APPLICATION FEE REQUIRED
Non-habitable structure (ex. driveways, decks, pools, sheds, or fences)	Permanent impacts $\leq$ 1,000 square feet	YES	\$300.00
In-kind repair and replacement of existing infrastructure in nontidal wetlands (Infrastructure is defined as: the structures such as roads, bridges, culverts, utilities, etc. that supports the general public and do not meet the definition of a residential activity)		YES	\$500.00

FEE SCHEDULE B -Fees are not additive; use the highest fee for the activity(ies) proposed- (If the proposed tidal wetland activity is not listed in this table, then use FEE SCHEDULE C)			
TIDAL WETLAND PROJECTS			
ACTIVITY	ACTIVITY PARAMETERS	APPLICATION REQUIRED	APPLICATION FEE REQUIRED
Replacement Bulkhead	Replacement bulkhead is proposed $\leq$ 18 inches channelward of the existing, functional ⁽¹⁾ bulkhead	YES	\$500.00
Platform and/or finger pier	Platform	YES	\$300.00 (To meet the application fee total area of all proposed platform(s) and finger pier(s) is $\leq$ 200 square feet)
	Fixed or Floating on an existing functional ⁽¹⁾ pier		
	Total area of all proposed platform(s) is $\leq$ 200 square feet ⁽²⁾		
Mooring piles	$\leq$ 6 ⁽⁴⁾	YES	\$300.00
Boat lift/hoist or Personal Watercraft Lift	Installation of pilings associated with lift	YES	\$300.00
Installation of a boatlift or personal watercraft lift on existing pilings	No new outer piling to be installed	YES	NO FEE (No other activity is proposed)
Construction of a Living Shoreline ⁽⁵⁾		YES	NO FEE (No other activity is proposed)
In-kind repair and replacement of functional structures located within jurisdictional tidal wetlands. ⁽⁶⁾		NO	NO FEE

¹ “Functional” means performing at least 85 percent of the action that a structure was originally designed to perform (COMAR 26.24.01.02(20)).

² COMAR 26.24.04.02B(3). Total platform space of existing and proposed platforms must be $\leq$ 200 square feet.

³ COMAR 26.24.04.02B(4)



⁴ COMAR 26.24.04.02B(2)(c)(v)

⁵ Construction of a Living Shoreline must be the only activity proposed on the application; otherwise the appropriate fee for the other proposed activities shall apply.

⁶ Must adhere to the definitions found in COMAR 26.24.01.02B(20)(24)(45). No increase of width, length, or height of the existing, previously authorized or “grandfathered”, functional structure.

FEE SCHEDULE C		
ACTIVITIES NOT FEE EXEMPTED OR DESCRIBED IN FEE SCHEDULE A OR B	AREA OF IMPACT	APPLICATION FEE REQUIRED
MINOR PROJECT ⁽¹⁾	<5,000 SQUARE FEET	\$750.00
MAJOR PROJECT ⁽²⁾	<1/4 ACRE	\$1,500.00
	≥ ¼ ACRE TO < ½ ACRE	\$3,000.00
	≥ ½ ACRE TO ≤ ¾ ACRE	\$4,500.00
	≥ ¾ ACRE TO < 1 ACRE	\$6,000.00
	≥ 1 ACRE	\$7,500.00/ACRE
MINOR MODIFICATION ³ (State Authorization has been issued and is currently active)	<5,000 SQUARE FEET	\$250.00
MAJOR MODIFICATION ⁴ (State Authorization has been issued and is currently active)	>5,000 SQUARE FEET	\$1,500.00

¹ **Minor projects** include the following:

1. Projects proposing to impact less than 5,000 square feet of wetlands, waterways, including the 100-year floodplain.
2. **A project that proposes residential activities:**
 - a. **Residential Activity** means a noncommercial activity that is conducted on residential property
 - i. **Residential Property** means improved property that is used primarily as a residence or unimproved property that is zoned for use as a residence. Includes:
 1. Property owned by a homeowner’s association
 2. A condominium
 - ii. A **Residential Property** does not include:
 1. A commercial building
 2. A marina
 3. A residential apartment complex or building
3. Mining Activities

² **Major Project** include the following:

1. A project that proposes to impact 5,000 square feet or more of wetlands or waterways, including the 100 year floodplain.
2. A nontidal wetland in an area of special state concern.
3. A project that requires public notice.



TIDAL WETLAND ACTIVITIES REQUIRING A PUBLIC NOTICE	
ACTIVITY	ACTIVITY PARAMETERS
New bulkhead	> 300 linear feet and/or > 10 feet channelward of the mean high water line
Replacement bulkhead	> 18 inches channelward of the existing bulkhead or > 10 feet channelward of the existing bulkhead when a stone toe protection is included
Revetment projects	> 500 linear feet and/or > 10 feet channelward of the mean high water line
Living shoreline/marsh creation	> 500 linear feet and/or > 35 feet channelward of the mean high water line
New stormwater discharge	Discharge within the critical area
Dredging projects	> 1,500 square feet and/or > 100 cubic yards of material
Boat ramp	> 12 feet wide and/or are > 30 feet channelward of the mean high water line
Groin, Jetty, Breakwater	
Any other activities substantially affecting tidal wetlands including as required by law	

Please be aware the review process for your application does not begin until MDE receives the required processing fee(s) and 7 copies of a complete application which include plans.

Reference the website below for more information concerning application fees:

<http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/Fee-Schedule-July2017.pdf>

USACE authorizations:

The Maryland State Programmatic General Permit (MDSPGP) may be issued in situations where a State authority has a regulatory program in place that provides a similar level of review as the USACE. In such cases, the MDSPGP avoids unnecessary duplication of effort by providing Corps authorization for certain activities with minimal adverse environmental effects, as specified by the terms, conditions, and limitations of the MDSPGP, provided they obtain the necessary state, regional, and local authorizations.

A proposed project which meets the MDSPGP – Category A activity-specific impact limits and requirements will have the JPA assigned a permit application number by MDE and will be reviewed, in most cases, by MDE only and the subsequent USACE authorization will be confirmed by MDE and available for download at MDE's website or the USACE website.

A proposed project which meets the MDSPGP – Category B or MDSPGP-Category A & B activity-specific impact limits and requirements will be reviewed by the Corps, MDE, resource agencies, and/or in certain cases the public to determine whether such activities are eligible for authorization under the MDSPGP. Upon receipt of an application that potentially qualifies for authorization under the MDSPGP-Category B or Category A & B, MDE will assign a permit application number to the JPA and will then distribute a copy of the application and plans to USACE. MDE and USACE will conduct separate but concurrent reviews of your project. Please be aware that MDE and the Corps will issue separate State and Federal authorizations for projects reviewed under the MDSPGP-Category B process. Therefore, please be sure that you have received all necessary authorizations, or documentation that no permit is required, prior to beginning the proposed work.

Permit application fees are not required for USACE MDSPGP verifications requested by this Abbreviated JPA



Application Contact Information:

1. APPLICANT INFORMATION: (Please note that the applicant is not the contractor/agent applying on behalf of a riparian property owner)

Name: _____ Telephone: (_____) _____
Address: _____ Email Address: _____
City: _____ State: _____ Zip: _____

2. RIPARIAN PROPERTY OWNER INFORMATION: (If different from the Applicant)

Name: _____ Telephone: (_____) _____
Address: _____ Email Address: _____
City: _____ State: _____ Zip: _____

The riparian property owner is the entity which holds title or an enforceable claim to the waterfront land on which the project and associated activities are proposed and must be the applicant. The riparian property owner is responsible for the activities conducted on the land parcel(s) listed in the application. Riparian property owners may be an individual person(s), partnership, Joint Stock Company, unincorporated association or society, trust, federal government, the State, any unit of the State, county, municipal organization, a political subdivision, or other corporation of any type. If the applicant/riparian property owner is an agency, company, corporation, or other organization, please indicate the company/organization name and the responsible officer and their title. Entities that hold an easement or right-of-way allowing them to conduct activities on the site should also complete this block.

For an MDE authorization in tidal waters or tidal wetlands, the applicant must be the riparian property owner.

However, USACE regulations recognize that the applicant can be either the riparian property owner or an entity (person/company/organization) that does not own the property but intends to undertake the activity. Applicants, if not the riparian property owner, must have a legal right to construct a project on the property. USACE, unlike MDE, can issue an authorization to an applicant other than the riparian property owner where the applicant has been given the legal right by the property owner to construct a project on the property. Applicants may include contract purchasers of the property. In such instances where the applicant and the property owner will be different, the application must be filled out according to the MDE requirement (applicant and property owner must be the same entity) and the ALTERNATIVE SIGNATURES FORM, located on page 18, should be filled out appropriately and submitted with the application package. The Alternative Signature Form will be forwarded to USACE. Please be aware that MDE will issue the State license to the Property Owner and USACE will issue to the Applicant.

Fill in the information for the applicant and/or the riparian property owner. The address should be the address where the applicant/owner receives mail through the United States Postal Service. The telephone number should be where the applicant (not the contractor or agent) may be reached during business hours.



3. AUTHORIZED AGENT / PRINCIPAL CONTACT INFORMATION:

Name: _____ Telephone: (____) _____
Address: _____ Email Address: _____
City: _____ State: _____ Zip: _____

This is the person to whom correspondence will be addressed and has been designated by the applicant to represent him/her in this process. The individual should be the person most knowledgeable about the project and proposed activities and will be able to answer questions from regulatory agencies. Any questions or concerns about the proposed project, the status of the application, and plan revisions are to be performed by this individual or the applicant.

Fill in the information for the authorized agent/principal contact. The address should be where the agent/principal contact receives mail through the United States Postal Service. The telephone number should be where the agent/contact may be reached during business hours.

4. CONTRACTOR INFORMATION (If currently unknown, required to be provided to MDE's Tidal Wetland Division prior to construction of project)

Company Name: _____
Principal Contact: _____ Email Address: _____
Marine Contractor MDE License #: _____ Telephone: (____) _____

If you are proposing a project in tidal waters or tidal wetlands and have identified a Marine contractor, provide the Maryland-Marine Contractor's Licensing Board's License number. Use of a licensed Marine contractor is required by MDE for authorized work in tidal wetlands or waters. Prior to beginning construction of any part of the project authorized by the State and federal licenses, the name, principal contact, e-mail address, license #, and telephone # of the Marine Contractor, licensed by the Maryland-Marine Contractor's Licensing Board who will be performing the work shall be provided to the Tidal Wetland Division.

Project Description**5. PROJECT DESCRIPTION:** (Attach additional pages if necessary)

The written description is an important part of the application. Provide a detailed, but brief description of the project and proposed activities in regulated tidal waters and wetlands, the dimensions of all proposed activities, the name of the waterway, and the construction technique (if applicable). Be sure to include how the construction site will be accessed, especially if clearing, grading, use of construction mats, or dredging will be required. If more space is needed, attach an extra sheet of paper marked Block 5.

Ex. "To construct a 6' wide by 130' long timber pier, a 10' long by 20' wide platform, 2 boat lifts with 4 associated boat lift piles, 4 mooring piles extending a maximum of 140' channelward of the mean high water line and to construct a stone revetment along 140' of eroding shoreline extending a maximum of 10' channelward of the mean high water line. Construction mats will be used within the first 10 feet of the shoreline to minimize impacts to some sparse near shore vegetation. Access to the site will be from a barge."



NOTE: All activities which the applicant plans to undertake which are reasonably related to the same project and for which a Department of the Army permit would be required should be included in the same permit application. The USACE, will reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill and structures associated with construction of the marina.

Project Purpose

6. PROJECT PURPOSE: (Check all that apply) ☐ Improve Navigable Access ☐ Shore Erosion Control ☐ Fill
☐ Beach Nourishment ☐ Create/Improve Habitat ☐ Erosion/Sediment Control ☐ Marina
☐ Create/Improve Infrastructure ☐ Utility Installation ☐ Residential/Commercial Development
☐ Other: (describe)_____.

Check the appropriate box that best fits the purpose of the proposed activities by the applicant at the project site.

Ex. – construction of a pier might be to improve navigable access to the property, construction of a revetment is control shore erosion, a living shoreline might be to control shore erosion and create/improve habitat, etc.

Project Location

7. PROJECT LOCATION: (If project site has no address, please include the lot # and/or nearest address with a clear description of the site)
 County: _____ Name of Waterway: _____
 Site Address or Location: _____
 _____ Latitude: _____ Longitude: _____
 Directions from nearest intersection of two state roads: _____

Accurate information on a project's location is vital for the timely review of your application. Reviewers often have difficulty in locating sites if directions are not clear. If a reviewer cannot locate the project site, the reviewer cannot perform a field visit to properly evaluate your proposed activity which could possibly delay the review and processing of your application.

Provide the name of the county where the applicant's proposed project is located. Provide the name of the waterway the proposed project is located; if unnamed tributary or canal then provide the name of the waterway that the tributary or canal connects to:

Ex. Unnamed tributary of ABC River, or Unnamed canal of ABC Bay, etc.

Provide the street address including the city/town/municipality and zip code that the proposed project will be located. "Same" or any omissions will be considered an incomplete application. If the property is a lot without a street address, the parcel and map number from state tax records should be provided. The street address of neighboring parcels, if available, also aids in locating sites.



Provide the latitude and longitude of the proposed project. Please place the coordinates as close to the proposed project area on the applicant's property as possible. Latitude and longitude should be depicted in either Degrees, minutes, seconds, Decimal degrees, or degrees, decimal minutes.

Ex. (Degrees, minutes, seconds) 39°16'32.19"N / 76°38'39.72"W
(Decimal degrees) 39.275693° / -76.644481°
(Degrees, decimal minutes) 39°16.542'N / 76°38.672'W

Provide directions to the project site from the nearest intersection of two State roads.

Ex. South on Rte. 2 to intersection of Rte. 214, turn left on Rte. 214 to Brown's Store, turn right on gravel road across from store, go one mile to red barn and turn left on dirt road. Project is directly at the end of the dirt road.

If the project is in an undeveloped subdivision or property, clearly stake and identify property lines and location of the proposed project to aid the reviewers during field review of your application. Please indicate if there is an access road to the project and whether it is public or private and improved or unimproved.

If more space is needed, attach an extra sheet of paper marked Block 7.

Attach an 8 ½" by 11" copy of a detailed plan such as a USGS topographic map or street map showing the site location and project boundary, so that it may be located for inspection. Include an arrow indicating the north direction. A supplemental plan showing how the property is to be subdivided should also be provided.

U.S. Army Corps of Engineers federally authorized Civil Works Projects (USACE project):

8. FEDERALLY AUTHORIZED CIVIL WORKS PROJECTS: Is the project located in, on, or adjacent to a U.S. Army Corps of Engineers' federally authorized civil works project, structure, property, or easement (e.g., federal navigation channel, flood control levees, dams and reservoirs, lake property, etc.)?	☐ Yes	☐ No
If yes , has a review pursuant to 33 U.S.C. 408 (Section 408) been initiated?	☐ Yes	☐ No

The U.S. Army Corps of Engineers has constructed many Civil Works projects across the Nation's landscape, including but not limited to, dams, levees, navigation projects, jetties, dams and reservoirs, and floodwalls. A separate review is required pursuant to 33 USC 408 (Section 408) when work will temporarily or permanently modify, alter, occupy, or use any USACE project. For many, but not all USACE projects, additional information is publicly available at:

Federal Navigation Channels: <http://www.nab.usace.army.mil/Missions/Civil-Works/Nav-Maps/>
National Levee Database: <http://nld.usace.army.mil/egis/f?p=471:1:>
Corps Lakes: <http://www.nab.usace.army.mil/Missions/Dams-Recreation/>

Note: These sources currently do not contain all USACE projects located in the Baltimore District.

Please indicate whether your project is located in, on, or adjacent to a USACE project by checking the "Yes" or "No" box in Block 8.

If you check "Yes", please indicate whether processing of a Section 408 request has been initiated by checking the second "Yes" or "No" box in Block 8.



Best Management Practices for Compliance with Endangered Species Act:

9. BEST MANAGEMENT PRACTICES VERIFICATION: I verify that my project will meet all Endangered Species Act Best Management Practices applicable to work in tidal waters and wetlands as required by the MDSPGP (see Section VII.B.4.c.i-iii).

☐ Yes ☐ No ☐ Unknown

Refer to the application instructions and the MDSPGP for additional information regarding these Best Management Practices.

Please indicate whether you have designed and will construct your project to meet these Endangered Species Act Best Management Practices by checking the "Yes", "No", or "Unknown" box in Block 9.

If you check No or Unknown, review under MDSPGP Category B or alternate permit process is required.

The following Best Management Practices are applicable to projects within tidal waters and tidal wetlands under the MDSPGP (Refer below and to the MDSPGP - Section VII.B.4.c.i-iii for additional information regarding these Best Management Practices).

Best Management Practices Applicable to Category A and Category B Activities within Tidal Waters and Wetlands:

i. Pile Driving for Category A Activities: For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 150 db re 1 μ Pa RMS or 206 db peak re 1 μ PA and must meet **one** of the following conditions:

- (1) Plastic or concrete piles must be less than 12 inches when a cushioned impact hammer or vibratory hammer is utilized for installation.
- (2) Timber piles must be 10 inches or less when a vibratory hammer is utilized for installation.
- (3) Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
- (4) Pile driving activities must be located within freshwater tributaries or within tidal or nontidal wetlands.
- (5) Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
- (6) Piles of any size/type with any hammer method must be installed between November 30 and March 15.

(Note: Any pile driving activity that does not meet one of the conditions above must be reviewed by the Corps as a Category B activity or an alternate Corps permit review process, as appropriate.

ii. Pile Driving for Category A and Category B Activities: For Category A and Category B activities, pile driving must be initiated with a soft start each day of pile driving, building up power slowly from a low energy start-up over a 20 minute period to allow for fish and other wildlife to leave the area.

iii. Sediment Disturbing Activities Time-of-Year Restriction for Category A and Category B Activities: Sediment disturbing activities, which includes pile driving activities, are prohibited during the period April 1 through June 30 within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 ppt (**See Appendix B**) for the protection of shortnose sturgeon during early life stages in these waters.



Project Activity Impacts:

10. TYPE OF PROJECT (check all that apply and provide all applicable information):

This abbreviated application should only be used for projects that are eligible for federal authorization under the Maryland State Programmatic General Permit (MDSPGP). Please refer to the MDSPGP for eligible activities.

Work Proposed	Overall Length (Ft.)	Average Width (Ft.)	Volume of Fill Material (cu. yards.)	Total Area Impacted (Sq. Ft.)		Maximum Distance Channelward from Mean High Water Line (Ft.)	New Work	Maintenance/Repair	Work Started/Completed
				Permanent	Temporary				
☐ Bulkhead							☐	☐	☐
☐ Revetment							☐	☐	☐ *
☐ Breakwater							☐	☐	☐ *
☐ Groins, Jetties, or Low Profile Sill							☐	☐	☐ *
☐ Living Shoreline (vegetated area)							☐	☐	☐ *
☐ Pier							☐	☐	☐ *
☐ Finger Pier							☐	☐	☐ *
☐ Platform							☐	☐	☐ *
☐ Pile(s) (#:) ☐ Osprey							☐	☐	☐ *
☐ Boat Lift (including support piles)							☐	☐	☐ *
☐ Boat Ramp							☐	☐	☐ *
☐ Utility Line							☐	☐	☐ *
☐ Construction Access/Mats							☐	☐	☐ *
☐ Dredging (Maintenance or New Minor)							☐	☐	☐ *
☐ Hydraulic / ☐ Mechanical									
☐ Other:							☐	☐	☐ *

* For any work started or completed, please clearly and accurately depict those portions of the project on the plans

PLEASE NOTE:

Please be advised that for ALL shore erosion control projects, a riparian property owner must obtain a State tidal wetlands authorization and all other applicable Federal, State, or local authorizations before beginning construction.

To obtain a State tidal wetlands authorization to construct a shore erosion control project, a riparian property owner must complete the following documents and submit them to MDE:

- a) A **Joint Federal/State Application for the Alteration of any Tidal Wetland in Maryland;**
- b) A proposed **Critical Area Buffer Management Plan;**
- c) A **Critical Area Buffer Notification Form** (Page A4);
- d) A **Living Shoreline Waiver Worksheet** (Page A5)*; and
- e) If applying for a structural shoreline stabilization method, a **Living Shoreline Waiver approved by MDE.**

*A completed Living Shoreline Waiver Request Form is not authorization of your proposed project or authorization to begin work.



Living Shoreline proposals - the parameters entered (i.e. length, width, total area impacted, and maximum distance channelward) should only include the actual area that will be filled with sand and vegetation and should not include any areas that will be filled with containment structures such as groins, low profile sills, fiber logs, etc. The containment structures should be shown in the appropriate work type (i.e. groins/jetties in that box, breakwater in that box, etc. Low profile sills and fiber logs should be shown in the “Other” box, writing in the work type, with their impacts appropriately identified.

Ex.

	Work Proposed	Overall Length	Average Width	Volume of Fill Material		Maximum Distance Channelward from Mean High Water Line	New Work	Maintenance/Repair	Work Started/Completed	Work Proposed	Overall Length
☒	Other: Low profile sill	452'	8'	540	3616	4520		35'	☒	☐	☐ *

Dredging ((Maintenance or New Minor) Minor dredging is defined as dredging which must not exceed 1,500 square feet in area and the volume of material removed must not exceed 100 cubic yards of material)) proposals - Identify the name and location of the proposed dredged material placement (DMP) site and the method of handling and disposing of, including transportation of, the dredged material. Separate plan sheets showing the location of the DMP site and area the material will be placed should be included with application. Include an acceptance letter from the DMP site owner or administrator specifically specifying the amount of material to be accepted and from the specific project with your application. Additionally, a currently approved Sediment and Erosion Control Plan will be required for a previously approved DMP site.

Minimum Setbacks for Structures Along Federally Authorized Channels: All applications seeking authorization for the construction of structures to be located along federally authorized navigation channels within the Baltimore District Civil Works Boundary will be required to supply latitude and longitude coordinates for the most channelward points of the proposed structure and any existing nearby structures. Currently, the latitude and longitude coordinates must be determined utilizing the current 1983-2001 NTDE. The Corps may require an updated NTDE to be used in the future. Additionally, all approved projects will be required to submit as-built latitude and longitude coordinates for review and approval by the Corps' Regulatory Branch. Additionally, all applications seeking authorization for the construction of structures to be located along federally authorized navigation channels within the Baltimore District Civil Works Boundary will be required to supply a bathymetric survey of the location of the structure. The survey must show actual water depths referenced to MLLW and clearly identify the 3-foot depth contour. See the Baltimore District Minimum Setback Guidance for Structures along Federally Authorized Channels for further information regarding the required parameters for submittal of latitude and longitude coordinates in a horizontal survey and requirements associated with a bathymetric survey. This document can be viewed on the Baltimore District Regulatory website at:

<http://www.nab.usace.army.mil/Mission/Regulatory/PublicationsandLinks.aspx>

All Projects: Provide accurate description of the length and width dimensions of the impact from each proposed structure or regulated activity.

Provide the permanent and temporary square footage that each activity will impact within regulated tidal wetlands. Although the USACE differentiates between permanent and temporary impacts in tidal wetlands, please be aware that **MDE's Tidal Wetlands Division does not and considers all impacts to**



regulated tidal wetlands as permanent. The State and federal authorizations will be conditioned to restore all “temporarily” impacted areas to their original contours.

Provide the maximum distance channelward from the mean high water line (MHWL) to the end of the proposed activity. Channelward is considered the direction toward the water extending beyond the MHWL.

MHWL means the line where the land meets the water surface at the elevation of mean high water (MHW); and MHW means the average of all the high water levels observed over the national tidal datum epoch (19-year period of water level averaging)). Under State regulations, COMAR 26.24.02.02E(2), MHW may be determined using one of the following methods:

- (a) Control tide station data as published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration; or
- (b) Derivation of the equivalent high water datum using a comparison of observational records with control tide station data as published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration; or
- (c) An evaluation of the project site conditions based upon the following parameters:
 - (i) Predicted tide range elevations,
 - (ii) Metrologic conditions,
 - (iii) Vegetation and other biological factors at the site including barnacles and algae lines, and
 - (iv) Physical indicators at the site such as rack lines, stain marks on nearby structures, and beach particle sorting.

Check the boxes indicating whether each proposed activity is new work, maintenance and repair to previously authorized functional structures, or work that has been started or completed prior to submitting the application. Any work that has been started or completed prior to submitting an application will be forwarded to the MDE’s Compliance Division and the USACE’s Regulatory Branch for further review. * Any work started or completed must be clearly and accurately depicted differently on the plans from those portions of the work proposed.

Depth soundings across the waterway and at increments designated by the Corps project manager MAY be required for some proposed projects in shallow water tidal areas and as determined by the MDE and/or Corps project manager. Typically, 10-foot increments, the date and time the measurements were taken, and how they were taken (e.g., tape, range finder, etc.) is required. Please note: Proposed work that would extend a private pier greater than 25% of the width of the waterway channelward of the MHWL and/or vegetated tidal wetlands does not meet the MDSPGP and the Standard JPA must be used to apply for authorization of this work.

A description of the material to be discharged and amount of each material in cubic yards to be discharged within waters of the United States, including jurisdictional wetlands must be provided in the application for boat ramps, bulkhead repair or replacement, new minor dredging, maintenance dredging of previously authorized dredged areas, dry fire hydrants, and small weirs and flumes, Please be sure this description will agree with your drawings. Discharge material includes: rock, sand, clay, concrete, etc.



Description of temporary vs. permanent impacts.

It is essential that accurate information about the extent of permanent or temporary impact be provided in the application. The extent of impacts determines what additional information, fees, public notice, and mitigation requirements apply to your project. Inaccurate calculation of impacts is a common error that results in delay in processing and requests for additional information.

Furthermore, it is important to distinguish between temporary and permanent impacts, as requirements, thresholds, and types of authorization may vary. It is additionally important that the acreage/square feet of impact shown match between plans and application.

Notification to County Critical Area Commission and Buffer Management Plan:

(All proposed shoreline erosion control projects) - A complete application shall also include:

- 2 copies of a completed Critical Area Buffer Notification Form* (Page A4).

http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/Buffer%20Notification%20Form%202-1-13%20%20_2_.pdf

- 2 copies of a proposed Critical Area Buffer Management Plan*

<http://dnr.maryland.gov/criticalarea/Pages/buffer.aspx>

* A riparian property owner must submit to MDE in order to obtain the State authorization to construct a shore erosion control project.

Notification to Adjacent Contiguous Riparian Property Owners:

Notification of the waterfront property owners directly adjacent to the applicant's property, applicable Home Owner's Association, and applicable local officials must occur concurrently with the submittal of the JPA on all proposed pier projects including any related structures (i.e. boat lifts/hoists, PWC lifts/hoists, platforms, finger piers, pilings etc.) in tidal waters. Please fill out the Adjoining Riparian Property Owner, Homeowners Association, and Appropriate Local Official Notification Certification Form. Contact MDE for guidance on when the notification is needed for other applications.

Project Planning and Design

11. DESCRIPTION OF AVOIDANCE, MINIMIZATION, AND COMPENSATION:

Please be advised that unavoidable losses of tidal wetlands and/or aquatic resources may require compensatory mitigation. Please provide a separate sheet(s) that addresses the proposed project's avoidance, minimization, and compensation (if required) which includes any clearing, grading, or excavation required before, during, and after the project.

Wetlands, their buffers, tidal waters, waterways are sensitive resources providing many valuable benefits. An applicant under Title 26: Department of the Environment, Subtitle 24: Tidal Wetlands, Chapter 01, Section .01 (COMAR 26.24.01.01) and the requirements of the MDSPGP shall design a project to first avoid and then minimize the loss of tidal wetlands and waters. All applicants are expected to avoid these resources where practicable, or, if not practicable, reduce the adverse impacts as much as possible. Applicants are required to describe how impacts were reduced and why further reductions are not feasible; what constraints, if any, exist to prevent reduction of impacts; and what attempts were made to overcome constraints to reduction of impacts. More documentation may be required.



Avoidance and Minimization Analysis:

Applicants should design projects and conduct regulated activities so as to have the least impact on regulated resources. The list of actions shown below include, but is not limited to, common avoidance and minimization actions that are required as part of the process that agencies follow in determining whether or not regulatory standards are met and an authorization can be granted:

1. Reduce the size of the project.
2. Re-design or re-configure the project, including shifting the location of the proposed structures.
3. Propose an activity that increases the amount of regulated resource.
4. Use different construction techniques or materials.
5. Install additional erosion and sediment control measures, including daily stabilization of disturbances.

If an applicant states that certain constraints prevent further avoidance and minimization, authorizing agencies require documentation indicating that attempts were made to overcome the constraint. Constraints may include cost, local design standards, health/safety requirements, and other natural resources concerns. For example, a local government may have design requirements that differ from what State or federal agencies request. In the case of a conflicting local requirement, MDE and/or the U.S. Army Corps of Engineers require correspondence from the local agency stating the requirement be provided, as well as evidence that the applicant attempted to receive a waiver/variance from the local government for the requirement. **Financial information for alternatives is required if a cost constraint is claimed, however, a more expensive alternative may still be required by regulatory agencies if the project can still be accomplished in a manner less harmful to wetland and water resources.** The expense of compensatory mitigation to offset impacts to aquatic resources should be considered in any evaluation of alternatives based on cost.

Please be advised that unavoidable losses of tidal wetlands and/or aquatic resources may require compensatory mitigation in accordance with the requirements of State COMAR and the MDSPGP.

Compensation:

“Mitigation” refers to the compensation required when there is a permanent loss of a regulated resource. For vegetated wetlands, the compensation requirement is usually to replace the wetlands that are lost. Mitigation requirements are listed in COMAR 23.02.04.11. Federal regulations governing compensatory mitigation for activities authorized by permits issued by the USACE are outlined in the Final 2008 Mitigation Rule found here:

http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig_info.aspx

For vegetated wetlands, mitigation is the replacement of wetland acreage, functions and human values that were or will be lost, due to filling, excavation, changes to hydrologic regimes or any other activity that may degrade or destroy an existing wetland.



Maryland State COMAR (COMAR 23.02.04.11B) regulations require the following mitigation ratios:

Restoration or In-Kind Creation

1. Open water tidal wetlands – 1:1
2. Emergent tidal wetlands-2:1
3. Scrub-shrub tidal wetlands-2:1
4. Forested tidal wetlands-2:1
5. Tidal wetlands habitat for rare, threatened, or endangered species, or species in need of conservation-3:1
6. Submerged aquatic vegetation and natural oyster bars-3:1

Enhancement or Out-of-Kind Creation

1. Open water tidal wetlands-2:1
2. Emergent tidal wetlands-4:1
3. Scrub-shrub tidal wetlands-4:1
4. Forested tidal wetlands-4:1
5. Tidal wetlands habitat for rare, threatened, or endangered species, or species in need of conservation-6:1
6. Submerged aquatic vegetation and natural oyster bars-6:1

The Board of Public Works may require mitigation by conditioning the license on restoring, creating in-kind new tidal wetlands, creating out-of-kind new tidal wetlands, or enhancing existing tidal wetlands, or a combination; or monetary compensation in lieu of mitigation in an amount the Board determines appropriate. Compensation in lieu of mitigation received is deposited into the Tidal Wetlands Compensation Fund.

In accordance with the 2008 Mitigation Rule, the final compensatory mitigation plan will be required prior to commencement of impacts to waters and/or wetlands on your project site when impacts are authorized under the MDSPGP. If no mitigation is planned, submit a detailed statement with the application explaining the reason(s) that mitigation should not be required for the proposed impacts.

Generally, compensatory mitigation for the construction of open pile supported structures such as piers, elevated walkways, and wharves within tidal waters and wetlands is not routinely required. However, measures should be considered to the maximum extent practicable to minimize damage to the marsh surface and vegetation when locating and constructing the open-pile structure. For example, the elevated walkway should be aligned for the shortest practicable crossing of a marsh. Please consult with the State and the Corps reviewers prior to submittal of the application to determine if any proposed activity will require compensation to the State and/or Corps. This can be done at a pre-application meeting or by contacting them directly by telephone.



Riparian Property Owner Certification:

12. STATE CERTIFICATION AND FEDERAL PRIVACY ACT STATEMENT:

Application is hereby made for a permit or permits to authorize the work described in this application. I hereby designate and authorize the agent named above to act on my behalf in the processing of this application and to furnish any information that is requested. I certify that the information on this form and on the attached plans and specifications is true and accurate to the best of my knowledge and belief. I understand that any of the agencies involved in authorizing the proposed works may request information in addition to that set forth herein as may be deemed appropriate in considering this proposal. I grant permission to the agencies responsible for authorization of this work, or their duly authorized representative, to enter the project site for inspection purposes during working hours. I will abide by the conditions of all permit(s) or license(s) if issued and will not begin work without the appropriate authorization. I also certify that the proposed works are consistent with Maryland's Coastal Zone Management Plan.

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers, 33 CFR 320-332. Principal Purpose: Information provided on this JPA will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice. Submission of requested information is voluntary, however, if information is not provided, the permit application cannot be evaluated nor can a permit be issued.

All information, including permit applications and related materials, submitted to MDE may be subject to public disclosure consistent with the Maryland Public Information Act, §4-101 et seq., General Provisions Article of the Maryland Code.

☐ I am the riparian property owner/applicant and do not want to be contacted by MDE. All correspondence should occur with my authorized agent /principal contact designated in Section 3, located on the 1st page of this application. (By checking the box, you are acknowledging that you will not receive any correspondence directly from MDE). I understand a copy of MDE's final decision regarding this application will be sent to me. This opt-out option does not apply to the U.S. Army Corps' correspondence, which will continue to be with the applicant/permittee.

RIPARIAN PROPERTY OWNER MUST SIGN: _____ **Date** _____

Refer to the **Application Contact Information** at the beginning of this instruction booklet regarding who is required to sign Block 12 of the JPA. For MDE, Block 12 must be signed by the **riparian property owner** (Block 2 of the JPA) who must also be considered the applicant (Block 1 of the JPA). For the USACE review, the Alternative Signatures Form (Page A2) must be used when there is an applicant who is not also the riparian property owner. The Alternative Signatures Form will be provided to USACE.

Please read the State and federal certifications carefully. The property owner must sign and date this section. **Any application which is not signed by the riparian property owner will be considered incomplete and shall delay the start of the review process. If there are multiple riparian property owners, each must sign the application.**

Riparian Property Owner/Applicant Correspondence "opt-out" Designation

During the course of reviewing the application, MDE and the U.S. Army Corps', will direct correspondence relating to the review of the application with the principal contact listed in Block 3 and/or the Riparian Property Owner/Applicant listed in Block 1 and/or Block 2.

The riparian property owner may choose that all MDE correspondence regarding the review of the application is to be directed to the principal contact listed in Block 3 only. If the riparian property owner/applicant wants to forgo receiving correspondence relating to the application review then the riparian property owner/applicant should initial the box after carefully reading the paragraph following the initialization box.

NOTE: This opt-out option does not apply to the U.S. Army Corps' correspondence, which will continue to be with the applicant/permittee. Additionally, a copy of the final MDE authorizations shall be mailed to the applicant/permittee.



The U.S. Army Corps' regulations require direct communication with the applicant to whom the permit is issued and will be responsible for permit conditions that could include long-term obligations. Additionally, the permittee is responsible for all work performed by their contractors and this communication provides assurances that the applicant is aware of all representations made on their behalf.

This signature shall be an affirmation that the party applying for the authorizations possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.). This signature also serves as a "Right of Entry" to access the property for purposes of pre-project inspections and post-project inspections. During the JPA review process, site inspections will be necessary to evaluate a proposed project. Failure to allow an authorized representative of MDE and USACE to enter the property, or to take photographs of conditions at the project site, may result in the withdrawal of your permit application. The signature will also affirm that the party applying for the authorizations has read the "opt-out" correspondence paragraph and has "opted-out" by initializing the box or, by default, "opted-in" by not initializing the box and thus may receive correspondence.

Examples:

In the example below, the applicant will not receive correspondence from MDE except for a copy of the Department's final agency action (i.e. approval or denial) because they have initialed the box:

 I am the riparian property owner/applicant and do not want to be contacted by MDE. All correspondence should occur with my authorized agent /principal contact designated in **Section 3**, located on the 1st page of this application. (By initializing the box, you are acknowledging that you will not receive any correspondence directly from MDE). I understand a copy of MDE's final decision regarding this application will be sent to me. This opt-out option does not apply to the U.S. Army Corps' correspondence, which will continue to be with the applicant/permittee.

In the example below the applicant will receive correspondence from all agencies because they have left the box blank:

 I am the riparian property owner/applicant and do not want to be contacted by MDE. All correspondence should occur with my authorized agent /principal contact designated in **Section 3**, located on the 1st page of this application. (By initializing the box, you are acknowledging that you will not receive any correspondence directly from MDE). I understand a copy of MDE's final decision regarding this application will be sent to me. This opt-out option does not apply to the U.S. Army Corps' correspondence, which will continue to be with the applicant/permittee.

On occasion an agent/contractor/applicant's representative needs to use a Power of Attorney (POA) in order to obtain the required permits necessary for a proposed project. Please be aware that the STATE CERTIFICATION AND FEDERAL PRIVACY ACT STATEMENT language needs to appear on the POA provided in the application. An example of an acceptable POA is provided at the end of the instructions booklet (Page A3). **Any POA that does not have the riparian property owner acknowledging with their signature the STATE CERTIFICATION AND FEDERAL PRIVACY ACT STATEMENT will result in the application being considered incomplete.**



APPLICATION SUBMISSION - IMPORTANT:

PLEASE MAIL SEVEN COPIES OF THE COMPLETE APPLICATION AND PLANS (INCLUDING REQUIRED SITE PLAN AND VICINITY MAP (WITH PROJECT LOCATION PINPOINTED)) TO: MDE/WATER MANAGEMENT ADMINISTRATION REGULATORY SERVICES COORDINATION OFFICE MONTGOMERY PARK BUSINESS CENTER – ST 430 1800 WASHINGTON BOULEVARD BALTIMORE, MD 21230-1708 (410) 537-3762 OR 1-800-876-0200	SEND THE APPLICABLE APPLICATION FEE, ALONG WITH A <u>COPY OF THE FIRST PAGE OF THE APPLICATION</u> TO: MDE P.O. BOX 2057 BALTIMORE, MD 21203-2057 PCA: 13910 OBJ: 4142 PLEASE REFER TO OUR WEBSITE http://mde.maryland.gov/programs/Water/WetlandsandWaterways FOR FURTHER INSTRUCTIONS.
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Please take notice that the address to submit 7 copies of the application and required plans is different from the address to submit the 1st page of the application and the applicable fee. The fee is delivered directly to the bank contracted by the State through the P.O. Box. The bank processes the received fee, matches the fee to the 1st page of the application, and notifies the Wetlands and Waterways Program of delivery after processing the check. Again, please be aware that the bank sends notification to MDE only after it has processed the check through their system. The application review process does not begin until the bank notification is received by the Wetlands and Waterways Protection Program's Regulatory Services Division. Delivery of the fee directly to MDE offices in person or by mail will result in a significant delay to the start of the review process because the check will have to be matched to an application and sent over to the bank for processing. Please check to make sure you have addressed the application packet and the fee packet correctly to avoid a delay in the review process.

A complete application* shall include:

- 7 copies of a completed and signed JPA
 - 7 copies of a complete set of plans with all required information (Refer to sample activity guidelines and drawings)
 - 7 copies of any required forms for the specific proposed activity i.e. Adjoining Riparian Property Owner and Appropriate Local Official Notification and Certification Form, etc.
 - MDE required review fee (amount dependent on proposed activity)
- * Please collate the required JPA, plans, and forms so that there are 7 independent sets of the required information.

(All proposed shoreline erosion control projects) - A complete application shall also include:

- 2 copies of a completed Critical Area Buffer Notification Form* (Page A4).
- [http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/Buffer%20Notification%20Form%202-1-13%20%202_2 .pdf](http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/Buffer%20Notification%20Form%202-1-13%20%202_2.pdf)
- 2 copies of a proposed Critical Area Buffer Management Plan*
 - <http://dnr.maryland.gov/criticalarea/Pages/buffer.aspx>
- 2 copies of a completed Living Shoreline Waiver Request Form* (Page A5).
<http://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/Living%20Shoreline%20Waiver%20Request%20Form%20with%20Samples.pdf>
- 2 copies of the **MDE approved Waiver Letter***

* A property owner must submit to MDE in order to obtain the State authorization to construct a shore erosion control project.



PROJECT DRAWINGS

Four types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, an Existing Plan View, a Proposed Plan View, and a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

- Vicinity Map (USGS topographic map, road map, or similar map showing project location)
- Existing Plan View Drawing (overhead, to scale or with dimensions clearly marked)
- Proposed Plan View Drawing (overhead, to scale or with dimensions clearly marked)
- Cross-Section Drawing (side view, to scale or with dimensions clearly marked)

*** Please refer to the individual project guidelines (Page B1) provided by MDE to determine the required information on each plan sheet and the acceptable scales for the appropriate project and plan sheet.**

Please submit seven copies of all drawings on 8 1/2 by 11 inch plain white paper. Drawings should be in black and white for ease of copying. The format must be 8 1/2 by 11 inches.



APPENDIX

<u>ALTERNATIVES SIGNATURES FORM</u>	A2
<u>LIMITED POWER OF ATTORNEY</u>	A3
<u>CRITICAL AREA BUFFER NOTIFICATIONFORM</u>	A4
<u>LIVING SHORELINE WAIVER REQUEST</u>	A5



ALTERNATIVE SIGNATURES FORM
(Use When an Applicant is Different From the Riparian Property Owner.
Both Applicant and Riparian Property Owner Must Sign this Form)

12A. STATE CERTIFICATION AND FEDERAL PRIVACY ACT STATEMENT:

Application is hereby made for a permit or permits to authorize the work described in this application. I hereby designate and authorize the agent named on the Abbreviated Joint Federal / State Application to act on my behalf in the processing of this application and to furnish any information that is requested. I certify that the information on the Abbreviated Joint Federal / State Application and on the attached plans and specifications is true and accurate to the best of my knowledge and belief. I understand that any of the agencies involved in authorizing the proposed works may request information in addition to that set forth herein as may be deemed appropriate in considering this proposal. I grant permission to the agencies responsible for authorization of this work, or their duly authorized representative, to enter the project site for inspection purposes during working hours. I will abide by the conditions of all permit(s) or license(s) if issued and will not begin work without the appropriate authorization. I also certify that the proposed works are consistent with Maryland's Coastal Zone Management Plan.

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers, 33 CFR 320-332.
Principal Purpose: Information provided on this JPA will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice. Submission of requested information is voluntary, however, if information is not provided, the permit application cannot be evaluated nor can a permit be issued.

An application that is not completed in full will be returned.

Applicant(s)

_____ Applicant's Name (printed/typed)	_____ Applicant's Signature	_____ Date
_____ Applicant's Name (printed/typed)	_____ Applicant's Signature	_____ Date
_____ Applicant's Name (printed/typed)	_____ Applicant's Signature	_____ Date

Riparian Property Owner(s)

_____ Riparian Property Owner's Name (printed/typed)	_____ Riparian Property Owner's Signature	_____ Date
_____ Riparian Property Owner's Name (printed/typed)	_____ Riparian Property Owner's Signature	_____ Date
_____ Riparian Property Owner's Name (printed/typed)	_____ Riparian Property Owner's Signature	_____ Date



LIMITED POWER OF ATTORNEY

<Agent/contractor/applicant's representative can INSERT any LANGUAGE HERE THAT MEETS YOUR NEEDS FOR YOUR COMPANY> ***along with your name, company name, and contact information***

STATE CERTIFICATION AND FEDERAL PRIVACY ACT STATEMENT:

Application is hereby made for a permit or permits to authorize the work described in this application. I hereby designate and authorize the agent named on the Abbreviated Joint Federal / State Application to act on my behalf in the processing of this application and to furnish any information that is requested. I certify that the information on the Abbreviated Joint Federal / State Application and on the attached plans and specifications is true and accurate to the best of my knowledge and belief. I understand that any of the agencies involved in authorizing the proposed works may request information in addition to that set forth herein as may be deemed appropriate in considering this proposal. I grant permission to the agencies responsible for authorization of this work, or their duly authorized representative, to enter the project site for inspection purposes during working hours. I will abide by the conditions of all permit(s) or license(s) if issued and will not begin work without the appropriate authorization. I also certify that the proposed works are consistent with Maryland's Coastal Zone Management Plan.

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers, 33 CFR 320-332.

Principal Purpose: Information provided on this JPA will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice. Submission of requested information is voluntary, however, if information is not provided, the permit application cannot be evaluated nor can a permit be issued.

An application that is not completed in full will be returned.

Riparian Property Owner's Name

Owners
Mailing
Address: _____

Project Site
Address: _____

Riparian Property Owner's E-mail

Owner's
Contact
Number: _____

PROPERTY OWNER MUST SIGN

DATE

<Agent/contractor/applicant's representative can INSERT ANY ADDITIONAL LANGUAGE HERE THAT MEETS YOUR NEEDS FOR YOUR COMPANY>



CRITICAL AREA BUFFER NOTIFICATION FORM

NOTICE TO SHORE EROSION CONTROL APPLICANTS

Submittal Requirements

WHEN submitting a shore erosion control application to the Maryland Department of the Environment (MDE), the owner or their representative shall include with the application the following:

1. The proposed Buffer Management Plan
2. This Critical Area Buffer Notification Form

Examples of Buffer Management Plans can be obtained by contacting the local government or the Critical Area Commission. This information is also available on the Commission's website (See contact information at the bottom of this form).

NOTICE

1. MDE may determine the application is incomplete if the DRAFT Buffer Management Plan or this form is not included with the application.
2. In addition to a federal or State authorization, a local government approval is required before you begin your project.
3. Before beginning any work, including site preparation and stockpiling of materials, the owner or their representative must obtain:
 - i. An authorization from MDE to construct and install a shore erosion control measure;
 - ii. Approval of the Buffer Management Plan from the local jurisdiction; AND
 - iii. Any other required local permits.
4. Buffer disturbance without a locally approved Buffer Management Plan or buffer disturbance that is not consistent with a locally approved Buffer Management Plan is a violation of State and local laws.

CERTIFICATION

I have read and understand the requirements described in this NOTIFICATION FORM. I will abide by these requirements and the conditions of any State authorization and/or local approval. I will not begin any work without all required proper authorizations. Upon reasonable notice, I authorize the right to enter for periodic on-site evaluation by official representatives of the local Critical Area permitting authority.

SIGNATURE OF RIPARIAN PROPERTY OWNER OR REPRESENTATIVE:

PRINTED NAME: _____

DATE: _____

ADDRESS OF SHORE EROSION CONTROL PROJECT (Street #, Street, City, State, Zip code):

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100 • Annapolis, MD 21401 • 410-260-3460

See the following website for a list of local Critical Area permitting authorities:

www.dnr.maryland.gov/criticalarea/Pages/default.aspx





Living Shoreline Waiver Request

Maryland Department of the Environment

Water and Science Administration



INSTRUCTIONS

Shore erosion control projects must consist of nonstructural shoreline stabilization measures that preserve the natural environment (i.e. Living Shorelines or marsh creation) unless:

- A waiver is obtained from the Maryland Department of the Environment (MDE); or
- The project shoreline has been mapped by MDE as an area appropriate for structural shoreline stabilization measures (i.e. revetment, groin, bulkhead, etc.). These maps are available on MDE's website:

<http://mde.maryland.gov/programs/Water/WetlandsandWaterways/DocumentsandInformation/Pages/wetlandtidalshoremeps.aspx>

In addition to the areas already mapped by MDE, certain sites will not be suitable for nonstructural shoreline stabilization measures due to site-specific characteristics. For example, at sites with excessive erosion, severe high energy conditions, extreme water depths, or a narrow waterway, a living shoreline may not be feasible and a property owner may be eligible for a waiver from the requirement to construct a nonstructural shoreline stabilization measure.

To Determine if your site meets these criteria and is eligible for a waiver:

1. Complete this Waiver Request Form.
2. Mail photographs of the project site along with the completed Waiver Request Form to:

Maryland Department of the Environment
Tidal Wetlands Division
1800 Washington Blvd.
Baltimore, MD 21230

Attention: *(Name of MDE Reviewer if Known)*

3. Complete a **Pre-Application Meeting Request Form** and submit the form by email or by mail with the completed Waiver Request Form and project site photographs to the above address.
4. After receiving all of the required information, MDE will contact the property owner or primary contact, if one is designated, to arrange a site visit. After the site visit, MDE will notify the property owner or primary contact, if one is designated, whether the Living Shoreline Waiver Request was approved.

Please be advised that for **ALL** shore erosion control projects, a property owner must obtain a State tidal Wetlands authorization and all other applicable federal, State, or local authorizations before beginning construction. A completed Living Shoreline Waiver Request Form is not authorization of your proposed project or authorization to begin work.

- a) To obtain a State tidal wetlands authorization to construct a shore erosion control project, a property owner must complete the following documents and submit them to MDE:
- b) A **Joint Federal/State Application for the Alteration of any Tidal Wetland in Maryland**;
- c) A proposed **Critical Area Buffer Management Plan**;
- d) A **Critical Area Buffer Notification Form**; and
- e) If applicable, a **Living Shoreline Waiver** approved by MDE.

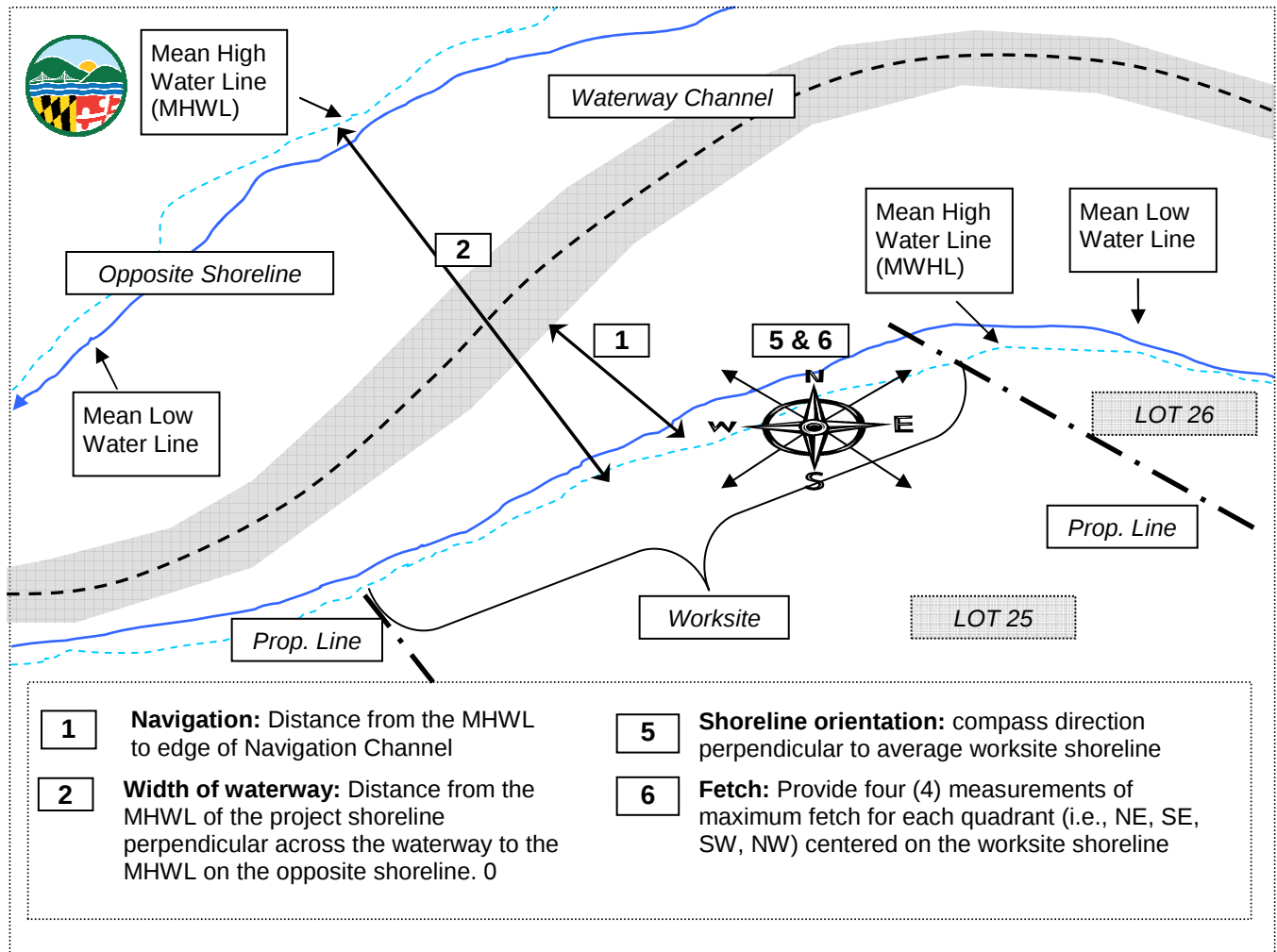


LIVING SHORELINE WAIVER WORKSHEET

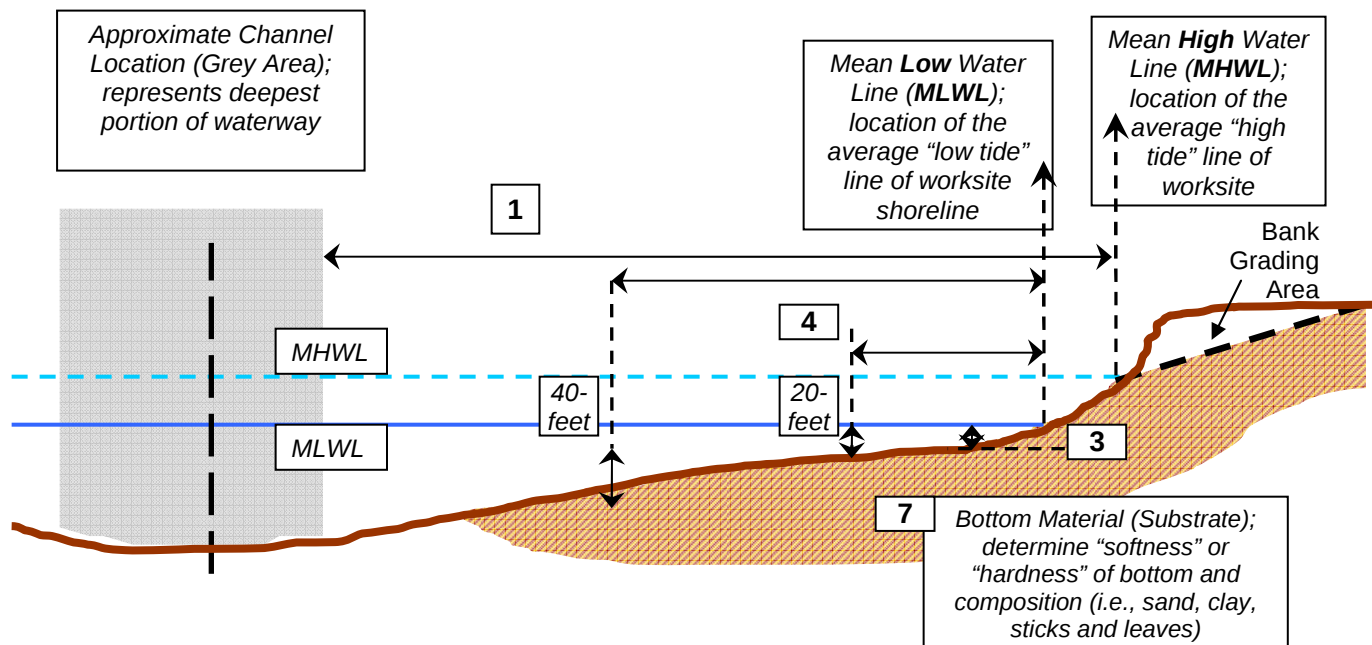
Project Site Address:				
City, State, Zip:				
Existing Structure		Is the proposed project a replacement of a previously authorized, functional structure i.e. replacement bulkhead? <u>If yes, then check the yes box and do not fill out the rest of the form.</u>	☐ Yes (Waiver)	
			☐ No	
Mapped Shoreline		Is the applicant's proposed project's shoreline mapped by MDE as an area appropriate for structural shoreline stabilization measures? If unknown, leave this section blank. <u>If yes, then check the yes box and do not fill out the rest of the form.</u>	☐ Yes (Waiver)	
			☐ No	
1	Navigation	Distance in feet from the Mean High Water Line to the centerline of the closest mapped or unmapped navigable channel.		
2	Width of Waterway	Distance in feet from Mean High Water Line of proposed project's shoreline perpendicular across the waterway to the Mean High Water Line on the opposite shoreline.		
3	Depth at Toe of Bank	Depth of the water in feet from the Mean Low Water Line to the bottom or toe of the shoreline bank.		
4	Depth of Waterway	Depth of water in feet relative to the Mean Low Water Line at 20-feet and 40-feet channelward of the Mean High Water Line at the proposed project's shoreline.	<u>At 20 ft.</u>	<u>At 20 ft.</u>
5	Shoreline Orientation	A. Provide a compass direction perpendicular to the line of the proposed project's shoreline. Direction can be given as NE, SW, etc. or as a compass heading (i.e., 45°, 225°).		
		B. Is Bank grading or tree trimming required to provide at least six hours of daily sunlight.		
6	Fetch	Provide four measurements (in feet) of maximum unobstructed distance over open water for each compass quadrant (i.e., NE, SE, SW, NW) centered on the proposed project's location on the applicant's shoreline.	<u>NW</u>	<u>NE</u>
			<u>SW</u>	<u>SE</u>
7	Bottom Material	Firmness of bottom material in the proposed project's area of impact.	☐ Hard ☐ Soft	
		Type of bottom material in the proposed project's area of impact.	☐ Muck ☐ Silt ☐ Sand ☐ Clay	
	Sensitive Species	Will project construction adversely impact fish, plant, underwater vegetation, marsh, shellfish, wildlife habitat, or the area within 100 feet landward of the proposed project's shoreline? If unknown, leave this section blank.	☐ Yes (provide explanation and attach to this form)	
			☐ No	
	Site Access	A. Can the proposed project be constructed from the water?	☐ Yes	☐ No
		B. Does the access to the site require any grading or trimming of vegetation?	☐ Yes	☐ No
I certify that the information on this form is true and accurate to the best of my knowledge and belief. RIPARIAN PROPERTY OWNER SIGNATURE: _____ DATE: _____ RIPARIAN PROPERTY OWNER NAME (PRINT): _____				



MDE LIVING SHORELINE WAIVER REQUEST SAMPLE 1, PLAN VIEW



MDE LIVING SHORELINE WAIVER REQUEST SAMPLE 2 (CROSS SECTION)



MHWL Mean High Water Line

MLWL Mean Low Water Line; referenced to **0.0 ft.**

1 **Navigation:** Distance from the MHWL to edge of Navigation Channel

3 Depth of Water at toe or bottom of bank

4 Depth of water during low tide at approximately 20-feet channelward of the MLWL and at approximately 40-feet channelward of the MLWL



SAMPLE ACTIVITY GUIDELINES AND DRAWINGS



**Maryland Department of the Environment
Wetlands and Waterways Program
Tidal Wetlands Division**

October 2017

Prepared by:



Maryland
Department of
the Environment

PROJECT DRAWINGS

Please submit seven copies of all drawings on 8 1/2 by 11 inch plain white paper. Drawings should be in black and white for ease of copying. The format must be 8 ½ by 11 inches.

Each drawing should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, to an appropriate scale (as described in the appropriate proposed activity guidelines and sample plans sheets included at the end of this section), and contain all necessary information. If a scale is not used, all dimensions must be clearly depicted in the drawings. If available, a plat of the property should be included, with the existing and proposed structures clearly indicated. Use heavy dark lines and dot shading, hatching or similar graphic symbols in place of color shading (**use of colored plans are not acceptable for tidal wetland applications**). Distances from the proposed structure(s) to fixed points of reference (benchmarks) and to adjacent property lines must be shown.

At a minimum, the following items must be included on ALL project drawings (plan and section, as appropriate):

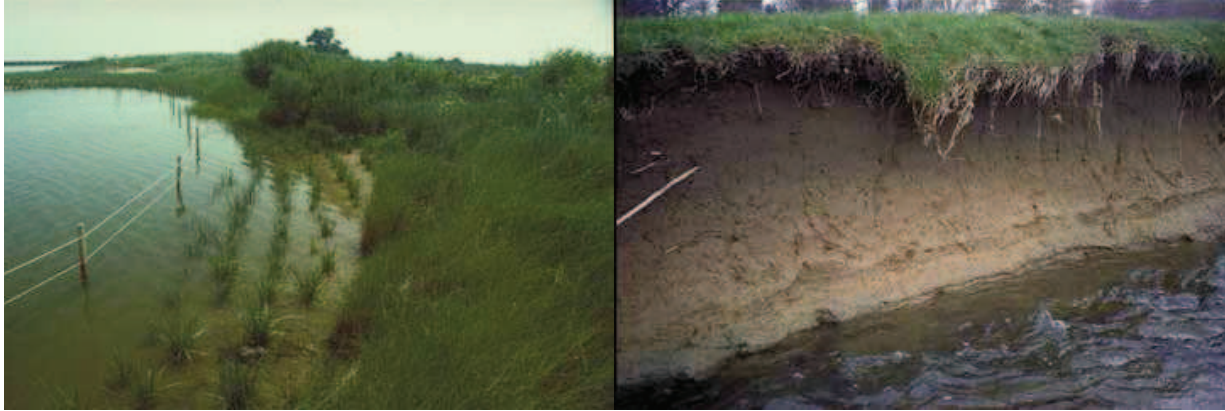
- North arrow
- Waterway name
- Existing and proposed structures, labeled as such
- Dimensions of all proposed structures
- Dimensions of all existing structures
- Defined dredge area showing the dimensions of the proposed area and the amount of resultant dredged material in cubic yards
- Existing and proposed water depths, measured at mean low water in the project area and channelward of the project area. Water depths can be marked as either contours or spot depths that extend across the width of the waterway.
- Identify the name and location of the proposed dredged material placement (DMP) site and the method of disposing of, including transportation of, the dredged material.
- Mean high water and mean low water lines. (If the mean high water and mean low water lines are to be altered during construction, the proposed MHWL and MLWL should also be labeled)
- Distance the proposed structures extend from the MHWL into the waterway
- Limits of vegetated wetlands, if applicable
- Limits of submerged aquatic vegetation, if applicable
- Ebb/flood direction
- Adjacent property lines and adjacent property owner's name(s)
- Distance of the proposed work to the adjacent property lines
- Distances from proposed structures to fixed points of reference (benchmarks)

Sample activity guidelines and drawings have been included at the end of this Section to provide guidance on the information needed to consider your application complete and allow for timely processing. Clear and accurate drawings are essential for project review and compliance determination. The proposed drawings and/or plans should focus on the proposed project's tidal portion of the property and the immediate upland area of the site. Incomplete or unclear drawings may cause delays in the processing of your application.

Recent photographs of the proposed project area are appreciated, but not required.



SAMPLE ACTIVITY GUIDELINES AND DRAWINGS



**Maryland Department of the Environment
Wetlands and Waterways Program
Tidal Wetlands Division**

August 2013

Prepared by:



Maryland
Department of
the Environment

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**WETLANDS AND WATERWAYS PROGRAM
TIDAL WETLAND APPLICATION GUIDELINES**

PROPOSED BOAT LIFT / MOORING PILES / PLATFORM PROJECT

Check list outlines the minimum required information for a proposed project; additional information may be required based on the project and/or the applicant's project site. Applicants are encouraged to schedule a pre-application meeting to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

- ☐ Requires application processing fee* (Boat lift with new pilings / new mooring piles / platform)
- ☐ Exempt from application processing fee* (Boat lift on existing pilings)

***Reference the fee guidelines and tables to determine appropriate application review fees.**

APPLICATION GUIDELINES

-
- ☐ ABBREVIATED JOINT FEDERAL / STATE APPLICATION FOR THE ALTERATION OF ANY TIDAL WETLAND AND/OR TIDAL WATERS IN MARYLAND
-
- ☐ Contiguous Property Owner and Appropriate Local Official Notification and Certification Form
-
- ☐ Photographs of project site and any existing structures.
-

GENERAL PLAN REQUIREMENTS

-
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets and a usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET

-
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. boat lift, mooring piles, or platform.
-
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
-
- ☐ Vicinity map and aerial photo should be sized to clearly depict the project site and surrounding area, but each map should no smaller than 4" by 4" in size.
-
- ☐ Vicinity map should include a North arrow and be scaled to clearly show project site, general location on the waterway, the immediate surrounding area.
-
- ☐ Aerial photograph should be no more than 10 years old from date of application.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET (CONTINUED)

- ☐ Aerial photograph should, at a minimum, show the proposed project site (clearly marked) with any existing structures and the adjacent property owners' property with any existing structures.
-

EXISTING AND PROPOSED CONDITION PLAN SHEETS

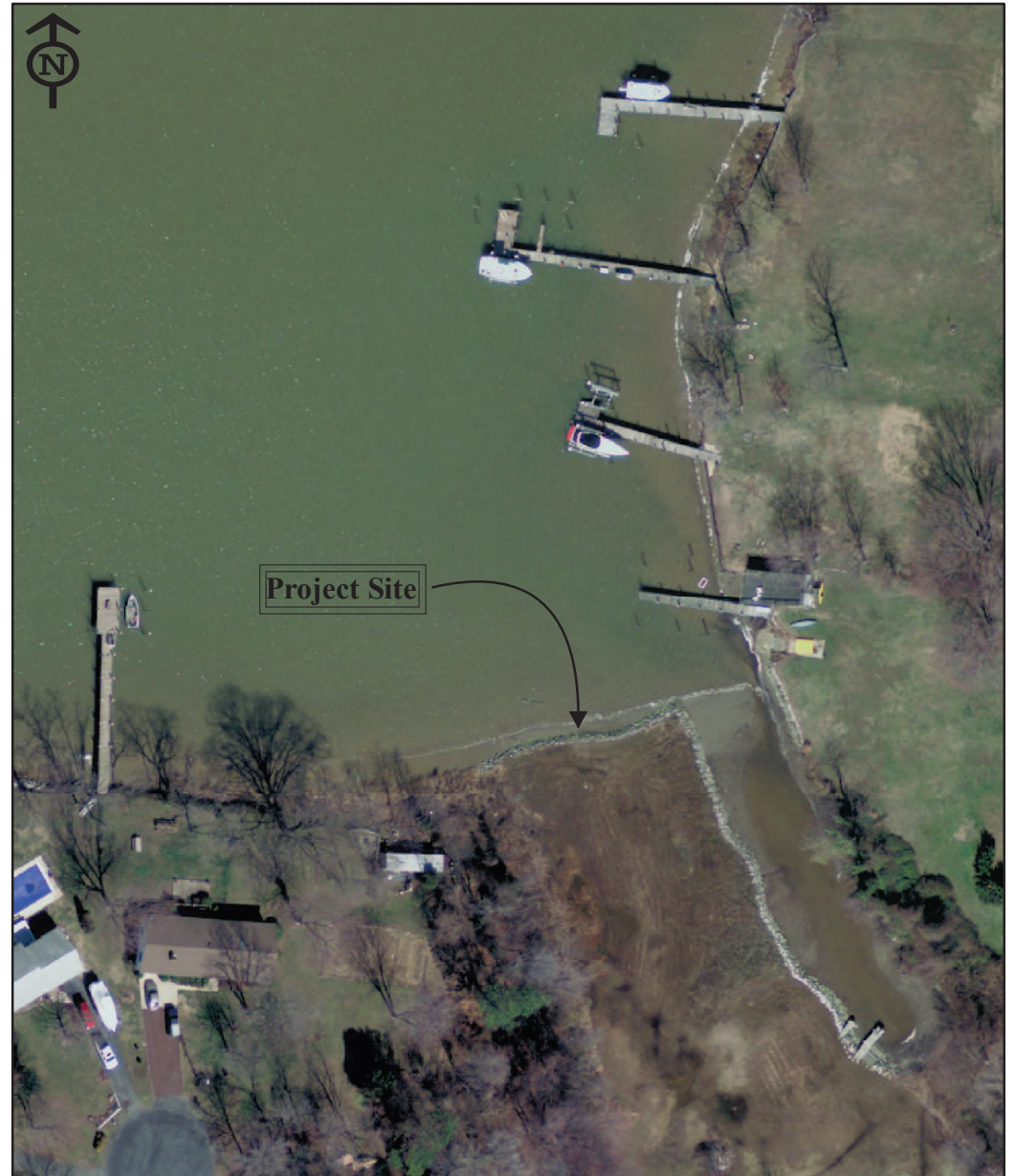
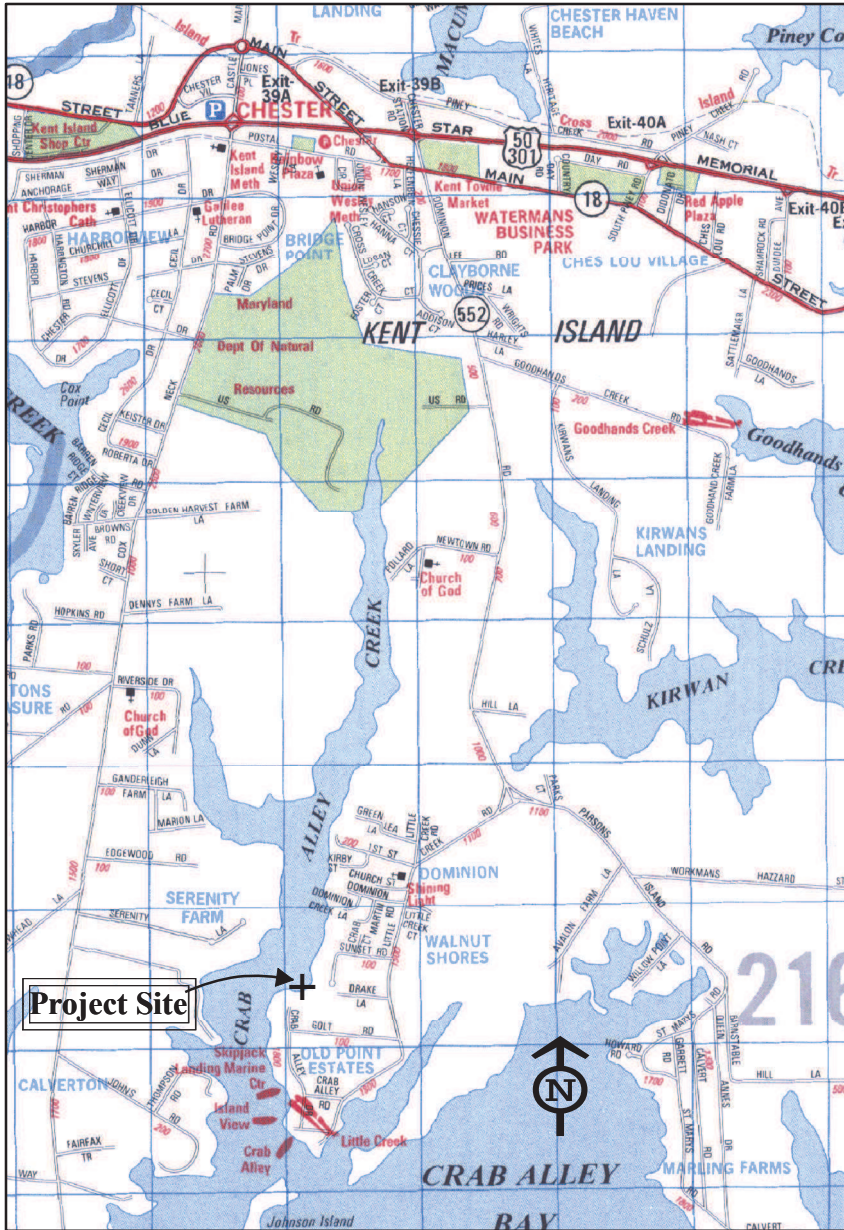
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. boat lift, mooring piles, or platform.
-
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
-
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet).
-
- ☐ Plan view should include water depths marked as either contours or spot depths that extend to the channelward end of the pier or proposed boat lift (whichever is greater).
-
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
-
- ☐ Plan view should include the shoreline from property line to property line.
-
- ☐ Plan view should include the property lines extended channelward and labeled
-
- ☐ Plan view should include the construction restriction set back lines extended channelward and labeled or if distance from the proposed project to the construction restriction set back lines will not fit on the page using the allowable scale the distance to each construction restriction set back line from the proposed project should be indicated.
***Check with the county to determine the appropriate required set back distance for tidal wetland projects. In counties where no county set back is required, MDE requires a minimum of 10 feet or a variance from the county prior to issuance of a State license.**
-
- ☐ Plan view should include the applicant's property and directly adjacent riparian properties clearly labeled with their name, site address, town/city, county, state, and zip code.
-
- ☐ Plan view should include all existing structures, including vegetated wetlands and SAV, on the applicant's property and adjacent riparian properties.
-
- ☐ Plan view should depict the location of the proposed boat lift and the existing or proposed associated pilings with the pilings clearly labeled as existing or proposed.
-
- ☐ Plan view should depict proposed boat lift or PWC locations with an X connecting the boat lift piles. ***Please provide, as a separate plan sheet, a schematic, plan, or typical photograph showing the type of boat lift or PWC lift that is proposed.**
-
- ☐ Plan view should depict the location of the proposed mooring piles clearly labeled as proposed.
-
- ☐ Plan view should depict the location of the proposed platform clearly labeled as proposed and the type i.e. fixed or floating.
-

TYPICAL BOAT LIFT PLAN SHEET

☐	Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
☐	Plan sheet should include the type of projects proposed by applicant i.e. boat lift, mooring piles, or platform.
☐	Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
☐	Plan sheet should depict a schematic, photograph, or plan of the type of boat lift proposed to be constructed at applicant's pier.

CROSS-SECTION PLATFORM PLAN SHEET

☐	Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
☐	Plan sheet should include the type of projects proposed by applicant i.e. platform.
☐	Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
☐	Cross-Section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet). Example: MLW = 0.0', MHW = + 1.9'
☐	FIXED PLATFORM – Proposed Cross-Section should depict the distance from the MLW to the bottom of the platform decking (minimum of 4 feet).
☐	FLOATING PLATFORM – Proposed Cross-Section should depict the distance from the bottom of the floatation structures to the bottom substrate. Typically floating platforms require a minimum of 2 feet of water depth in the proposed location to receive authorization.



Vicinity Map & Aerial Photo

Project: [INSERT TYPE OF PROJECT]

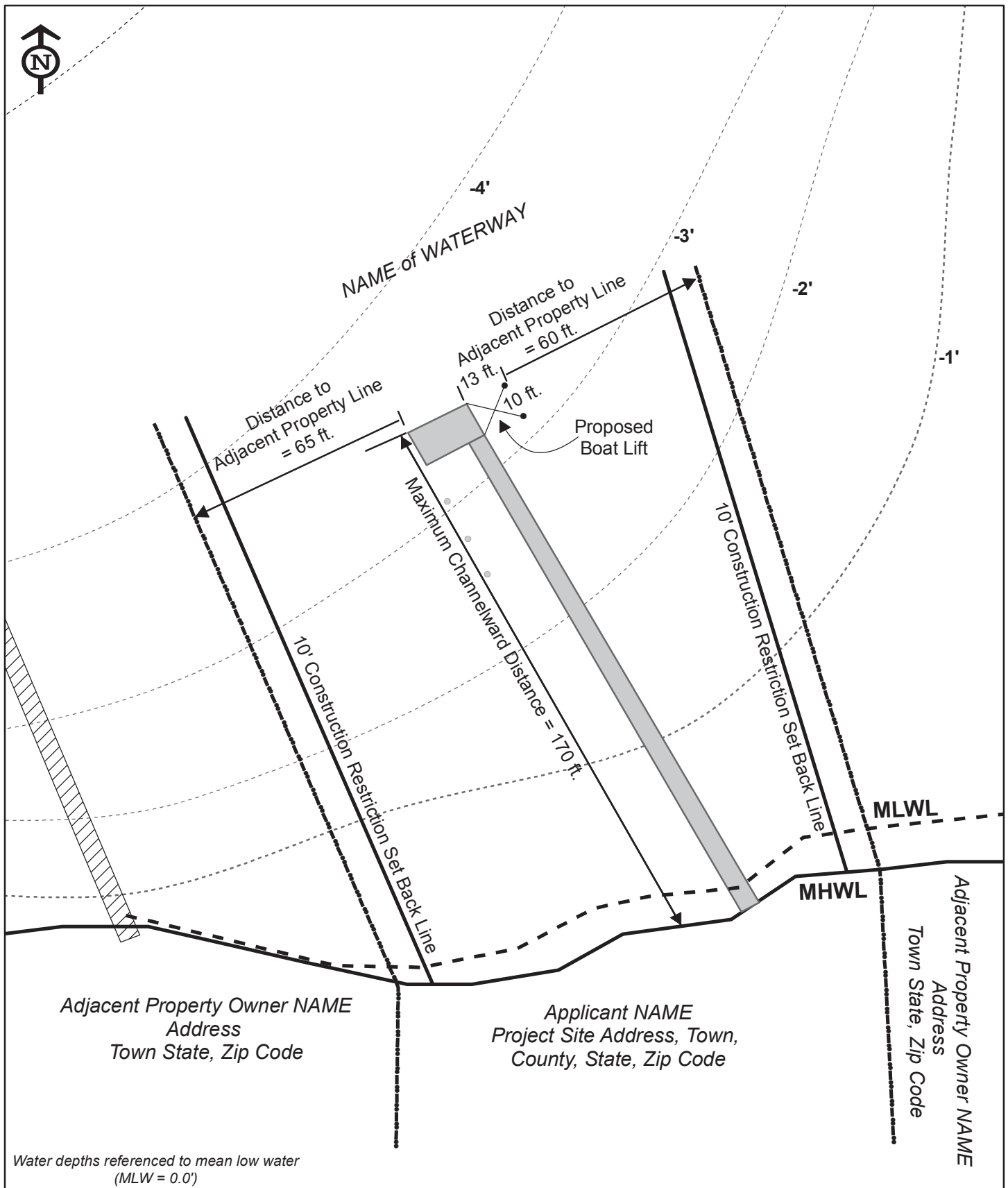
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

NOTES

DATE, Page X of Y



Existing Conditions with Proposed Boatlift

Project: Proposed Boatlift on existing pier & pilings

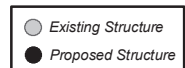
0 10 20 40 60 80 Feet

1 inch = 40 feet

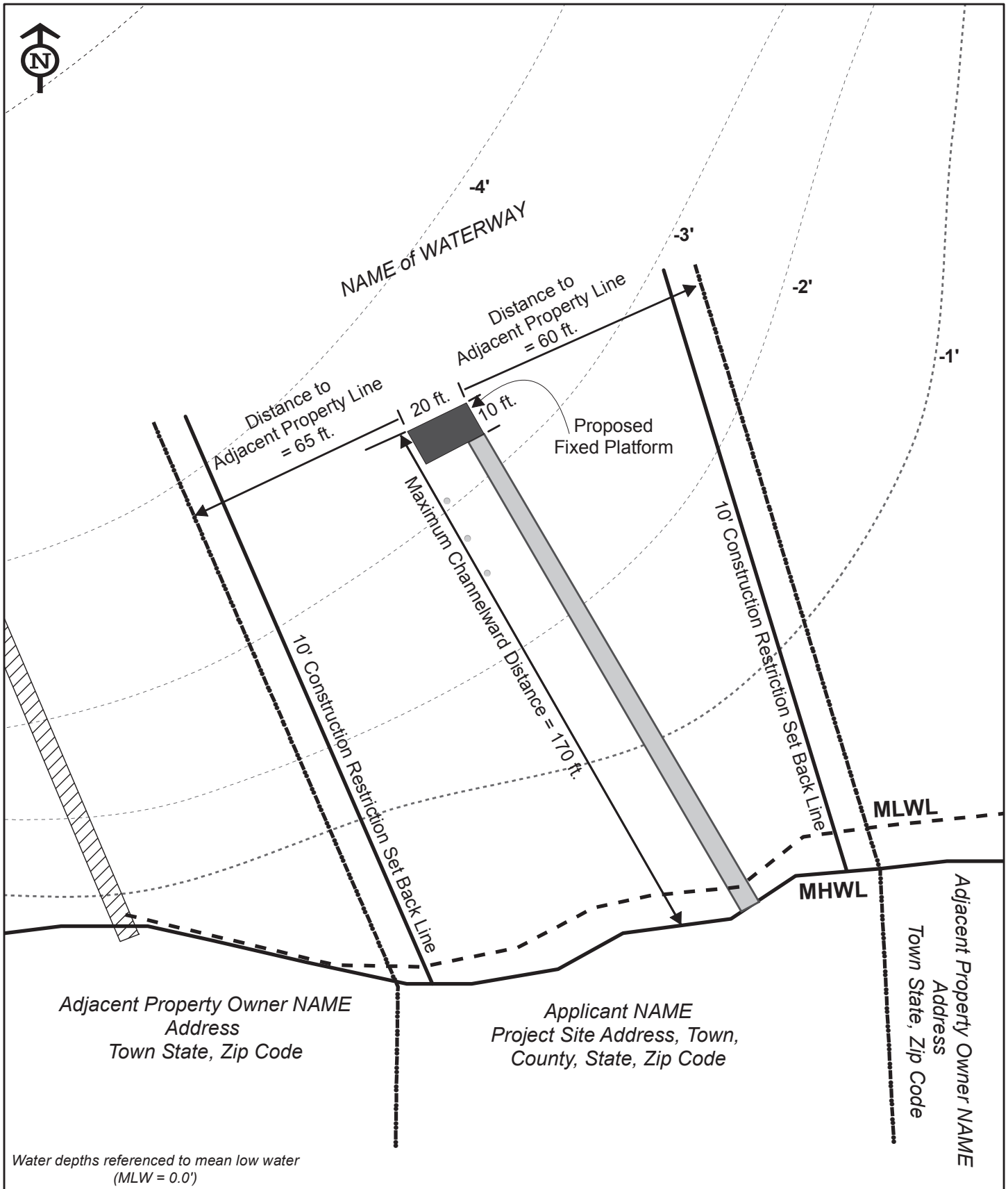
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code



DATE, Page X of Y



Existing Conditions with Proposed Platform

Project: Proposed Platform on an existing pier

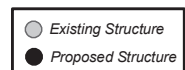


1 inch = 40 feet

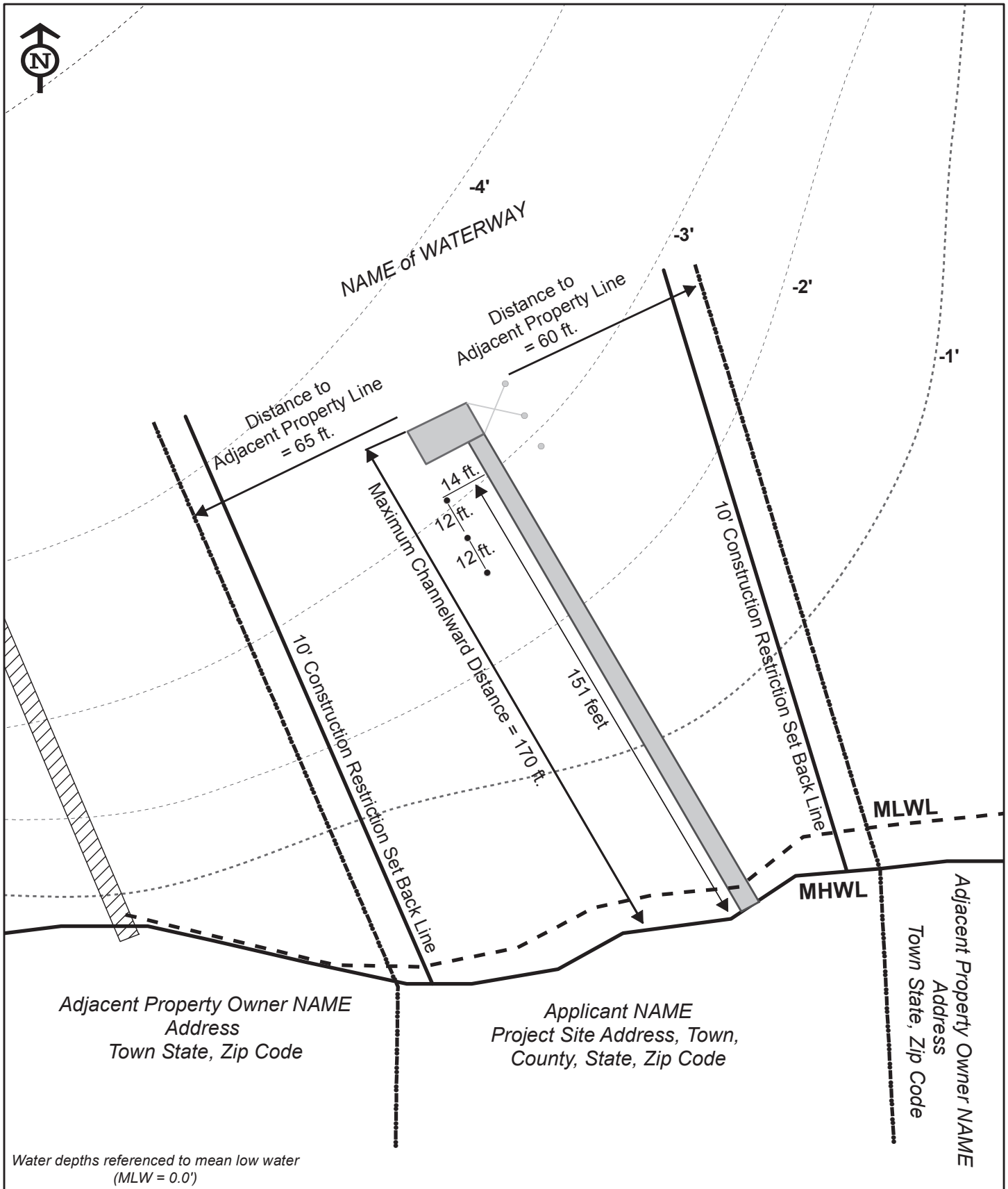
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code



DATE, Page X of Y



Existing Conditions with Proposed Mooring Piles

Project: Proposed mooring piles on an existing pier

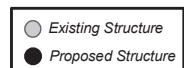
Proposed Project for:

Applicant NAME

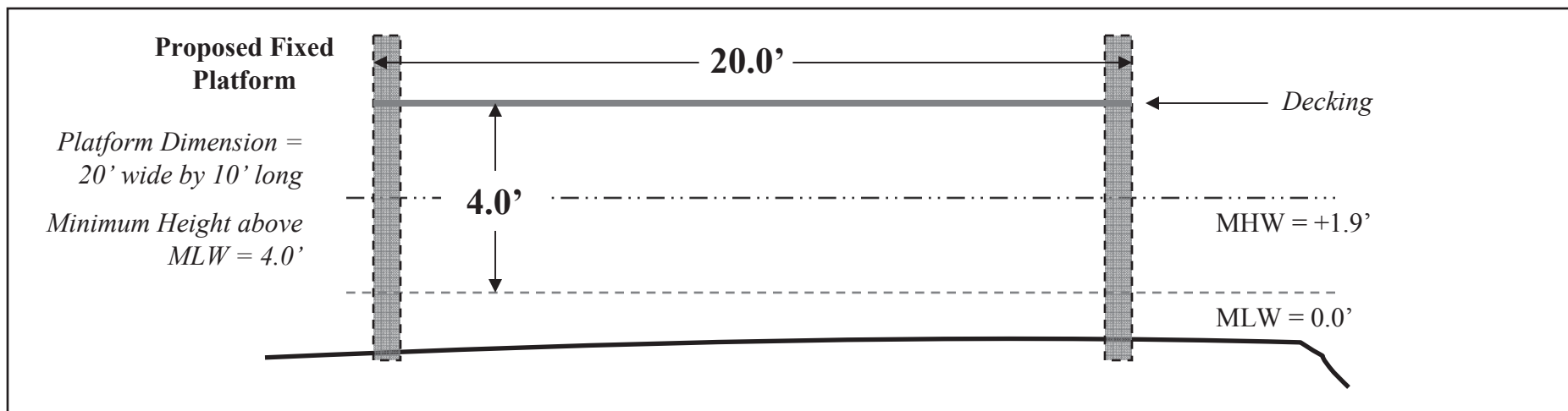
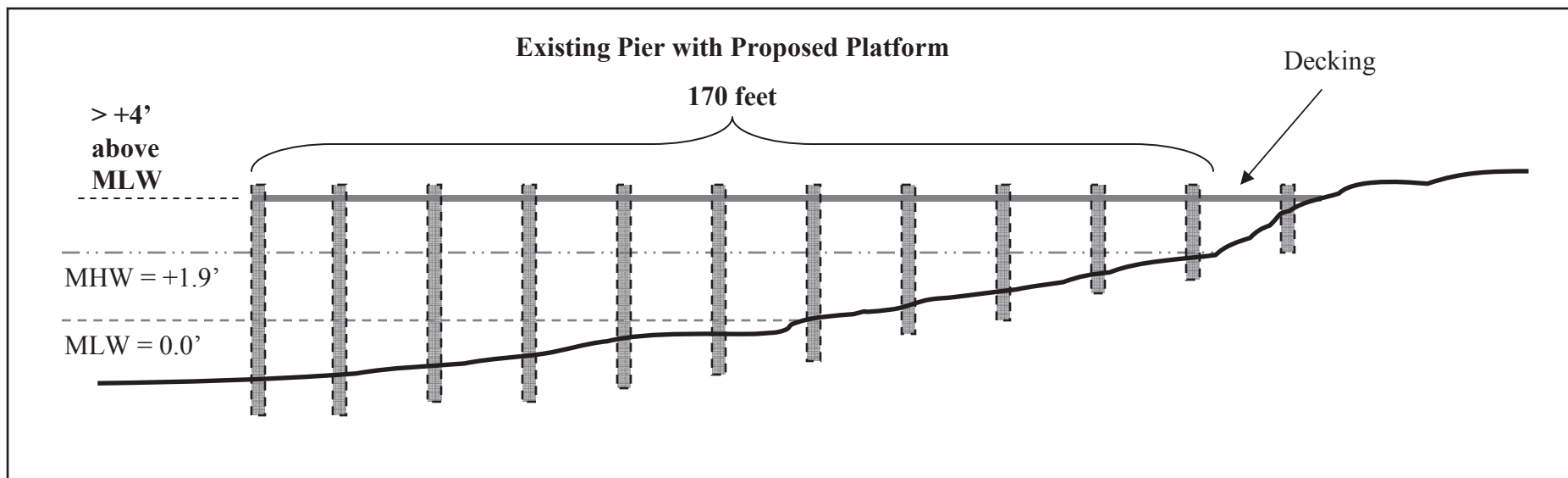
Mailing Address, Town, County, State, Zip Code

0 10 20 40 60 80 Feet

1 inch = 40 feet



DATE, Page X of Y



Platform on Existing Pier Project

Proposed Project Cross-section for:
 Applicant Name
 Mailing Address, Town, County, State

DATE, Page X of Y

**WETLANDS AND WATERWAYS PROGRAM
TIDAL WETLAND APPLICATION GUIDELINES**

PROPOSED PIER PROJECT

Check list outlines the minimum required information for a proposed project; additional information may required based on the project and/or the applicant's project site. Applicants are encouraged to schedule a pre-application meeting to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

- ☐ Requires application processing fee
- ☐ Exempt from application processing fee

***Reference the fee guidelines and tables to determine appropriate application review fees.**

GENERAL PLAN REQUIREMENTS

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets and a usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. pier, platform, mooring piles, and boat lift.
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Vicinity map and aerial photo should be sized to clearly depict the project site and surround area, but each map should no smaller than 4" by 4" in size.
 - ☐ Vicinity map should include a North arrow and be scaled to clearly show project site, general location on the waterway, the immediate surrounding area.
 - ☐ Aerial photograph should be no more than 10 years old from date of application.
 - ☐ Aerial photograph should, at a minimum, show the proposed project site (clearly marked) with any existing structures and the adjacent property owners' property with any existing structures.
-

PROJECT VICINITY CONDITIONS PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scaled appropriate for area of project vs. 8.5" x 11" sheet. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. pier, platform, mooring piles, and boat lift.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) of project's shoreline and the distance to the opposite shoreline.
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include water depths marked as either contours or spot depths that extend across the width of the waterway.
- ☐ Plan view should include any marked or unmarked channels within the waterway and distance to the nearest edge of the channel.
- ☐ Plan view should include the property lines (labeled) extended channelward.
- ☐ Plan view should include all vegetated wetlands at the applicant's site.

EXISTING CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. pier, platform, mooring piles, and boat lift.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet).
- ☐ Plan view should include water depths marked as either contours or spot depths that extend a minimum of 100' channelward from the end of the channelward most proposed work.
***Narrow width waterways require water depths across the entire width of the channel.**
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.

EXISTING CONDITION PLAN SHEET(S) (CONTINUED)

- ☐ Plan view should include the shoreline from property line to property line (property lines extended channelward and labeled) or if distance from the proposed project to property lines will not fit on the page using the allowable scale the distance to each property line from the proposed project should be indicated.
- ☐ Plan view should include the applicant's property and directly adjacent riparian properties clearly labeled with their name, site address, town/city, county, state, and zip code.
- ☐ Plan view should include all existing structures, including vegetated wetlands and SAV, on the applicant's property and adjacent riparian properties.

PROPOSED CONDITION PLAN SHEET(S)

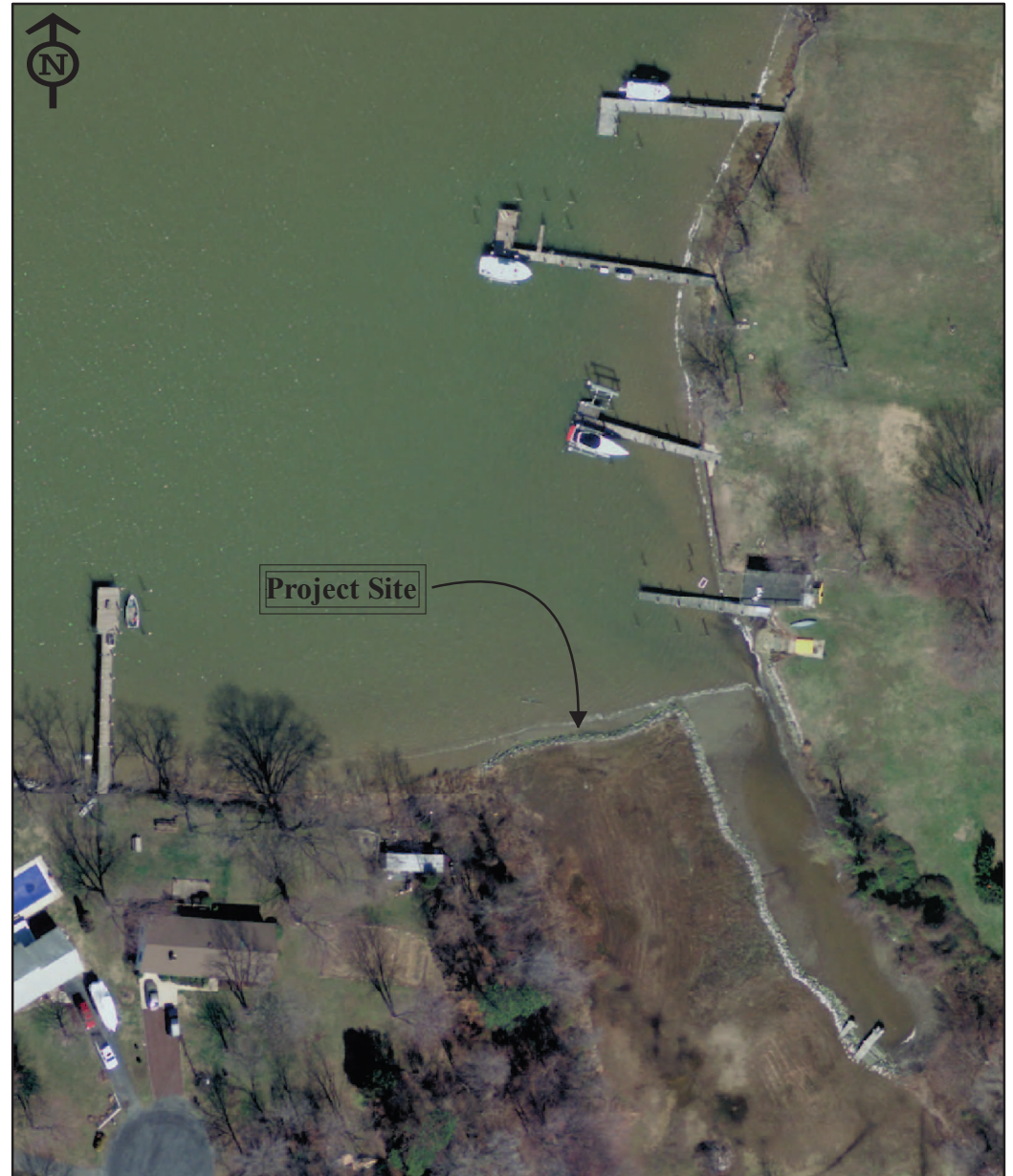
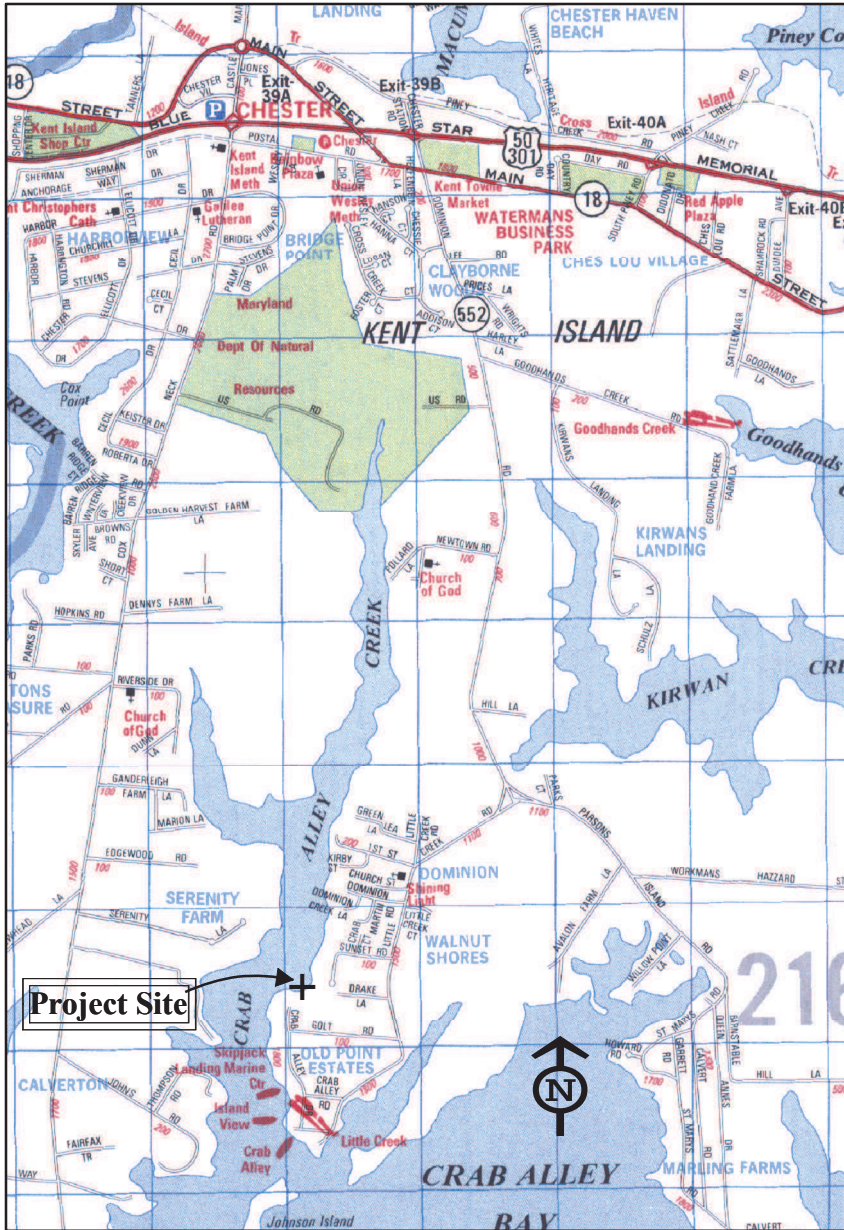
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. pier, platform, mooring piles, and boat lift.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet). *If the MHWL or the MLWL are to be altered during construction the proposed MHWL and MLWL should also be labeled.*
- ☐ Plan view should include water depths marked as either contours or spot depths that extend a minimum to the channelward extent of the proposed project.
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include the property lines (labeled) extended channelward.
- ☐ Plan view should include the construction restriction set back lines extended channelward and labeled or if distance from the proposed project to the construction restriction set back lines will not fit on the page using the allowable scale the distance to each construction restriction set back line from the proposed project should be indicated.
***Check with the county to determine the appropriate required set back distance for tidal wetland projects. In counties where no county set back is required, MDE requires a minimum of 10 feet or a variance from the county prior to issuance of a State license.**
- ☐ Plan view should depict the proposed pier and all proposed associated structures including the channelward distance from the MHWL to each structure.
- ☐ Plan view should depict proposed boat lift or PWC locations with an X connecting the boat lift piles. ***Please provide, as a separate plan sheet, a schematic, plan, or typical photograph showing the type of boat lift or PWC lift that is proposed.**

CROSS-SECTION PLAN SHEET(S)

-
- | | |
|--------------------------|---|
| ☐ | Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc. |
| ☐ | Plan sheet should include the type of projects proposed by applicant i.e. pier, platform, mooring piles, and boat lift. |
| ☐ | Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code. |
| ☐ | Cross-Section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet). Example: MLW = 0.0', MHW = + 1.9' |
| ☐ | Existing Cross-Section should depict width of pier decking (maximum 6.0 feet over open water tidal wetlands and a maximum of 3.0 feet over vegetated tidal wetlands). |
| ☐ | Proposed Cross-Section should depict the distance from the MLW to the bottom of the pier decking (minimum of 4 feet over open water tidal wetlands) or the distance from the substrate to the bottom of the pier decking (minimum of 3 feet over vegetated tidal wetlands). |
-

TYPICAL BOAT LIFT PLAN SHEET(S)

-
- | | |
|--------------------------|---|
| ☐ | Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc. |
| ☐ | Plan sheet should include the type of projects proposed by applicant i.e. pier, platform, mooring piles, and boat lift. |
| ☐ | Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code. |
| ☐ | Plan sheet should depict a schematic, photograph, or plan of the type of boat lift proposed to be constructed at applicant's pier. |
-



Vicinity Map & Aerial Photo

Project: [INSERT TYPE OF PROJECT]

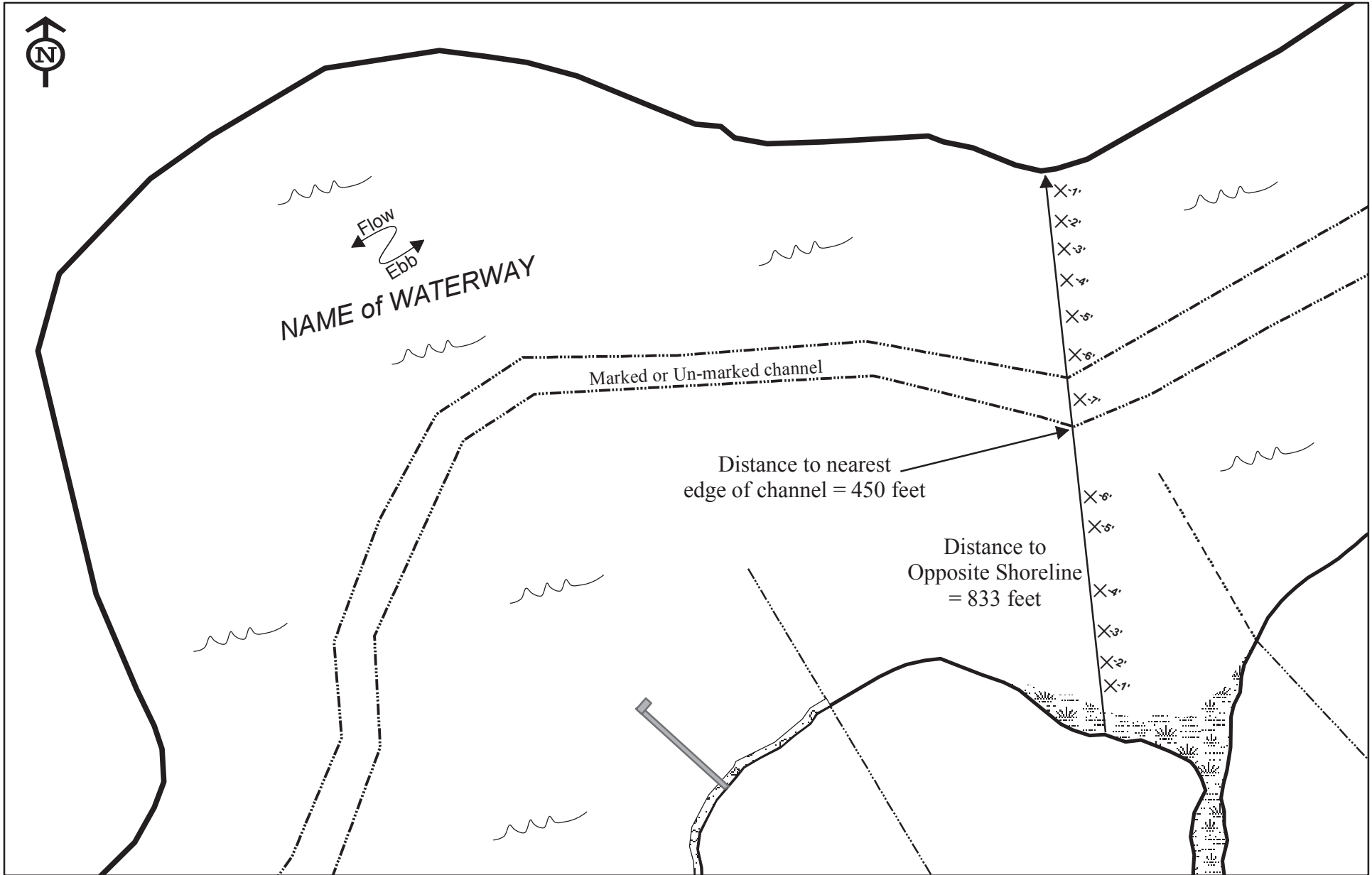
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

NOTES

DATE, Page X of Y



Project Vicinity Conditions

Project: Pier, Platform, Pilings, & Boatlift

Proposed Project for:

Applicant NAME

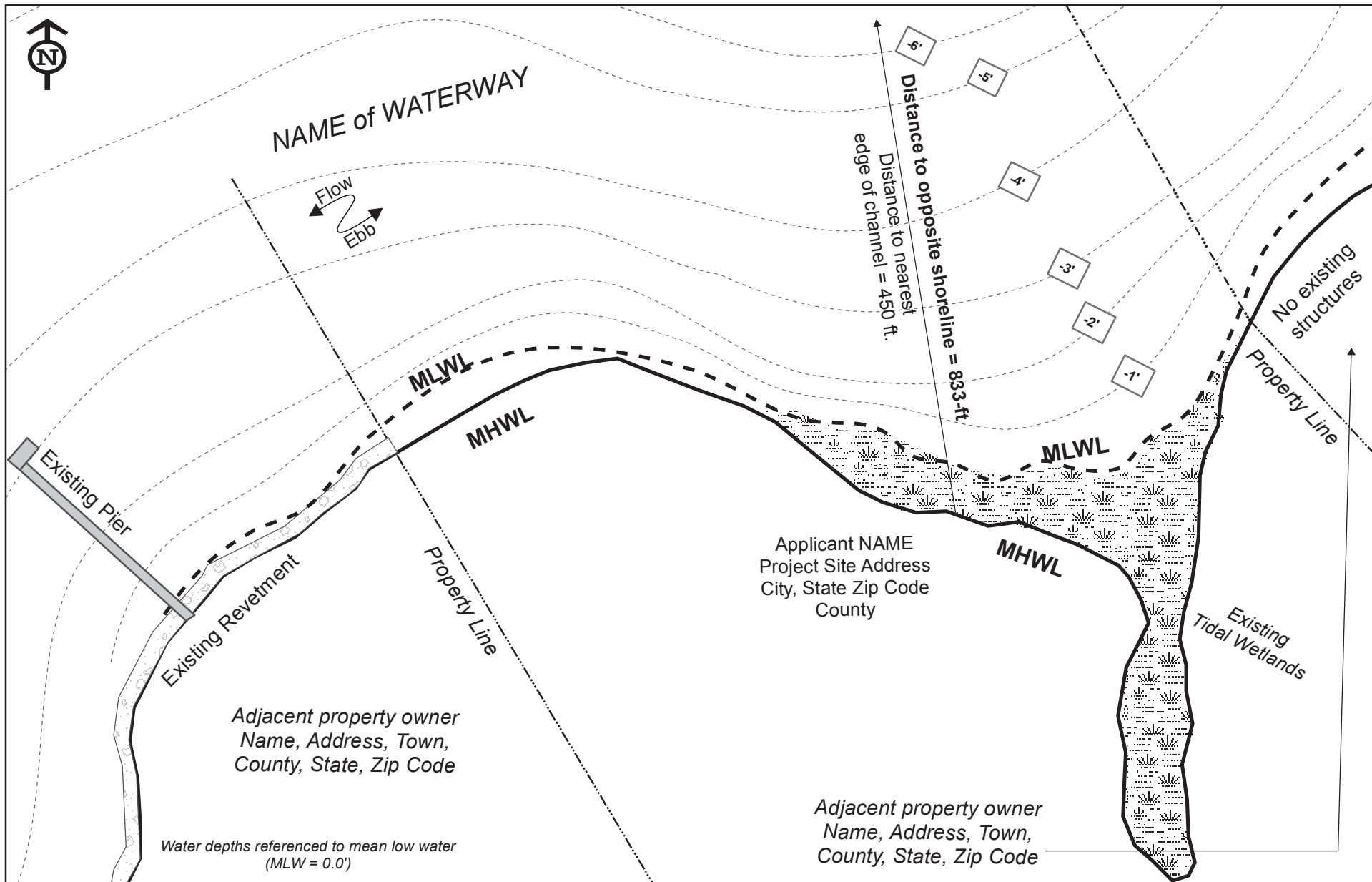
Mailing Address, Town, County, State, Zip Code



1 inch = 200 feet

PROJECT NOTES:

DATE, Page X of Y



Existing Conditions

Project: Pier, Platform, Pilings, & Boatlift

Proposed Project for:

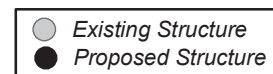
Applicant NAME

Mailing Address, Town, County, State, Zip Code

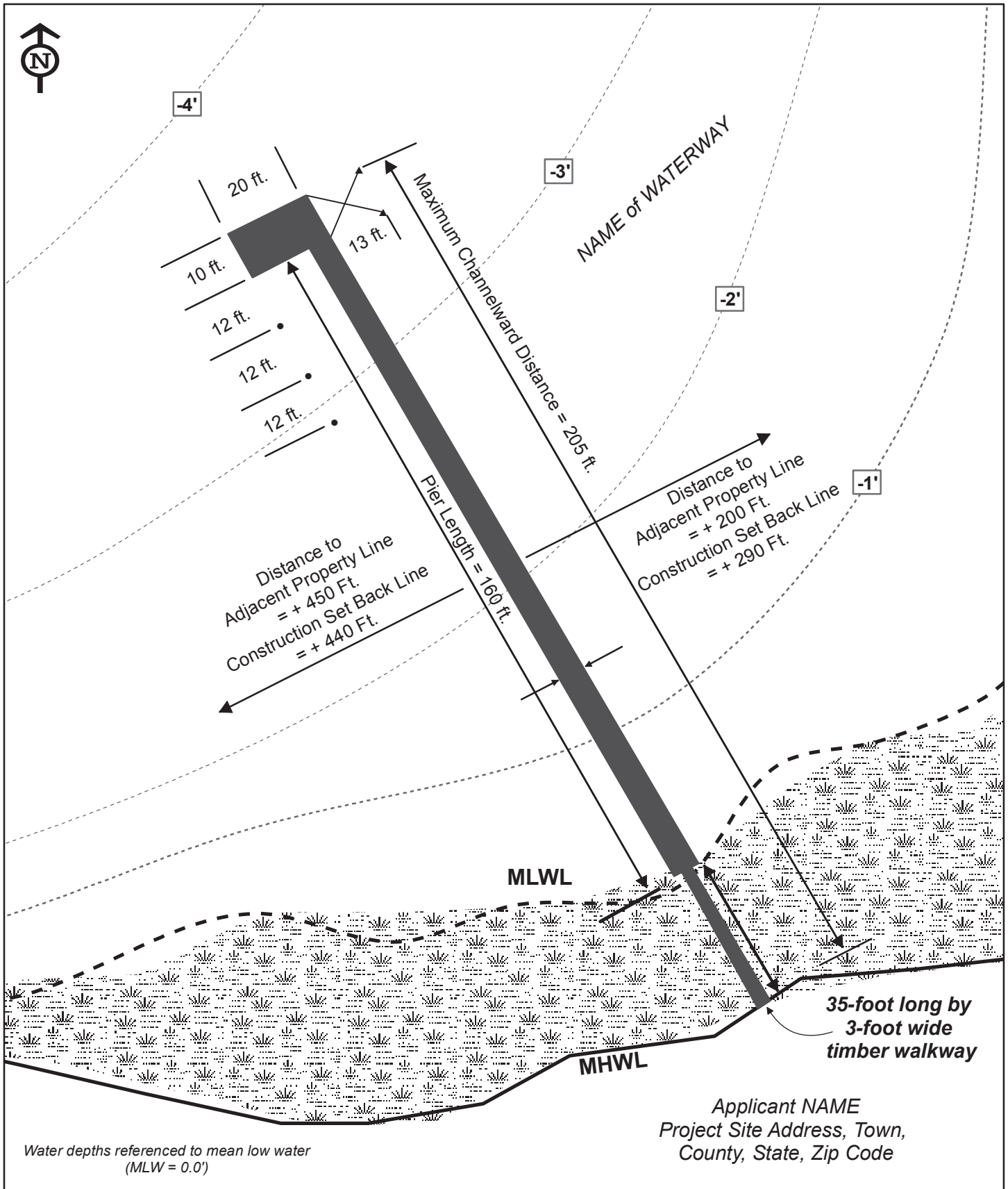


1 inch = 100 feet

PROJECT NOTES:



DATE, Page X of Y



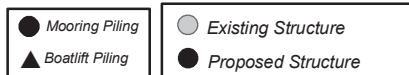
Proposed Conditions

Project: Pier, Platform, Pilings, & Boatlift

Proposed Project for:
Applicant NAME
Mailing Address, Town, County, State, Zip Code

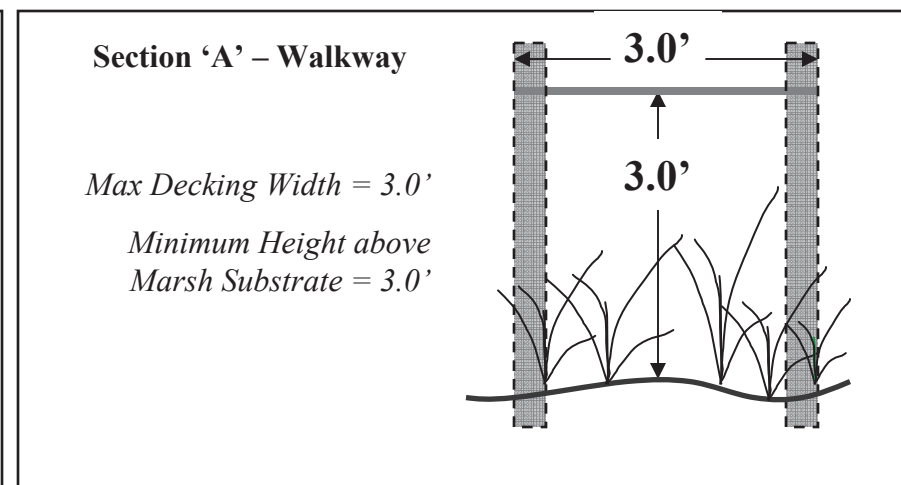
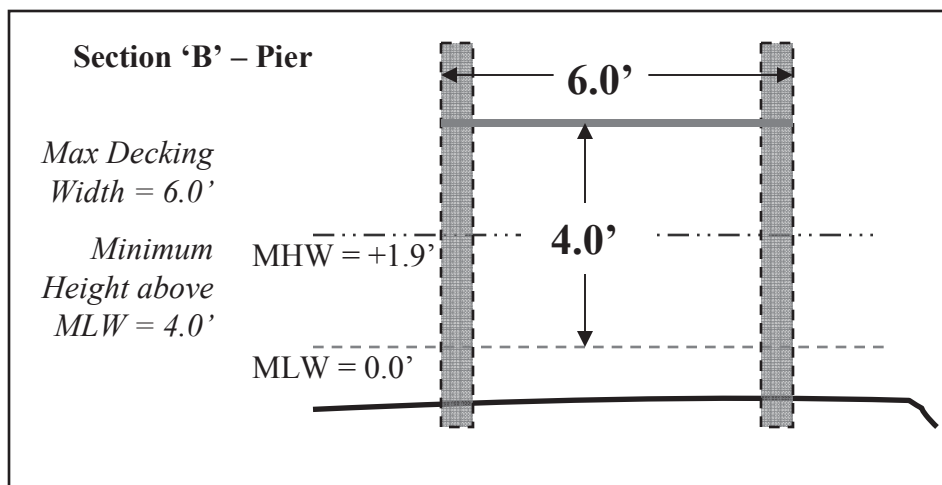
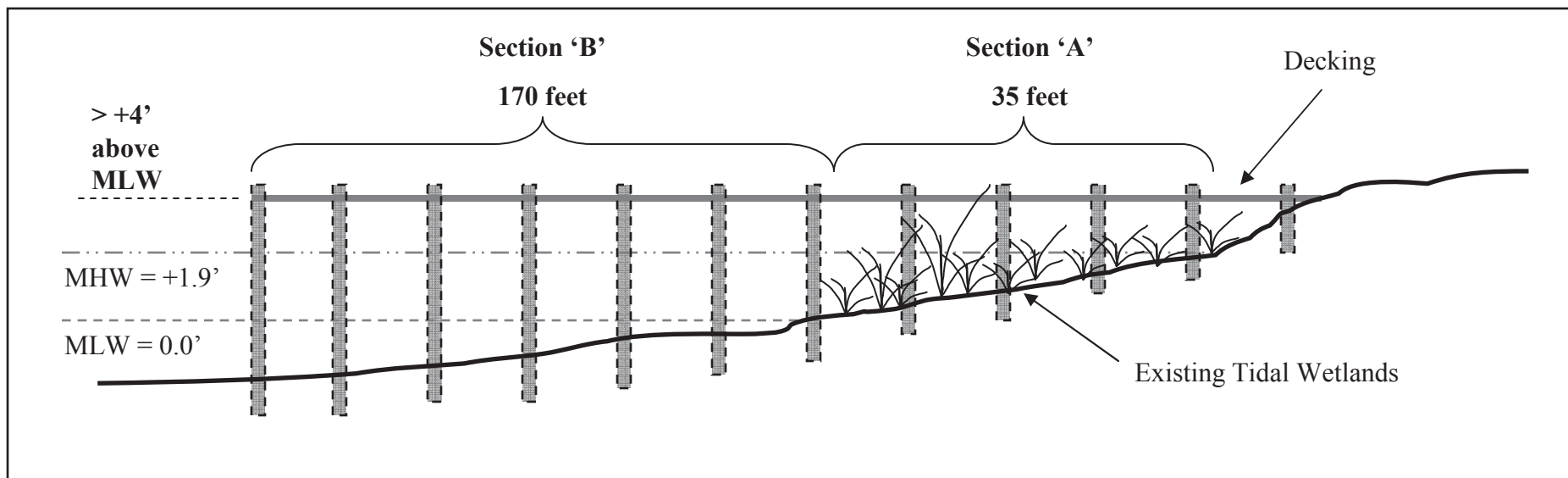
0 12.5 25 50 75 100 Feet

1 inch = 30 feet



PROJECT
NOTES:

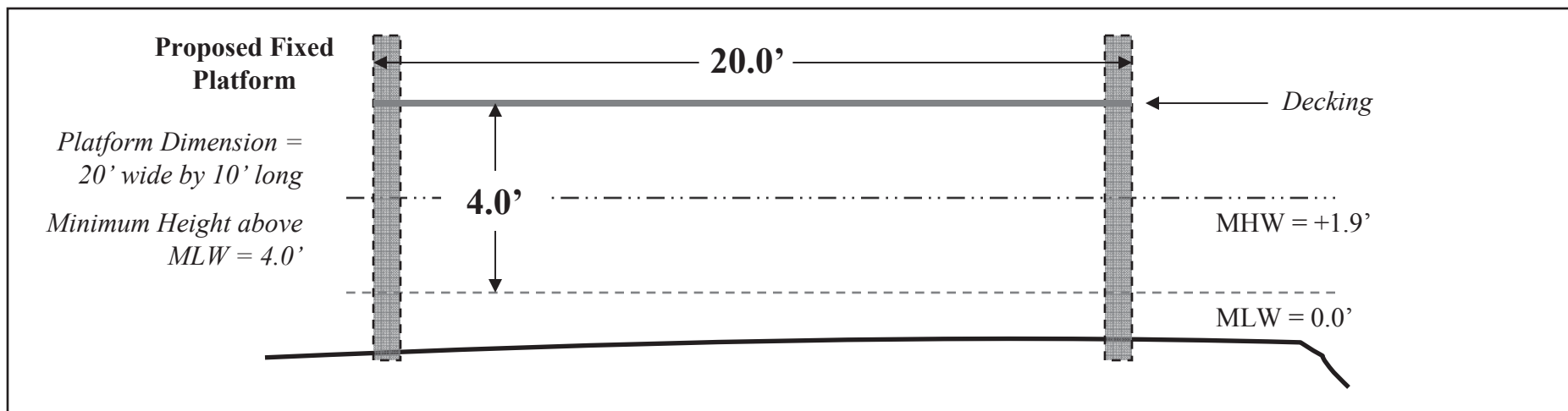
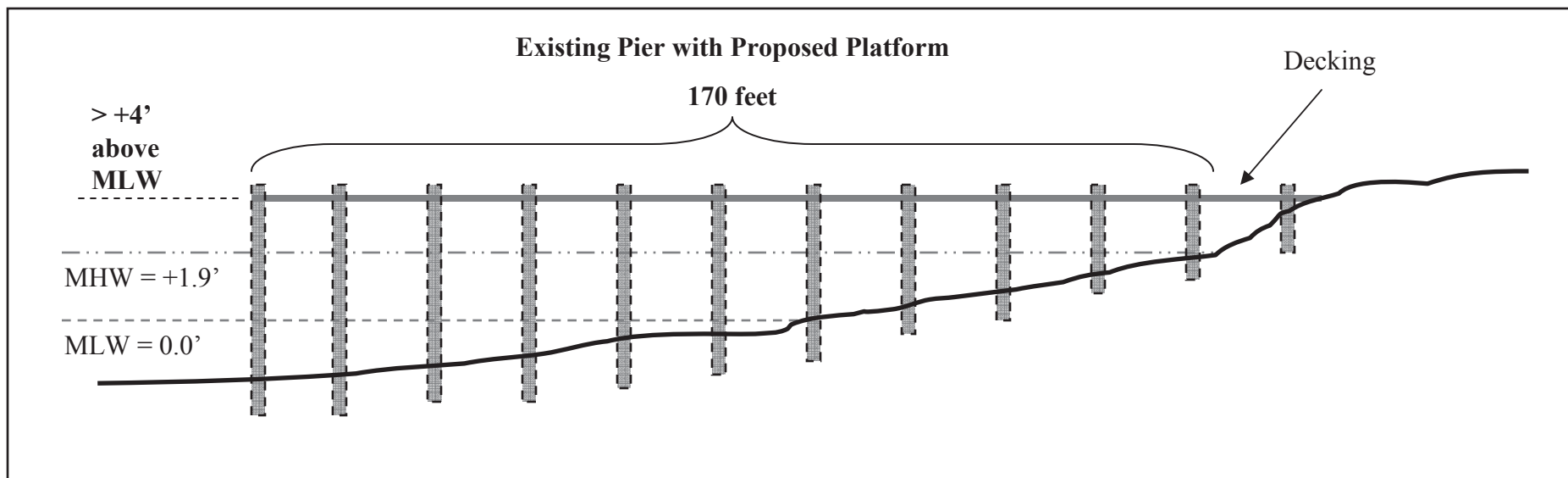
DATE, Page X of Y



Pier Project

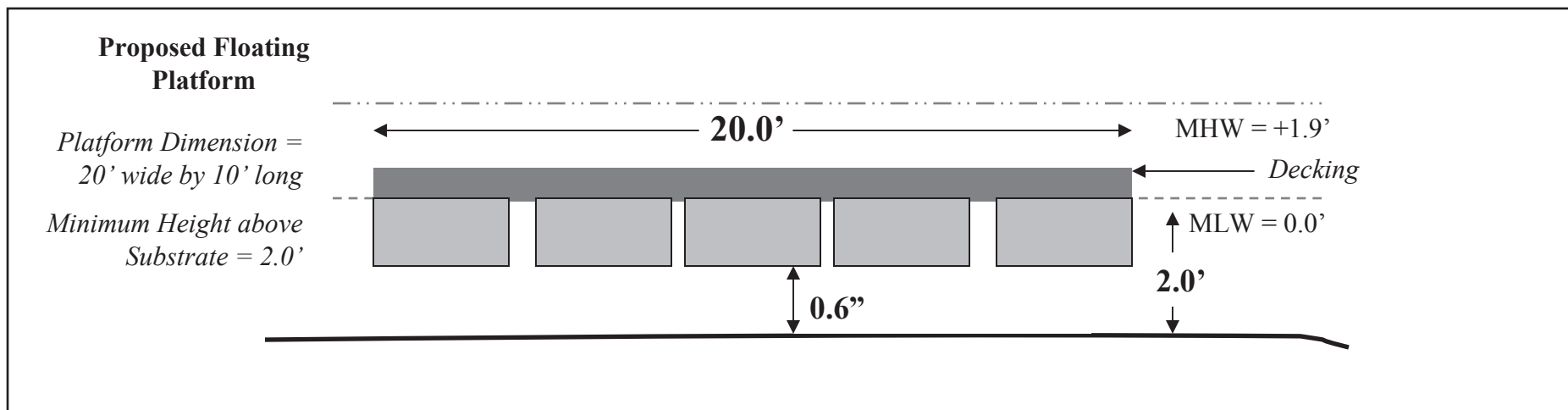
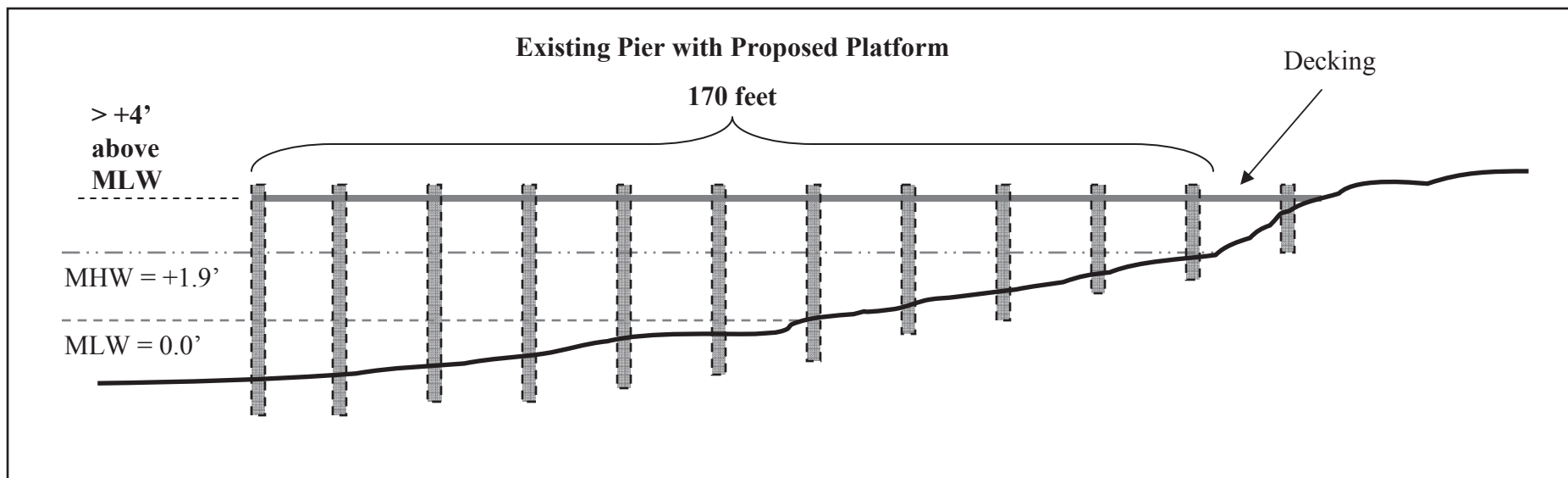
Proposed Project Cross-section for:
 Applicant Name
 Mailing Address, Town, County, State

DATE, Page X of Y



Platform on Existing Pier Project

Proposed Project Cross-section for:
 Applicant Name
 Mailing Address, Town, County, State



Platform on Existing Pier Project

Proposed Project Cross-section for:
 Applicant Name
 Mailing Address, Town, County, State

DATE, Page X of Y

**WETLANDS AND WATERWAYS PROGRAM
TIDAL WETLAND APPLICATION GUIDELINES**

PROPOSED REPLACEMENT BULKHEAD PROJECT

Check list outlines the minimum required information for a proposed project; additional information may be required based on the project and/or the applicant's project site. Applicants are encouraged to schedule a pre-application meeting to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

- ☐ Requires application processing fee* (1.5 feet / 18 inches channelward of existing, functional bulkhead)
- ☐ Exempt from application processing fee* (in-kind – replacement in the exact same footprint of existing, functional bulkhead (NO CHANNELWARD ENCROACHMENT) (**In-kind is defined as "...replacement of a structure with a structure of similar materials and dimensions" per COMAR 26.24.01.02A(24) and functionality is defined as 85% per COMAR 26.24.01.02A(20)**)

***Reference the fee guidelines and tables to determine appropriate application review fees.**

NOTE: This guideline and sample plans are for the replacement of a bulkhead 1.5 feet/18 inches channelward of a functional, existing bulkhead. It is recommended that an applicant schedule a pre-application visit with MDE to determine if the existing bulkhead is functional according to MDE guidelines. A functional, existing bulkhead may be replaced, otherwise an alternative method of shoreline erosion control must be proposed.

APPLICATION GUIDELINE

- ☐ ABBREVIATED JOINT FEDERAL / STATE APPLICATION FOR THE ALTERATION OF ANY TIDAL WETLAND AND/OR TIDAL WATERS IN MARYLAND
 - ☐ Plans
 - ☐ Photographs of existing bulkhead
-

GENERAL PLAN REQUIREMENTS

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets and a usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. replacement bulkhead.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET (CONTINUED)

- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Vicinity map and aerial photo should be sized to clearly depict the project site and surround area, but each map should no smaller than 4" by 4" in size.
 - ☐ Vicinity map should include a North arrow and be scaled to clearly show project site, general location on the waterway, the immediate surrounding area.
 - ☐ Aerial photograph should be no more than 10 years old from date of application.
 - ☐ Aerial photograph should, at a minimum, show the proposed project site (clearly marked) with any existing structures and the adjacent property owners' property with any existing structures.
-

EXISTING CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. replacement bulkhead
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet).
 - ☐ Plan view should include water depths marked as either contours or spot depths.
 - ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
 - ☐ Plan view should include the property lines (labeled) extended channelward.
 - ☐ Plan view should depict the existing bulkhead and include the linear feet of shoreline proposed to be impacted by construction of the replacement bulkhead.
 - ☐ Plan view should include the applicant's property and directly adjacent riparian properties clearly labeled with their name, site address, town/city, county, state, and zip code.
 - ☐ Plan view should include all existing structures, including vegetated wetlands and SAV, on the applicant's property and adjacent riparian properties.
-

PROPOSED CONDITION PLAN SHEET(S)

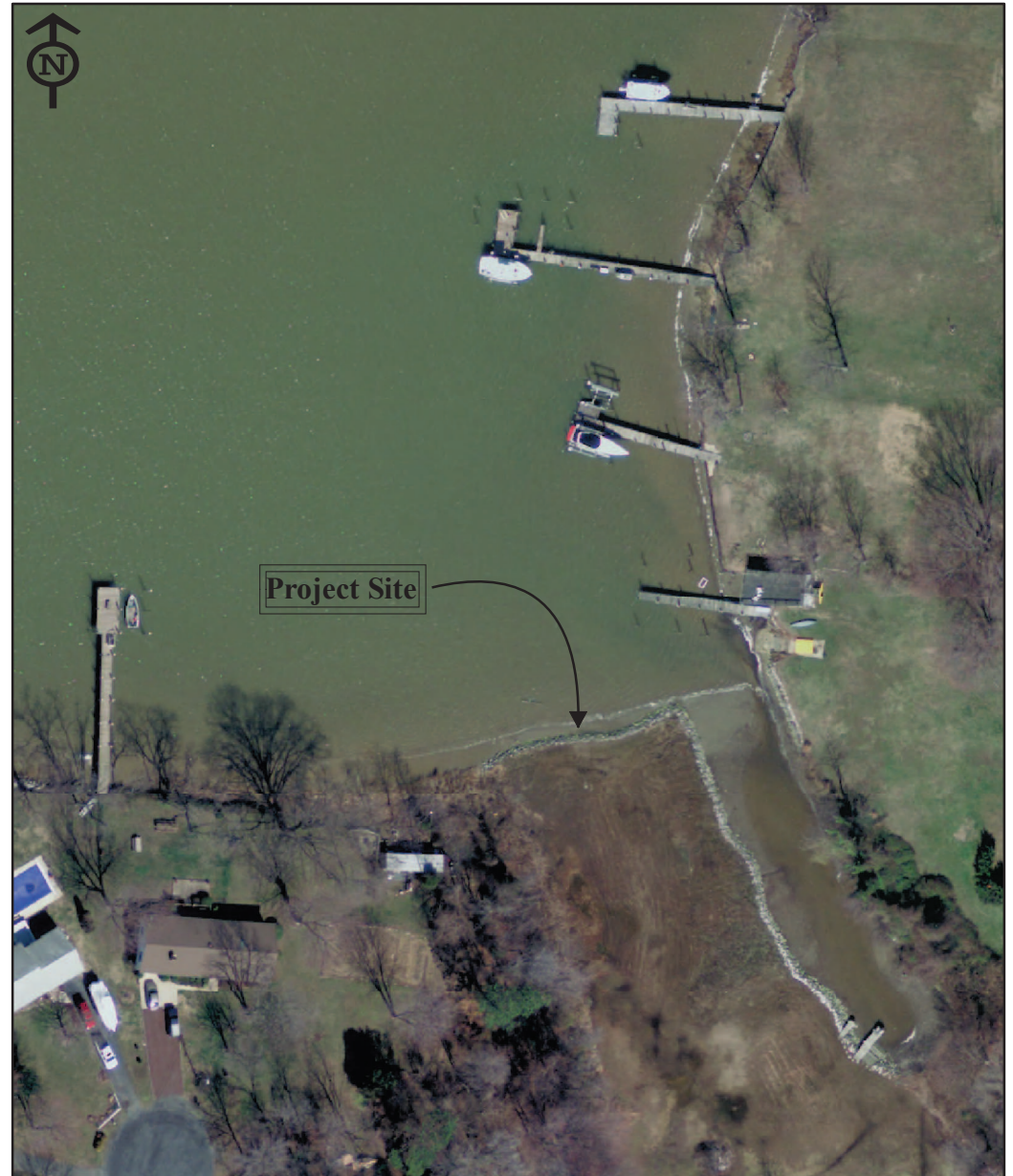
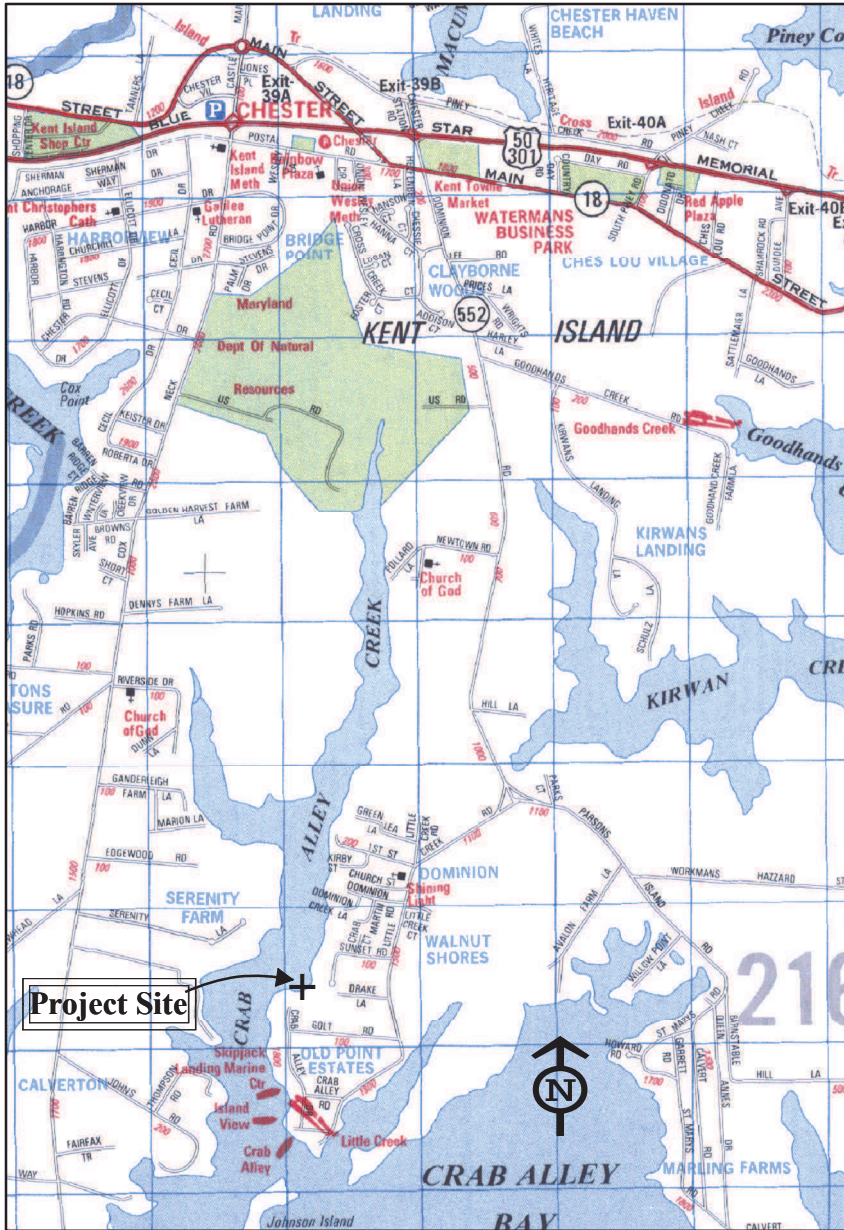
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. replacement bulkhead.
-

PROPOSED CONDITION PLAN SHEET(S) (CONTINUED)

- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet). *If the MHWL or the MLWL are to be altered during construction the proposed MHWL and MLWL should also be labeled.*
 - ☐ Plan view should include water depths marked as either contours or spot depths.
 - ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
 - ☐ Plan view should include the property lines (labeled) extended channelward.
 - ☐ Plan view should depict the existing bulkhead and the proposed replacement bulkhead along the shoreline and accurately depict the maximum channelward encroachment, from the existing bulkhead, along the entire project (1.5 feet/ 18 inches).
 - ☐ Plan view should include the applicant's property and any erosion control structures on adjacent riparian properties that will be abutted by the replacement bulkhead.
-

CROSS-SECTION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. replacement bulkhead.
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Cross-Section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet), and top of bank. Example: MLW = 0.0', MHW = + 1.9', + 4.0' Top of Bank.
 - ☐ Cross-Section should depict existing bank, existing bulkhead (depict sheathing & pilings), proposed bulkhead (depict sheathing & pilings), maximum channelward extent of 1.5 feet/18 inches from existing bulkhead (**1.5 feet/18 inches is measured from the outboard edge of the pilings of the existing bulkhead to the inboard edge of the sheathing of the proposed bulkhead**), any proposed fill landward of the existing and proposed bulkhead, and proposed method to prevent loss of fill material to the waters of the State (i.e. filter cloth).
-



Vicinity Map & Aerial Photo

Project: [INSERT TYPE OF PROJECT]

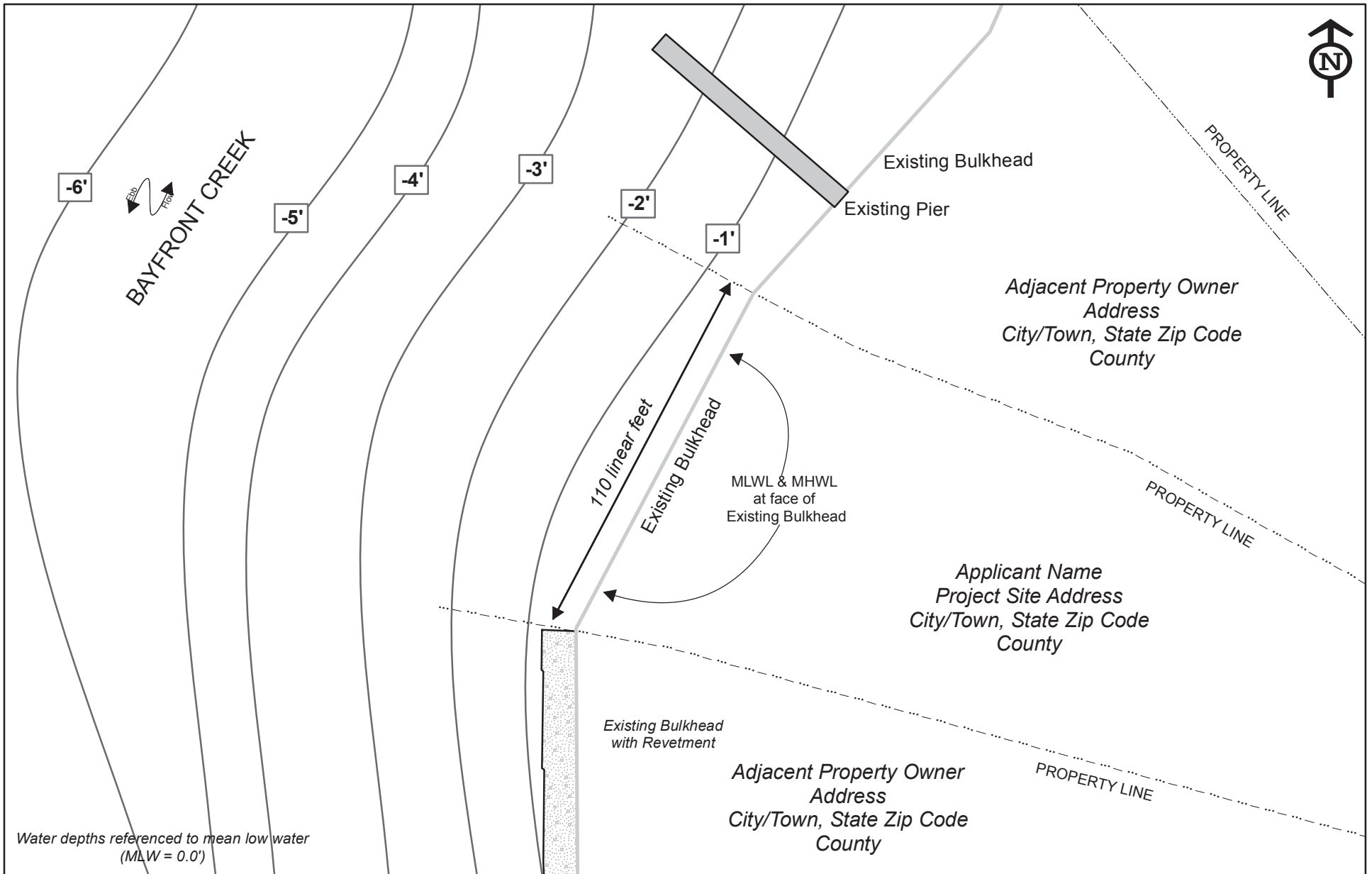
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

NOTES

DATE, Page X of Y



Existing Conditions

Project: Replacement Bulkhead

Proposed Project for:

Applicant NAME

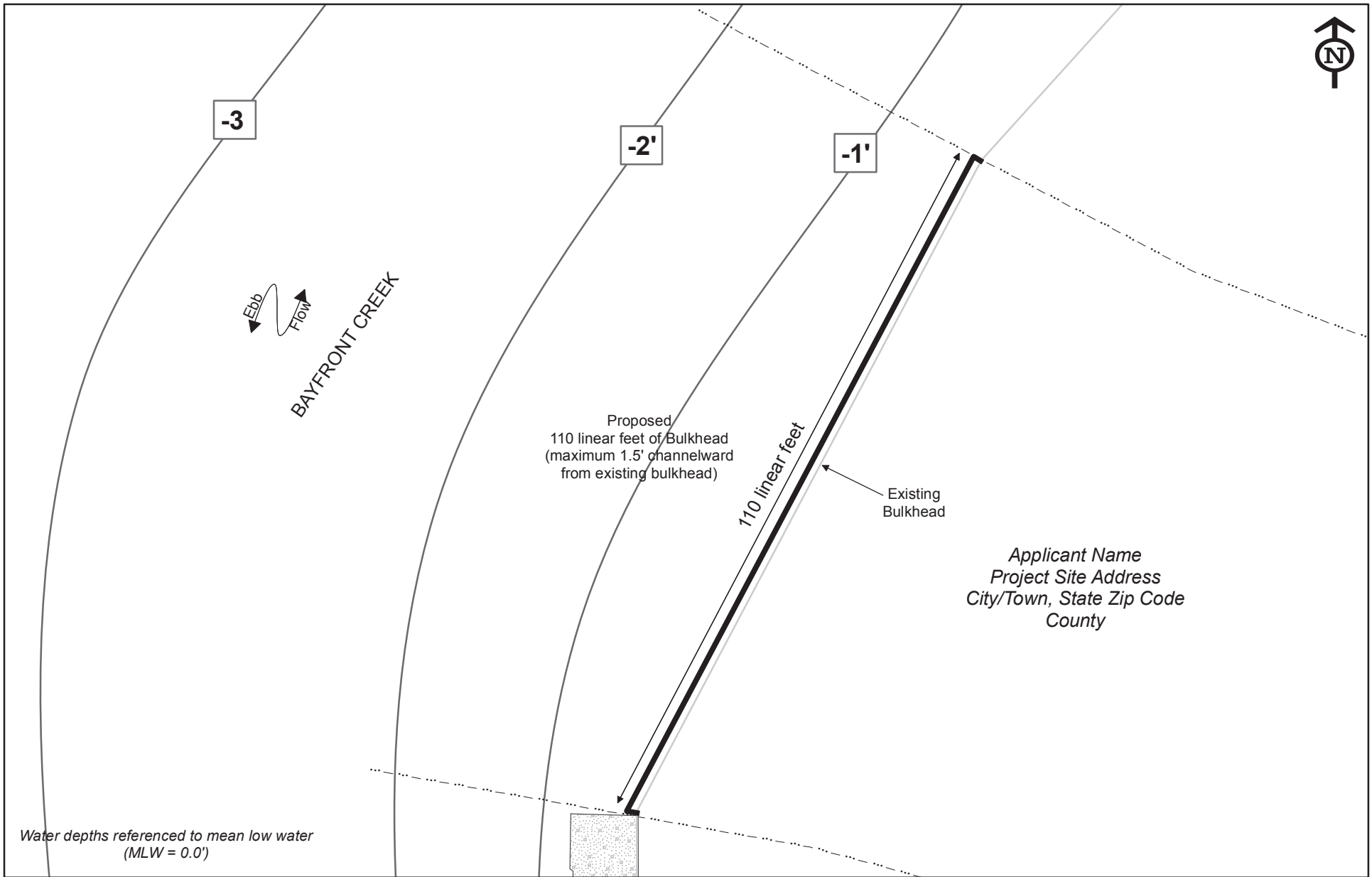
Mailing Address, Town, County, State, Zip Code

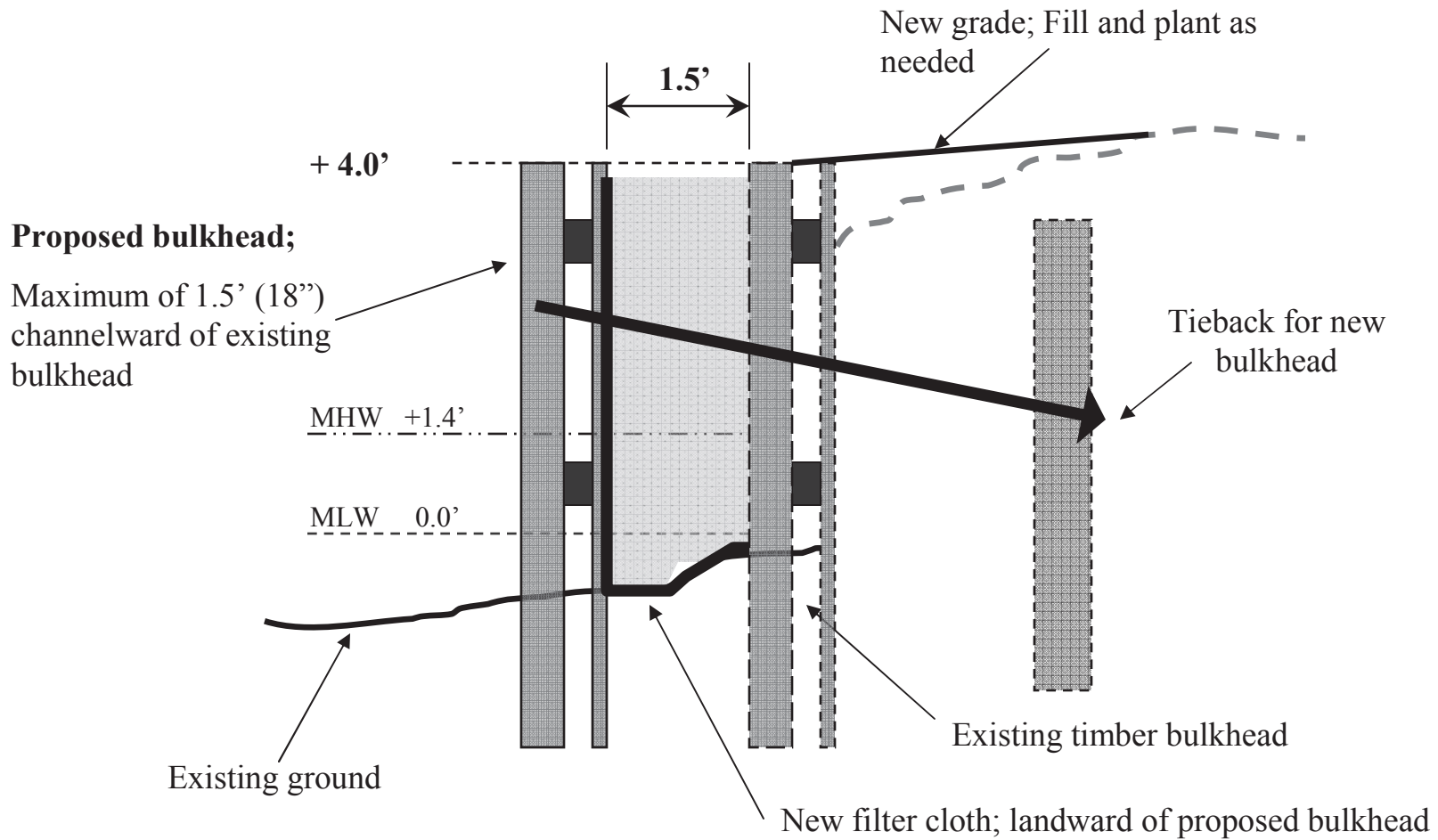
0 10 20 40 60 80 100 120 Feet

1 inch = 40 feet

PROJECT NOTES:

Existing Structure
DATE, Page X of Y





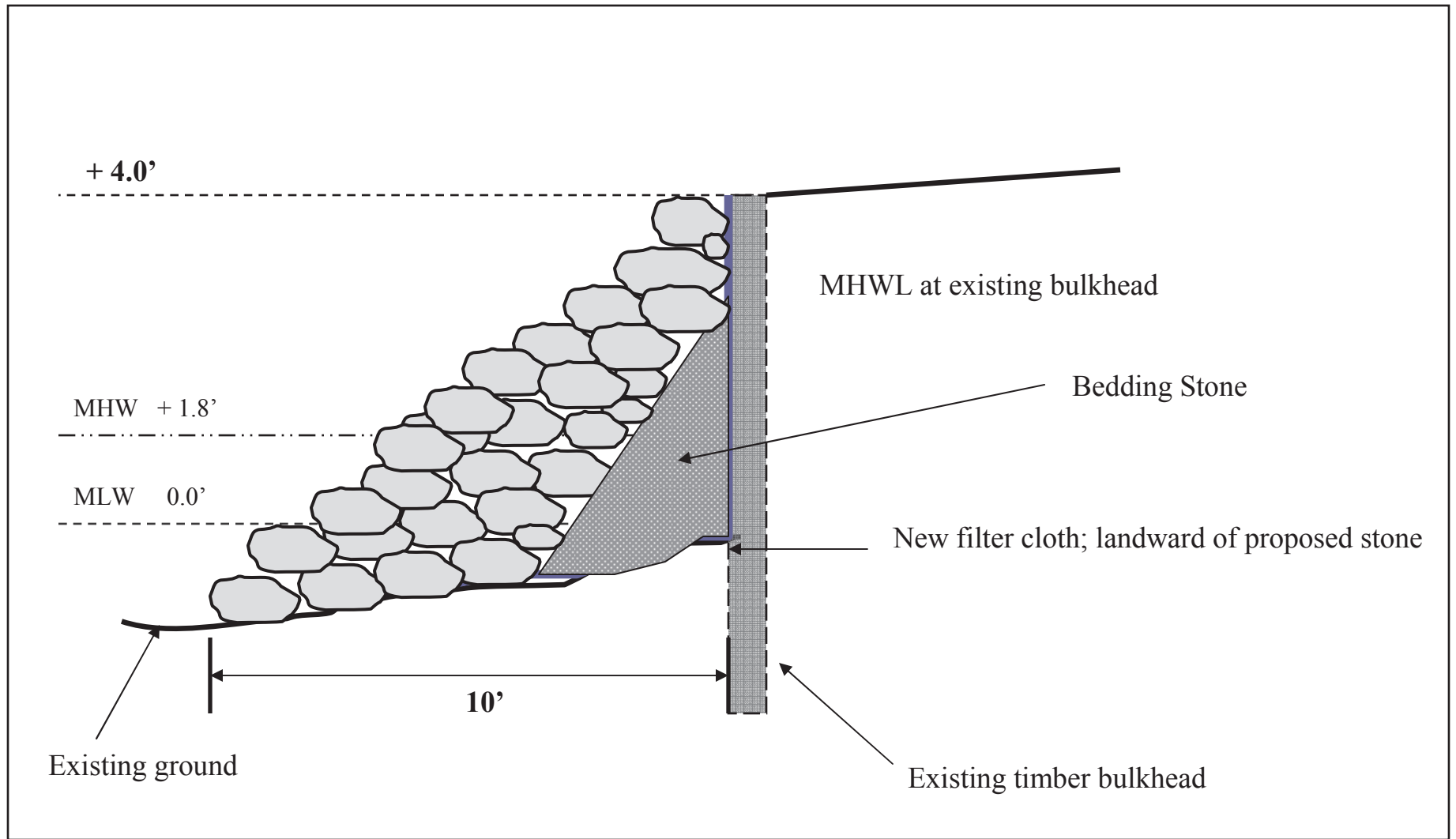
Project: Replacement Bulkhead

PROJECT NOTES:

Proposed Project Cross-section for:
Applicant Name
Mailing Address, Town, County, State

110 Linear Feet of Replacement Bulkhead,
constructed no more than 1.5-feet (18")
channelward of existing structure.

DATE, Page X of Y

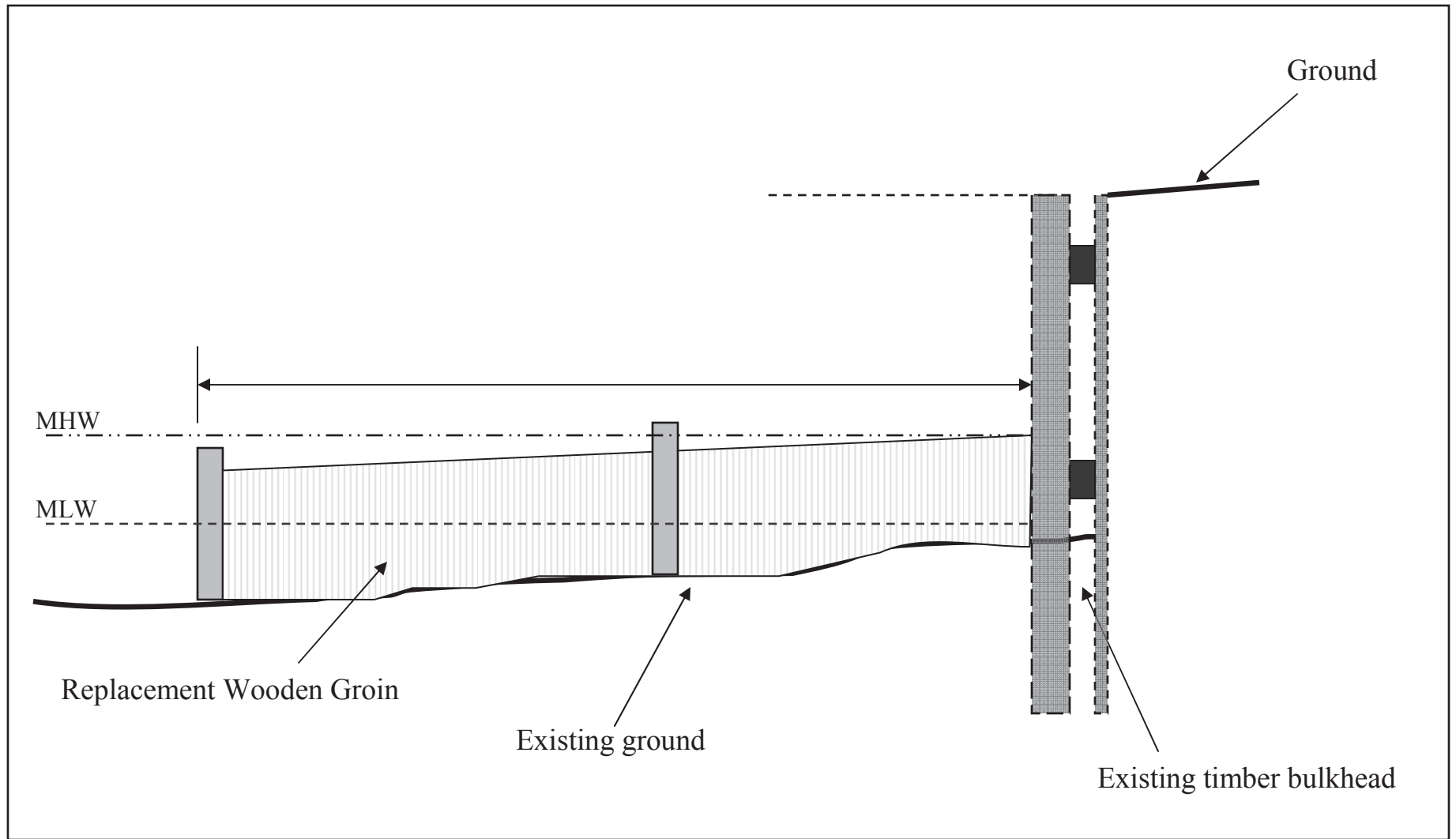


Project: Stone Revetment Channelward of Existing Bulkhead

Proposed Project:

Proposed Project Applicant:
Applicant Name
Mailing Address, Town, County, State

NOTES: XXX Linear Feet of Stone
Revetment extending X feet channelward
of an existing Bulkhead



Project: Replacement Wooden Groin

on Existing Bulkhead

Proposed Project Cross-section for:
Applicant Name
Address, City, Zipcode

**WETLANDS AND WATERWAYS PROGRAM
TIDAL WETLAND APPLICATION GUIDELINES**

PROPOSED REVETMENT PROJECT

Check list outlines the minimum required information for a proposed project; additional information may be required based on the project and/or the applicant's project site. Applicants are encouraged to schedule a pre-application meeting to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

- ☐ Requires application processing fee
- ☐ Exempt from application processing fee

***Reference the fee guidelines and tables to determine appropriate application review fees.**

GENERAL PLAN REQUIREMENTS

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets and a usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. revetment.
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Vicinity map and aerial photo should be sized to clearly depict the project site and surround area, but each map should no smaller than 4" by 4" in size.
 - ☐ Vicinity map should include a North arrow and be scaled to clearly show project site, general location on the waterway, the immediate surrounding area.
 - ☐ Aerial photograph should be no more than 10 years old from date of application.
 - ☐ Aerial photograph should, at a minimum, show the proposed project site (clearly marked) with any existing structures and the adjacent property owners' property with any existing structures.
-

EXISTING CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. revetment.
-

EXISTING CONDITION PLAN SHEET(S) (CONTINUED)

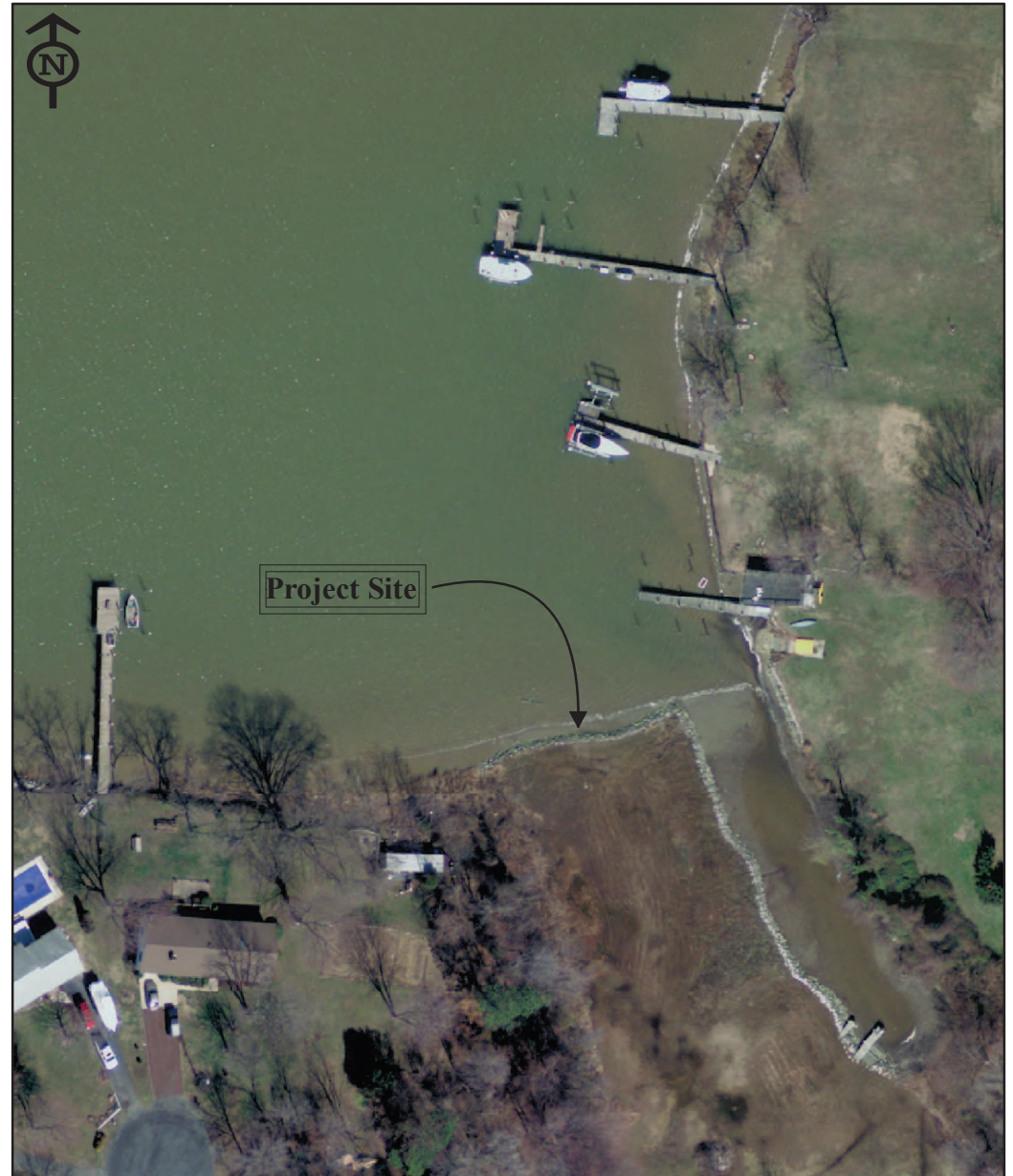
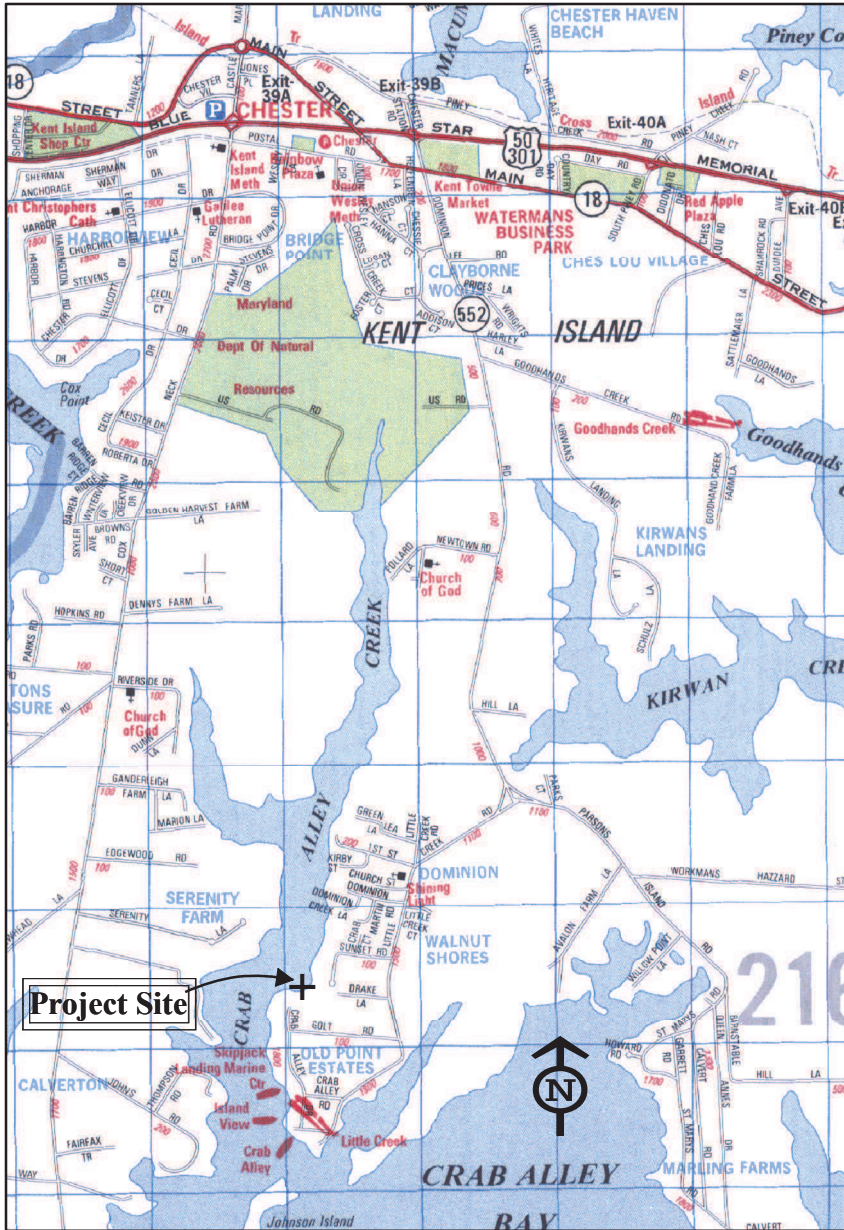
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet).
- ☐ Plan view should include water depths marked as either contours or spot depths.
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include the property lines (labeled) extended channelward.
- ☐ Plan view should include the linear feet of shoreline proposed to be impacted by construction of the revetment.
- ☐ Plan view should include the applicant's property and directly adjacent riparian properties clearly labeled with their name, site address, town/city, county, state, and zip code.
- ☐ Plan view should include all existing structures, including vegetated wetlands and SAV, on the applicant's property and adjacent riparian properties.

PROPOSED CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. revetment.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet). *If the MHWL or the MLWL are to be altered during construction the proposed MHWL and MLWL should also be labeled.*
- ☐ Plan view should include water depths marked as either contours or spot depths that extend across the width of the waterway.
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include the property lines (labeled) extended channelward.
- ☐ Plan view should depict the proposed revetment along shoreline proposed to be impacted by construction and accurately depict the max channelward encroachment along the entire project.
- ☐ Plan view should include the applicant's property and any erosion control structures on adjacent riparian properties that will be abutted by the revetment.

CROSS-SECTION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. revetment.
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Cross-Section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet), and top of bank. Example: MLW = 0.0', MHW = + 1.9', + 4.0' Top of Bank.
 - ☐ Existing Cross-Section should depict existing bank and slope.
 - ☐ Proposed Cross-Section should depict the proposed revetment, any grading and fill necessary for construction, maximum channelward encroachment from the Mean High Water (MHW), the material used to prevent the loss of fill material to the waters of the State i.e. filter cloth, and the slope of revetment.
-



Vicinity Map & Aerial Photo

Project: [INSERT TYPE OF PROJECT]

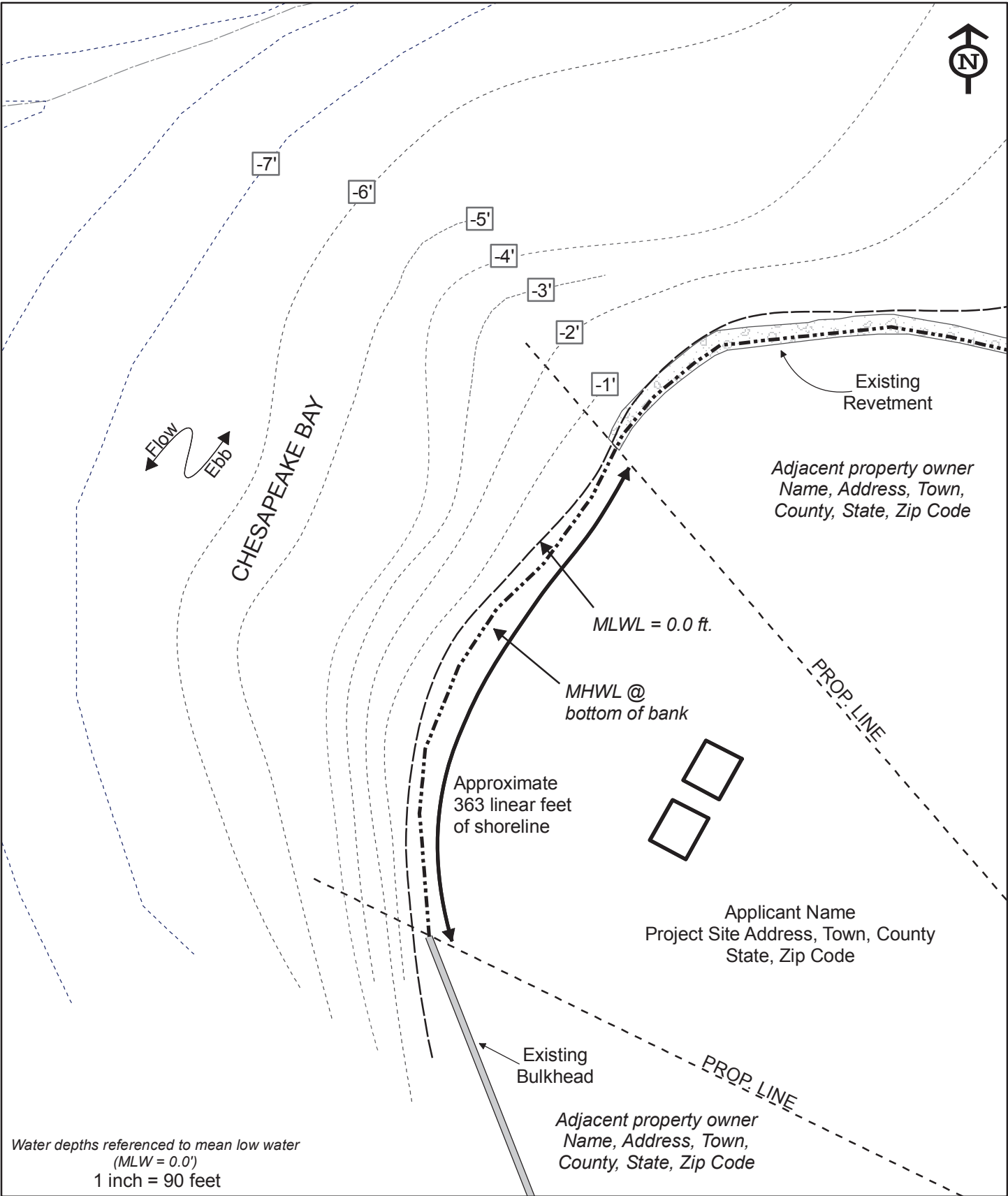
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

NOTES

DATE, Page X of Y



Water depths referenced to mean low water
(MLWL = 0.0')
1 inch = 90 feet

Existing Conditions

Project: Revetment

Proposed Project for:

Applicant NAME

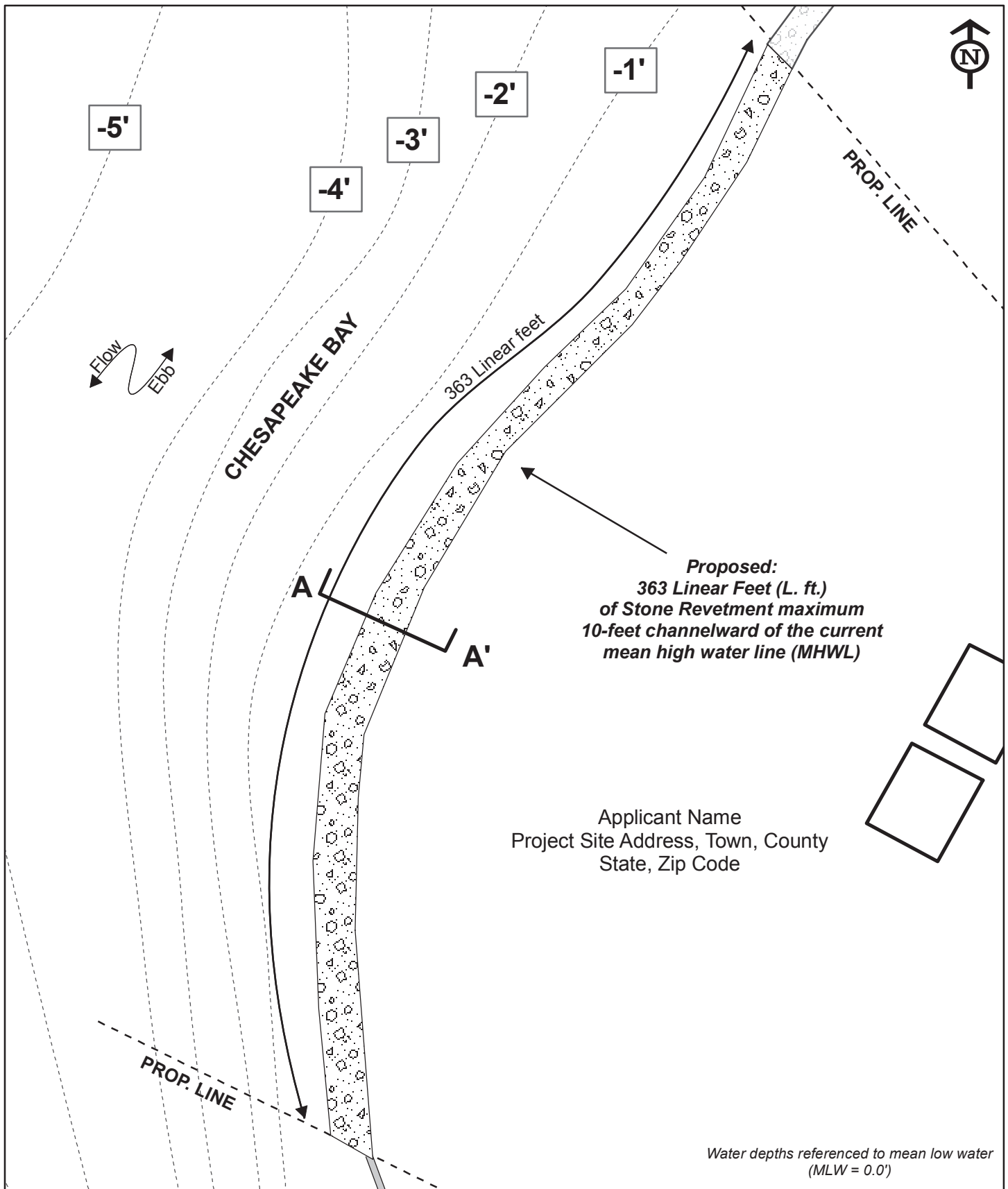
Mailing Address, Town, County, State, Zip Code

0 25 50 100 150 200 Feet

PROJECT NOTES:

Existing Structure

DATE, Page X of Y



Proposed Conditions

Project: Revetment

0 12.5 25 50 75 100 Feet

1 inch = 40 feet

Proposed Project for:

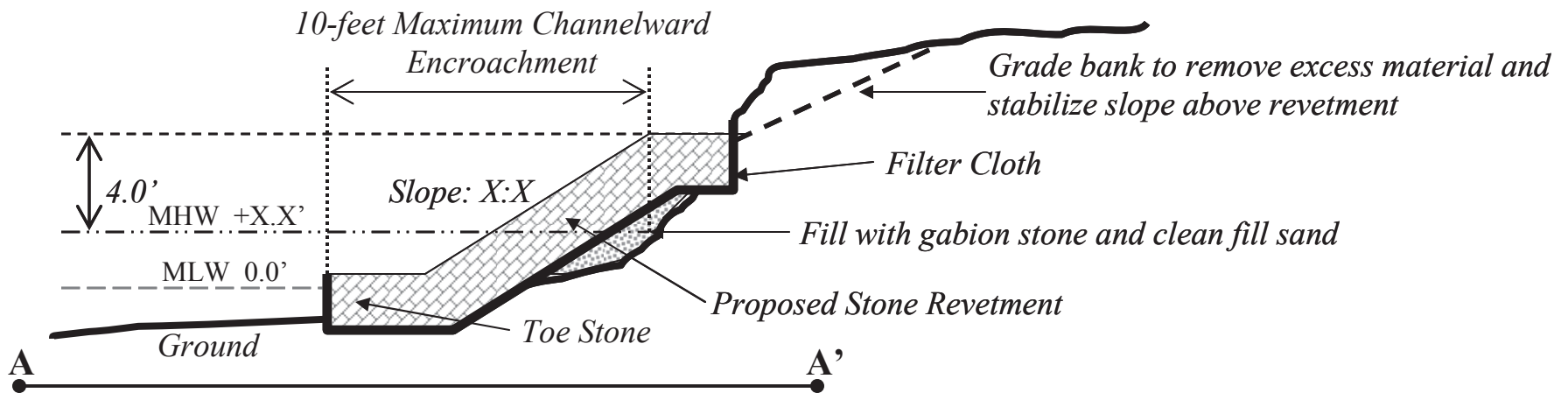
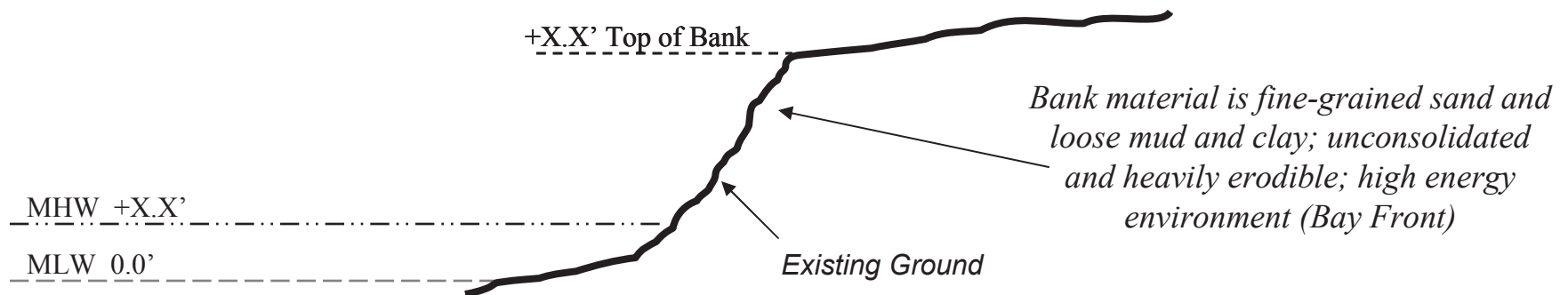
Applicant NAME

Mailing Address, Town, County, State, Zip Code

- Existing Structure
- Proposed Structure

PROJECT NOTES:

DATE, Page X of Y

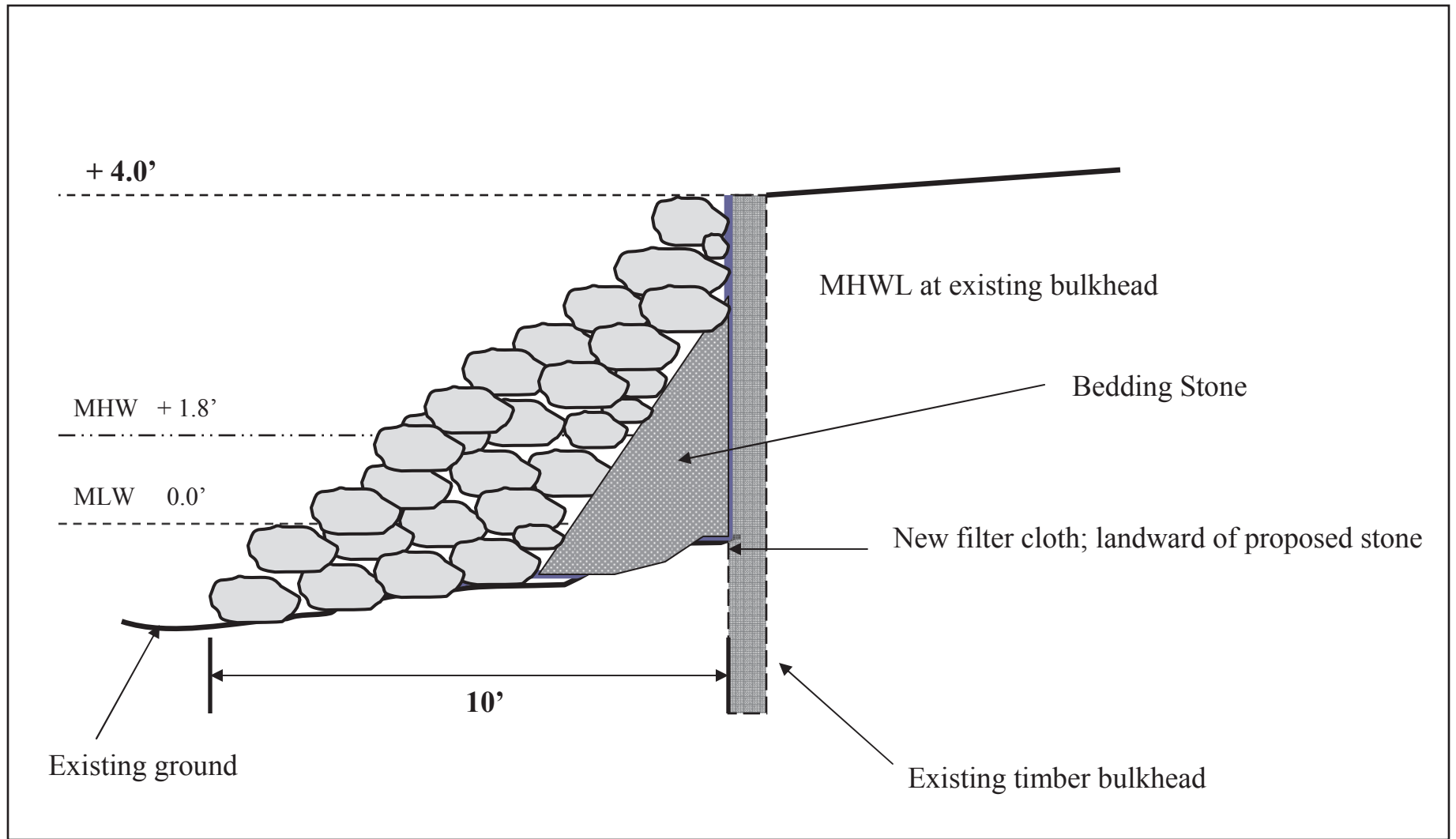


Project: Revetment

NOTES: Class of stone used, clean fill

Proposed Project Cross-section for:
 Applicant Name
 Mailing Address, Town, County, State

DATE, Page X of Y



Project: Stone Revetment Channelward of Existing Bulkhead

Proposed Project:

Proposed Project Applicant:

Applicant Name

Mailing Address, Town, County, State

NOTES: XXX Linear Feet of Stone
Revetment extending X feet channelward
of an existing Bulkhead

**WETLANDS AND WATERWAYS PROGRAM
TIDAL WETLAND APPLICATION GUIDELINES**

PROPOSED LIVING SHORELINE PROJECT

Check list outlines the minimum required information for a proposed project; additional information may be required based on the project and/or the applicant's project site. Applicants are encouraged to schedule a pre-application meeting to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

- ☐ Exempt from application processing fee (**No other project types are proposed at applicant's site**)
- ☐ Requires application processing fee (other project types proposed in conjunction with living shoreline i.e. living shoreline & revetment, living shoreline & pier, etc)

***Reference the fee guidelines and tables to determine appropriate application review fees.**

GENERAL PLAN REQUIREMENTS

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets and a usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET

- ☐ Plan sheet should include the type of projects proposed by applicant i.e. living shoreline.
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Vicinity map and aerial photo should be sized to clearly depict the project site and surround area, but each map should no smaller than 4" by 4" in size.
 - ☐ Vicinity map should include a North arrow and be scaled to clearly show project site, general location on the waterway, the immediate surrounding area.
 - ☐ Aerial photograph should be no more than 10 years old from date of application.
 - ☐ Aerial photograph should, at a minimum, show the proposed project site (clearly marked) with any existing structures and the adjacent property owners' property with any existing structures.
-

PROJECT AREA CONDITIONS PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable visual scaled appropriate for area of project vs. 8.5" x 11" sheet. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. living shoreline.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.

PROJECT AREA CONDITIONS PLAN SHEET(S) (CONTINUED)

- ☐ Plan sheet should include the Mean High Water Line (MHWL) of project's shoreline and the MHWL of the opposite shoreline reflecting the maximum fetch.
- ☐ Plan sheet should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan sheet should include the maximum fetch.
- ☐ Plan sheet should include the property lines (labeled) extended channelward.

EXISTING CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. living shoreline.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet).
- ☐ Plan view should include water depths marked as either contours or spot depths that extend channelward a minimum of 100 feet channelward of the Mean High Water Line (MHWL) or 100 feet channelward of the channelward most proposed structure.
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include the property lines (labeled) extended channelward.
- ☐ Plan view should include the linear feet of shoreline proposed to be impacted by construction of the living shoreline.
- ☐ Plan view should include the applicant's property and directly adjacent riparian properties clearly labeled with their name, site address, town/city, county, state, and zip code.
- ☐ Plan view should include all existing structures, including vegetated wetlands and SAV, on the applicant's property and adjacent riparian properties.

PROPOSED CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. living shoreline.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.

PROPOSED CONDITION PLAN SHEET(S) (CONTINUED)

-
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet). *If the MHWL or the MLWL are to be altered during construction the proposed MHWL and MLWL should also be labeled.*
 - ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
 - ☐ Plan view should include the property lines (labeled) extended channelward.
 - ☐ Plan view should depict the linear feet of shoreline proposed to be impacted by construction and accurately depict the max channelward encroachment along the entire project.
 - ☐ Plan view should include the applicant's property and any erosion control structures on adjacent riparian properties that may be abutted by the sill or groin structures.
 - ☐ Plan view should clearly depict the area of low marsh plantings, the area of high marsh plantings, the species of plant in each area, and the channelward extent.
 - ☐ Plan view should clearly depict the channelward extent of any proposed sand containment structure i.e. low profile sill or groin structures and any window openings associated with each structure.
-

CROSS-SECTION PLAN SHEET(S)

-
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
 - ☐ Plan sheet should include the type of projects proposed by applicant i.e. living shoreline.
 - ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
 - ☐ Cross-Section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet), and top of the proposed sill or proposed groin. Example: MLW = 0.0', MHW = + 1.9', + 2.4' Top of sill.
 - ☐ Proposed Living Shoreline Cross-Section(s) should depict existing bank and slope, proposed slope (including slope ratio) and fill area, existing and proposed Mean High Water Line (MHWL), depiction of proposed sill or groin with channelward extent, proposed low marsh with channelward extent, proposed high marsh with channelward extent, and species of plant proposed to be planted in each area.
 - ☐ Proposed Sill Opening Cross-Section(s) should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet), and top of the proposed sill or proposed groin. Example: MLW = 0.0', MHW = + 1.9', + 2.4' Top of sill.
-

WETLANDS AND WATERWAYS PROGRAM TIDAL WETLANDS APPLICATION GUIDELINES

PROPOSED LIVING SHORELINE PROJECT - SUPPLEMENTAL CHECKLIST

Checklists outline additional information that may be required for the proposed project based on the project and/or the applicant's project site. Applicants are encouraged to schedule a [pre-application meeting](#) to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

For minimum requirements for all living shoreline applications, please see [Tidal Wetland Application Guidelines for Living Shorelines](#).

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PURPOSE AND NEED

Checklist outlines supplemental information that may be required for a proposed living shoreline. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested).

ADDITIONAL INFORMATION THAT MAY BE REQUESTED

- Provide detailed explanation of avoidance and minimization of impacts to resources such as SAV beds and open water. If filling areas colonized by SAV in the last five years is proposed, provide a detailed justification for why proposed impacts are unavoidable and minimized to the maximum extent practicable to achieve water-dependent project goals.
 - Does the proposed project meet COMAR's definition of a "nonstructural shoreline erosion control measure" ([COMAR 26.24.01.02.B.\(35-1\)](#))? Is the living shoreline dominated by tidal wetland vegetation?
 - Does the proposed project meet the goals of the [Living Shoreline Protection Act of 2008](#)? In addition to controlling shoreline erosion, will the proposed project trap sediment, filter pollution, and provide aquatic and terrestrial habitat?
 - Demonstrate the need for shoreline stabilization. This could include site photographs documenting ongoing erosion. If erosion is occurring, what is/are the source(s) of erosion, rates of erosion, and how will this project address those sources?
 - Possible Source of Information on erosion rates:
 - [MD DNR - The Coastal Atlas](#)
 - If shoreline presents existing stabilization structures (e.g., bulkhead) provide details regarding structure age, construction method (e.g., fill, excavation), and current condition. If existing structures are to remain and/or if no landward grading is proposed, provide water-dependent justification for this approach.
 - If the existing shoreline is natural, provide details regarding sources of erosion and how will this project address those sources. If hardened structures (e.g., stone sills) are proposed to protect this shoreline, provide justification for their construction and design (i.e., size, height) in lieu of natural shoreline or a softer shoreline (e.g., coir log) approach.
 - If the proposed living shoreline will be utilized for Chesapeake Bay TMDL goals or to achieve Municipal Separate Storm Sewer System (MS4) targets, refer to page 12.
-

SUBMERGED AQUATIC VEGETATION

Checklist outlines supplemental information that may be required for a **proposed living shoreline that is within or adjacent to (i.e., within 50 feet) a submerged aquatic vegetation (SAV) bed**. Information below may be required for projects with impacts to submerged aquatic vegetation and/or projects that require a Wetlands License. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested). When impacting SAV, considerations should be taken to minimize high marsh plantings, maximize low marsh plantings and open water areas, replace impacted SAV area with an equivalent area of marsh plantings, and consider landward placement of the living shoreline to minimize channelward extent.

EXISTING AND PROPOSED CONDITIONS PLAN SHEET(S)

- Plan view should include an outline of SAV offshore of the applicant's property and adjacent riparian properties.
 - Outline of SAV should depict the last five years of available SAV mapping from the Virginia Institute of Marine Sciences (VIMS). VIMS SAV Interactive Map can be found at: VIMS - SAV Interactive Map. Delineation data can be found at: VIMS - SAV Reports and Data
 - If the applicant has conducted a ground-truthed SAV survey, the survey boundary outline should also include an overlay on plan view containing all VIMS SAV mapping data. Observed SAV species should be noted on the plan, if applicable. Information on SAV species identification can be found at: Eyes on the Bay - Submerged Aquatic Vegetation (SAV) Identification Key.
 - Proposed Conditions plan view should quantify the area of impact (square feet) to SAV within the proposed project footprint.
-

ADDITIONAL INFORMATION THAT MAY BE REQUESTED

- Plan view should note the year(s) that SAV was mapped, species observed (if available), and the density of the bed(s) for each year that SAV was mapped offshore of the applicant's property and adjacent riparian properties. Information on density and SAV species can be found on the VIMS SAV Interactive Map.
 - Has the project's watershed met or exceeded the SAV restoration goals of the Chesapeake Bay Watershed Agreement in the past five years?
 - Sources for this information include:
 - [Chesapeake Bay Program - SAV Fact Sheets](#)
 - [VIMS - SAV Area by Segment](#)
 - [Eyes on the Bay - Bay Grass Coverage and Habitat Status](#)
 - [Chesapeake Progress - Submerged Aquatic Vegetation \(SAV\)](#)
 - How does the proposed living shoreline provide ecological uplift that could offset the loss of SAV? Provide quantitative and/or qualitative information of the functional uplift expected from the project based on approved ecological assessment methods or applicable research.
 - Will impacts to SAV be temporary or permanent? If impacts are temporary, provide supporting documentation explaining why SAV is expected to recolonize the impacted area. This should include an examination of grain size, water velocities, and depths present under proposed conditions and a relative comparison to existing conditions that support SAV.
 - Provide a narrative that explains how low marsh vegetation has been maximized in the design plans.
-

- Provide a narrative that explains how the filling of existing open water has been minimized in the design plans and open water areas have been maximized in the design plans.

- Provide a narrative that explains how the creation of open water features (e.g., incorporation of a tidal gut through a living shoreline) has been maximized in the design plans, if applicable.

- To minimize impacts to existing aquatic resources or to minimize channelward extent, can the project be moved landward into the uplands?

- The Department prefers a 1:1 ratio of high marsh to low marsh plantings, but site conditions, such as SAV, may require a higher ratio of low marsh plantings. Justify if site conditions would prevent the planting of a higher ratio of low marsh plantings.

- The Department prefers the replacement of the area of impacted SAV with an equivalent area of marsh plantings. Justify if site conditions would prevent the planting of an equivalent area of marsh plantings.

COASTAL RESILIENCY

Checklist outlines supplemental information that may be required for **a proposed living shoreline that is designed for coastal resiliency, sea level rise, and climate change**. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested).

GENERAL REQUIREMENTS

- Provide the predicted sea level rise elevation used for the project design. For a simple, pre-approved option, the 2050 'High Tolerance for Flood Risk' elevation found in the [Guidance for Using Maryland's 2023 Sea Level Rise Predictions](#) may be used. See Tables on Pg 7 for elevations at NOAA Tide Stations at various baseline elevations (NOAA Tidal Datum and Current Conditions (2025)).
 - Please note that the Guidance Document uses 2005 levels as the baseline elevation.
 - If an alternative predicted elevation is proposed, see Additional Information that May Be Requested below.
 - Provide baseline elevation for MLW at 0.0 ft (e.g., referenced to NOAA Tide Station Epoch (1983 - 2001) or current conditions).
 - Provide a detailed narrative explaining how the project has incorporated sea level rise / coastal resiliency into the proposed project design.
 - Provide detailed justification of the proposed channelward extents of the project.
 - Provide detailed justification for the proposed height of any stone containment structures.
 - Provide information on recent or historic shoreline erosion at the site.
 - Provide details regarding potential marsh migration areas in existing and/or proposed uplands and discuss how the proposed shoreline is reasonably anticipated to facilitate tidal wetland migration under predicted sea levels.
 - Provide details regarding potential marsh migration areas in existing and/or proposed uplands and discuss how the proposed shoreline is reasonably anticipated to facilitate tidal wetland migration under predicted sea levels.
 - The Department prefers a 1:1 ratio of high marsh to low marsh plantings, but site conditions, such as high-energy environments, may justify a higher ratio of high marsh plantings. Justify if site conditions would prevent the planting of a 1:1 ratio of high marsh to low marsh plantings.
-

PROPOSED CONDITIONS PLAN SHEET

- Plan view should clearly depict the area of low marsh plantings, the area of high marsh plantings, the area of upland plantings, the area of unplanted fill in existing jurisdictional tidal wetlands, the species of plant in each area, and the channelward extent.
 - The Upper Limit of Tidal Wetlands is the highest elevation of high marsh plantings above Mean Low Water (MLW) in 2050 and is calculated using the following method:

Upper Limit of Tidal Wetlands = (1.5 x Mean Tidal Range) + predicted 2050 MLW elevation

Calculated elevation is added to baseline MLW at 0.0 ft. All plantings and fill above this elevation should be included in the area of upland plantings and/or unplanted fill in existing jurisdictional tidal wetlands (as applicable). The Upper Limit of Tidal Wetlands is only used for determining planting areas and not for jurisdictional determinations. **See Tables on Pg 7 for the elevation of the Upper Limit of Tidal Wetlands at various NOAA Tide Stations.**

ADDITIONAL INFORMATION THAT MAY BE REQUIRED

- Reference sites and examples that use similar design elements may be provided.
 - If an alternative predicted sea level rise elevation is proposed that is not the 2050 High Risk Tolerance found in [Guidance for Using Maryland's 2023 Sea Level Rise Predictions](#), then provide the predicted sea level rise elevation and the Risk Tolerance used for the project design, including the year, elevation, and the source of the alternative prediction. Additionally, provide a detailed justification for using the alternative prediction and Risk Tolerance.
 - Example: Use of the 2050 predicted elevation using Moderate Risk Tolerance instead of High Risk Tolerance.
 - If proposing to plant tidal wetland vegetation in any fill other than sand (e.g rock/cobble containment structures/ headlands or shingle beach), provide the average diameter size of rock and cobble areas that will be planted.
 - Provide a breakdown of the quantity and average diameter of each type of proposed fill.
-

MDE Accepted Elevations for the Upper Limit of Tidal Wetlands in 2050

This is the highest planting elevation MDE will accept for high marsh vegetation for Coastal Resiliency projects. The Upper Limit of Tidal Wetlands (2050) elevations have been rounded. For step-by-step instructions for using the tables, see page 8, and for an illustration of how to add the Upper Limit of Tidal Wetlands to MLW, see page 10.

Predicted 2050 MLW Elevation + (1.5 x Mean Tidal Range) = Upper Limit of Tidal Wetlands in 2050

Baseline Elevation: NOAA Tidal Datum

All Elevations Referenced to MLW = 0.0 ft using NOAA Tidal Datum (Epoch 1983 - 2001)

NOAA Tide Station	2050 Predicted Elevation	1.5 x Mean Tidal Range (ft)	Upper Limit of Tidal Wetlands in 2050
Baltimore	1.44 ft	1.5 x 1.15 ft = 1.73 ft	3.2 ft
Annapolis	1.54 ft	1.5 x 1.00 ft = 1.50 ft	3.0 ft
Solomons	1.61 ft	1.5 x 1.17 ft = 1.76 ft	3.4 ft
Tolchester Beach	1.48 ft	1.5 x 1.22 ft = 1.83 ft	3.3 ft
Cambridge	1.53 ft	1.5 x 1.62 ft = 2.43 ft	4.0 ft
Ocean City	1.63 ft	1.5 x 2.10 ft = 3.15 ft	4.8 ft

Baseline Elevation: Current Conditions (2025)

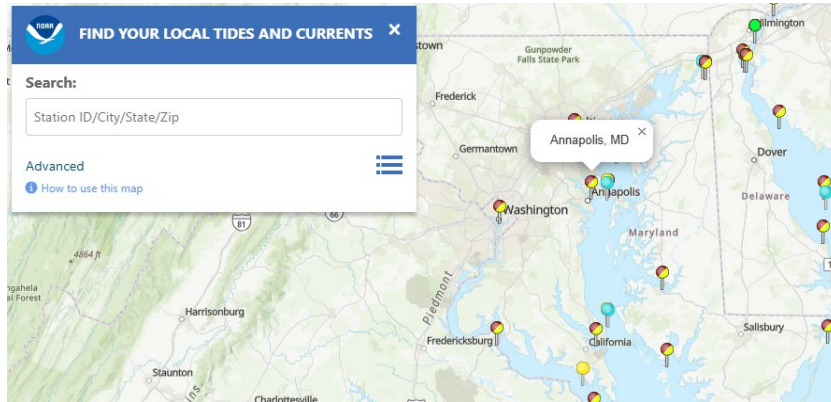
All Elevations Referenced to MLW = 0.0 ft using Current conditions (NOAA data from 2025)

NOAA Tide Station	2050 Predicted Elevation	1.5 x Mean Tidal Range (ft)	Upper Limit of Tidal Wetlands in 2050
Baltimore	0.99 ft	1.5 x 1.15 ft = 1.73 ft	2.7 ft
Annapolis	1.02 ft	1.5 x 1.00 ft = 1.50 ft	2.5 ft
Solomons	1.07 ft	1.5 x 1.17 ft = 1.76 ft	2.8 ft
Tolchester Beach	1.02 ft	1.5 x 1.22 ft = 1.83 ft	2.9 ft
Cambridge	1.06 ft	1.5 x 1.62 ft = 2.43 ft	3.5 ft
Ocean City	0.95 ft	1.5 x 2.10 ft = 3.15 ft	4.1 ft

Guide to Determining the Upper Limit of Tidal Wetlands (2050) for Your Project

1. Find your closest NOAA Tide Station: Use the [NOAA Tides & Current](#) website to find the tide station nearest to your project. If your project is not located near one of the six stations listed in the tables on page 7, you should contact MDE for assistance.

Ex: My project is located in Crownsville, MD on the Severn River. The nearest NOAA tide station is located in Annapolis, which is one of the six NOAA tide stations with a predicted elevation in 2050.



2. **Set your baseline elevation (MLW = 0.0 feet):** Decide what your Mean Low Water (MLW) at 0.0 feet will be based on: the nearest NOAA tide station epoch or current conditions. If you are using a baseline elevation that is not based on the NOAA tide station epoch or current conditions, contact MDE staff for assistance.

Ex: The NOAA Tidal Datum (Epoch 1983 - 2001) is out of date, so I chose to use current conditions to set my baseline elevation (Mean Low Water (MLW) at 0.0 ft).

3. **Choose the correct table to use on page 7:** Look at the tables on page 7 to find the Upper Limit of Tidal Wetlands in 2050. Select the table that matches the baseline elevation you chose in Step 2.
 - Use the first table if your baseline is the NOAA Tide Station Epoch (1983-2001).
 - Use the second table if your baseline is based on Current Conditions (2025).

Ex: Because I used Current Conditions for my baseline elevation in Step 2, I should use the second table (“Current Conditions (2025)”). For my project, I should not use the “NOAA Tidal Datum” table.

Baseline Elevation: Current Conditions (2025)

All Elevations Referenced to MLW = 0.0 ft using Current conditions (NOAA data from 2025)			
NOAA Tide Station	2050 Predicted Elevation	1.5 x Mean Tidal Range (ft)	Upper Limit of Tidal Wetlands in 2050
Baltimore	0.99 ft	1.5 x 1.15 ft = 1.73 ft	2.7 ft
Annapolis	1.02 ft	1.5 x 1.00 ft = 1.50 ft	2.5 ft
Solomons	1.07 ft	1.5 x 1.17 ft = 1.76 ft	2.8 ft
Tolchester Beach	1.02 ft	1.5 x 1.22 ft = 1.83 ft	2.9 ft
Cambridge	1.06 ft	1.5 x 1.62 ft = 2.43 ft	3.5 ft
Ocean City	0.95 ft	1.5 x 2.10 ft = 3.15 ft	4.1 ft

4. Locate your tide station on the chosen table: Find the row for the tide station closest to your project location (the station you found in Step 1).

Ex: My project is located near the Annapolis tide station, so I should use the row labeled “Annapolis”.

Baseline Elevation: Current Conditions (2025)

All Elevations Referenced to MLW = 0.0 ft using Current conditions (NOAA data from 2025)			
NOAA Tide Station	2050 Predicted Elevation	1.5 x Mean Tidal Range (ft)	Upper Limit of Tidal Wetlands in 2050
Baltimore	0.99 ft	1.5 x 1.15 ft = 1.73 ft	2.7 ft
Annapolis	1.02 ft	1.5 x 1.00 ft = 1.50 ft	2.5 ft
Solomons	1.07 ft	1.5 x 1.17 ft = 1.76 ft	2.8 ft
Tolchester Beach	1.02 ft	1.5 x 1.22 ft = 1.83 ft	2.9 ft
Cambridge	1.06 ft	1.5 x 1.62 ft = 2.43 ft	3.5 ft
Ocean City	0.95 ft	1.5 x 2.10 ft = 3.15 ft	4.1 ft

5. **Find the 2050 Predicted Elevation:** Look at the column labelled “2050 Predicted Elevations”. This column shows the predicted elevation in 2050, which MDE has adjusted for the baseline you chose in Step 2.

Ex: My project is located near the Annapolis tide station, so I should use the row labeled “Annapolis”.

Baseline Elevation: Current Conditions (2025)

All Elevations Referenced to MLW = 0.0 ft using Current conditions (NOAA data from 2025)			
NOAA Tide Station	2050 Predicted Elevation	1.5 x Mean Tidal Range (ft)	Upper Limit of Tidal Wetlands in 2050
Baltimore	0.99 ft	1.5 x 1.15 ft = 1.73 ft	2.7 ft
Annapolis	1.02 ft	1.5 x 1.00 ft = 1.50 ft	2.5 ft
Solomons	1.07 ft	1.5 x 1.17 ft = 1.76 ft	2.8 ft
Tolchester Beach	1.02 ft	1.5 x 1.22 ft = 1.83 ft	2.9 ft
Cambridge	1.06 ft	1.5 x 1.62 ft = 2.43 ft	3.5 ft
Ocean City	0.95 ft	1.5 x 2.10 ft = 3.15 ft	4.1 ft

6. **Determine the Upper Limit of Tidal Wetlands:** Look at the column labeled "Upper Limit of Tidal Wetlands in 2050". This number is the highest elevation where you can plant tidal wetland vegetation (measured in feet above your MLW baseline). Any plantings above this elevation must be counted as upland plantings. Upper Limit of Tidal Wetlands is calculated using 1.5 x Mean Tidal Range. This value is added to the 2050 Predicted Elevation.

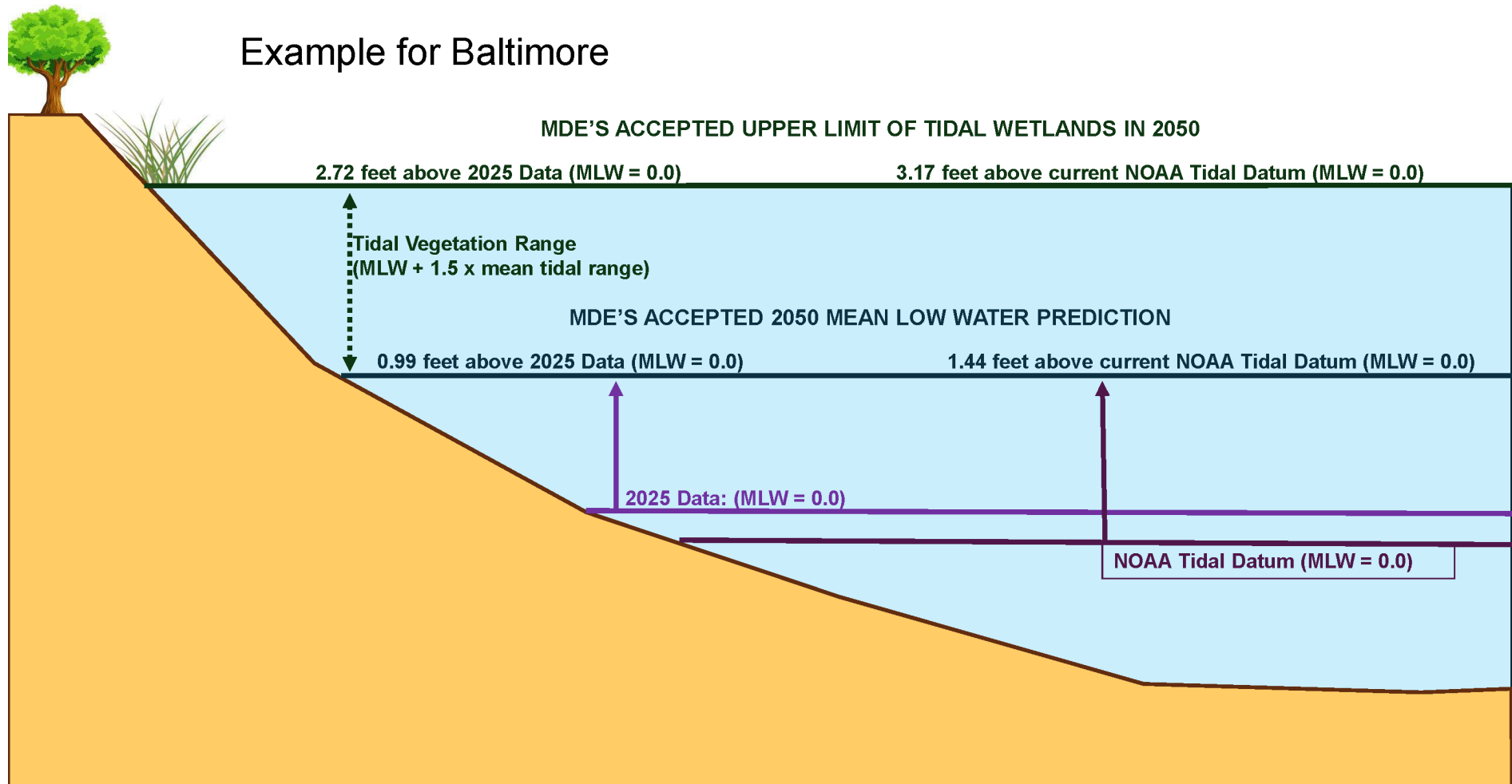
Ex: For my project, the Upper Limit of Tidal Wetlands in 2050 will be 2.5 feet above MLW. Any wetland vegetation that I proposed to plant up to 2.5 ft above MLW should be included in my planting totals for tidal wetland vegetation. Any plantings above 2.5 ft MLW should be included in my planting totals for upland vegetation.

Baseline Elevation: Current Conditions (2025)

All Elevations Referenced to MLW = 0.0 ft using Current conditions (NOAA data from 2025)			
NOAA Tide Station	2050 Predicted Elevation	1.5 x Mean Tidal Range (ft)	Upper Limit of Tidal Wetlands in 2050
Baltimore	0.99 ft	1.5 x 1.15 ft = 1.73 ft	2.7 ft
Annapolis	1.02 ft	1.5 x 1.00 ft = 1.50 ft	2.5 ft
Solomons	1.07 ft	1.5 x 1.17 ft = 1.76 ft	2.8 ft
Tolchester Beach	1.02 ft	1.5 x 1.22 ft = 1.83 ft	2.9 ft
Cambridge	1.06 ft	1.5 x 1.62 ft = 2.43 ft	3.5 ft
Ocean City	0.95 ft	1.5 x 2.10 ft = 3.15 ft	4.1 ft

Sample Illustration for Determining Upper Limit of Tidal Wetlands in 2050

Sample Illustration depicting how to determine the Upper Limit of Tidal Wetlands in 2050 using various MLW benchmarks in Baltimore City. For example, if you are designing a project in Baltimore and are using Current Conditions (2025) as your baseline elevation (MLW = 0.0 ft), then the accepted Upper Limit of Tidal Wetlands will be 2.72 ft above MLW.



COARSE WOODY DEBRIS

Checklist outlines supplemental information that may be required for **a proposed living shoreline that incorporates coarse woody debris (CWD) into the design**. Application is required for any CWD placed or relocated on the project site. Application is not required for existing CWD remaining in the same location as where it fell. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested).

GENERAL REQUIREMENTS

- Provide detailed information about the purpose and need for the use of CWD in the proposed project design.
 - Describe the energy level of the shoreline and explain why the CWD will not become a navigation hazard. Energy level of the shoreline is applicant-defined, and supporting documents and information with sources for the description should be provided. Note: CWD may not be appropriate at high-energy shorelines as a foundational design element. Additional justification for the use of CWD in high-energy shorelines may be required.
 - Example Source: The Coastal Resiliency Assessment layer found in the Maryland Coastal Atlas mapping tool presents wave hazard scoring that may reflect energy conditions at your site. ([MD DNR - The Coastal Atlas](#)).
 - Wave Hazard scoring can be found in the Shoreline Hazard Index sublayer under the Coastal Resiliency Assessment layer. When this layer is shown on the map, click on the point and a table displays information on the wave hazard at the site.
 - The Department prefers the use of hardwood for CWD features. Provide a description of the type of wood (i.e., soft or hard wood) that will be used as CWD. If using soft wood, provide justification for the use of soft wood instead of hard wood.
-

PROPOSED CONDITIONS PLAN SHEET(S)

- All CWD requires an anchoring system. Plan view should depict the placement of any CWD, the anchoring system, the approximate size of the CWD, and the channelward extent of the CWD and anchoring system. Plan detail may be provided to accurately depict the system.
-

CROSS-SECTION(S)

- Cross-section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 ft), the proposed CWD, and the proposed anchoring system.
-

BENEFICIAL USE OF DREDGED MATERIAL

Checklist outlines supplemental information that may be requested for a **proposed living shoreline that utilizes beneficially used dredged material**. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested).

GENERAL REQUIREMENTS

- Please investigate whether suitable dredged material can be used for the construction of the living shoreline in accordance with the Department's guidance on [Innovative Reuse and Beneficial Use of Dredged Material](#).
 - Additional information regarding opportunities for incorporating dredged material can be found here:
 - [MD DNR - The Coastal Atlas](#)
 - [MD DNR - Beneficial Use of Dredged Material](#)
-
- The application for dredging will be required to provide additional information, including:
 - Grain Size Analysis using ASTM D-422 or the most recent methodology (authorization required from the State for sediment bores).
 - If there is reason to believe that contamination exists at the dredge site, then additional sampling may be necessary.
 - Acceptance letter from the property owner of the living shoreline stating the volume of material that they will accept.
 - Other information required by the Department.
-
- The application for dredging or the living shoreline will be required to provide additional information, including:
 - Information regarding placement of material (e.g., directly on living shoreline below MHWL or material dewatered in the uplands).
 - Information regarding material containment during placement and grading (e.g., construction or placement of sill, turbidity curtain, sill fence, etc.).
 - Other information required by the Department.
-
- DNR's [BUILD tool](#) allows project planners to proactively identify sources of dredged material and potential placement sites.
-

IMPACTS TO NONTIDAL WETLANDS

Checklist outlines required information for **a proposed living shoreline that affects nontidal wetlands**. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested).

GENERAL REQUIREMENTS

- If the project includes impacts to wetland vegetation above the mean higher high water line (MHHWL) under current conditions (e.g. NOAA tide data from 2025), then this vegetation is considered nontidal wetland vegetation and requires separate review by the Department's Nontidal Wetlands Division.
 - Coordination with the Nontidal Wetlands Division should occur prior to submission of the application to the Wetland and Waterway Protection Program.
 - [Nontidal Wetlands Division Contact List](#)
-

EXISTING AND PROPOSED CONDITIONS PLAN SHEET(S)

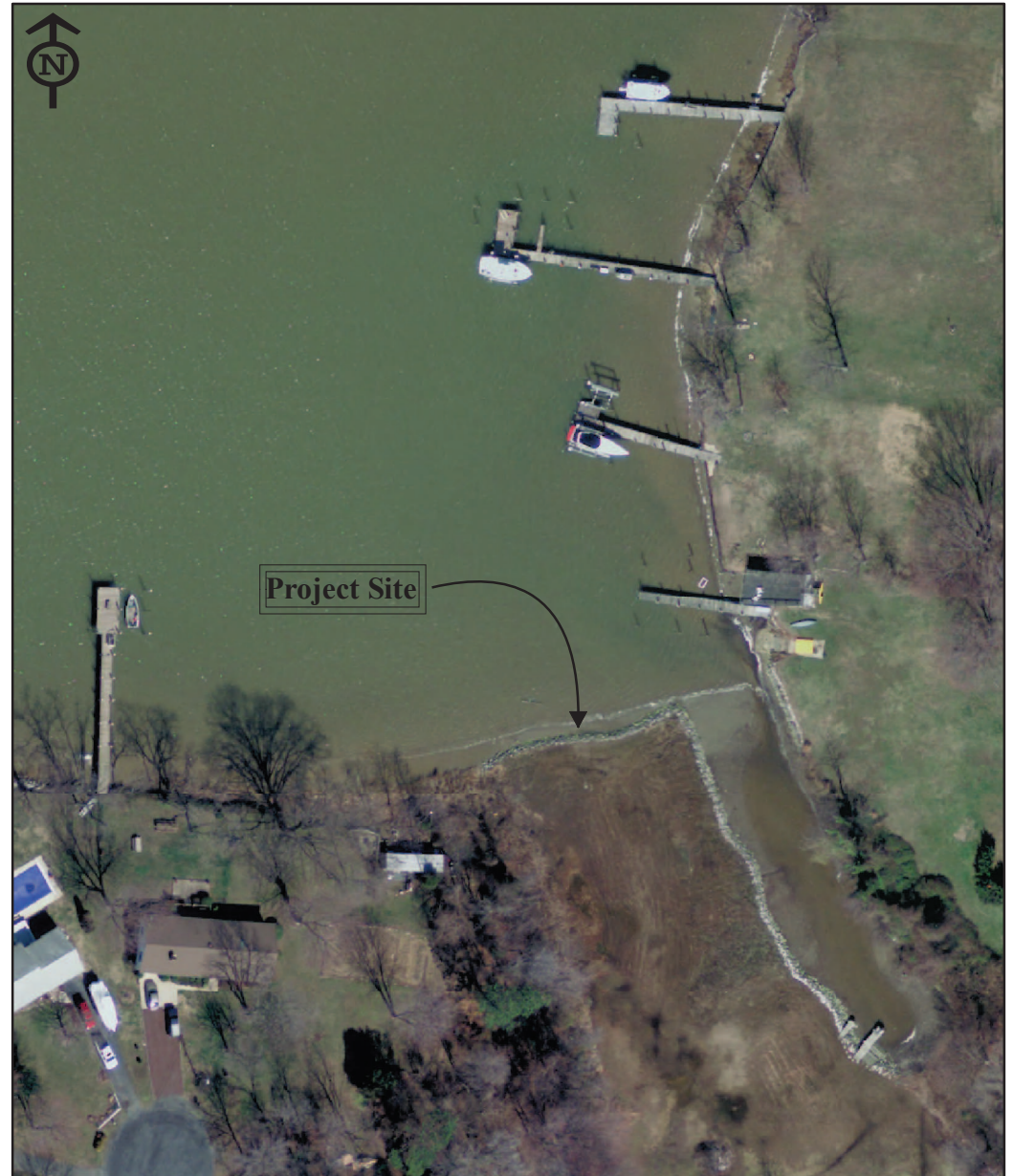
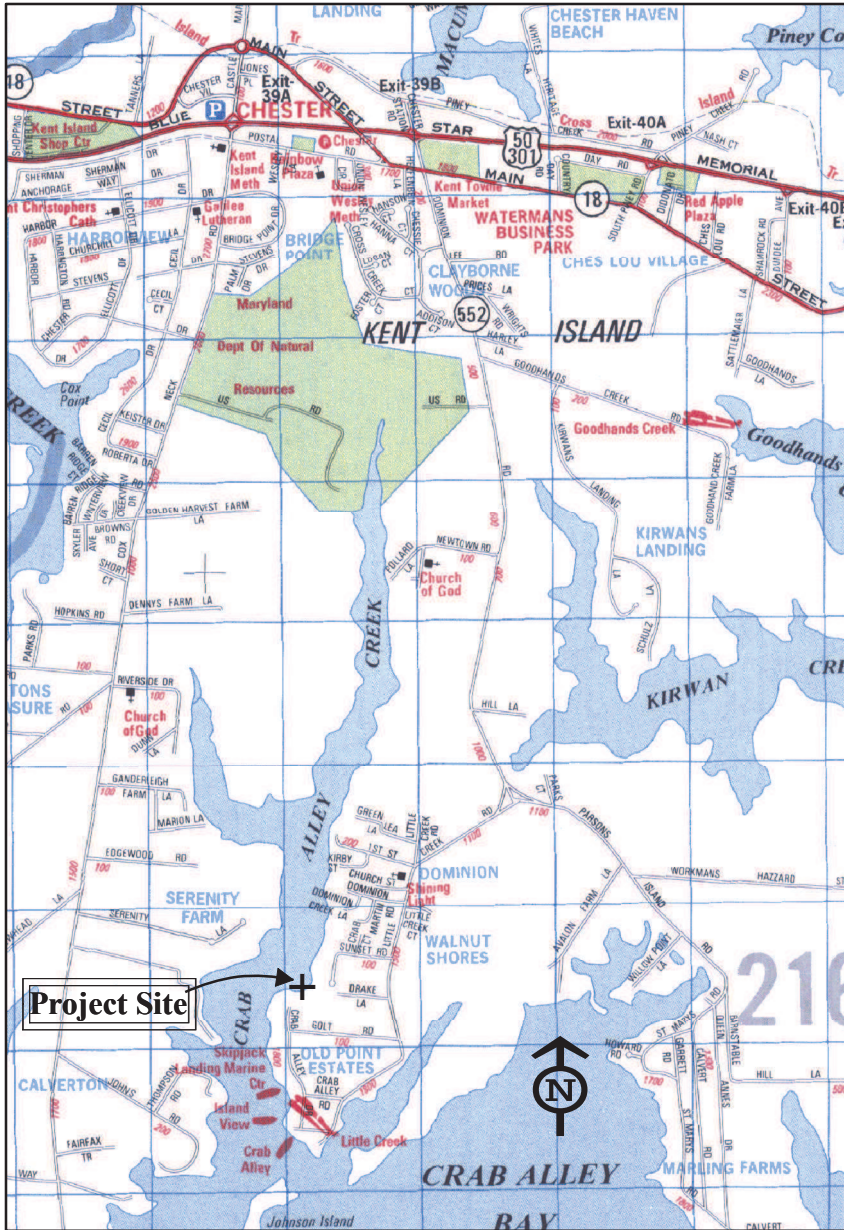
- Plan sheets should include the MHHWL (MLW referenced to 0.0 ft).
 - Additional information can be found here: [Mean Higher High Water Determination](#)
-

TOTAL MAXIMUM DAILY LOAD (TMDL) PROJECTS

Checklist outlines required information for a **proposed living shoreline, which will be utilized for Chesapeake Bay TMDL goals or to achieve Municipal Separate Storm Sewer System (MS4) targets**. Additional information may be required based on the project and/or the applicant's project site but not required for all applications (see Additional Information That May Be Requested).

ADDITIONAL INFORMATION THAT MAY BE REQUESTED

- Provide documentation verifying that the project is an MS4/Chesapeake Bay TMDL-related restoration project, which may include:
 - Watershed Implementation Plan
 - Comprehensive Watershed Assessment
 - Design Report
 - What sediment and/or nutrient reduction credits will be received?
 - Justify the dimensions of the proposed project. The proposed project should be sited and designed in accordance with applicable recommendations for living shorelines as a Best Management Practice (BMP).
 - [Chesapeake Bay Program - Quick Reference Guide for BMPs \(Shoreline Management\)](#)
-



Vicinity Map & Aerial Photo

Project: [INSERT TYPE OF PROJECT]

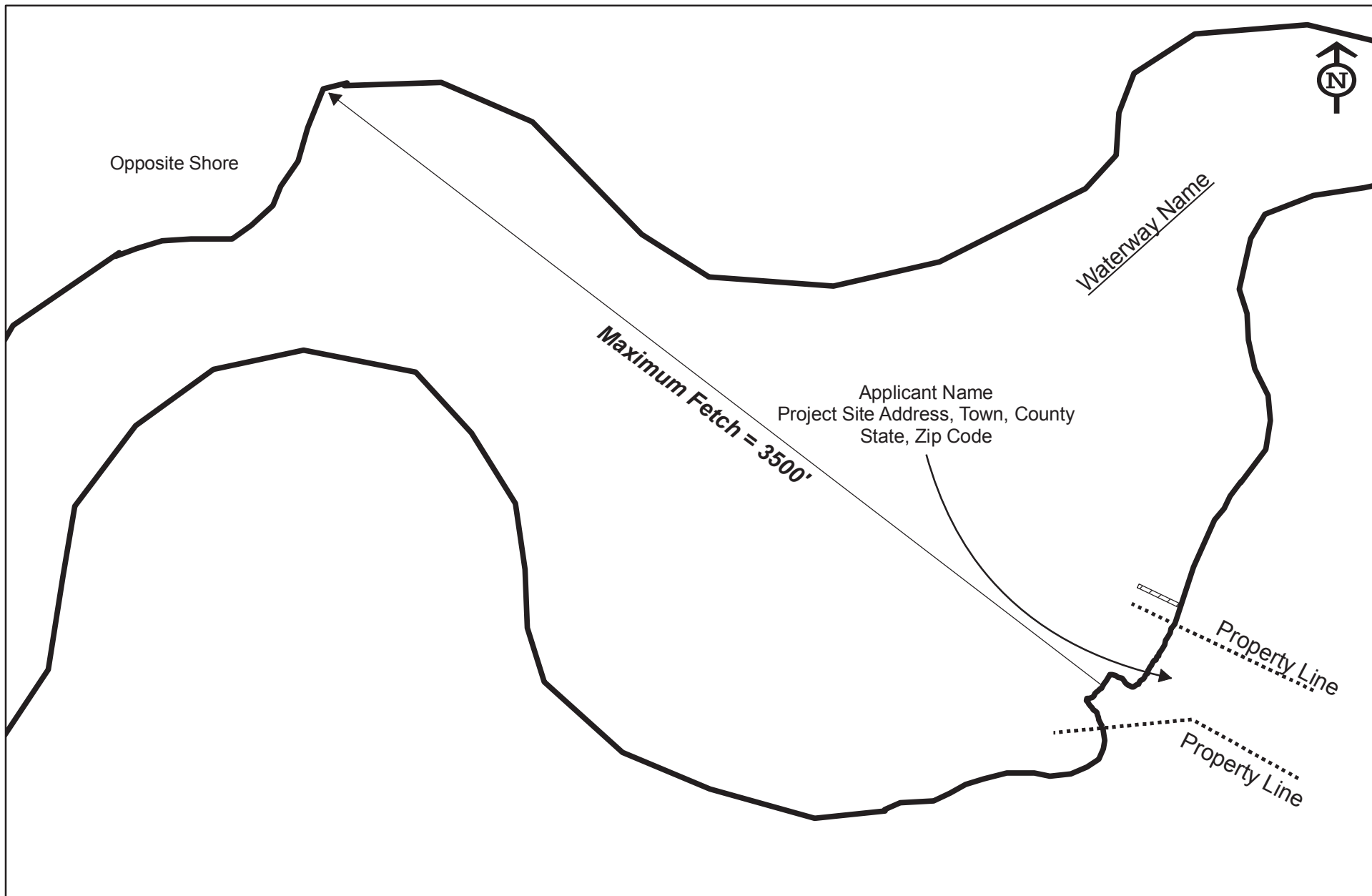
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

NOTES

DATE, Page X of Y



Project Vicinity Conditions

Project: Living Shoreline

0 120 240 480 720 960 Feet

1 inch = 500 feet

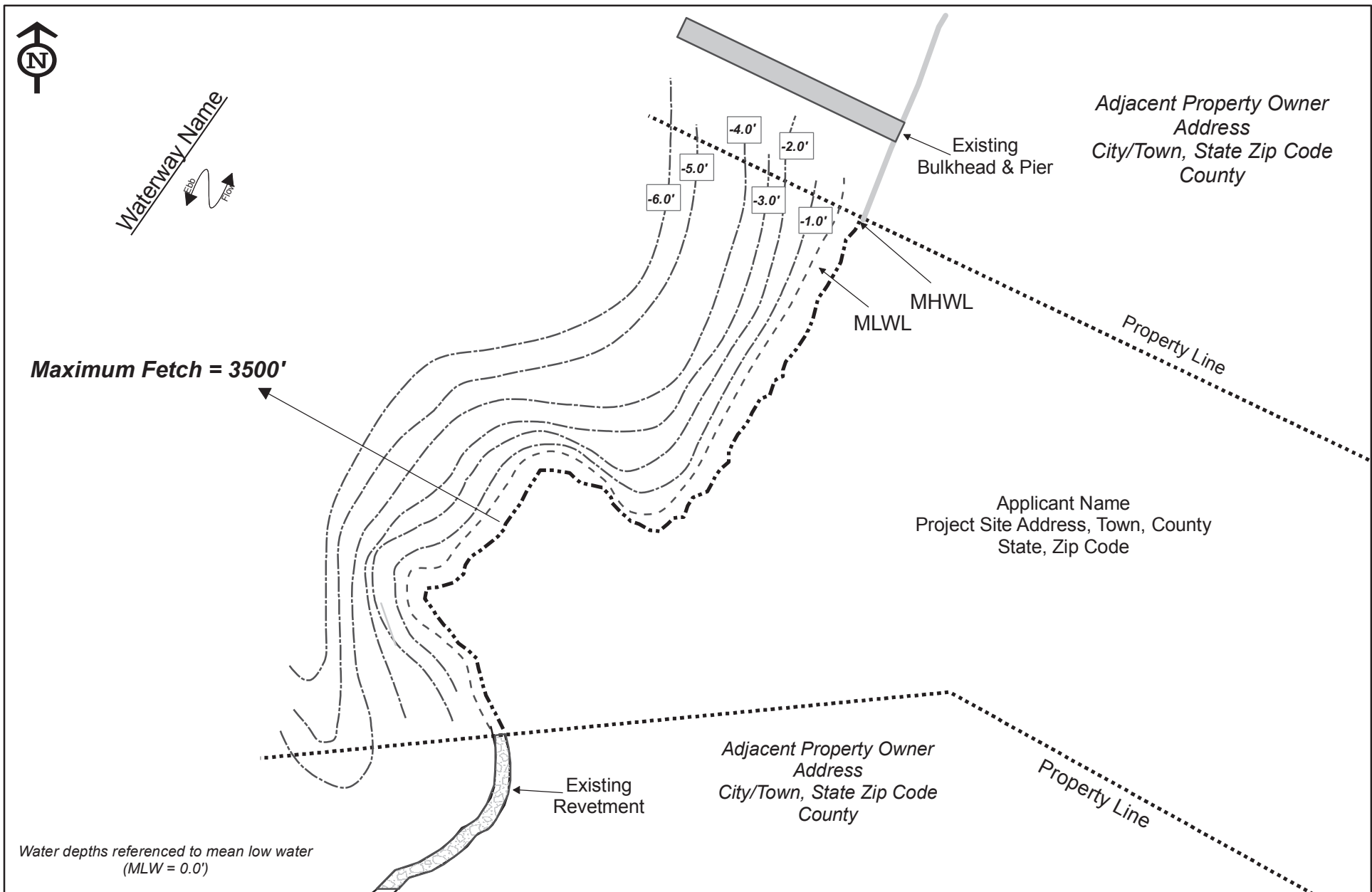
PROJECT NOTES

Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

DATE, Page X of Y



Existing Conditions		PROJECT NOTES	
Project: Living Shoreline			
Proposed Project for:			
Applicant NAME			
Mailing Address, Town, County, State, Zip Code		DATE, Page X of Y	

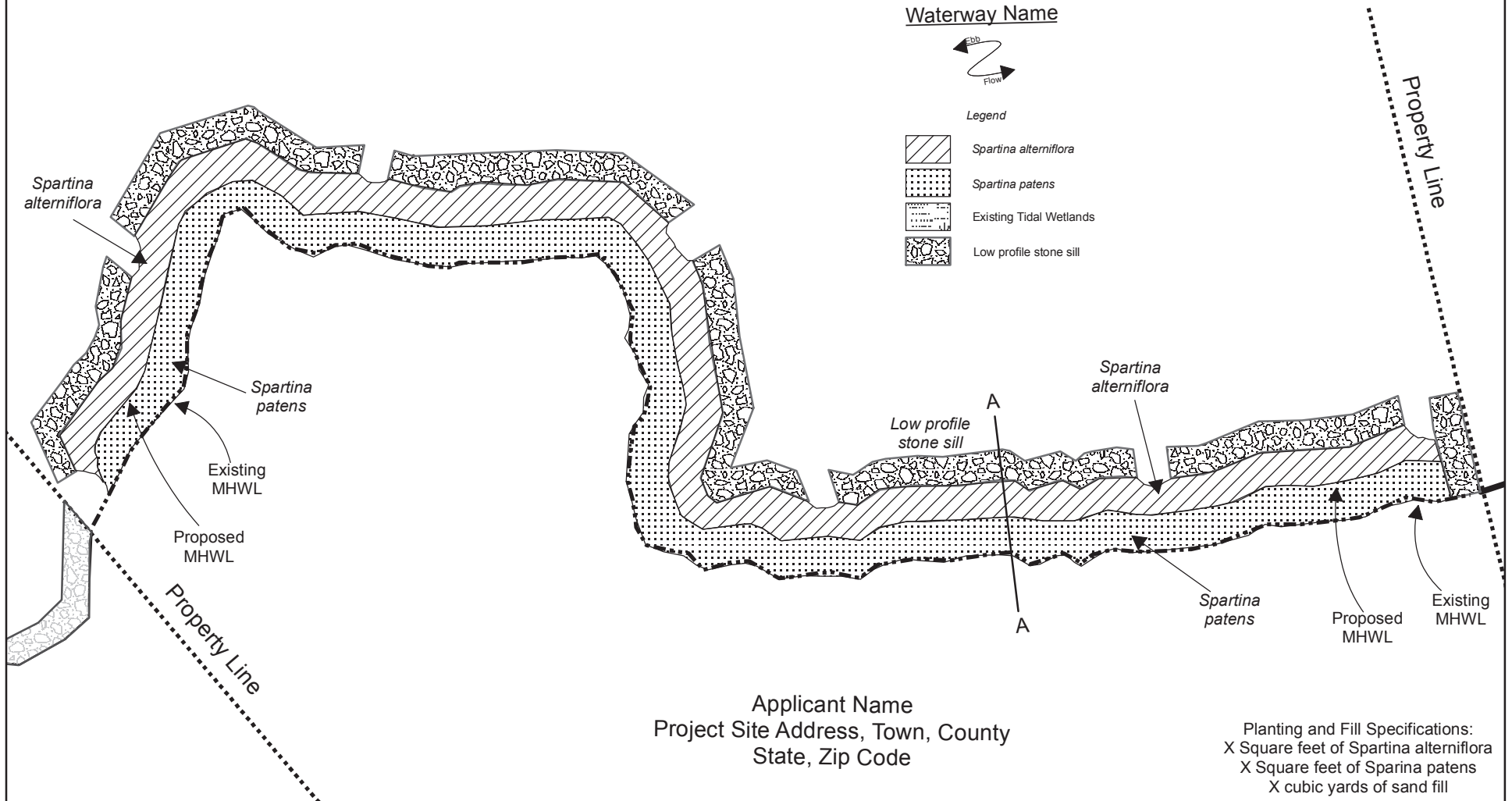


Waterway Name



Legend

-  *Spartina alterniflora*
-  *Spartina patens*
-  Existing Tidal Wetlands
-  Low profile stone sill



Applicant Name
Project Site Address, Town, County
State, Zip Code

Planting and Fill Specifications:
X Square feet of *Spartina alterniflora*
X Square feet of *Spartina patens*
X cubic yards of sand fill

Proposed Conditions

Project: Living Shoreline



1 inch = 50 feet

PROJECT NOTES

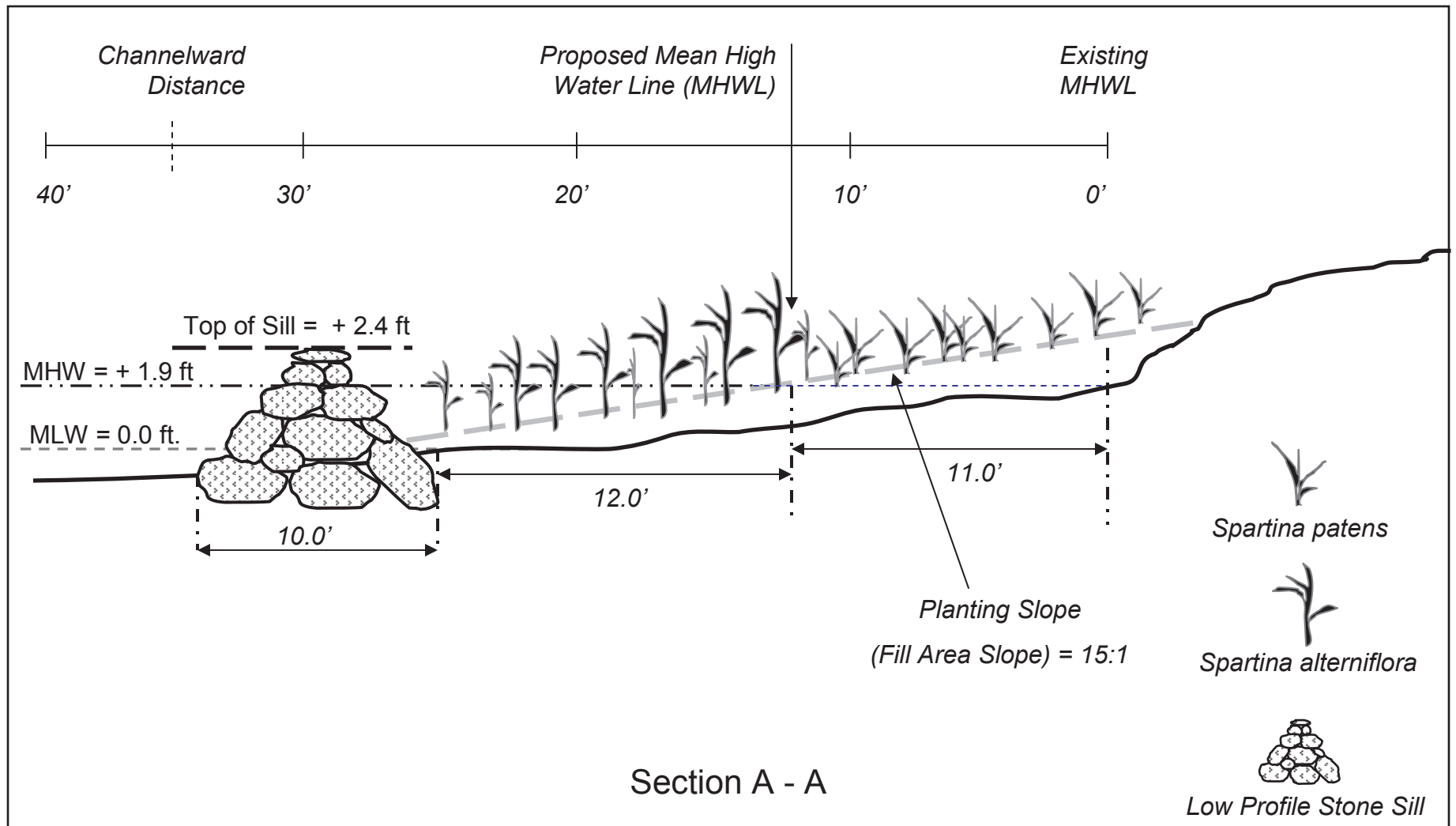
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

-  Existing Structure
-  Proposed Structure

DATE, Page X of Y



Project: Living Shoreline

Proposed Project Cross-section for:
Applicant Name
Mailing Address, Town, County, State

Notes:

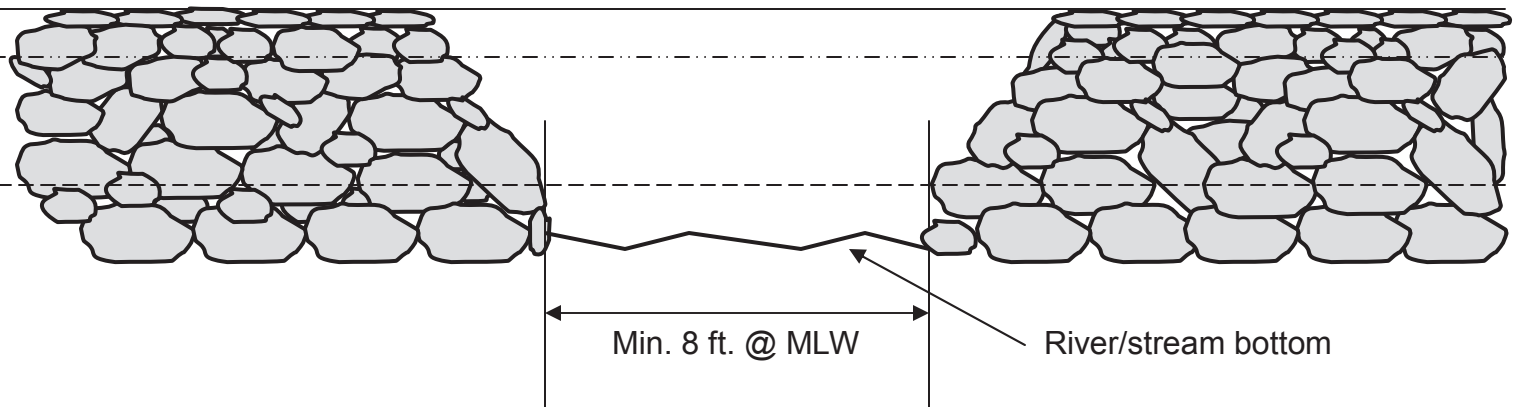
Maximum Channelward Distance; Amount of Clean Sand Fill (cubic yds.), Amount of Planting Area (Sq Ft.) for both low marsh (*S. alterniflora*) and high marsh (*S. patens*), Slope of planting area; number of plants; Marsh maintenance plan (draft)

DATE, Page X of Y

Top of Sill = + 2.4 ft

MHW = + 1.9 ft

MLW = 0.0 ft.



Cross-Section: Typical Sill Opening

Low Profile Stone Sill

Project: Living Shoreline

Notes: Bottom of sill opening below the MLWL

Proposed Project Cross-section for:
Applicant Name
Mailing Address, Town, County, State

DATE, Page X of Y

**WETLANDS AND WATERWAYS PROGRAM
TIDAL WETLAND APPLICATION GUIDELINES**

PROPOSED DREDGING PROJECT

***These plan guidelines should only be used for private homeowner dredging projects which only require the ABBREVIATED JOINT FEDERAL / STATE APPLICATION FOR THE ALTERATION OF ANY TIDAL WETLAND AND/OR TIDAL WATERS IN MARYLAND**

Check list outlines the minimum required information for a proposed project; additional information may required based on the project and/or the applicant's project site. Applicants are encouraged to schedule a pre-application meeting to answer questions, discuss the applicant's site, discuss the proposed project, and determine if any additional information/plan sheets are required due to the uniqueness of the applicant's site.

☐ Requires application processing fee

***Reference the fee guidelines and tables to determine appropriate application review fees.**

GENERAL PLAN REQUIREMENTS

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets and a usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-

VICINITY MAP & AERIAL PHOTO PLAN SHEET

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
-
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. dredging.
-
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
-
- ☐ Vicinity map and aerial photo should be sized to clearly depict the project site and surround area, but each map should no smaller than 4" by 4" in size.
-
- ☐ Vicinity map should include a North arrow and be scaled to clearly show project site, general location on the waterway, the immediate surrounding area.
-
- ☐ Aerial photograph should be no more than 10 years old from date of application.
-
- ☐ Aerial photograph should, at a minimum, show the proposed project site (clearly marked) with any existing structures and the adjacent property owners' property with any existing structures.
-

EXISTING CONDITION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 100' on existing plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. dredging.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet).
- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include the property lines (labeled) extended channelward.
- ☐ Plan view should include any marked or unmarked channels within the waterway and distance to the nearest edge of the channel.
- ☐ Plan view should include water depths marked as either contours or spot depths extending to the edge of the marked or unmarked channel.
- ☐ Plan view should depict all existing structures channelward of the Mean High Water Line (MHWL), including shoreline erosion control structures, located at the applicant's project site.
- ☐ Plan view should include the applicant's property and directly adjacent riparian properties clearly labeled with their name, site address, town/city, county, state, and zip code.
- ☐ Plan view should depict all existing structures channelward of the Mean High Water Line (MHWL), including shoreline erosion control structures, on the adjacent riparian properties.

PROPOSED CONDITION PLAN SHEET(S)

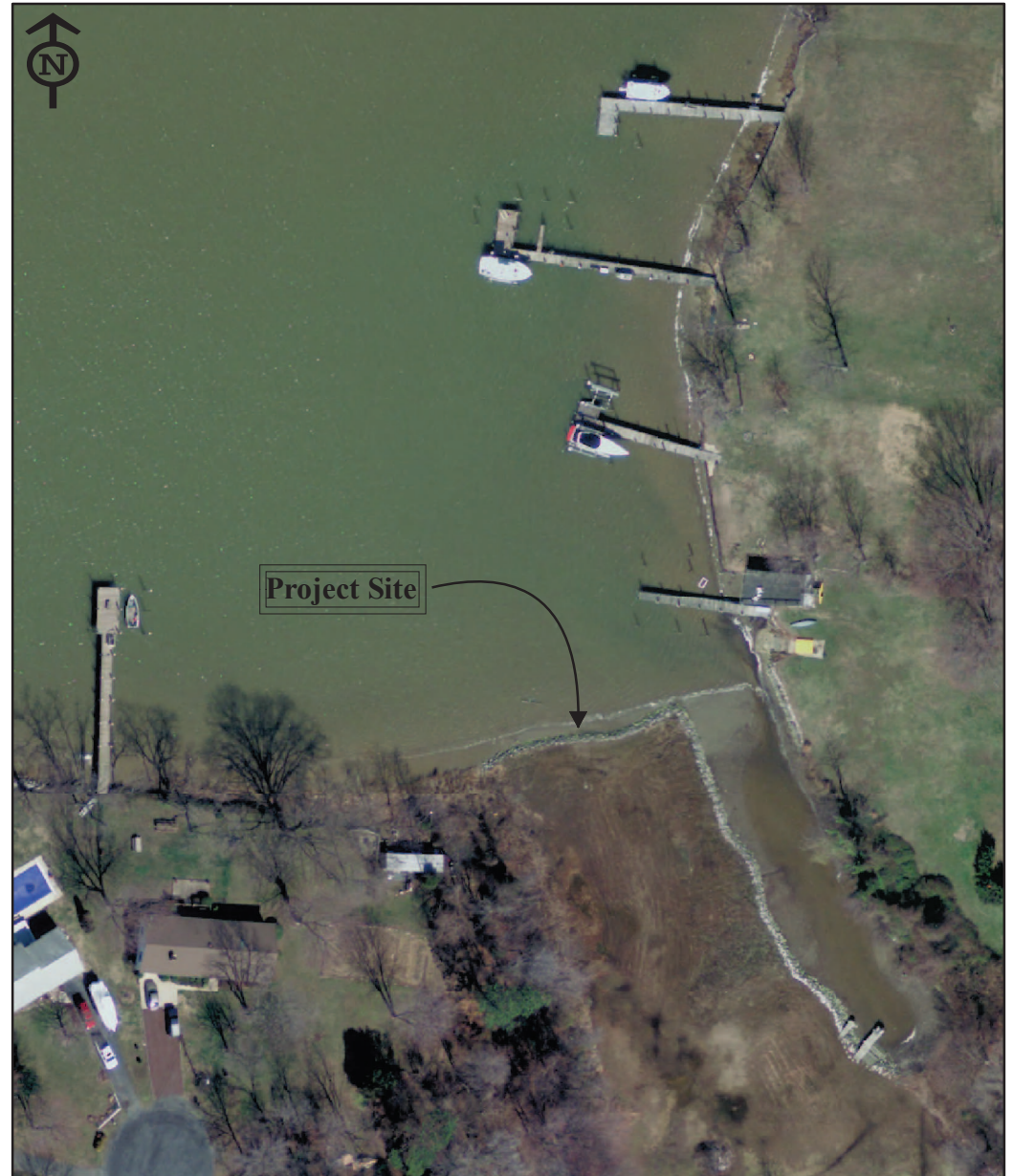
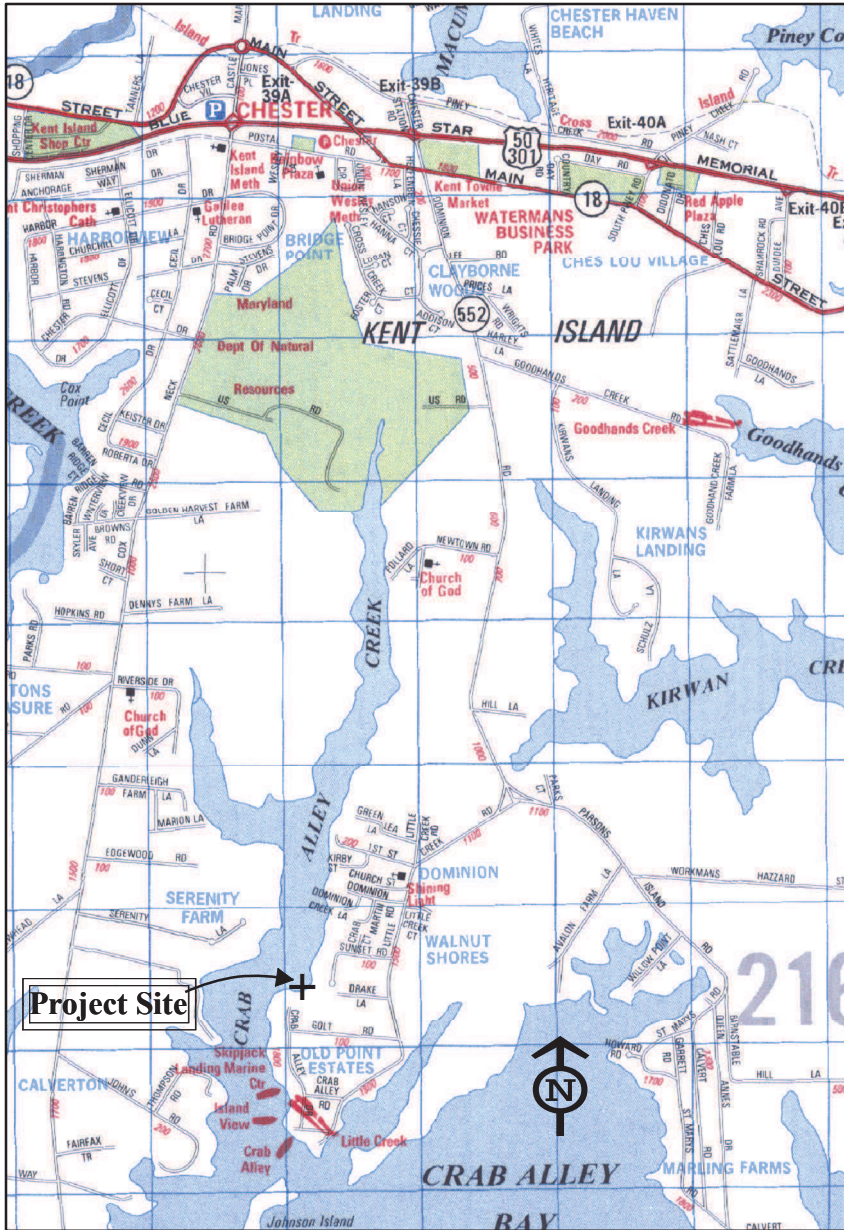
- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered; usable written or visual scale no smaller than 1" = 50' on proposed plan sheets. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. dredging.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Plan view should include the Mean High Water Line (MHWL) and the Mean Low Water Line (MLWL; referenced to 0.0 feet). *If the MHWL or the MLWL are to be altered during construction the proposed MHWL and MLWL should also be labeled.*
- ☐ Plan view should include water depths marked as either contours or spot depths.

PROPOSED CONDITION PLAN SHEET(S) (CONTINUED)

- ☐ Plan view should include the name of the waterway, North arrow, and direction of ebb/flow tide.
- ☐ Plan view should include the property lines (labeled) extended channelward where dredging will occur close to the property lines.
- ☐ Plan view should depict the measurements (width and length) of the proposed dredge area.
- ☐ Plan notes should detail the total square footage of the proposed dredge area, the maximum proposed dredging depth, and the total cubic yards of material proposed to be removed.

CROSS-SECTION PLAN SHEET(S)

- ☐ Plan sheets should be on 8.5" x 11" paper, black and white, and single sided; Plans are to be legible and not cluttered. All plan notes should be placed at the bottom of the page or on a separate page. The plan sheets should be numbered to reference the plan sheet in relation to the total number of plan sheets i.e. Page 1 of 3, Page 2 of 3, etc.
- ☐ Plan sheet should include the type of projects proposed by applicant i.e. dredging.
- ☐ Plan sheet should include the name of the applicant(s) and mailing address including the town/city, county, state, and zip code.
- ☐ Cross-section(s) should depict the entire area to be dredged and accurately show the existing bottom elevation and the proposed bottom elevation.
- ☐ Cross-section(s) should depict Mean Low Water (MLWL; referenced to 0.0 feet) and corresponding water depths to the proposed dredging depth.
- ☐ Plan notes should detail the total square footage of the proposed dredge area, the maximum proposed dredging depth, and the total cubic yards of material proposed to be removed.
- ☐ Plan notes should list the name and address of the MDE approved dredge disposal site. The method of transport to be used for the material i.e. water tight trucks, barge, etc.
- ☐ Cross-Section views should include the Mean High Water (MHW), the Mean Low Water (MLW; referenced to 0.0 feet), and top of bank. Example: MLW = 0.0', MHW = + 1.9', + 4.0' Top of Bank.



Vicinity Map & Aerial Photo

Project: [INSERT TYPE OF PROJECT]

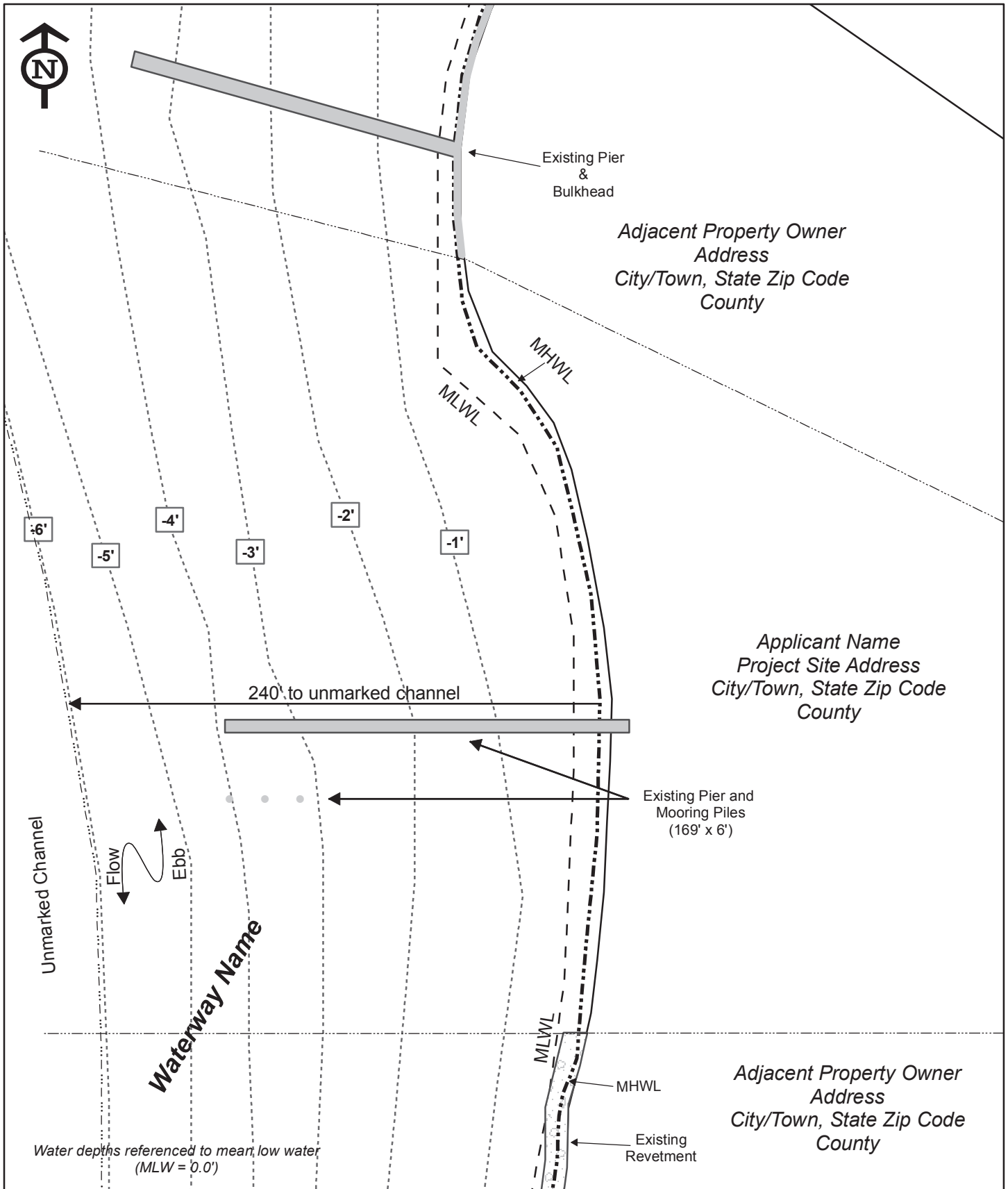
Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code

NOTES

DATE, Page X of Y



Existing Conditions

Project: Dredging

Proposed Project for:

Applicant NAME

Mailing Address, Town, County, State, Zip Code



1 inch = 60 feet

PROJECT NOTES:

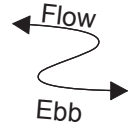
Existing Structure

DATE, Page X of Y



-5'

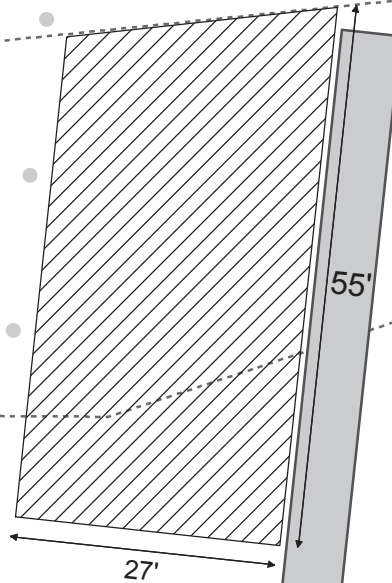
Waterway Name



-4'

-3'

-2'



Proposed Dredging Area
Maximum Dredging Depth -4.0 ft @ MLW
~ 1485 square feet
~ 80 Cubic yards of Material

Water depths referenced to mean low water
(MLW = 0.0')

Proposed Conditions

Project: Dredging

Proposed Project for:

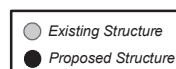
Applicant NAME

Mailing Address, Town, County, State, Zip Code

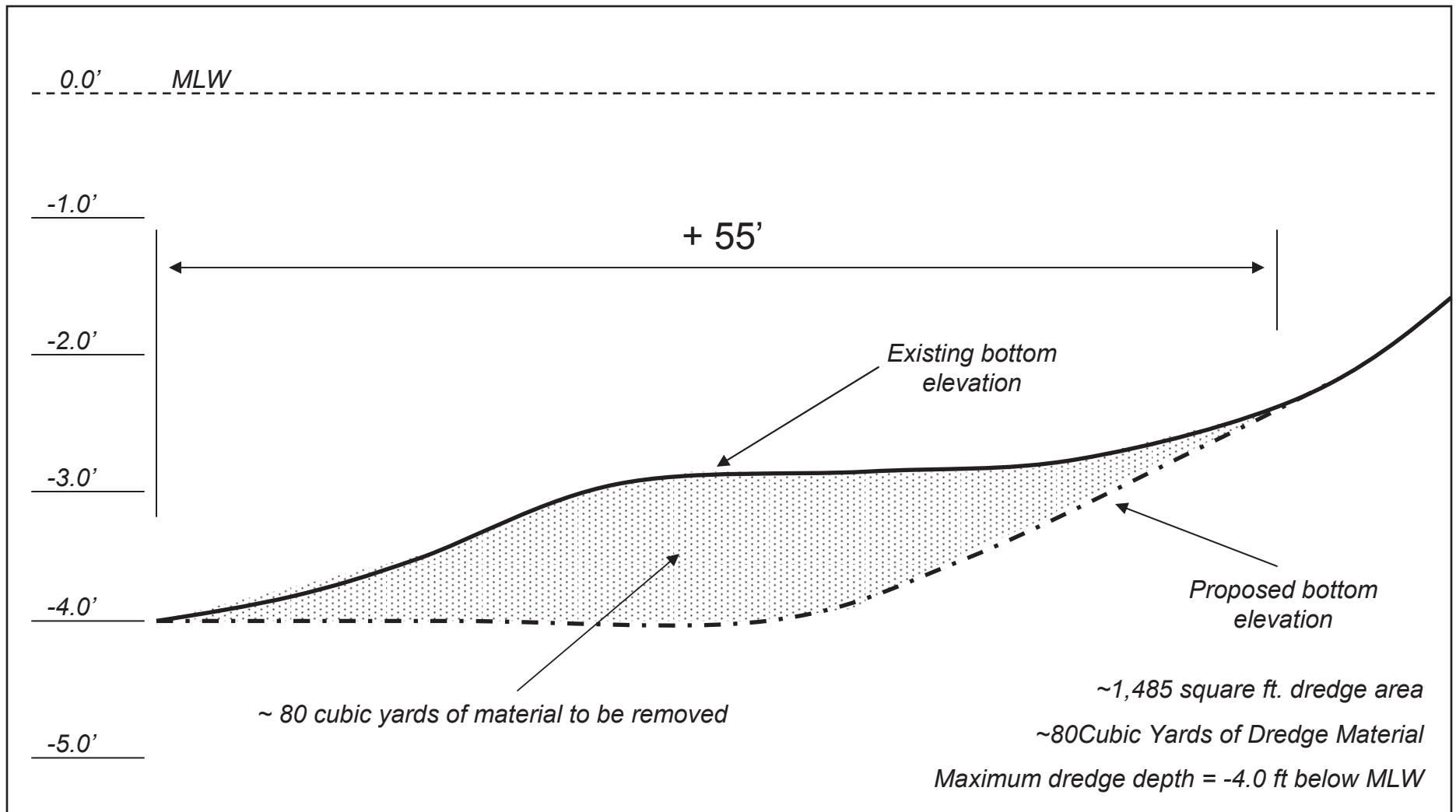
0 5 10 20 30 40 Feet

1 inch = 20 feet

PROJECT NOTES:



DATE, Page X of Y



Project: Minor Dredging

PROJECT NOTES:
Method of transport
Address of Dredge Disposal Site

Proposed Project Cross-section for:
Applicant Name
Mailing Address, Town, County, State

DATE Page X of Y

Appendix E:
Code of Maryland Regulations (COMAR) Title 26 Subtitle 24

Subtitle 24 TIDAL WETLANDS

Chapter 01 General

Administrative History

Effective date: February 14, 1994 (21:3 Md. R. 184)

(Wetlands regulations before February 14, 1994, appeared under COMAR 08.05.07)

Regulations [.01](#)—[.07](#) were recodified from Regulations .01, .02, .13, .24, .25, .27, and .28, respectively, under COMAR 08.05.05 Tidal Wetlands, June 1996

[Regulation .02B](#) amended as an emergency provision effective March 9, 2007 (34:7 Md. R. 695); emergency expired September 5, 2007

[Regulation .02B](#) amended effective February 4, 2013 (40:2 Md. R. 73)

Authority

Environment Article, Title 16, Annotated Code of Maryland

.01 Purpose.

- A. It is the goal of the State to preserve the tidal wetlands of the State, prevent their loss and despoliation, and strive for a net resource gain in tidal wetland acreage and function. An applicant for a license or permit required under this subtitle shall design a project to first avoid and then minimize the loss of tidal wetlands. If the Department determines that the loss of tidal wetlands is unavoidable and may be licensed or permitted by the Department or recommended for licensing to the Board of Public Works, the permit or license shall require

mitigation in accordance with this subtitle. Tidal wetlands are found in the Chesapeake Bay, the tidal tributaries to the Chesapeake Bay, and the 3-mile area seaward of the low water mark of Maryland's Atlantic coast.

- B. These regulations combine in one subtitle the Department's processing of applications for licenses to conduct activities in or over State tidal wetlands and for permits to conduct activities on private tidal wetlands. However, it is not the intent of these regulations to change the legal distinctions between State tidal wetlands and private tidal wetlands. The State holds State tidal wetlands in a proprietary capacity, in trust for the benefit of the people of Maryland. The Department regulates the activities of private persons on private tidal wetlands. When the Department acts on the application for a permit to conduct activities on private tidal wetlands, it is regulating the exercise of preexisting property rights. In contrast, when the State acts on an application for a license to conduct activities in or over State tidal wetlands, it is deciding whether or not to grant to a person certain limited property rights that the person did not have previously, and, in making that decision, the State enjoys the same discretion that any owner has in deciding whether to grant to another an interest in the owner's property.
- C. This subtitle describes the Department's review of license applications for the dredging or filling of State tidal wetlands and the construction, reconstruction, or repair of structures on State tidal wetlands. Following the Department's review of an application, the Department shall make a decision or the Department shall submit a recommendation to the Board of Public Works. The Board of Public Works shall take final action on an application for a license in accordance with [COMAR 23.02.04](#).
- D. This subtitle also describes the Department's review of permit applications for dredging, filling, removing, or otherwise altering or polluting private tidal wetlands. Following review of an application, the Department shall make a decision in accordance with these regulations.

.02 Definitions.

- A. In this subtitle, the following terms have the meanings indicated.
- B. Terms Defined.
 - (1) "Administration" means the Water Management Administration, a unit of the Department of the Environment designated by the Secretary of the Environment to administer

[Environment Article, Title 16, Annotated Code of Maryland](#).

- (2) “Administrative Procedure Act” means the provisions of [State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland](#).
- (3) “Aquaculture” has the meaning stated in [Natural Resources Article, §4-11](#) A-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) “Best management practices” means conservation practices or systems of practices and management measures that:
 - (a) Control soil loss and reduce water quality degradation caused by runoff, nutrients, animal waste, toxicants, and sediment if best management practices do not dredge or fill tidal wetlands; and
 - (b) Minimize adverse impacts to the surface water, ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of tidal wetlands.
- (6) “Board” means the Board of Public Works.
- (7) “Boathouse” means a structure with a roof or cover, or similar device placed over open water to protect a boat or other vessel.

(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) “Containment structure” means a facility designed for the sole purpose of accepting and confining dredged material from tidal waters while allowing the release of effluent, and excludes those structures designed to contain, impound, or obstruct the waters of the State as defined by [Environment Article, §5-501, Annotated Code of Maryland](#).

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

(10) “Critical Area” has the meaning stated in [COMAR 27.01.01.01B](#).

(11) Critical Area Buffer.

(a) “Critical Area buffer” means an area in the Critical 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 each bank of a tributary stream, or the landward boundary 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) “Critical Area 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](#).

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

(12) “Department” means the Department of the Environment.

(13) “Direct discharge” means the concentrated release of storm water to tidal waters or vegetated tidal wetlands from new development or redevelopment projects in the Critical Area.

(14) “Director” means the Director of the Water Management Administration.

(15) “Dredging” means the removal or displacement by any means of soil, sand, gravel, shells, or other material, whether or not of intrinsic value, from any State or private tidal wetlands.

(16) “Emergency condition” means a sudden, unforeseen occurrence caused by act of God, natural disaster, or other similar natural event or catastrophe when the health, safety, or welfare of the citizens of the State would be jeopardized by a delay in issuance of a license or permit.

(17) “Endangered species” has the meaning stated in [COMAR 08.03.08.01](#).

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

(18) Filling.

(a) “Filling” means the:

- (i) Displacement of navigable water by the depositing of soil, sand, gravel, shells, or other materials, including pilings, piers, boathouses, deadweights, or riprap into State or private tidal wetlands;
- (ii) Artificial alteration of tidal water levels by any physical structure, drainage ditch, or otherwise; or
- (iii) Discharge of water from storm drainage projects directly into tidal waters of the State.

(b) “Filling” does not include:

- (i) Drainage of agricultural land;
- (ii) In-place replacement or repair of functional shore erosion control structures using substantially similar materials and construction design;
- (iii) Planting of wetlands vegetation when no grading or fill in State or private wetlands is necessary; or
- (iv) Marking channels and harbors and establishing aids to navigation if approval has been granted by the United States Coast Guard.

(19) “Fish” has the meaning stated in [Natural Resources Article, §4-101, Annotated Code of Maryland](#).

(20) “Functional” means performing at least 85 percent of the action that a structure was originally designed to perform.

(21) “General wetlands license” means written authorization from the Department based on a standing authorization by the Board for recurrent or minimally disruptive activities conducted in State tidal wetlands.

(22) “General wetlands permit” means written authorization from the Department for activities conducted in private tidal wetlands that cause only minimal individual and cumulative

adverse impacts.

- (22-1) “Groyne” means a structural shoreline stabilization measure comprised of stone, wood, plastic, steel, or other similar material that is:
- (a) Typically placed perpendicular to the shoreline; and
 - (b) Designed to trap sand and reduce erosion.
- (23) “Historic property” means a district, site, building, structure, monument, or object significant in the prehistory, history, upland and underwater archeology, architecture, engineering, and culture of the State, including artifacts, records, and remains related to a district, site, building, structure, or object.
- (24) “In kind” means having characteristics closely approximating original characteristics, including those of a vegetated tidal wetland before that wetland was adversely impacted, or replacement of a structure with a structure of similar materials and dimensions.
- (25) “In the dry” means activities performed above or landward of the mean high water line and all tidal wetland vegetation.
- (25-1) “Jetty” means a structural shoreline stabilization measure comprised of stone, wood, plastic, steel, or other similar material that is:
- (a) Placed at inlets; and
 - (b) Designed to:
 - (i) Stabilize the position of a channel;
 - (ii) Shield vessels from wave forces; and
 - (iii) Control the movement of sand along adjacent beaches by minimizing the movement of sand into a channel.
- (26) “Landward boundary of tidal wetlands” means the common boundary between upland or nontidal wetlands, and State or private wetlands, as defined in this subtitle.

- (27) “License” means written authorization by the Board or by the Department under delegation from the Board to dredge, fill, construct structures, or conduct other activities involving State tidal wetlands which conveys a limited property interest.
- (28) “Maintenance dredging” means the removal or displacement by any means of soil, sand, gravel, shells, or other material, whether or not of intrinsic value, from any State or private tidal wetlands, that restores a navigation channel, marina, or mooring basin to depths confirmed after 1972.
- (29) “Marina” means a facility for the mooring, docking, or storing of more than ten vessels on tidal navigable waters, including a commercial, noncommercial, or community facility.
- (30) “Mean higher high water” means the average of the higher high water height of each tidal day observed over the national tidal datum epoch, including a spring tide.
- (31) “Mean high water” means the average of all the high water levels observed over the national tidal datum epoch.
- (32) “Mean high water line” means the line where the land meets the water surface at the elevation of mean high water.
- (33) “Mean low water” means the average of all the low water levels observed over the national tidal datum epoch.
- (34) “Mitigation” means the creation, restoration, or enhancement of tidal wetlands lost or damaged due to dredging or filling.
- (35) “National tidal datum epoch” means the specific 19-year period adopted by the National Ocean Service as the official time segment over which tidal observations are taken and reduced to obtain mean values for tidal datums.
- (35-1) Nonstructural Shoreline Stabilization Measure.
- (a) “Nonstructural shoreline stabilization measure” means an erosion control measure that is dominated by tidal wetland vegetation and is designed to preserve the natural shoreline, minimize erosion, and establish aquatic habitat.

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

(36) “Nontidal wetland” has the meaning stated in [COMAR 26.23.01.01](#).

(37) “Non-water-dependent structure or activity” means a temporary or permanent structure or activity, which by reason of its intrinsic nature or operation does not require location in or over State or private tidal wetlands.

(38) “Out of kind” means having characteristics not closely approximating those of a tidal wetland before that wetland was adversely impacted, or replacement of a structure with a structure of dissimilar materials or dimensions.

(39) “Permit” means written authorization by the Department to dredge, fill, construct structures, or to conduct certain other activities involving private tidal wetlands.

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

(41) Pier.

(a) “Pier” means any fixed or floating pier, wharf, dock, walkway, or other similar water-dependent structure constructed on or over State or private tidal wetlands for the purpose of gaining access to the navigable waters of the State.

(b) “Pier” does not include a structure on pilings or stilts that was constructed before December 2, 1985, landward of the tidal wetland boundaries.

(42) “Private tidal wetlands” means:

(a) Land not considered State wetland bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth;

(b) Tidal wetlands transferred by the State by a valid lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred; and

(c) Tidal waters created by the excavation of upland unless conveyed to the State.

(43) “Public informational hearing” means a meeting, open to the public, at which the applicant or the Department presents information concerning a permit or license and the Department receives oral and written comments concerning a decision to issue or deny a permit or a license. A public informational hearing is not a contested case hearing under [State Government Article, §10-202\(d\), Annotated Code of Maryland](#).

(44) “Regular or periodic tidal action” means the rise and fall of the sea produced by the attraction of the sun and the moon uninfluenced by wind or any other circumstances.

(45) Repair.

(a) “Repair” means an activity that restores the scope, size, and design of a functional structure to its previously authorized, undamaged condition.

(b) “Repair” does not include activities that change the size or scope of a project beyond the original design and dredge or fill tidal wetlands that were not previously impacted by the project.

(46) “Restoration” means reestablishment of tidal wetlands on former tidal wetland sites.

(47) “Revetment” means a structural shoreline stabilization measure comprised of stone, broken concrete, or other similar material that is:

(a) Typically placed parallel to the shoreline; and

(b) Designed to:

(i) Prevent erosion;

(ii) Fortify a bulkhead; or

(iii) Stabilize an embankment.

(48) “Riparian landowner” means a property owner whose land borders on tidal wetlands or waters of the State.

- (49) “Riparian rights” means the rights of an owner of land bordering on tidal wetlands or waters of the State as recognized by [Environment Article, Title 16, Annotated Code of Maryland](#) .
- (50) “Shallow water habitat” means aquatic habitat less than 3 feet in depth at mean low water.
- (51) “Species in need of conservation” has the meaning stated in [COMAR 08.03.08.01](#).
- (52) “State tidal wetlands” means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Tidal wetlands of this category which have been transferred by the State by a valid lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights are considered private tidal wetlands to the extent of the interest transferred.
- (53) Structural shoreline stabilization measure.
- (a) "Structural shoreline stabilization measure" means an erosion control measure that uses devices to armor and stabilize an area landward of the measure from further erosion.
 - (b) "Structural shoreline stabilization measure" includes the use of a bulkhead, gabion, revetment, groin, breakwater, jetty, sand, beach nourishment, and any other similar structure, or any other device for erosion control or vessel protection.
- (54) Structure.
- (a) “Structure” means building or construction materials, or a combination of those materials, that are purposely assembled or joined together on or over land or water.
 - (b) “Structure” includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, or shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.
- (55) Submerged Aquatic Vegetation.
- (a) “Submerged aquatic vegetation (SAV)” means a vascular hydrophyte, which is rooted or unrooted, that lies entirely beneath the surface of the water except for the flowering

parts of some species. Examples include *Zannichellia palustris*, *Ruppia* sp., and *Potamogeton* sp.

(b) “Submerged aquatic vegetation” does not include algae.

(56) “Threatened species” has the meaning stated in [COMAR 08.03.08.01](#).

(57) “Tidal wetlands” means all State and private tidal wetlands, marshes, submerged aquatic vegetation, lands, and open water within the Chesapeake Bay and its tidal tributaries, the Coastal Bays and their tidal tributaries, and the Atlantic Ocean to a distance of 3 miles offshore of the low water mark.

(58) “Tidal wetland boundary map” means a map or aerial photograph on a scale of 1 inch to 200 feet that delineates the landward boundary of tidal wetlands and is adopted by the Department.

(59) “Unified soil classification system” means a classification system used to classify sedimentary materials by grain size into gravel, silt, and clays. It is the principal classification system used by engineers, and its boundaries correspond to U. S. standard sieve sizes.

(60) “Upland” means any area that does not qualify as a tidal or nontidal wetland.

(61) “Utility line” means an underground or overhead transmission line, conduit pipe, cable, or wire for the conveyance of public or private water, sewage, natural gas, or petroleum, or the transmission of electricity or telecommunications.

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

(62) “Water dependent” means a temporary or permanent structure or activity, which by reason of its intrinsic nature or operation, requires location in or over State or private wetlands.

(62-1) “Water Quality Certification” means the certification required under [COMAR 26.08.02.10](#).

(62-2) “Wetlands License” means written authorization by the Board to dredge, fill, construct a structure, or conduct any other activity involving State tidal wetlands that does not qualify

for approval under a general wetlands license.

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

Cross References

[27.01.01.01B\(62-1\)\(a\)](#)

[27.01.01.01B\(62-1\)\(b\)](#)

[27.01.01.01B\(72-1\)](#)

.03 Delegation of Authority from the Board of Public Works.

In accordance with [COMAR 23.02.04.04A](#), the Board has delegated to the Department the authority to reject, authorize, modify, condition, or deny applications for construction or replacement of pilings, fixed or floating piers, decks, walkways, boathouses, and related structures on piers.

Cross References

[26.24.04.02B\(1\)](#)

.04 Public Notice.

A. Exemptions from Public Notice for a State Wetlands License. If the Department recommends to the Board that a State wetlands license be granted, the Board may issue a license without public notice for:

- (1) Projects which qualify under the general license in [COMAR 26.24.02.04](#);
- (2) Construction of a shore erosion control structure other than a revetment, if the fill area is less than 300 feet in length parallel to the upland and as close to the upland as structurally feasible, but not more than 10 feet channelward of the mean high water line;

- (3) Repair or replacement of a bulkhead for the purpose of shore erosion control when the bulkhead is presently functional, but is deteriorating or damaged, only if the repair or replacement structure does not extend more than 18 inches channelward of the existing structure measured from the channelward face of the existing piling to the landward face of the proposed sheeting, although replacement may include stone or broken concrete placed along the base of the bulkhead, only if the stone or broken concrete does not extend more than 10 feet channelward of the bulkhead; and
- (4) Construction or repair of a private, noncommercial boat ramp only if the ramp does not exceed 12 feet in width and extend more than 30 feet channelward of the mean high water line.

B. Exemptions from Public Notice for Private Wetlands Permits. The Department may:

- (1) Issue a private wetlands permit without a public notice for the following categories of projects:
 - (a) Projects which qualify under the general permit in [COMAR 26.24.02.05](#),
 - (b) Construction of tide gates designed to prevent the encroachment of salt water into agricultural drainage ditches, and
 - (c) Installation of underground utilities, if the surface of the wetlands is restored substantially to its original condition;
- (2) Authorize work in private wetlands without public notice when an emergency exists.

C. An applicant shall notify adjoining riparian property owners in writing at the time of application if the proposed project requires public notice. The notification shall include:

- (1) A copy of the application and plans for the proposed project; and
- (2) A statement advising the property owner to direct any comments or concerns directly to the Department within 2 weeks of receipt.

D. The Department shall issue a public notice of an opportunity to submit written comments, or to request a public informational hearing about the application for a State wetlands license or

private wetlands permit. Public notice is not required for activities exempted under §§A and B of this regulation.

E. The notice in [§D of this regulation](#) shall:

(1) Contain:

- (a) The name of the applicant;
- (b) A general description of the nature and location of the proposed activity including the street address of the proposed activity;
- (c) Instructions for submission of written comments or a request for a public informational hearing;
- (d) The expiration date for the opportunity to comment or to request a public informational hearing; and
- (e) The address and telephone number of an individual in the Department from whom information about the application may be obtained;

(2) Be given by:

- (a) Publication in a daily newspaper distributed in one or more counties which the Department determines may be directly affected by the proposed activity, or if there is no local daily newspaper, in a newspaper of general circulation in that county;
- (b) Publication in the Maryland Register;
- (c) Joint notice with other units or programs reviewing applications for other approvals within the Department; and
- (d) Selected mailing to federal, State, county, or municipal authorities, and other list of interested persons, including anyone who has:
 - (i) Submitted written comments on the specific project in question,

(ii) Requested to be kept informed about the specific project, or

(iii) Requested receipt of public notices for tidal wetlands licenses and permits.

Cross References

[23.02.04.06B\(3\)](#)

[26.24.02.02C](#)

.05 Public Informational Hearings.

- A. An interested person may request the Department or the Board to hold a public informational hearing on a project requiring public notice. A request shall be in writing to the Department.
- B. If a hearing is requested, the Department shall set the date, time, and place for the hearing. Notice of the hearing shall be given by:
 - (1) Publication in a daily newspaper distributed in one or more counties which the Department determines may be directly affected by the project, or if there is no local daily newspaper, in a newspaper of general circulation in that county;
 - (2) Publication in the Maryland Register; and
 - (3) Selected mailing to federal, State, county, or municipal authorities, and other list of interested persons.
- C. The hearing shall take place not less than 14 calendar days after publication of the public notice of the public informational hearing.
- D. The hearing shall be conducted by a representative of the Board or the Department's designee. The individual authorized to conduct the public hearing shall be designated as the hearing officer.
- E. The applicant and interested persons shall be given an opportunity at the informational hearing to present facts and make statements for or against granting the license or permit.

Questions may be asked of, and directed to, the hearing officer, but cross-examination may not be conducted. The hearing is not a contested case hearing under [State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland](#) .

F. The order of the presentation is determined by the hearing officer and may be conducted as follows:

- (1) Introduction of the activity and participants by the hearing officer;
- (2) Statement of legal authorities, public policy, and procedures by the hearing officer;
- (3) Presentation of the proposed project by the applicant;
- (4) Questions about the activity;
- (5) Statements by public officials;
- (6) Statements in opposition;
- (7) Statements in support; and
- (8) Closing of the hearing by the hearing officer.

G. The hearing officer has the authority and duty to:

- (1) Conduct a full and fair public informational hearing;
- (2) Act to avoid unnecessary delay and to maintain order;
- (3) Regulate the course of the public hearing and the conduct of the participants;
- (4) Extend the time period for providing supplemental written comments or information for inclusion in the hearing record; and
- (5) Rule upon a request for a continuance of the hearing.

- H. At the close of the public comment period, the hearing officer shall prepare an official record of the public informational hearing or comments.
- I. A tape recording or notes of the public informational hearing, if any, may be transcribed if the Department, the applicant, or a participant in the public hearing requests a transcript within 5 working days of the public informational hearing. Costs shall be paid by the requester.
- J. After a public hearing, the Wetlands Administrator for the Board shall present the proposed project at a public meeting of the Board. The Board shall make a final decision under [COMAR 23.02.04](#).

.06 Violations of Statutory, Regulatory, License, or Permit Requirements.

- A. Determination of Violation. The Department shall serve a written complaint on a violator if it determines that there has been a violation of:
 - (1) Any provision of Environment Article, §§[16-101](#) — [16-503](#), Annotated Code of Maryland;
 - (2) A regulation in this subtitle;
 - (3) A license or permit condition; or
 - (4) An administrative order.
- B. Complaints. A complaint shall comply with the notice requirements under [COMAR 08.01.04.05](#).
- C. Orders. At any time, including during an enforcement action, the Department may issue an administrative order requiring the violator to take corrective action within a certain time period. The order may require the violator to:
 - (1) Cease the violation;
 - (2) Stabilize the site;
 - (3) Stop all construction work at the site of a regulated activity;

- (4) Restore unlawfully affected State or private wetlands; or
- (5) Submit a written report or plan concerning the violation.

D. Suspension or Revocation.

- (1) Grounds for License or Permit Suspension or Revocation. The Department or the Board may suspend or revoke a permit or license if the Department determines that any of the following have occurred:
 - (a) A violation of the provisions of Environment Article, §§[16-101](#)—[16-503](#), Annotated Code of Maryland, this subtitle, or [COMAR 23.02.04](#);
 - (b) Failure of a licensee or permittee to comply with the requirements of an administrative action or order under this subtitle;
 - (c) Requirements and conditions of the license or permit have been violated;
 - (d) Misrepresentation in the license or permit application process or failure to disclose a relevant or material fact has occurred;
 - (e) There has been a substantial deviation from the plans, specifications, or requirements of the license or permit;
 - (f) The licensee or permittee has prevented a representative of the Department from entering the site to make reasonable inspections;
 - (g) The licensee or permittee's rights under the license or permit have not been vested and new information, changes in site conditions, or amended regulatory requirements necessitate revocation; or
 - (h) The licensee or permittee has failed to post or maintain financial assurances required under [COMAR 26.24.05.02](#).
- (2) Notice. Except for emergency actions under [§H of this regulation](#), a tidal wetlands license or permit may not be suspended, modified, or revoked unless the Department or the Board

first gives the permittee or licensee written notice by certified mail of the specific facts that warrant suspension or revocation.

(3) Hearings.

- (a) Upon receipt of written notice to suspend, modify, or revoke a permit, the permittee or surety has 10 calendar days to request a contested case hearing.
- (b) A hearing under this subsection shall be conducted in conformance with [State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland](#), and [COMAR 08.01.04](#).
- (c) An appeal from a license suspension or revocation shall be in accordance with [COMAR 23.02.04](#).
- (d) If the Department does not receive a request for a hearing, the permit shall be suspended, modified, or revoked, and the right to appeal shall be waived.

E. Bond Forfeiture. If the Department finally determines that a permit shall be revoked, the Department may immediately forfeit the bond and notify the permittee and surety in writing. An appeal of the final decision to forfeit a bond shall be to the circuit court.

F. Service.

- (1) A complaint, order, or other administrative notice issued by the Department may be served on a violator personally or by certified mail to the violator's last known address.
- (2) An order issued under this regulation is effective immediately.

G. Hearings.

- (1) The Department shall hold a hearing under this regulation in conformance with [State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland](#), and [COMAR 08.01.04](#).
- (2) Within 10 calendar days of service of a written complaint under this regulation, a violator may request a hearing in writing.

H. Emergency Action.

(1) License Recommendations. The Department may recommend that the Board take action to immediately suspend a license if the Department:

(a) Finds that the public health, safety, or welfare imperatively requires immediate suspension; and

(b) Promptly gives the licensee written notice of the recommendation which shall include:

(i) Specific facts upon which the immediate suspension is based, and

(ii) The licensee's opportunity to appeal in accordance with [COMAR 23.02.04](#).

(2) Permit Actions.

(a) The Department may order an immediate suspension of a permit if the Department:

(i) Finds that the public health, safety, or welfare imperatively requires the immediate suspension; and

(ii) Promptly gives the permittee written notice of the suspension.

(b) A notice of immediate suspension shall include a statement of:

(i) Specific facts on which the immediate suspension is based; and

(ii) The permittee's opportunity to be heard in accordance with [§D of this regulation](#).

Cross References

[26.24.02.07D](#)

.07 Waivers.

- A. If the Department determines, from the information submitted with an application for a private wetlands permit, that a waiver of a regulation of this subtitle is in the public interest, the Department may grant relief from the requirement upon request.
- B. If a waiver results in the loss of tidal wetlands, the applicant is required to mitigate for that loss in accordance with [COMAR 26.24.05.01](#).

Chapter 02 Permits and Licenses

Administrative History

Effective date: February 14, 1994 (21:3 Md. R. 184)

(Wetlands regulations before February 14, 1994, appeared under COMAR 08.05.07)

Regulation .18B amended as an emergency provision effective August 1, 1995 (22:17 Md. R. 1309); amended permanently effective December 4, 1995 (22:24 Md. R. 1894)

Regulation .19A amended as an emergency provision effective August 1, 1995 (22:17 Md. R. 1309); amended permanently effective December 4, 1995 (22:24 Md. R. 1894)

Regulations [.01—.08](#) were recodified from Regulations [.03—.05](#), .18—.20, .23, and .26, respectively, under COMAR 08.05.05 Tidal Wetlands, June 1996

Authority

Environment Article, Title 16, Annotated Code of Maryland

.01 General Requirements for a State Tidal Wetlands License or Private Tidal Wetlands Permit.

- A. License or Permit Required. Except as set forth in [§C of this regulation](#), before beginning any work, a person who proposes to construct or reconstruct structures, or to dredge or fill a State or private tidal wetland, shall obtain a:

(1) License from the Board; or

(2) License, general license, general permit, or permit from the Department.

B. Uses and Activities Prohibited on State or Private Tidal Wetlands Without a License or Permit.

Except when authorized, a person may not:

(1) Fill, place, dump, or discharge on tidal wetlands any:

(a) Loam, peat, sand, gravel, soil, or other similar substance, or

(b) Trash, garbage, debris, junk, or other polluting substance;

(2) Drain, excavate, or dredge the tidal wetlands encompassed by this subtitle, or remove from the tidal wetlands loam, peat, sand, gravel, soil, or other similar substance;

(3) Construct any structure in, on, over, or under tidal wetlands; or

(4) Perform an act or use involving tidal wetlands in a manner which would destroy the natural vegetation or existing patterns of tidal flow, or alter the natural and beneficial character of the tidal wetland.

C. Exemptions from a State Tidal Wetlands License and a Private Tidal Wetlands Permit. The following activities are exempted from the requirement to obtain a license from the Board or a license, general license, general permit, or permit from the Department under this subtitle:

(1) Dredging of seafood products by any licensed operator including normal leased bottom activities permitted under [Natural Resources Article, Title 4, Subtitle 11, Annotated Code of Maryland](#), and [COMAR 08.02.08.12](#), or the harvesting of submerged aquatic vegetation provided the root system is not affected;

(2) Trapping, hunting, fishing, and catching shellfish, if legally permitted;

(3) Mosquito control and abatement projects as approved by the Department of Agriculture;

(4) Improvement of agricultural drainage ditches as approved by the Department of Agriculture;

- (5) Routine maintenance, repair, or replacement of a highway structure, pier, boathouse, a structure on a pier, bulkhead, revetment, tidal impoundment dike, water control structure, aboveground transmission facility, agricultural drainage ditch, or highway drainage ditch when the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment;
- (6) Channel and harbor navigation aids, if approval has been granted by the United States Coast Guard;
- (7) Private piers that meet the criteria in [COMAR 26.24.04.02](#);
- (8) Control of exotic plant species such as *Phragmites australis*, if a toxic materials permit under [COMAR 26.08.03.02](#) is obtained;
- (9) Temporary installation of bass spawning boxes from March 1 through June 15 annually outside of marked navigation channels.

Cross References

[26.24.04.02B\(1\)](#)

[26.24.04.02C\(1\)](#)

.02 Application Requirements.

A. Who May Apply. An applicant for a license or permit is a person:

- (1) With a riparian interest in private tidal wetlands or upland adjacent to State tidal wetlands, or an agent designated by the person with riparian interest; or
- (2) Seeking approval for navigation, mining, aquaculture, archeology, or similar projects in tidal wetlands.

B. Application Form.

- (1) The application form shall be a joint federal and State application for the regulation of activities in tidal wetlands in Maryland.
- (2) An applicant for a tidal wetlands license or permit shall submit all of the information required by the Department in a manner and form acceptable to the Department before final action on the application is taken.
- (3) For additional information requirements for specific project types, see [COMAR 26.24.03](#) and [26.24.04](#).
- (4) The application form is available at the following government agencies:
 - (a) Department of the Environment;
 - (b) U. S. Army Corps of Engineers, Baltimore District;
 - (c) An agency designated by each county or municipality; or
 - (d) Department of the Environment, Water Management Administration.
- (5) The person who signs an application form shall be:
 - (a) An individual or an individual's authorized agent;
 - (b) An officer or authorized agent of a corporation;
 - (c) An authorized official of a State or local government; or
 - (d) An authorized member of an association or partnership.
- (6) The person who signs an application is responsible for the truth, accuracy, and completeness of all information in the application.

C. The Department shall acknowledge receipt of an application in writing by regular mail, and shall advise the applicant of the public notice requirements under [COMAR 26.24.01.04](#).

D. The Department shall review an application to determine whether it is complete for processing. An application is complete if it contains all the information required in this subtitle. The Department shall notify an applicant within 45 days by telephone or in writing of the additional information required in an incomplete application. If the Department fails to notify an applicant within 45 days, an application is considered complete. The Department may require additional information from an applicant as a result of the administrative review process.

E. For purposes of an application, mean high water and mean low water are:

(1) Referenced in feet to a benchmark elevation based upon:

- (a) The National Geodetic Vertical Datum of 1929 (NGVD) which is incorporated by reference under 41 FR 20202 (1976);
- (b) The North American Vertical Datum of 1988 (NAVD) which is incorporated by reference under 48 FR 50784 (1983); or
- (c) A benchmark established and documented by an applicant and approved by the Department;

(2) Determined using one of the following methods:

- (a) Control tide station data as published by the U. S. Department of Commerce, National Oceanic and Atmospheric Administration;
- (b) Derivation of the equivalent high water datum using a comparison of observational records with control tide station data as published by the U. S. Department of Commerce, National Oceanic and Atmospheric Administration; or
- (c) An evaluation of the project site conditions based upon the following parameters:
 - (i) Predicted tide range elevations,
 - (ii) Meteorologic conditions,

(iii) Vegetation and other biological factors at the site including barnacles and algae lines, and

(iv) Physical indicators at the site such as rack lines, stain marks on nearby structures, and beach particle sorting.

F. The Department may require an applicant to engage a professional engineer, licensed under Maryland law, to certify that the design meets all of the requirements of the Department. This requirement may apply to projects including:

(1) Shore erosion control structures; and

(2) Dredge material placement sites.

G. The Department may require project plans to include a bathymetric survey that is referenced to a benchmark based on the NGVD of 1929 or NAVD of 1988, or a benchmark established and documented by an applicant and approved by the Department. All survey and topographic information shall be referenced to 0.0 mean low water.

H. Other Approvals.

(1) The Department may suspend processing of an application for a structure or activity if the application is inconsistent with State, federal, or local land use requirements, including federal tidal wetlands authorizations under §404 of the Clean Water Act of 1992 and §10 of the Rivers and Harbors Act of 1899, critical area, zoning, special exception, variance, or conditional use approvals. The Department will make these consistency determinations in cooperation with the appropriate State, federal, and local regulatory agencies. Project approval under this subtitle does not relieve a licensee or permittee of the need to obtain other approvals that may be required.

(2) A person shall obtain a permit to engage in aquaculture activities under [COMAR 08.02.14](#) before the Department will accept an application for construction of an aquaculture facility in tidal wetlands.

I. An applicant shall allow reasonable access for inspection of the project site by representatives of the Department.

J. An applicant may request in writing, at the time an application is submitted or as soon as possible, that certain information submitted as part of an application not be disclosed. The Department shall determine if the information is confidential under [State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland](#) [↗](#), and other applicable law. If the Department denies a request for nondisclosure, an applicant may withdraw the application or appeal the Department's determination under applicable law. If an applicant withdraws an application, the Department shall, at the request of the applicant, return any documents claimed to be confidential.

Cross References

[23.02.04.06B\(2\)](#)

[23.02.04.08B](#)

[26.24.02.07A\(3\)](#)

[26.24.02.07C](#)

[26.24.03.01A](#)

[26.24.03.03B\(1\)](#)

[26.24.03.05B\(1\)](#)

[26.24.03.06A](#)

[26.24.04.01-3A](#)

[26.24.04.03A](#)

.03 Criteria for Evaluating Tidal Wetlands License or Permit Applications.

A. Evaluation Criteria.

- (1) The criteria in this regulation are presented to assist in preparing an application and to provide a consistent basis for recommendations and decisions for licenses or permits.
- (2) As the basis for a recommendation or final decision, including approval, denial, suspension, or modification of a license or permit, the Department shall take into account ecological, economic, developmental, recreational, and aesthetic values of tidal wetlands in order to preserve tidal wetlands and prevent their despoliation and loss.
- (3) When reviewing an application for a license, the Department considers the proprietary interests of the Board over State tidal wetlands.

B. Application Evaluation. In evaluating an application, the Department shall consider the degree to which:

- (1) Dredging and filling activities can be avoided or minimized;
- (2) The proposed activity is water-dependent;
- (3) The proposed activity will alter or destroy tidal wetlands, including a determination of how the proposed project will:
 - (a) Destroy or adversely affect the value of the tidal wetlands as a source of nutrients or habitat for finfish, crustaceans, mollusks, or wildlife of significant economic or ecologic value,
 - (b) Affect potential habitat areas such as historic spawning and nursery grounds for anadromous and semianadromous fisheries species and shallow water areas suitable to support populations of submerged aquatic vegetation,
 - (c) Eliminate or substantially reduce marine commerce, recreation, and aesthetic enjoyment,
 - (d) Affect the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare, and
 - (e) Substantially reduce the capacity of tidal wetlands to trap sediment, and result in increased silting of channel and harbor areas to the detriment of free navigation;

- (4) The proposed activity would alter natural water flow, water temperature, water quality, and natural tidal circulation regimes;
- (5) The proposed activity would alter littoral drift;
- (6) The proposed activity enhances the aquatic environment;
- (7) The proposed activity would impact local, regional, and State economic conditions;
- (8) The proposed activity is consistent with State, federal, and local land use plans and laws, including Critical Area laws;
- (9) Alternatives for the disposal of dredged material have been explored;
- (10) The natural, scenic, historic property, and aesthetic values can be retained or enhanced;
- (11) The proposed activity provides facilities for the proper handling of storm water runoff and sanitary wastes;
- (12) Danger may arise because of the location of proposed structures from hurricanes, floods, sea level rise, or other determinable and periodically recurring natural hazards;
- (13) Navigational safety is affected;
- (14) The activity benefits the public, if applicable;
- (15) Shore erosion is controlled;
- (16) Maintenance and operation of the proposed project is assured;
- (17) Recreational and navigational access to beaches and waters of the State is provided;
- (18) The proposed activity would alter the scenic and wild qualities of a designated State scenic and wild river; and
- (19) The proposed activity would impact historic waterfowl staging areas and colonial bird-nesting sites.

.04 General Tidal Wetlands License.

- A. The Board shall issue a general wetlands license for those activities proposed in State tidal wetlands listed in [§B of this regulation](#). A person proposing an activity in State tidal wetlands under the general wetlands license shall apply to the Department. The Department shall consider the ecological, economic, developmental, recreational, and aesthetic values of the proposed project and determine if the proposed project qualifies under the general wetlands license. If a project qualifies for a general wetlands license and does not require mitigation under [COMAR 26.24.05.01](#), the Department may issue the authorization directly to the applicant.
- B. General Wetlands License Projects. Projects which qualify for approval under the general license include projects to:
- (1) Add stone or broken concrete to a revetment or channelward of a bulkhead if the stone or broken concrete extends not more than 10 feet channelward of the existing structure;
 - (2) Emplace a revetment for shore erosion control only if it is less than 500 feet in length and it is aligned not more than 10 feet channelward of the mean high water line;
 - (3) Fill near shore shallow water not more than 35 feet channelward of the mean high water line only if the fill area is less than 500 feet in length and parallel to the upland for the purpose of shore erosion control by tidal vegetated wetland creation;
 - (4) Maintenance dredge a mooring, boat ramp, or travel lift slip with an area of 1,500 square feet or less and remove 100 cubic yards or less of material, if the licensee complies with the water quality certification required under [COMAR 26.08.02](#);
 - (5) Reconfigure an existing marina if there is no dredging or no increase in channelward encroachment beyond existing piers and associated structures;
 - (6) Construct a boat ramp not more than 12 feet wide and 30 feet channelward of the mean high water line;
 - (7) Armor or strengthen bridges or causeways when the activity extends not more than 10 feet from the existing structure, requires no dredging, and does not impede the flow of the waterway;

(8) Create a new discharge of storm water runoff within 1,000 feet landward of the tidal wetlands boundary, if the drainage system directly discharges to tidal waters and employs stormwater control measures to manage runoff for rate and water quality according to State and local standards which include measures:

(a) Designed to control erosive velocities to tidal waters of wetlands, and

(b) Required under [COMAR 27.01.01](#) and [27.02.01](#) and a State-approved critical area program of a local jurisdiction;;

(9) Clear debris and windfalls from shorelines without dredging State tidal wetlands;

(10) Install temporary monitoring or research devices; and

(11) Construct a replacement bulkhead within a maximum of 18 inches channelward of a functional bulkhead.

C. Term of License. An authorization under a general license expires 3 years after the date of issuance. If the construction or the activity authorized under this general license is not completed within 3 years, a license extension may not be granted by the Department and the licensee shall apply for a new license.

D. General License Conditions. To obtain authorization under the general license to be valid, an applicant shall:

(1) Obtain all required federal, State, county, or local approvals before beginning work on a licensed activity;

(2) When applicable, obtain an approved sediment and erosion control plan from the local soil conservation district before construction;

(3) Notify the Enforcement Division of the Water Management Administration at least 5 days before beginning work;

(4) Allow representatives of the Department to enter the property at reasonable times to inspect the ongoing or completed work under the license; and

- (5) Design and construct the authorized work in a manner which minimizes adverse impacts on natural resource values, including water quality, plants, wildlife, and plant and wildlife habitat.

Cross References

[23.02.04.06A\(2\)](#)

[26.24.02.05B](#)

[26.24.02.05D](#)

.05 General Tidal Wetlands Permit.

- A. The Department shall issue a general wetlands permit to the Administration for those activities in private wetlands listed in [§B of this regulation](#). A person proposing an activity in private tidal wetlands under the general wetlands permit shall apply to the Administration. The Administration shall consider the ecological, economic, developmental, recreational, and aesthetic values of the proposed project and determine if the project proposed in the application qualifies under the general wetlands permit. If a project qualifies under the general wetlands permit and does not require mitigation under [COMAR 26.24.05.01](#), the Administration may issue the authorization directly to the applicant.
- B. General Wetlands Permit Projects. Projects which qualify for approval under the general permit include projects described in [Regulation .04 of this chapter](#) and projects to:
 - (1) Install or maintain underground utilities such as phone, cable television, electricity, or natural gas pipelines not exceeding 12 inches in diameter if the surface of the wetlands is restored to its original elevation and vegetation;
 - (2) Conserve soil, vegetation, water, fish, shellfish, and wildlife using best management practices; and
 - (3) Improve wildlife habitat as approved by the Administration.

- C. Term of Permit. An authorization under the general permit expires 3 years after the date of issuance. If the construction or activity is not completed within 3 years, the Department may not grant an extension and the permittee shall reapply for authorization.
- D. General Permit Conditions. In order for an authorization under this general permit to be valid, the applicant shall meet the requirements under [Regulation .04D of this chapter](#).

Cross References

[26.24.01.04B\(1\)\(a\)](#)

.06 Conditions of a License or Permit.

- A. License Conditions. Standard conditions of a tidal wetlands license shall be imposed by the Board in accordance with [COMAR 23.02.04.13](#).
- B. The Department may recommend that the Board include special conditions, including requirements for maintenance dredging, mitigation, compensation, and financial assurances, in accordance with [COMAR 23.02.04.14](#). The Department shall use the guidelines in §§C—L of this regulation in recommending conditions to the Board.
- C. The licensee shall submit a construction schedule to the Department 10 days before the beginning of construction.
- D. The use of construction equipment or other temporary structural barriers may not decrease the width of the navigable waterway by more than 50 percent during construction, unless approved by the Department.
- E. The Department may prohibit dredging during certain times to protect shellfish. The Department may determine time restrictions in accordance with the following:
 - (1) Factors including the type of project, nature of the bottom substrate, location, and other physical site characteristics of the site;
 - (2) Mechanical dredging within 500 yards of shellfish areas is prohibited from December 16 through March 14, and June 1 through September 30; and

- (3) Hydraulic dredging within 500 yards of shellfish areas is prohibited from June 1 through September 30.
- F. Dredge restrictions in other identified shellfish areas shall be determined on a case-by-case basis by the Department.
- G. Dredging may be prohibited during certain periods by the Department to protect identified finfish-spawning and nursery areas. The Department shall determine dredging time restrictions in accordance with the following:
 - (1) Restrictions during the nursery period of finfish species shall be determined by the Department using factors including target species, type of project, location, and other physical site characteristics;
 - (2) Dredging is prohibited from:
 - (a) February 15 through June 15 in areas where yellow perch have been documented to spawn, and
 - (b) March 1 through June 15 in areas where other important finfish species identified by the Department have been documented to spawn.
- H. Dredging is prohibited within 500 yards of SAV from April 15 through October 15.
- I. Detailed final project plans and specifications shall be submitted to and approved by the Administration before the project begins.
- J. The Department may prohibit the construction of structures on, in, or over shore erosion control structures unless specifically licensed by the Board of Public Works.
- K. Other specific conditions may be recommended by the Department on a case-by-case basis.
- L. Permit Conditions.
 - (1) Standard conditions of a private permit shall be imposed by the Department, which at a minimum address the following:

- (a) Protection of property rights;
- (b) Construction time period;
- (c) Term of permit;
- (d) Compliance with plans and specifications;
- (e) Maintenance of permitted project;
- (f) Protection and management of natural resources;
- (g) Use of navigable waters; and
- (h) Other approvals required.

- (2) The Department may include special conditions such as requirements for maintenance dredging, mitigation, financial assurances, or other approvals. The Department shall use the guidelines in [§B of this regulation](#) in establishing special conditions.

.07 License or Permit Modifications or Extensions.

A. Requests for License or Permit Modifications.

- (1) Upon written request for a license or permit modification, the Department shall determine if the modification is major or minor.
- (2) Minor modifications to a license may be recommended to the Board or made to a permit by the Department if the modification involves:
 - (a) A change in land ownership;
 - (b) A reduction in the scope of the originally authorized work;
 - (c) Revisions to the project plans or specifications that would otherwise be approved; or

(d) Structures, activities, or the conditions of a license or permit which require modification to correct adverse environmental impacts.

(3) Major modifications to a license or permit require a new application as described in [Regulation .02 of this chapter](#).

B. Requests for Construction Period Extensions.

(1) The Department may not extend the construction period for maintenance dredging projects.

(2) The construction period of a tidal wetlands license or permit may be extended for a valid reason. Only one extension for construction authorized under a license or permit may be granted. An extension shall be for a period up to 3 years. A request for extension shall be made in writing to the Department and shall include the following:

(a) The reason the project could not be completed within the construction period in the original license or permit;

(b) Revised schedule for start and completion of construction;

(c) Assurances that all other State, federal, and local approvals have not expired or have been authorized;

(d) Evidence of a substantial effort made to construct the authorized works within the construction period specified in the license or permit;

(e) Evidence that the project is to be constructed in phases over a number of years; or

(f) Evidence of undue hardship due to circumstances beyond the applicant's control.

C. Requests for Reinstatements. A wetlands license or permit that has expired may not be reinstated and requires a new application as described in [Regulation .02 of this chapter](#).

D. Modifications. If the Department determines that a modification to a project is necessary, the Department may revise a permit or request a revision of the license by the Board. If conditions

are revealed which will not permit safe construction, the license or permit may be suspended or revoked in accordance with [COMAR 26.24.01.06](#).

Cross References

[26.24.03.04C\(3\)](#)

.08 Appeals.

- A. License Decisions. A party aggrieved by a decision of the Board may petition the circuit court in the county where the land is located within 30 days after receiving the decision. An aggrieved party's impacted interests shall be specific and different from the interests of the public, and the right to an appeal is limited by law to aggrieved parties.
- B. Permit Decisions.
- (1) An applicant who is adversely affected by a decision of denial, suspension, revocation, or condition of a permit by the Department may, within 30 days of receipt of the administrative action, file with the Director written exceptions and a request to present oral argument. After considering the written exceptions, the Director may hear argument and shall issue a written final decision.
 - (2) The applicant, the county, or the municipal government where the land is located may appeal the final decision of the Director to the circuit court in the county where the land is located within 30 days of the final decision.
 - (3) An applicant may not reapply for a permit under this subtitle until after the expiration of 18 months from the date of the denial, or the final determination of an appeal from the denial.

Cross References

[26.24.04.02D](#)

Chapter 03 Dredging and Filling

Administrative History

Effective date: February 14, 1994 (21:3 Md. R. 184)

(Wetlands regulations before February 14, 1994, appeared under COMAR 08.05.07)

Regulations [.01](#)—[.06](#) were recodified from Regulations [.06](#)—11, respectively, under COMAR 08.05.05 Tidal Wetlands, June 1996

Authority

Environment Article, Title 16, Annotated Code of Maryland

.01 Maintenance Dredging.

- A. In addition to the requirements of [COMAR 26.24.02.02](#), an applicant proposing to maintenance dredge, or to dredge to maintain an existing use, in State or private tidal wetlands shall submit the following information at the time of application:
- (1) A plan depicting the dimensions, including the existing and proposed depths and location of the main channel and all the spur channels proposed to be dredged;
 - (2) Quantity of material to be dredged;
 - (3) Documentation detailing when the site was last dredged and the dimensions of the channel, if applicable;
 - (4) Evidence of historical boat use since January 1, 1972;
 - (5) Texture characterization of material to be dredged; and
 - (6) Dredge material placement information in accordance with Regulation .03 or .05 of this chapter;

- (7) Except for emergency dredging projects as determined by the Department, a map depicting:
 - (a) Current submerged aquatic vegetation populations within the area to be dredged, and a 500-yard buffer, if appropriate;
 - (b) Date of the submerged aquatic vegetation survey;
 - (c) Method of sampling; and
 - (8) Justification for classifying the proposed maintenance dredging as an emergency.
- B. The Department may recommend that a wetland license contain a condition to allow for periodic maintenance dredging of quantities less than 500 cubic yards.

.02 Dredging — General.

- A. Required Information. In addition to the requirements of Regulations .03 and .05 of this chapter and [COMAR 26.24.02.02](#), an applicant proposing to perform dredging in State or private tidal wetlands that have never been dredged shall submit the following information at the time of application:
- (1) A description of the purpose for the dredging and a discussion of alternatives considered, including an evaluation of the no action alternative;
 - (2) A plan of the proposed project, showing the:
 - (a) Extent of the area to be dredged;
 - (b) Existing and proposed depths;
 - (c) Volume of material to be removed;
 - (d) Extent of tidal wetlands to be impacted; and
 - (e) Identification of a dredged material disposal site;

- (3) The method of dredging and anticipated work schedule; and
- (4) A map depicting current submerged aquatic vegetation populations within and adjacent to the area to be dredged, date of the submerged aquatic vegetation survey, and the method of sampling.

B. Additional Information Requirements.

- (1) Based on project size and scope, environmental sensitivity of the project site, and potential adverse impacts to tidal wetlands, the Department may, with notice to the applicant by telephone, letter, or meeting, require information in addition to that in [§A of this regulation](#). The Department recommends that an applicant consult with the Department before developing and submitting the information listed in §B(2)—(5) of this regulation.
- (2) A description of the predicted short-term and long-term impacts of dredging activities on water circulation, water quality, tidal wetland values, and aquatic biota may be required.
- (3) Bathymetric Survey.
 - (a) A bathymetric survey of existing depths may be required.
 - (b) The survey shall reflect current conditions in the area to be dredged and shall be dated.
 - (c) The survey shall relate to mean low water (MLW) as 0.0 and be referenced to a recoverable vertical bench mark. Soundings may be poled or recorded by fathometer and shall be taken to an accuracy of 0.5 foot unless otherwise specified by the Department. The survey shall clearly identify low point elevations and shall extend 100 feet beyond the limits of the project or to the controlling depth contour in the adjoining waterway, whichever boundary leads to the larger survey area.
 - (d) Survey data shall be plotted on a grid at a minimum scale of 1 inch equals 100 feet with 1-foot contour intervals and spot elevations at a minimum of every 25 feet unless otherwise specified by the Department. The survey shall be referenced to two recoverable horizontal control points.
 - (e) A bathymetric survey of the project area upon completion of the authorized dredging may be required.

- (4) A plan drawing may be required that includes property lines and their bearings, bathymetric survey data, the proposed alignment and bearing of navigation channels or permanent structures that extend into State waters, and horizontal and vertical control points. The plan shall be certified by a registered professional engineer or registered land surveyor unless otherwise specified by the Department.
- (5) Provisions for monitoring and enhancing water quality may be required in accordance with applicable water quality standards established by the Department.

C. Design Guideline Requirements.

- (1) Dredging of channels, canals, and boat basins shall be designed to provide:
 - (a) Adequate flushing and elimination of stagnant water pockets; and
 - (b) A demonstrated public benefit.
- (2) Navigational access projects shall when possible be designed to use piers to reach deep waters rather than to use dredging.
- (3) Navigational access channels to serve individual or small groups of riparian landowners shall be designed to prevent unnecessary channels. A central access channel with short spur channels shall be considered over separate access channels for each landowner.
- (4) Navigational access channels shall be designed to minimize alteration of State or private tidal wetlands. The channel shall provide a minimum width, length, and depth consistent with historic boating use or access.
- (5) The channel alignment shall make maximum use of natural or existing channels and bottom contours.
- (6) The alignment of the channel shall first avoid and then minimize impacts to shellfish beds, submerged aquatic vegetation, and vegetated tidal wetlands. When feasible, the alignment shall be located the maximum distance feasible from shellfish beds, submerged aquatic vegetation, and other vegetated tidal wetlands.
- (7) New Channels.

- (a) Channels through uplands, canals, or basins connecting to State waters for navigational access shall be considered only when the:
 - (i) Applicant is a riparian landowner who demonstrates a need for access to State waters;
 - (ii) Proposed channel represents the smallest dimensions necessary to connect a basin created from upland, or is a public boat ramp to navigable waters if all other requirements of this subtitle are met; and
 - (iii) Proposal is the best alternative means of providing reasonable access to navigable waters or no other alternative location exists that would cause less destruction or alteration of tidal wetlands.
- (b) New channels shall be designed to comply with Maryland water quality standards and to avoid pockets of stagnant water having inadequate tidal flushing. The channel design shall include provisions for adequate water circulation.
- (c) Upland excavation that would open to State waters shall be performed in the dry and the banks shall be stabilized through wetland creation or the placement of stone before a connection to tidal waters is made.
- (8) Provisions shall be included in the design for protection of the channel or canal banks against erosion by waves and boat wakes.
- (9) Dredging to obtain material for beach nourishment may be approved if an environmental analysis determines there will be no adverse impacts to the environment, and the requirements of [Regulation .06 of this chapter](#) are fulfilled.
- (10) Dredging for sand, gravel, or fill material may be approved when an environmental analysis determines that there will be no adverse impact on the environment, and no alternative fill material is available.
- (11) The use of explosives to create waterfowl potholes or to clear drainage blockages may be approved when an environmental analysis determines no significant impact to the surrounding habitat will occur, and when performed by a licensed expert.

D. Dredging Prohibitions for New Dredging Projects.

- (1) A person may not dredge for projects that are non-water-dependent.
- (2) A person may not dredge by means of a vessel's propeller.
- (3) A person may not dredge in shallow water areas 3 feet or less at mean low water unless:
 - (a) Historic boat use since January 1, 1972 is documented by:
 - (i) Photographs showing the presence of a functional pier, boat, or mooring, and a written report from the applicant that describes the types of boats, their draft, and dates of use at the site;
 - (ii) A navigational chart or a bathymetric survey, certified by a professional engineer or land surveyor licensed under Maryland law, that verifies the water depth;
 - (iii) National Oceanic and Atmospheric Administration navigation charts;
 - (iv) State and federal permits and licenses for dredging projects issued since January 1, 1972; or
 - (v) Other information considered appropriate by the Department;
 - (b) The proposed channel represents the smallest dimensions necessary to connect a basin created from upland, or a public boat ramp to navigable waters if all other requirements of this subtitle are met;
 - (c) The proposed channel is necessary for construction of shore erosion control projects as described in [COMAR 26.24.04.01](#);
 - (d) The proposed channel is necessary for construction of navigational improvement projects such as jetties or breakwaters; or
 - (e) Otherwise determined by the Department.

Cross References

[26.24.03.03B\(1\)](#)

[26.24.03.05B\(1\)](#)

[26.24.03.05B\(5\)](#)

[26.24.04.03B](#)

.03 Upland Disposal of Dredged Material.

A. Exemptions.

- (1) Previously Approved Disposal Facility. The requirements of §§B—C of this regulation may be waived for a dredge disposal facility previously approved by the Department if it can be demonstrated that the facility is capable of adequately containing the dredged material. Before authorizing the use of a previously approved upland disposal facility, the Department may require:
 - (a) A written report stating that the facility is capable of accepting the volume of material to be dredged considering freeboard constraints, bulking, and remaining capacity;
 - (b) An evaluation regarding the safety and effectiveness of the facility to impound additional dredge material, and stability of outlet structures and embankments; and
 - (c) A currently approved soil conservation district plan.
- (2) Landfills. Use of an existing landfill may be approved by the Department, and the requirements of §§B—C of this regulation may be waived, if the licensee submits:
 - (a) Documentation that the landfill proposed to be used is being operated in full compliance with local, State, and federal regulations; and
 - (b) Written approval from the landfill owner, or the owner's legal representative, accepting the quantity and type of material to be dredged.

(3) Nonforested Upland Fields. Use of nonforested upland fields may be approved by the Department, and the requirements of §§B—C of this regulation may be waived, if:

(a) The elevation of the dredge material is less than 3 feet in height; and

(b) The applicant submits:

(i) An approved sediment and erosion control plan from the soil conservation district;
and

(ii) Written approval from the property owner, or the owner's legal representative,
accepting the quantity and type of material to be dredged.

B. General Requirements.

(1) In addition to the requirements of [Regulation .02 of this chapter](#) and [COMAR 26.24.02.02](#), an applicant proposing to dispose of dredged material on upland is required to submit the following information at the time of application:

(a) Grain size analysis;

(b) A detailed dredge disposal plan that includes the proposed disposal area and:

(i) Property lines;

(ii) Existing and proposed topography and bathymetry;

(iii) Mean high water line;

(iv) Location of all tidal and nontidal wetlands and tributaries within 100 feet of any site disturbance;

(v) Limits of critical area buffers as defined in [COMAR 27.01.09](#), [COMAR 27.02.05](#), and the State-approved critical area program of a local jurisdiction;

(vi) Stabilized access to the site;

- (vii) The method of dredge material transport to the disposal site, including the alignment of the pipe or the proposed route and staging areas as appropriate;

- (viii) Spillway location;

- (ix) Sediment and erosion control plan approval by the local soil conservation district; and

- (x) A vicinity map identifying the area to be dredged, and the surrounding land areas and water bodies within 100 feet of any disturbance;

- (c) Proof of ownership or right to use the disposal site, including:

- (i) An executed deed conveying title of the site to the licensee;

- (ii) An executed easement;

- (iii) Written consent of the landowner; or

- (iv) A fully executed option agreement, long-term lease agreement, or contract sale of the site;

- (d) Methods to ensure that water discharged from the disposal area does not adversely impact water quality, tidal wetlands, or aquatic habitat;

- (e) Methods to protect waters during construction operation and dewatering; and

- (f) Methods to control or divert runoff and erosion from upland disposal sites.

C. Based on project size and scope, environmental sensitivity of the project site, potential adverse impacts to the environment, and the welfare and safety of the public, the Department may, with notice to the applicant by telephone, letter, or meeting, request the information in §C(1)—(5) of this regulation, in addition to other requirements of this subtitle. This information is required for all dredging projects proposing to dispose of hydraulically dredged material in a contained placement site. The Department recommends that an applicant consult with the Department before developing and submitting the following information listed in §C(1)—(5) of this regulation:

- (1) Composition of dredge material;
- (2) An analysis of alternative disposal methods, including beneficial uses and site selection;
- (3) A geotechnical evaluation or more detailed report prepared in support of the project which:
 - (a) Demonstrates feasibility of the site for the intended use; and
 - (b) Provides geotechnical information regarding on-site soils intended for embankment construction, with the unified soil classification system being used to identify all materials intended for embankment construction,
 - (c) Provides geotechnical recommendations regarding the degree of embankment compaction to be achieved, design provisions to address hydrologic conditions at the site, and any other special provisions to address seepage control including the use of impermeable liners;
 - (d) Identifies the location and results of all soil borings taken along the centerline of the proposed embankment and the area from which embankment material will be obtained, with a sufficient number of soil borings being taken to evaluate material quality and availability.
 - (e) Summarizes all geotechnical sampling information shown on the design plans including construction requirements that address unique surface and subsurface conditions of the site; and
 - (f) References design standards;
- (4) The type and settling characteristics of sediments to be dredged based upon the “Standard Method of Particle Size Analysis of Soils, AASHTO Designation T 88-90”, which is incorporated by reference as found in Standard Specifications for Transportation Materials and Methods of Sampling and Testing, Part II Tests, Fifteenth Edition, American Association of State Highway and Transportation Officials, (1990); and
- (5) A detailed plan including:

- (a) Notes related to vegetative stabilization, sediment and erosion control, and water quality;
- (b) Temporary and permanent vegetative stabilization specifications;
- (c) A detailed sequence of construction and operation;
- (d) A water quality monitoring schedule;
- (e) Discharge return route to tidewater and outfall protection;
- (f) Drainage swales;
- (g) Utilities;
- (h) Sediment and erosion controls;
- (i) Identified ecologic, archaeologic, or historic features;
- (j) Limits of disturbance and stockpile areas;
- (k) Cross section, height, and settlement of embankments;
- (l) Stage-storage curves or table;
- (m) Inflow point or points;
- (n) Outlet structures and the barrel location in the embankment;
- (o) Seepage controls;
- (p) Details and dimensions of dewatering structure;
- (q) Barrel type, size, and specifications and methods to obtain watertight joints;
- (r) Signature and seal by a professional engineer licensed to practice in Maryland;

- (s) Location of all subsurface borings;
- (t) Date of plan or plan revision; and
- (u) Soil conservation district approval.

.04 Guidelines for Upland Disposal of Dredged Material.

A. Disposal sites shall be designed to have the least impact on:

- (1) Public safety;
- (2) Adjacent properties; and
- (3) The environment.

B. Dredged Material Placement Facilities.

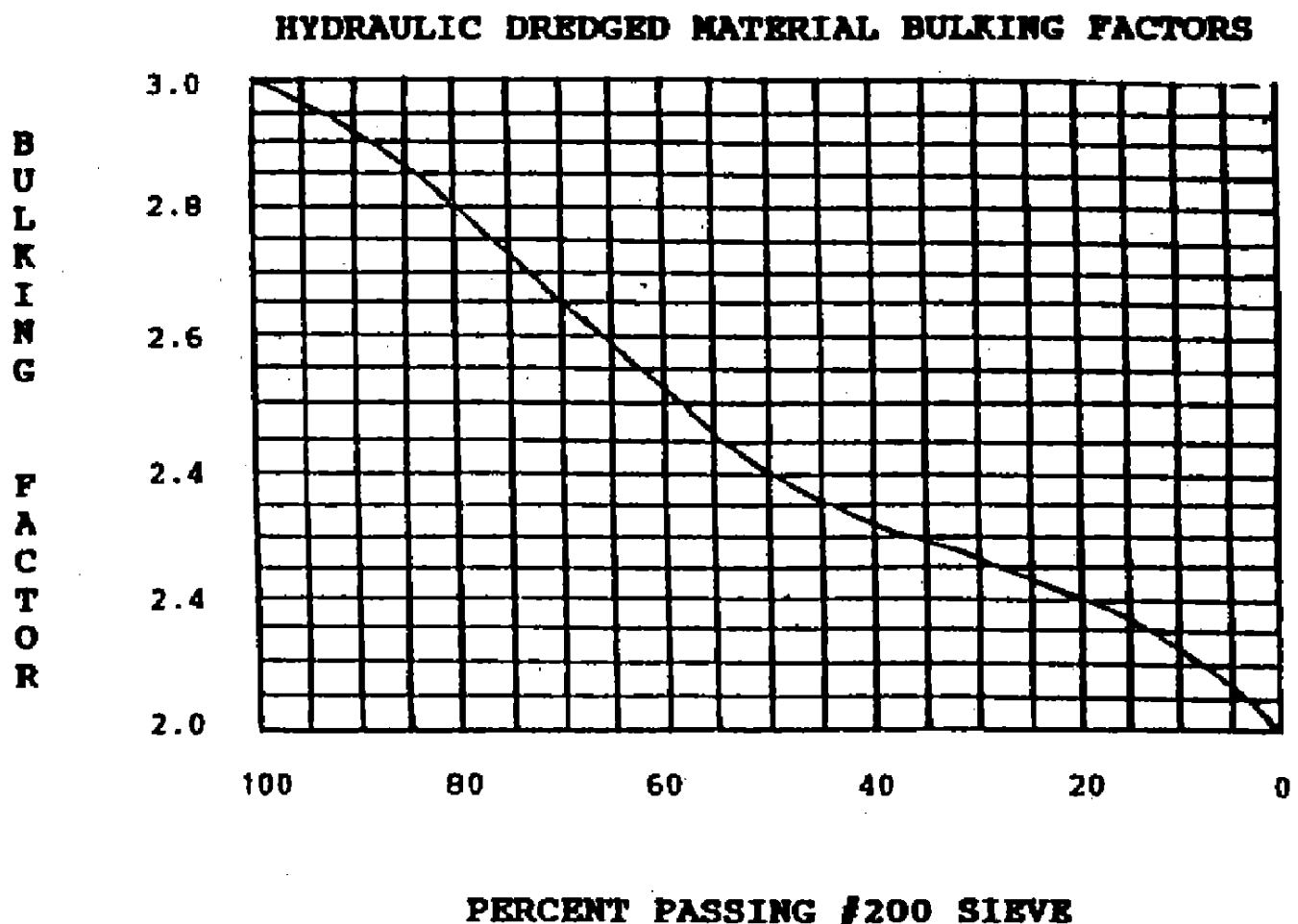
- (1) Dredged material placement facilities shall be designed with the specifications set forth in §B(2)—(12) of this regulation unless otherwise determined by the Department.
- (2) All plans, reports, and supporting documentation shall be dated, sealed, and signed by a professional engineer licensed to practice in Maryland. All revisions shall be noted on the plans.
- (3) Soils shall be classified using the unified soil classification system.
- (4) The minimum top width of an embankment is as follows:
 - (a) Less than 5 feet high embankment, top width = 4 feet;
 - (b) 6—10 feet high, top width = 6 feet; and
 - (c) Greater than 10 feet, top width shall be determined by the engineer approving the design.
- (5) A weir box and antifoatation devices shall have a minimum safety factor of 1.2.

- (6) There shall be a minimum 2-foot freeboard to the settled top of an embankment.
- (7) Embankment cross-section side slopes dimensions shall be a minimum of 2 horizontal:1 vertical inside and 3 horizontal:1 vertical outside.
- (8) The placement facility shall have a controlled overflow structure design that removes excess ponded water from the facility and that is capable of completely stopping the flow of any effluent. The weir overflow shall have an adjustable crest elevation to remove surface water while assuring that the effluent is in compliance with water quality requirements under [COMAR 26.08.02](#)—.04, as established by the Department.
- (9) The placement shall have a pipe outlet design that:
 - (a) Specifies that the minimum size is 8 inches in diameter;
 - (b) Includes measures to control scour and erosion;
 - (c) Provides an outlet channel that withstands the maximum outlet velocity anticipated;
and
 - (d) Provides watertight joints.
- (10) Size of Disposal Facility.
 - (a) The design of the disposal facility shall address effluent water quality based on surface area, embankment height, settling time, and sediment consolidation. When sizing the facility, allowances shall be incorporated in the design for ponding depth and freeboard requirements.
 - (b) A stage-storage curve or table is required.
 - (c) The size of the disposal facility shall be calculated using one of the procedures in §B(10)(d), (e), or (f) of this regulation.
 - (d) Formula:

- (i) $V = (Qd)(B)$, where V equals total disposal volume required in cubic yards, Qd is the quantity of material to be dredged in cubic yards, and B is the bulking (expansion) factor.
- (ii) Figure 1 in [§B\(10\)\(d\)\(iii\) of this regulation](#) shall be used when selecting a bulking factor for hydraulic dredgings. A bulking factor of 1.4 shall be used for mechanical dredging.

(INSERT IMAGE HERE)

(iii) Figure 1.



(iii) Figure 1 (Hydraulic Dredged Material Bulking Factors/Percent Passing #200 Sieve).

- (e) Size calculations may be made according to the "Confined Disposal of Dredged Material, EM 1110-2-5207, U. S. Army Engineer Waterways Experiment Station,

Vicksburg, MS (1987)", which is incorporated by reference.

- (f) Size calculations may be made according to the "Environmental Effects of Dredging Technical Notes, Confined Disposal Guidance for Small Hydraulic Maintenance Dredging Projects-Design Procedures, EEDP-02-8, U. S. Army Engineer Waterways Experiment Station, Vicksburg, MS (December, 1988)", which is incorporated by reference.

- (11) Soils containing organic matter shall be rejected for use in the embankment of disposal facilities.
- (12) The design of the disposal facility shall include regulating provisions for the flow of dredge material into the basin or increasing the depth of ponded water at the overflow weir if the concentration of suspended solids in the effluent increases above acceptable limits.

C. Construction Requirements.

- (1) The Department may require that construction of a disposal facility:
 - (a) Is under the supervision of a professional engineer licensed to practice in Maryland under [Business Occupations and Professions Article, Title 14, Subtitle 3, Annotated Code of Maryland](#); and
 - (b) Meets all provisions of this subtitle.
- (2) Materials failing to meet specifications in this subtitle shall be removed.
- (3) Design changes shall be reported to the Department for approval in accordance with [COMAR 26.24.02.07](#) before proceeding with construction.
- (4) When construction of a disposal facility is complete, the Department may require submittal of a report that includes:
 - (a) Date, location, and results of all material tests made;
 - (b) Narrative of construction, including any problems and design changes; and

(c) “As built” plans sealed and signed by a professional engineer licensed to practice in Maryland.

D. Conditions. Disposal facilities are prohibited in the critical area buffer unless approved in accordance with [COMAR 27.01.03.04B](#), COMAR 27.02.05.04B, and a State-approved critical area program of a local jurisdiction.

.05 Placement of Dredged Material in Open Water.

A. Applicants proposing marsh creation or beach nourishment projects are exempt from the requirements of [§B of this regulation](#).

B. Overboard Disposal.

- (1) In addition to the requirements of [Regulation .02 of this chapter](#) and [COMAR 26.24.02.02](#), an applicant proposing overboard disposal of dredged material into open water is required to submit the information in §B(2)—(8) of this regulation at the time of application.
- (2) An environmental study shall be submitted that includes measures to preserve or enhance the aesthetic, scenic, environmental, and natural resource values of the disposal site.
- (3) Test results of the physical and chemical parameters of the material to be dredged shall be submitted. Testing shall include physical characteristics of the material to be dredged, including material identification in accordance with the unified soil classification system and grain-size distribution.
- (4) Chemical characteristics, including the concentration of metals, organic compounds, oil and greases, nutrients, bacteria, and toxic compounds and their potential short-term and long-term release into the water column shall be submitted.
- (5) A current bathymetric survey of the site where the proposed dredged material is to be placed, in accordance with the criteria of [Regulation .02B\(3\) of this chapter](#), shall be submitted. In addition, the survey shall meet the following criteria:
 - (a) Soundings shall be taken in sufficient quantity to clearly identify low point elevations within 500 feet beyond the limits of the proposed project; and

(b) Survey data shall be plotted at a scale not less than 1 inch equals 200 feet.

(6) A plan shall be submitted which depicts the following:

(a) Adjacent land features;

(b) Existing navigation channels;

(c) Archaeological sites; and

(d) Permanent structures that extend into State waters.

(7) A hydrodynamic study of the impacts of the potential long-term movement of all material placed in tidal waters shall be submitted.

(8) A monitoring program shall be submitted that includes the collection and analysis of data before, during, and after the disposal operation, including:

(a) Aquatic biota, including benthos, shellfish, and finfish;

(b) Water quality parameters, including temperature, salinity, dissolved oxygen, conductivity, and pH;

(c) Turbidity within the disposal site and specified adjacent areas;

(d) Nutrients, including ammonia and phosphate;

(e) An assessment of volume reductions in the dredged material following placement, including sediment resuspension and transport through tidal and wave current interactions, fluid mud movement, and material consolidation; and

(f) An assessment of the post-depositional benthos community recolonization.

C. Beneficial Uses of Dredged Material. Dredged material may be allowed for use in establishing substrate for marsh creation projects and beach nourishment projects, if the following parameters are met:

- (1) The dredged material is equal to or larger in size than sediments at the placement location, unless measures are taken to control its movement, including:
 - (a) Breakwaters;
 - (b) Groins; or
 - (c) Other similar structures;
- (2) The dredged material is relatively free of organic material; and
- (3) It can be documented that the site is properly suited to maintain the sediments placed at the site.

D. Design Guideline Requirements for Overboard Disposal and Beneficial Use of Dredged Material.

- (1) Proposed material placement may not cause adverse impacts to existing navigation channels, longshore current patterns, or adjacent properties.
- (2) Dredged material may not contain more than 10 percent silts and clays unless measures are taken to control the dredged material's movement as described in [§C\(1\) of this regulation](#).
- (3) Floating debris or other objects shall be prevented from entering tidal waters.
- (4) Turbidity shall be minimized during the disposal operation.
- (5) Adverse impacts on fish spawning, nursery, and migration patterns shall be prevented.
- (6) Adverse impacts on commercial and sport fishing shall be minimized.
- (7) Adverse impacts on vegetated tidal wetlands, submerged aquatic vegetation, charted natural oyster bars, and anadromous fish spawning and nursery grounds shall be minimized.

.06 Filling.

- A. In addition to the requirements of [COMAR 26.24.02.02](#), an applicant proposing to fill State or private tidal wetlands for purposes other than shore erosion control as described in [COMAR 26.24.04.01](#) shall submit an 8-1/2-inch by 11-inch site plan drawn to a minimum scale of 1 inch equals 100 feet depicting the following information:
- (1) Fill location referenced to existing landmarks;
 - (2) Location of pilings and associated structures;
 - (3) Existing topography and bathymetry that is referenced to mean low water;
 - (4) Property lines;
 - (5) Land use features;
 - (6) Type of fill;
 - (7) Surface water bodies including swales;
 - (8) Location of all tidal and nontidal wetlands;
 - (9) Mean high water line;
 - (10) Utilities; and
 - (11) A vicinity map that identifies the surrounding land areas and water bodies in the vicinity of the project.
- B. Based on project size and scope, environmental sensitivity of the project site, and potential adverse impacts to tidal wetlands, the Department may, with notice to the applicant by telephone, letter, or meeting, require information in addition to that in [§A of this regulation](#). The Department recommends that an applicant consult with the Department before developing and submitting the following information:
- (1) An alternatives analysis of the proposed project, including the “no action” and other alternatives that avoid and minimize adverse impacts on tidal wetlands, with the analysis

including an evaluation of alternatives that have the least impact on public safety, adjoining properties, and the aquatic environment;

(2) An estimation of the public and private benefits from the project;

(3) Additional site plan information, including;

(a) Location of any submerged aquatic vegetation;

(b) Location of shellfish beds;

(c) Limits of critical area buffer as defined in [COMAR 27.01.09.01](#);

(d) Other significant ecological or historical features; and

(e) Location of all subsurface borings or other tests associated with any feasibility report prepared for the project;

(4) Predicted impacts of the fill on tidal wetlands, water quality, and aquatic habitat, including leaching or dispersion of pollutants;

(5) Methods to protect surface water and ground water from pollution;

(6) A statistical comparison between existing beach sediments and the proposed borrow material for beach nourishment and marsh creation projects;

(7) Storm drain plans, details, and supporting documentation, reports, and design calculations;

(8) Methods to control upland runoff; and

(9) Methods to ensure that the fill does not adversely affect water quality during and after construction.

C. Reclamation of Lost Upland. Projects designed to reclaim lost upland by filling shall meet the following requirements:

- (1) A person who is the owner of land bounding on tidal water is entitled to reclaim upland lost by erosion or avulsion during the person's ownership of the land to the extent of provable boundaries;
- (2) The right to reclaim lost upland relates only to upland lost after January 1, 1972; and
- (3) The burden of proof that the loss of upland occurred after January 1, 1972 is the responsibility of the owner of the land, and the riparian property owner may demonstrate the loss of upland through the use of historical photographs and land survey data.

D. Beach Nourishment. Beach nourishment projects shall meet the following requirements:

- (1) The fill material grain size shall be equal to or greater in grain size and character to the existing beach material, or determined otherwise to be compatible with existing site conditions and acceptable to the Department;
- (2) The fill material shall be relatively free of organic material, floating debris, or other objects;
- (3) Silt and clay fills that change the sandy nature of the existing beach materials are not acceptable;
- (4) Gravel fill may be acceptable, if particle sizes are equal to or greater than the existing beach materials; and
- (5) Fill material shall be placed above the mean high water line before final grading to achieve the desired beach profile, unless site conditions prohibit the placement of fill material above the mean high water line and specific measures are designed to prevent material from washing away from the site.

E. Storm Drain Projects.

- (1) Exemptions. The following storm drain projects are exempt from the design guidelines of [§E\(2\) of this regulation](#):
 - (a) The extension of storm drains which directly discharge into tidal wetlands through new or replacement shore erosion control structures; and

(b) Storm drain projects which manage runoff from an individual lot with one dwelling.

(2) Design Guidelines Requirements.

(a) New storm drain systems shall be designed to manage the rate of runoff and improve water quality. At a minimum, a 10 percent improvement in water quality shall be achieved.

(b) Storm drain systems shall:

(i) Comply with applicable State or local design standards;

(ii) Be designed to follow natural drainage patterns and incorporate swales, filter strips, and sediment traps wherever feasible; and

(iii) Include measures to prevent scouring from increased water velocities at their outlet.

(c) The licensee or permittee is responsible for the removal of any sediment deposited in the waters of the State as a result of the construction of an approved storm drain system or on-site grading and development activities.

(d) The licensee or permittee shall submit a preconstruction depth survey of any tidal wetlands within the project vicinity for approval by the Department before construction. The survey shall be referenced to mean low water at a fixed benchmark on the adjoining land, or an adjoining structure such as a bulkhead.

(e) The licensee or permittee shall submit a post-construction depth survey for review and verification by the Administration at any time after construction has begun, if required by the Administration. The survey shall be referenced to the same benchmark and elevation used for determining preconstruction depths.

Cross References

[26.24.03.02C\(9\)](#)

Chapter 04 Structures

Administrative History

Effective date: February 14, 1994 (21:3 Md. R. 184)

(Wetlands regulations before February 14, 1994, appeared under COMAR 08.05.07)

Regulation .14 amended as an emergency provision effective August 1, 1995 (22:17 Md. R. 1309); amended permanently effective December 4, 1995 (22:24 Md. R. 1894)

Regulations [.01](#)—[.04](#) were recodified from Regulations .12, .14, .16, and .17, respectively, under COMAR 08.05.05 Tidal Wetlands, June 1996

Chapter revised as an emergency provision effective March 9, 2007 (34:7 Md. R. 695); emergency expired September 5, 2007

[Regulation .01](#) repealed and new Regulation .01 adopted effective February 4, 2013 (40:2 Md. R. 73)

[Regulation .01-1](#) adopted effective February 4, 2013 (40:2 Md. R. 73)

[Regulation .01-2](#) adopted effective February 4, 2013 (40:2 Md. R. 73)

[Regulation .01-3](#) adopted effective February 4, 2013 (40:2 Md. R. 73)

[Regulation .01-4](#) adopted effective February 4, 2013 (40:2 Md. R. 73)

Authority

.01 Shore Erosion Control.

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

- (1) There is no evidence of erosion and the applicant is unable to document a claim of erosion;
- (2) Existing State or private tidal wetlands are effectively preventing erosion; or
- (3) The proposed project may adversely affect:
 - (a) An adjacent property;
 - (b) Navigation, and the applicant has not adequately offset these impacts;
 - (c) Threatened or endangered species, species in need of conservation, or significant historic or archaeological resources; or
 - (d) Natural oyster bars or private oyster leases.

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

- (1) No action; and
- (2) Relocation of structures threatened by erosion.

C. Except as authorized under [§E of this regulation](#), if the Department is satisfied that neither option listed under [§B of this regulation](#) is feasible, the person shall use a nonstructural shoreline stabilization measure.

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

- (1) A breakwater, sand containment structure, or sill that is acceptable to the Department; or
- (2) A beach that is acceptable to the Department, when used for the purpose of habitat enhancement.

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

- (1) In an area identified as appropriate for structural shoreline stabilization measures by the Department, in coordination with the Maryland Department of Natural Resources, and shown on a map approved by the Department under [Regulation .01-1 of this chapter](#); or
- (2) At a site where the person has obtained a waiver from the Department in accordance with [Regulation .01-2 of this chapter](#) by demonstrating to the Department's satisfaction that a nonstructural shoreline stabilization measure is not feasible.

Cross References

[26.24.03.02D\(3\)\(c\)](#)

[26.24.03.06A](#)

[26.24.04.01-2A](#)

[26.24.04.01-3A\(7\)\(a\)](#)

[27.01.04.03A](#)

[27.01.04.03B](#)

[27.01.04.03D](#)

[27.02.05.05D\(1\)](#)

[27.02.05.05D\(2\)](#)

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

- (1) Display the areas that are appropriate for structural shoreline stabilization measures; and
- (2) Are readily available to the public.

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

- (1) The presence or absence of a natural shoreline;
- (2) Proximity to channels;
- (3) As determined by the Department based on site conditions, the presence of high energy waves or a severely eroding shore that would render a nonstructural stabilization measure infeasible;
- (4) The extent to which a water-dependent facility requires a bulkheaded shoreline for loading and unloading operations, such as the berthing of commercial vessels;
- (5) Impacts to rare, threatened and endangered species, and species in need of conservation; and
- (6) Any other site-specific factor, as determined relevant by the Department.

Cross References

[26.24.04.01E\(1\)](#)

.01-2 Nonstructural Shoreline Stabilization Waiver Process.

A. A person who applies for a waiver from the requirement to construct a nonstructural shoreline stabilization measure under [Regulation .01C of this chapter](#) shall:

- (1) Use the form provided by the Department; and

- (2) Complete the waiver process before submitting an application to obtain a wetlands license from the Board or a general wetlands license, wetlands permit, or general wetlands permit from the Department under [COMAR 26.24.02](#).
- B. When evaluating a person's request for a waiver, the Department shall determine whether the site is suitable to support a nonstructural shoreline stabilization measure by considering:
- (1) The width of the waterway;
 - (2) The bottom elevation and slope at mean low water;
 - (3) The bottom substrate;
 - (4) The fetch;
 - (5) The bank elevation and orientation;
 - (6) The degree of erosion;
 - (7) The height and regularity of tides;
 - (8) Any other physical constraints that would impede or prevent successful establishment of a nonstructural shoreline stabilization measure; and
 - (9) Any other relevant environmental resources, including a Critical Area buffer and other plant, fish, and wildlife habitat, and the likely adverse or protective impact of a nonstructural shoreline stabilization measure on those resources in comparison to the likely adverse or protective impact of a structural shoreline stabilization measure on those resources.
- C. A person may obtain a waiver from the requirement to use a nonstructural shoreline stabilization measure if, to the Department's satisfaction, a structural shoreline stabilization measure is the only feasible alternative that will protect and maintain the person's shoreline.

Cross References

[26.24.04.01E\(2\)](#)

.01-3 Application Requirements.

A. In addition to the requirements of [COMAR 26.24.02.02](#), a person proposing a shoreline stabilization measure shall submit the following information at the time of application:

(1) An 8-1/2 by 11-inch plan, with dimensions, of the proposed project showing:

(a) Location;

(b) Land ownership;

(c) Existing and proposed contours;

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

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

(f) Existing and proposed structures, including:

(i) A septic system;

(ii) A utility-related structure;

(iii) A building;

(iv) A road;

(v) Drainage features; and

(vi) An equipment storage area;

(g) Adjacent shoreline features;

- (h) Best management practices to control any upland runoff which contributes to erosion;
 - (i) Type of materials to be used in construction; and
 - (j) Site bathymetry;
- (2) A waiver, if the project qualifies for a structural shoreline stabilization measure under [Regulation .01-2 of this chapter](#);
- (3) Photographs of the project site, the adjoining shoreline, and existing structures;
- (4) In accordance with the requirements of [COMAR 27.01.09.01-3](#), the proposed major or minor buffer management plan that will address disturbance of the buffer, including any disturbance to stabilize a bank or slope or to control erosion above mean high water;
- (5) Critical Area Buffer Notification Form signed by the property owner;
- (6) If required by the Department, a design report that includes:
- (a) A foundation investigation;
 - (b) A structural analysis;
 - (c) The structural properties of the materials to be used to construct the proposed project;
 - (d) The estimated economic, environmental, and other benefits to be derived from the project;
 - (e) The design life expectancy of the project;
 - (f) The sequence of construction;
 - (g) A description of the method of construction that includes:
 - (i) Estimated beginning and completion dates;
 - (ii) The equipment to be used;

- (iii) The proposed access to the site;
 - (iv) The foundation excavations;
 - (v) The means for diverting water away from the project during construction; and
 - (vi) The means for controlling the dewatering discharges;
 - (h) Specific references and benchmarks used by the designer;
 - (i) Estimated impact, if any, of the project on adjacent properties;
 - (j) Estimated impact, if any, of the project on public access to the shore;
 - (k) Written specifications for the quality of the materials and methods of construction to ensure that design criteria will be met or exceeded;
 - (l) A description of how the reclamation of lost upland meets the requirements of [COMAR 26.24.03.06C](#), if applicable; and
 - (m) A description of measures to be taken to avoid and minimize impacts to plant, fish, and wildlife habitat before, during, and after construction; and
- (7) If required by the Department, an alternatives analysis, including:
- (a) The justification for rejecting the options required to be considered under [COMAR 26.24.04.01B](#);
 - (b) The justification for the selected shoreline stabilization measure; and
 - (c) For a structural shoreline stabilization measure, proof of consideration of each alternative, including an analysis of habitat impact for each alternative, in the following order of preference:
 - (i) Beach nourishment;
 - (ii) Breakwater;

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

(iv) Revetment; and

(v) Bulkhead.

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

.01-4 Design of Structural Shoreline Stabilization Measures.

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

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

(2) Minimize erosion and undesirable shoaling;

(3) Use materials that are:

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

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

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

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

(5) Prevent damage due to scour; and

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

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

- (1) The encroachment is limited to that which is structurally necessary and is verified by a design report or other documentation, as required by the Department; and
- (2) For a bulkhead:
 - (a) The encroachment is three feet or less beyond the mean high water line; and
 - (b) Other nonstructural and structural shoreline stabilization measures are infeasible, as determined by the Department.

.02 Piers and Boathouses.

- A. Exemptions. Private noncommercial piers, boat hoists or lifts, mooring piles, and osprey poles that meet all of the following criteria are exempt from the requirement to obtain a license from the Board of Public Works or a license or permit from the Department under this subtitle:
 - (1) Only one pier per property;
 - (2) The width of the main section of the pier may not be greater than 6 feet;
 - (3) Fixed or floating platforms, including Ts, Ls, and step-down platforms may not:
 - (a) Exceed 200 square feet in area including the segment of the main pier section to which the platform is attached;
 - (b) Be located over vegetated tidal wetlands, including submerged aquatic vegetation; and
 - (c) Be constructed on the landward 50 percent of the main pier section, except in canals and similar narrow water bodies as considered appropriate by the Department.
 - (4) The project may not include more than six mooring piles or create more than four boat slips;
 - (5) The project may not include more than two osprey poles per property;
 - (6) A maximum of two, 3-foot wide finger piers not exceeding 50 percent of the proposed slip length may be constructed on the landward side of the end of a private pier;

- (7) The project shall meet the minimum extended property line setback requirements established by the local jurisdiction in which the activity is proposed;
- (8) The project may not be constructed in a location that will impede navigation or block ingress to and egress from adjoining properties;
- (9) The project may not obstruct the flow of the tide;
- (10) The pier may not extend within 100 feet of a ski course approved by the Department;
- (11) The pier may not extend more than 100 feet channelward of the tidal wetlands boundary line, or a distance of 25 percent of the width of the waterway, whichever is less;
- (12) Piers over vegetated tidal wetlands shall be constructed a minimum of 3 feet above the wetlands; and
- (13) The owner or owner's agent shall notify the Department on a form provided by the Department within 10 days before construction of the pier or any auxiliary structure.

B. Pier Criteria.

- (1) The Department may issue, deny, modify, or condition a license in accordance with [COMAR 26.24.01.03](#) for the construction of fixed or floating piers, decks, walkways, and related structures. The Department may not issue a license for a fixed or floating pier, deck, walkway, or related structure which adversely affects shallow water habitat, submerged aquatic vegetation, shellfish, or vegetated tidal wetlands. The Department shall use all the criteria in §B(2)—(4) of this regulation in making final decisions on fixed or floating piers, decks, walkways, or other related structures not exempted in [COMAR 26.24.02.01C\(7\)](#) and [§A of this regulation](#).
- (2) Private Noncommercial Piers.
 - (a) The main section of a pier may not be wider than 6 feet.
 - (b) A pier shall meet the minimum extended property line set-back requirements established by the local jurisdiction in which the activity is proposed.

(c) A pier may not:

- (i) Be constructed in a location that will impede navigation or block ingress and egress to adjoining properties;
- (ii) Obstruct the flow of the tide;
- (iii) Extend within 100 feet of a ski course approved by the Department;
- (iv) Extend more than 25 percent across a waterway unless it is determined by the Department that the pier will not adversely affect navigation, recreation, aesthetics, or the biological character of the area; or
- (v) Include more than six mooring piles, four boat lifts or hoists, or four boat slips.

(d) Piers over vegetated tidal wetlands shall be constructed a minimum of 3 feet above the wetland substrate.

(3) Private, Noncommercial Pier Platforms. The total area of fixed or floating platforms such as Ts and Ls, and step-down platforms:

- (a) Shall include the segment of the main pier section to which the platform is attached and may not exceed 200 square feet;
- (b) May not be located over vegetated tidal wetlands, including submerged aquatic vegetation; and
- (c) May not be constructed on the landward 50 percent of the main pier except in canals and other similar narrow water bodies as deemed appropriate by the Department.

(4) Private, Noncommercial Finger Piers. Two, 3-foot wide finger piers may be constructed on the landward side of the end of the main pier. Finger piers may be constructed in addition to other fixed or floating platforms and may not be included in calculating the area for purposes of the exemption in [§A\(3\) of this regulation](#).

C. Boathouses.

(1) Routine repair and maintenance of existing boathouses is exempt under [COMAR 26.24.02.01C\(5\)](#) if there is no increase in width, length, height, or channelward encroachment.

(2) Except at commercial marinas, a person may not construct a new boathouse in or over State or private wetlands.

D. Appeals. A person aggrieved by a final decision of the Administration may appeal the decision in accordance with [COMAR 26.24.02.08](#).

Cross References

[26.24.02.01C\(7\)](#).

.03 Marinas.

A. In addition to the requirements of [COMAR 26.24.02.02](#), an applicant for a new marina or marina expansion is required to submit the following information at the time of application:

(1) An alternatives analysis, including the alternative of no action, with the potential impacts on water quality, tidal wetland values, and aquatic habitat discussed for each alternative for:

(a) Marina location;

(b) Construction methods;

(c) Configuration of project components;

(d) Dimensions; and

(e) Related facilities;

(2) A bathymetric survey of the proposed marina site;

(3) A description of the marina facility, including the number of slips, breakwaters, or jetties;

(4) A description of:

(a) Marina support facilities including:

- (i) Parking;
- (ii) Storm water management facilities;
- (iii) Concessions;
- (iv) Boat sales;
- (v) Boat repair;
- (vi) Hauling;
- (vii) Dry storage;
- (viii) Sewage pumpout facilities;
- (ix) Utilities;
- (x) Swimming pools;
- (xi) Restaurants; and
- (xii) Lodging facilities; and

(b) Techniques to minimize the adverse environmental impacts of the facilities in [§A\(4\)\(a\) of this regulation](#);

(5) A description of the impact of the marina on State or federal navigation channels located within 3,000 feet of the project;

(6) A description of the existing site characteristics, including water quality in the project area;

- (7) Location of materials such as submerged cables, piles, pipelines, or debris to be removed during construction, as well as measures for disposal;
 - (8) Location of boat repair, cleaning, wet and dry storage facilities, fueling facilities, and other boat service facilities;
 - (9) The location of the areas in which antifouling compounds for boat bottom painting, waste oil, washwater, and other pollutants are used;
 - (10) A description and plan of the method proposed to manage water quality associated with storm water runoff; and
 - (11) A flushing study for basins dredged into upland.
- B. If the proposed new marina or marina expansion includes dredging and dredge disposal, the information requirements and design guidelines in [COMAR 26.24.03.02](#)—.05 shall be met.
- C. Based on project size and scope, environmental sensitivity of the project site, and potential adverse impacts to tidal wetlands, the Department may, with notice to the applicant by telephone, letter, or meeting, require information in addition to §§A and B of this regulation. The Department recommends that an applicant consult with the Department before developing and submitting the following information:
- (1) The predicted short-term and long-term direct and indirect impacts on water quality, tidal wetland values, and aquatic habitat;
 - (2) Increased noise levels, boat wakes, pollutant loading, and other project-related impacts;
 - (3) Possible interference with water currents and impacts on littoral drift, sediment deposition, and shoaling;
 - (4) Impacts on water circulation and flushing within the project area;
 - (5) Other alterations of tidal wetlands and the impact on biological productivity;
 - (6) Schedules, monitoring programs, or other provisions to be used during construction, operation, and maintenance to reduce or avoid adverse environmental impacts and to keep

erosion, turbidity, and siltation at the lowest possible levels;

(7) Special provisions to be used to enhance the environment;

(8) The long-term public gain expected from the project such as:

(a) Employment;

(b) Tax yields;

(c) Reduction of existing pollution; and

(d) Enhancement of public access to the water;

(9) Estimated frequency of maintenance dredging, the volume of materials to be dredged over the life of the project, and site or sites to be used for disposal of these materials;

(10) A description of how the speed, numbers, and directional movements of boat traffic will:

(a) Be controlled in and out of the marina;

(b) Impact commercial navigation; and

(c) Impact boats kept at the proposed marina facility, with the techniques to minimize the adverse impact of boat wakes on the proposed facility being addressed; and

(11) A plan to minimize oil spillage into the basin and to identify contingencies for oil spill containment and removal.

D. Pumpout Facilities.

(1) A person may not construct additional slips at an existing property that would result in a total capacity of more than ten slips or construct a new marina with more than ten slips unless:

(a) The marina has a wastewater collection and treatment system that is adequate to handle any existing and proposed flows and is approved by the local health

department;

(b) There is a pumpout station on-site that is adequate to handle the increased sewage capacity from vessels that use the marina and that is operable and accessible at reasonable times; or

(c) The marina has a contract with a pumpout facility that is:

(i) Located not more than 2 miles from the marina;

(ii) Adequate to handle the increased sewage capacity from vessels that use the marina, as determined by the local health department; and

(iii) Operable and accessible at reasonable times.

(2) Wastewater collection and treatment facilities may be required, in consultation with the Department, if the marina:

(a) Has a capacity of more than 25 slips;

(b) Has a capacity of ten or more slips that are designed to accommodate boats of 25 feet or more in length; and

(c) Is located off the main stem of the major river tributaries of the Chesapeake Bay and coastal bays or in sensitive areas identified for no pollutant discharge by the State.

E. Vessel Mooring Facilities. The placement of buoys, group mooring buoys, and other apparatus used to secure, berth, or moor vessels in the waters of the State shall conform to the requirements of [COMAR 08.04.13](#).

F. Marina Management Plan. The location of all new marinas or expansion of an existing marina shall be consistent with a marina management plan, if any, that has been approved by the local government. If there is a conflict between a local marina management plan and this subtitle, the more stringent regulation takes priority.

G. Marina Siting Guidelines.

- (1) New marina development and the expansion of existing marinas shall be located:
 - (a) To avoid and minimize impacts to tidal wetlands and other aquatic resources; and
 - (b) On waterways with strong flushing characterized by:
 - (i) A bottom which slopes from headwaters to mouth without sumps or other features which inhibit complete water exchange;
 - (ii) The waterway has an unobstructed entrance; and
 - (iii) The waterway has few branches, coves, and other features which inhibit complete mixing.
- (2) New marina development and expansion of existing marinas may not be located in areas where:
 - (a) The natural depth is 4.5 feet or less at mean low water unless the marina basin is excavated from upland; and
 - (b) Their presence would adversely impact submerged aquatic vegetation, productive macroinvertebrate communities, shellfish beds, fish spawning or nursery areas, rare, threatened, or endangered species, or species in need of conservation, or historic waterfowl staging areas.
- (3) Expansion of existing marinas is favored over development of new marinas.

Cross References

[27.01.03.06B\(1\)](#)

[27.01.03.07B\(1\)\(b\)](#)

[27.02.05.04-3B\(2\)\(a\)](#)

.04 Conduits, Cables, Pipes, or Other Crossings of State Tidal Wetlands.

The construction, reconstruction, alteration, or addition to any conduit, cable, pipeline, intake or discharge pipe, trestle, or other similar device, structure, or apparatus, over, on, in, or under State tidal wetlands or waters of the State requires a license. A license issued for this construction is subject to the compensation requirements of [COMAR 23.02.04](#) as may be assessed by the Board.

Chapter 05 Mitigation

Administrative History

Effective date: February 14, 1994 (21:3 Md. R. 184)

(Wetlands regulations before February 14, 1994, appeared under COMAR 08.05.07)

Regulations .01 and .02 were recodified from Regulations .21 and .22, respectively, under COMAR 08.05.05 Tidal Wetlands, June 1996

Authority

Environment Article, Title 16, Annotated Code of Maryland

.01 Mitigation.

- A. Goal. It is the goal of the State to preserve tidal wetlands, prevent their loss and despoliation, and strive for a net resource gain in tidal wetlands acreage and function.
- B. Mitigation Requirements.
 - (1) An applicant for a license or permit shall design a project to first avoid and then minimize the loss of tidal wetlands. If an applicant demonstrates that alteration of tidal wetlands cannot be avoided to accomplish the project, the Department shall:
 - (a) Recommend that the Board require mitigation as a condition of a State tidal wetlands license; or

(b) Require mitigation as a condition of a private tidal wetlands permit.

(2) Mitigation projects shall be designed to replace the values and functions associated with the wetlands to be impacted.

(3) Mitigation projects shall be connected to existing tidal wetlands or tidal waterways. Projects may be located on multiple parcels. Projects shall be located according to the following geographic location in order of preference, unless otherwise determined by the Department:

(a) Locations on-site;

(b) Locations off-site in the:

(i) Immediate watershed subsegment where the tidal wetland loss occurred,

(ii) Watershed sub-basin where the tidal wetland loss occurred, or

(iii) State minor basin where the tidal wetlands loss occurred.

(4) Mitigation for the loss of tidal wetlands shall be considered in the following order of preference:

(a) Restoration;

(b) In-kind creation;

(c) Out-of-kind creation;

(d) Enhancement of existing tidal wetlands;

(e) Monetary compensation to the Wetlands Compensation Fund.

(5) Enhancement activities may be accepted in addition to tidal wetlands restoration or creation when the applicant has demonstrated to the satisfaction of the Department that enhancement provides additional protection or improves tidal wetlands functions. Activities may include:

(a) Enhancement of degraded tidal wetlands; or

(b) Preservation of existing tidal wetlands.

(6) The Department may recommend that the Board accept monetary compensation only if the Department determines that creation, restoration, or enhancement of tidal wetlands are not feasible alternatives.

(7) Mitigation requirements may be reduced or eliminated:

(a) For shore erosion control projects that meet all of the requirements of [COMAR 26.24.04.01](#); or

(b) If the proposed project provides a significant environmental benefit as determined by the Department.

(8) The Department may not base a final tidal wetland permit decision or tidal wetland license recommendation solely on the environmental benefits of a mitigation proposal or the financial benefits of a monetary compensation proposal.

(9) The Department may approve mitigation bank sites in consultation with the appropriate local, State, and federal agencies.

C. Standards.

(1) The Department may use acreage replacement ratios to determine the size of newly created, restored, or enhanced tidal wetlands as mitigation for the loss of existing tidal wetlands. Acreage replacement ratios are expressed as a relationship between two numbers. The first number is the acreage of tidal wetlands to be mitigated and the second is the acreage of tidal wetlands lost. Acreage replacement ratios for in-kind creation and restoration are as follows:

(a) Open water tidal wetlands—1:1;

(b) Emergent tidal wetlands—2:1;

(c) Scrub-shrub tidal wetlands—2:1;

- (d) Forested tidal wetlands—2:1; and
 - (e) Tidal wetlands habitat for rare, threatened, or endangered species, or species in need of conservation—3:1.
- (2) Out-of-kind creation and enhancement ratios are increased by a factor of 2.
- (3) A mitigation project, as built, shall meet the following plant survival criteria:
- (a) After 5 years, greater than 85 percent of the mitigation site shall be vegetated by planted species approved by the Department; and
 - (b) Allowances shall be made for natural species changes as long as the plant communities are similar to those lost.
- (4) In determining if mitigation activities will replace tidal wetlands acreage and functional losses, the Department shall consider the following:
- (a) Degree to which the mitigation activity replaces the functions of the lost tidal wetlands;
 - (b) Benefits of the mitigation activity in rehabilitating or maintaining tidal wetlands;
 - (c) Scope and extent of the mitigation activity;
 - (d) Proximity of the mitigation activity to the tidal wetlands loss;
 - (e) Technical merits of the mitigation activity and its likelihood of long-term success;
 - (f) Adverse impact of the mitigation activity on natural resources;
 - (g) Relationship of the mitigation activity to ongoing natural resource management activities; and
 - (h) Compatibility of the mitigation activity with approved comprehensive river or watershed management plans, if applicable.

D. Mitigation Plan.

(1) At a minimum, a mitigation plan shall contain the following information:

- (a) A plan view of the mitigation area drawn at a scale not smaller than 1 inch equals 50 feet, including the delineation of all existing and adjacent tidal and nontidal wetlands, submerged aquatic vegetation, and shellfish resources;
- (b) Existing and proposed elevations of the ground contours referenced to mean low water at the site;
- (c) Cross-section views if elevation changes are required to provide adequate substrate to support plant species;
- (d) The location and description of all existing and proposed tidal wetlands plants by species;
- (e) Photographs of the affected tidal wetlands, including the types of vegetation;
- (f) The proposed method of construction, including temporary or permanent access roads;
- (g) Location, type, and characteristics of all borrow or fill materials and method of site grading;
- (h) Construction schedule;
- (i) Method of final site stabilization;
- (j) A description of how the proposed mitigation project will replace the functions of lost tidal wetlands; and
- (k) Monitoring plan.

(2) A licensee or permittee shall implement the mitigation plan before or concurrent with the construction of the project unless otherwise directed by the Department.

- (3) A bond shall be recommended as a condition of a license or required as a permit condition to assure that mitigation is performed. The Department shall approve the form of the bond in accordance with [Regulation .02 of this chapter](#).

E. Monitoring Report.

- (1) A permittee or licensee shall submit annual monitoring reports for 5 years from the completion of the construction of the mitigation project, unless the permittee or licensee has received written notice from the Department that the monitoring requirements have been fulfilled in less than 5 years. The monitoring report shall include the following:
- (a) A description of how the mitigation project meets the mitigation project standards in this regulation;
 - (b) Photographs of the mitigation project;
 - (c) The commercial source of planting stock whenever planting is required;
 - (d) A description of modifications which have been made or need to be made to implement the mitigation plan necessary to meet this regulation; and
 - (e) An “as-built” site design plan shall be included in the first annual report, and subsequent reports shall detail any modifications to the “as built” plan.
- (2) The Department reserves the right to inspect the mitigation project at any reasonable time during the construction and required monitoring period, and any time after that to assess the long-term viability of the mitigation site.
- (3) Through written notification to the permittee or licensee, the Department may extend the required monitoring period for not more than an additional 3-year period, for a total of 8 years, if the mitigation project fails to comply with the standards in [§C of this regulation](#).

Cross References

[23.02.04.11A\(1\)](#)

[26.24.01.07B](#)

.02 Bonding for Mitigation Purposes.

- A. This regulation does not apply to any State, county, or municipal government, or to projects licensed by the Board.
- B. This regulation only applies to those projects proposed and permitted by the Department in private tidal wetlands.
- C. The bond is payable to the Department and conditioned upon fulfillment of mitigation monitoring requirements.
- D. Alternative Forms of Security.
 - (1) Instead of a surety bond, the Department may accept one of the following forms of security:
 - (a) A deposit of cash or negotiable bonds of the federal government having a market value equal to the bond amount accompanied by a written agreement of the bank to pay the State on demand in the event of forfeiture;
 - (b) A certificate of deposit equal to the required bond amount, issued by a bank in the State and with a written agreement from the bank to pay the State on demand in the event of forfeiture;
 - (c) An irrevocable letter of credit equal to the bond amount, issued by a bank or financial institution organized to do business in the State, that expressly states that the total sum is guaranteed to be available and payable directly to the State on demand in the event of forfeiture;
 - (d) The grant to the Department, in trust, of a deed, easement, or other interest in upland property owned by the permittee that has the same or greater monetary value than the selected mitigation site; or

(e) Fulfillment of mitigation requirements before completion of the permitted activity which results in the loss of tidal wetlands.

(2) The permittee shall submit to the Department the alternative form of security under this regulation, until authorized by the Department for release. Alternative forms of security may not be released until monitoring of the mitigation project has been successfully completed.

E. Amount of Bond.

(1) The amount of the bond for a permittee is \$50,000 per acre of tidal wetlands mitigation required under the permit, or in an amount determined by the Department.

(2) The permittee may request reduction of the bond amount by submitting a written request to the Department with a justification for reducing the bond amount, including estimated or actual costs to complete the mitigation project, and any other relevant information.

(3) The Department shall determine whether a lesser amount is sufficient to cover the cost of the mitigation project, taking into account the following:

(a) Number of acres to be mitigated;

(b) The cost of land in the area of the mitigation site;

(c) The proposed method of mitigation; and

(d) Any other relevant factors, including the likelihood of success of the project.

F. Liability under the bond continues until the Department determines that the monitoring requirements have been fulfilled, and the surety or financial institution receives written notice from the Department that the mitigation project was successfully completed.

G. A surety bond or other alternative form of security may be cancelled by the surety, bank, or other issuing entity when both of the following conditions are satisfied:

(1) The surety notifies the Department and the permittee of its intent to cancel the bond, in writing, by certified mail, not less than 90 days before cancellation; and

- (2) At least 45 days before the cancellation date indicated in the notice, the permittee files a replacement bond from a surety, bank, or other issuing entity to provide a substitute security which will be effective on the cancellation date indicated in the notice.

H. Bond Forfeiture.

- (1) The bond or other instrument securing compliance with the mitigation plan may be subject to forfeiture upon:
 - (a) Revocation of a tidal wetlands license or permit;
 - (b) Failure to comply with an administrative order; or
 - (c) Failure to comply with any element of the approved mitigation plan.
 - (2) The Department, in writing and by certified mail, shall notify the permittee, surety, or other financial institution of the Department's intention to initiate forfeiture proceedings and the grounds for forfeiture.
 - (3) The permittee, surety, or other financial institution has 30 days from receipt of the notice of forfeiture to show cause why the bond or other instrument may not be forfeited.
 - (4) On showing cause, the Department shall provide for a reasonable time for the permittee, surety, or other financial institution to correct the problem.
 - (5) If the permittee, surety, or other financial institution fails to show cause, the bond is forfeited nisi and the Department shall notify the permittee, surety, or other financial institution. If a showing of an intention to correct the problem in compliance with the mitigation plan is not submitted within 30 days from forfeiture nisi, the bond shall be forfeited absolute.
- I. If tidal wetlands are adequately protected, the Department may allow an applicant to post one bond under [Environment Article, §15-823, Annotated Code of Maryland](#) , or another Department program requiring bonding.
- J. A permittee may not conduct a regulated activity in a tidal wetland if the permittee previously forfeited a bond under this subtitle, unless the permittee repays the Department the cost of

completing the mitigation project in excess of the forfeited bond, plus interest at the rate set in [Courts and Judicial Proceedings Article, §11-107\(a\), Annotated Code of Maryland](#). If the mitigation project is still not completed, the permittee shall complete the mitigation project at the permittee's expense according to the approved mitigation plan.

Cross References

[26.24.01.06D\(1\)\(h\).](#)

[26.24.05.01D\(3\).](#)

Appendix F:
Code of Maryland Regulations (COMAR) Title 23

Chapter 04 State Tidal Wetlands Licensing Procedures

.01 Purpose.

- A. The purpose of this chapter is to advance the best interest of the State with respect to State tidal wetlands, including preserving the rights of riparian owners.
- B. The State holds State tidal wetlands in both a proprietary capacity and in sovereign trust for the benefit of the people of Maryland. In determining whether to issue a State tidal wetlands license, the Board of Public Works has the same discretion that any owner has in deciding whether to grant to another an interest in the owner's property.
- C. In applying this chapter to determine whether issuing a State tidal wetland's license is in the State's best interest, it is the public policy of the State, taking into account varying ecological, economic, developmental, recreational, and aesthetic values, to preserve the wetlands and prevent their despoliation and destruction.

.02 Scope.

- A. This chapter sets forth the procedures of the Board of Public Works for the licensing of all dredging, filling, or altering of State tidal wetlands. This includes the construction, reconstruction, or repair of structures, or of nonstructural shoreline stabilization measures, on State tidal wetlands.
- B. A license issued under this chapter does not convey ownership of lands or the affected air space, or diminish the full and free use and enjoyment by the public of the tidal waters of the State.
- C. This chapter does not change the title to submerged lands conveyed to private owners by the State or its predecessors.

- D. This chapter does not set forth the complete range of Board of Public Works' fiduciary and proprietary responsibilities relating to private uses of State wetlands. The Board of Public Works may, among other things, address these matters through easement, lease, deed, or other instrument to protect the State's interests or to convey an interest in State wetlands.

.03 Definitions.

- A. In this chapter, the following words have the meanings indicated.

B. Terms Defined.

- (1) "Administrator" means the Wetlands Administrator for the Board of Public Works.
- (2) "Board" means the Maryland Board of Public Works.
- (3) "Critical area" consists of the following areas, as indicated on the Statewide Base Map:
 - (a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide;
 - (b) All State and private wetlands designated under [Environment Article, Title 16, Annotated Code of Maryland](#); and
 - (c) All land and water areas within 1,000 feet beyond the landward boundaries of the resource identified under §B(3)(a) and (b) of this regulation.
- (4) "Department" means the Maryland Department of the Environment.
- (5) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells, or other materials, whether or not of intrinsic value, from any State or private tidal wetlands.
- (6) Enhancement.
 - (a) "Enhancement" means the rehabilitation of a degraded wetland site by manipulation of the physical, chemical, or biological characteristics of a wetland site:

- (i) To heighten, intensify, or improve a specific function, or functions; or
 - (ii) For a purpose such as water quality improvement, flood water retention or wildlife habitat.
- (b) “Enhancement” results in a change in wetland function, or functions, and can lead to a decline in other wetland function, but does not result in a gain in wetland acres.

(7) Filling.

(a) “Filling” means the:

- (i) Displacement of tidal water by depositing into State or private wetlands soil, sand, gravel, shells, or other materials, including pilings, piers, and other structures;
- (ii) Artificial alteration of tidal water levels by any physical structure, drainage ditch, or otherwise; or
- (iii) Storm drainage projects that flow directly into tidal waters of the State.

(b) “Filling” does not include:

- (i) Drainage of agricultural land;
- (ii) In-place replacement or repair of functional shore erosion control structures using substantially similar materials and construction design; or
- (iii) Planting of wetlands vegetation when no grading or fill in State or private wetlands is necessary.

(8) “Interested person” means, an owner of a riparian property contiguous to a parcel for which there is a licensing proceeding, or an individual that comments on, requests hearings for, or makes inquiries about a licensing proceeding.

(9) “License” means written authorization by the Board under [Environment Article, §16-202, Annotated Code of Maryland](#), to dredge, fill, construct structures, or conduct certain other activities involving State tidal wetlands.

- (10) “Licensee” means a person to whom the Department issues a general wetlands license or the Board issues an individual or emergency State tidal wetlands license.
- (11) “Living shoreline” means an approach that uses plants and sand, rock, oyster shell, or other natural materials to protect shoreline and to create, maintain, or enhance habitat.
- (12) “Maintenance dredging” means dredging an area previously dredged under a Board-issued or Department-issued license for the purpose of maintaining the area’s functional navigation channel, marina, or mooring basin.
- (13) “Mean high water” means the average of all the high water levels observed over the national tidal datum epoch.
- (14) “Mean high water line” means the line where the land meets the water surface at the elevation of mean high water.
- (15) “Mean low water” means the average of all the low water levels observed over the national tidal datum epoch.
- (16) “Mitigation” means offsetting loss or damage to State tidal wetlands due to licensed activity by creating new State tidal wetlands or restoring or enhancing existing State tidal wetlands.
- (a) “In-kind” means having characteristics closely approximating the original characteristics, including those of a vegetated tidal wetland before that wetland was adversely impacted.
- (b) “Out-of-kind” means having characteristics not closely approximating those of a tidal wetland before that wetland was adversely impacted.
- (17) Nonstructural Shoreline Stabilization Measure.
- (a) “Nonstructural shoreline stabilization measure” means an erosion control measure that is dominated by tidal wetland vegetation, such as submerged aquatic vegetation, and is designed to preserve the natural shoreline, minimize erosion, and establish aquatic habitat.

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

(18) Nonwater-Dependent Project.

(a) “Nonwater-dependent project” means a temporary or permanent structure or activity that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private tidal wetlands.

(b) “Nonwater-dependent project” includes a:

(i) Dwelling unit on a pier;

(ii) Restaurant, shop, office, or other commercial building or use on a pier;

(iii) Temporary or permanent roof or covering on a pier;

(iv) Pier used to support a nonwater-dependent use; and

(v) Small-scale renewable energy system on a pier, including a solar energy system and its photovoltaic cells, solar panels, or other necessary equipment; a geothermal energy system and its geothermal heat exchanger or other necessary equipment; and a wind energy system and its wind turbine, tower, base, or other necessary equipment.

(c) “Nonwater-dependent project” does not include:

(i) A fuel pump or other fuel-dispensing equipment on a pier;

(ii) A sanitary sewage pump or other wastewater removal equipment on a pier;

(iii) A pump, pipe, or any other equipment attached to a pier and associated with a shellfish nursery operation under a permit issued by the Department of Natural Resources under Natural Resource Article, §4-11A-23, Annotated Code of Maryland; or

(iv) An office for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or

emergency equipment related to marina operations.

- (19) “Over, on, in, or under” means the horizontal and vertical totality of State tidal wetlands and the associated air space applicable throughout this chapter, except when the context clearly limits the meaning.
- (20) “Periodic maintenance dredging” means maintenance dredging where:
- (a) The area and depth of the dredging are in conformance with the original dredging license;
 - (b) No more than 500 cubic yards of material are dredged at each maintenance dredging to restore licensed work;
 - (c) The dredged material is deposited upon the designated dredge material placement site or other upland site approved by the Department; and
 - (d) The licensee receives prior approval from the Department for each maintenance dredging operation.
- (21) “Person” means any natural person, partnership, joint stock company, unincorporated association or society, the State, any unit of the State, a political subdivision, the federal government, or other corporation of any type.
- (22) “Political subdivision” means a county (including Baltimore City) or municipality.
- (23) “Private tidal wetlands” means:
- (a) Land not considered State tidal wetlands bordering on or lying beneath tidal waters, that is subject to regular or periodic tidal action and supports aquatic growth;
 - (b) Tidal wetlands transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred; or
 - (c) Tidal waters created by the excavation of upland unless conveyed to the State.

(24) Restoration.

- (a) “Restoration” means reestablishment of tidal wetlands on former tidal wetland sites by manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions.
- (b) “Restoration” results in rebuilding a former wetland and in a gain in wetland acres.

(25) “Riparian rights” means a bundle of rights that derive from the physical relationship of a body of water to the land abutting it.

(26) Riprap.

- (a) “Riprap” means intentionally placed rock or other durable materials such as rubble or pre-formed concrete shapes, used to armor both shorelines, channels, and other natural features as well as pilings and other structures, against scour, and water or ice erosion.
- (b) “Riprap” includes structures that may be constructed of riprap, such as revetments, embankments, groins, sills, and breakwaters.

(27) State Tidal Wetlands.

- (a) “State tidal wetlands” means any land:
 - (i) Under the navigable waters of the State below the mean high water line, affected by the regular rise and fall of the tide; and
 - (ii) Between the landward boundary, coterminous with the mean high water line, and the seaward boundary, 3 miles from the low water mark of the Atlantic coast.
- (b) “State tidal wetlands” does not include wetlands that have been transferred by the State by valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, which are instead “private tidal wetlands” to the extent of the interest transferred.

- (28) “Structure” means something that is built or constructed, temporarily or permanently, including a boathouse, breakwater, bulkhead, drainage ditch, groin, pier, revetment, sill, tidal impoundment dike, transmission facility, or water control structure.
- (29) “Trenchless technology” means subsurface construction work, including horizontal directional drilling, microtunneling, and other similar technologies, used to install underground infrastructure, such as below-ground pipelines and cables.
- (30) “Upland” means any area that does not qualify as a tidal or nontidal wetland.

.04 License Requirement.

- A. A person may not conduct the following activities over, on, in, or under State tidal wetlands without a license except as provided for in [§E of this regulation](#):
 - (1) Dredging;
 - (2) Filling;
 - (3) Constructing, reconstructing, repairing, or altering structures, trestles, conduits, cables, pipelines, intake or discharge pipes, or similar devices or apparatuses;
 - (4) Constructing a shore erosion control project, including a living shoreline; or
 - (5) Otherwise altering State tidal wetlands.
- B. The Board may issue a State tidal wetlands license to:
 - (1) The owner of the riparian rights associated with an upland parcel;
 - (2) The State, any unit of the State, or the federal government;
 - (3) A political subdivision;
 - (4) A public service company; or

- (5) An individual who seeks to obtain soil borings, sediment borings, or samples for research purposes.

C. Agents.

- (1) Any person eligible to apply for a license under [§B of this regulation](#) may do so through the use of an agent.
- (2) Any reference to “applicant” or “licensee” in this chapter includes an agent of the eligible person.

D. The issuance of a State tidal wetlands license does not relieve the licensee from obtaining other approvals and permits that may be required, including a U.S. Army Corps of Engineers permit, water quality certification, coastal zone consistency certification, buffer management plan, and other State and local approvals and permits.

E. Activities Not Requiring a License. A person may conduct the following activities over, on, in, or under State tidal wetlands without a license issued by the Board:

- (1) Constructing, repairing, or removing private noncommercial piers when the property owner provides 10-day notice to the Department on a Department-approved form and meets the following criteria:
 - (a) Only one pier per property;
 - (b) Pier is not wider than 6 feet;
 - (c) Piers over vegetated tidal wetlands are at least 3 feet above the wetlands;
 - (d) Fixed or floating platforms, including Ts, Ls, and step-down platforms that:
 - (i) Do not exceed 200 square feet, excluding the segment of the main pier section to which the platform is attached;
 - (ii) Are not located over vegetated tidal wetlands or submerged aquatic vegetation; and
 - (iii) Are located in at least 2 feet at mean low water;

- (e) No more than two 3-foot wide finger piers may be constructed on the landward side of the end of a private pier;
 - (f) Pier does not extend within 100 feet of a Department-approved water-ski course;
 - (g) Pier does not extend beyond the lesser of 100 feet channelward of the mean high water line or a distance of 25 percent of the waterway width;
 - (h) Meets property line setback requirements established by the political subdivision;
 - (i) Pier does not impede navigation or block adjoining properties from ingress and egress;
 - (j) Pier does not obstruct the tidal flow;
 - (k) Pier does not include more than four slips, lifts, or hoists; and
 - (l) Pier does not extend within 500 feet of an approved aquaculture lease site.
- (2) Maintaining, repairing, or replacing an existing functional structure by a licensed marine contractor or property owner when there is only a de minimis increase in the original length, width, height, or channelward encroachment.
 - (3) Dredging seafood products by a licensed aquaculture operator, harvesting submerged aquatic vegetation if the root system is not affected, and harvesting of seaweed.
 - (4) Trapping, hunting, fishing, cultivating or harvesting shellfish when legally permitted.
 - (5) Aquaculture activities occurring under a Department of Natural Resources lease.
 - (6) Mosquito control and abatement projects approved by the Department of Agriculture.
 - (7) Improving wildlife habitat or agricultural drainage ditches if approved by the appropriate State agency.
 - (8) Marking channels and harbors and establishing navigation aids approved by the U.S. Coast Guard and the Department of Natural Resources.

- (9) Controlling invasive plant species through the application of pesticides when authorized by a toxic materials permit under [COMAR 26.08.03.02](#).
- (10) Installing bass spawning boxes outside of marked navigation channels.

Cross References

[23.02.04.05A\(1\)](#)

[23.02.04.05A\(16\)](#)

[23.02.04.06B\(1\)\(a\)](#)

[26.24.01.03](#)

.05 Delegation to the Department.

- A. The Board delegates to the Department the authority to grant, deny, or grant with conditions a State tidal wetlands general license for the following activities:
- (1) Except for applications for nonwater-dependent projects under [Environment Article, §16-104, Annotated Code of Maryland](#), constructing pilings or fixed or floating private, noncommercial piers and platforms that are not exempt from licensure under [Regulation .04E\(1\) of this chapter](#);
 - (2) Constructing a revetment by placing riprap for shore erosion control only when it is no more than:
 - (a) 500 feet in length parallel to the shoreline; and
 - (b) 10 feet channelward of the mean high water line;
 - (3) Filling or constructing a nonriprap shore erosion control structure, such as a bulkhead, when the fill area is no more than:
 - (a) 300 feet in length parallel to the shoreline; and,

- (b) 10 feet channelward of the mean high water line;
- (4) Constructing tidal groins to minimize impacts to the littoral drift, when extending no more than 25 feet channelward of the mean high water line;
- (5) Bulkhead repair or replacement where the repair or replacement does not extend more than 18 inches channelward of the existing bulkhead. A general license for repair or replacement may authorize riprap placed as a revetment along the base of the bulkhead, if the riprap does not extend more than 10' channelward of the bulkhead;
- (6) Filling of nearshore shallow water not more than 35 feet channelward of the mean high water line when the fill area is:
 - (a) Less than 500 feet in length;
 - (b) Parallel to the shoreline; and
 - (c) For the purpose of shore erosion control by vegetated tidal wetland creation;
- (7) Maintenance dredging a mooring, private or commercial boat ramp, mobile boat hoist slip, or marine railway when no more than 100 cubic yards of material nor an area greater than 1,500 square feet needs to be dredged;
- (8) Reconfiguring an existing marina when there is no dredging or increase in channelward encroachment beyond existing piers and associated structures;
- (9) Constructing a private noncommercial boat ramp not more than 12 feet wide and 30 feet channelward of the mean high water line;
- (10) Reinforcing bridges or causeways when they extend less than 10 feet from the existing structure, require no dredging, and do not impede the flow of the waterway;
- (11) Creating a new discharge of stormwater runoff when the project directly discharges to tidal waters if the drainage system extends no more than 10 feet channelward of the mean high water line and complies with stormwater regulations;
- (12) Clearing debris and windfalls from shorelines without dredging State tidal wetlands;

- (13) Installing temporary (not to exceed 3 years) sampling, surveying, or monitoring equipment solely for research or educational purposes where the impacted area does not exceed 10,000 square feet;
 - (14) Performing scientific sampling, soil borings, sediment borings, archaeological surveys, or similar activities in a total area not to exceed 10,000 square feet or exceed 10 cubic yards;
 - (15) Installing temporary site access measures such as wooden mats, as long as there are no changes to hydrology or grading and the impacted area does not exceed 10,000 square feet and provided the area is restored to original conditions; and
 - (16) Installing intake and discharge structures associated with aquaculture activities that are not exempt from licensure under [Regulation .04E\(5\) of this chapter](#).
- B. The Department may not grant or deny a State tidal wetlands general license for a nonwater-dependent project under [Regulation .07 of this chapter](#).
- C. The Department may not grant or deny a State tidal wetlands general license if the activity listed in [§A of this regulation](#) requires compensation under [Regulation .12 of this chapter](#) or if the activity listed in [§A of this regulation](#) is part of a larger project that requires an individual license under [Regulation .06B\(4\) of this chapter](#).
- D. The Board, through the Executive Secretary, may, after consultation with the Wetlands Administrator, require any project delegated to the Department to obtain an individual license.
- E. The Department shall provide to the Board such reports and information as the Board may request.

Cross References

[23.02.04.06A\(1\)](#)

[23.02.04.06B\(1\)\(b\)](#)

[23.02.04.06B\(4\)](#)

.06 Types of Licenses.

A. General License.

- (1) A general license is an authorization for the activities identified in [Regulation .05A of this chapter](#) involving State tidal wetlands.
- (2) To obtain a general license, a person shall apply to the Department in accordance with the procedures in [COMAR 26.24.02.04](#).
- (3) The Department:
 - (a) Shall, within 45 days of receipt of an application, notify the applicant whether the application is complete and the wetland delineation is correct; and
 - (b) May extend, upon written notice to the applicant, the deadline if the following extenuating circumstances prevent consideration of the application:
 - (i) Inclement weather conditions;
 - (ii) Review is required by federal, State, or local government agencies; or
 - (iii) The applicant requests extension.
- (4) The Department:
 - (a) Shall grant, deny, or condition the general license within 45 days of receiving a complete application; and
 - (b) May extend, upon written notice to the applicant, the deadline 30 days for the following extenuating circumstances:
 - (i) Review is required by federal, State, or local government agencies; or

- (ii) The applicant requests extension.

B. Individual License.

- (1) An individual license is issued by the Board for activities involving State tidal wetlands that:
 - (a) Are not among those listed in [Regulation .04E of this chapter](#);
 - (b) Are not delegated to the Department under [Regulation .05A of this chapter](#); and
 - (c) Do not qualify for an emergency license under [§C of this regulation](#).
- (2) To obtain an individual license, a person shall apply through the Department in accordance with the procedures in [COMAR 26.24.02.02](#) and [§A\(4\)\(b\) of this regulation](#).
- (3) An individual license is subject to public notice and an opportunity to request a public informational hearing in accordance with [COMAR 26.24.01.04](#) and .05.
- (4) If any aspect of a project requires an individual license from the Board, the entire project shall come before the Board, including those activities that are delegated under [Regulation .05A of this chapter](#).

C. Emergency License.

- (1) Without prior public notice, the Administrator may issue an emergency license when an emergency exists caused by an act of God, natural disaster, catastrophe, or other similar natural event when the health, safety, or welfare of the citizens of the State would be jeopardized by a delay caused by time requirements for public notice.
- (2) An emergency license issued under [§A of this regulation](#), including its effective period, is limited to only those activities necessary to abate or mitigate the emergency.
- (3) Any additional activities beyond those necessary to abate or mitigate the emergency require either a general or individual license under §A or B of this regulation.

- (4) To obtain an emergency license a person shall apply through the Department. The initial request may be made orally. The applicant shall provide the following written information to the Department within 3 days:
 - (a) Applicant's name;
 - (b) Location of the emergency activity;
 - (c) Site photographs;
 - (d) Extent of work to be done;
 - (e) Anticipated impact on tidal wetlands; and
 - (f) Nature of the emergency.
- (5) Promptly upon receipt of the written information, the Department shall notify the Department of Natural Resources and the Maryland Historical Trust.
- (6) If the Department determines an emergency license is appropriate, the Department shall issue a written summary to the Administrator within 10 days of the initial request containing:
 - (a) A description of the emergency;
 - (b) Terms and conditions under which the emergency license should be granted;
 - (c) Comments received from the Department of Natural Resources and the Maryland Historical Trust; and
 - (d) Any other submitted comments or relevant materials.
- (7) Within 14 days of the initial call, the applicant shall submit an application to the Department.
- (8) Emergency License Issuance.

- (a) If the Administrator agrees with the Department's determination that an emergency license is appropriate, then:
 - (i) The Board authorizes the Administrator to issue an emergency license; and
 - (ii) The Administrator shall issue the emergency license within 14 days of the initial request.
- (b) The Administrator shall transmit the license to the applicant and advise the applicant to sign and return the license to the Administrator, constituting acceptance of the terms and conditions.
- (c) If an applicant fails to sign and return the emergency license within 14 calendar days of transmittal, the Administrator shall notify the applicant in writing that the license is void.
- (d) Upon return of the signed emergency license, the Administrator shall sign and transmit a copy of the fully signed license to the licensee and to the Department.
- (e) The license is effective when fully signed under both §C(8)(b) and (d) of this regulation.

(9) After issuance of the emergency license:

- (a) The Department shall provide prompt public notice and an opportunity to submit written comments and to request a public informational hearing on ratifying or revoking the license;
- (b) If a public informational hearing is requested, it shall occur within 30 days of issuance of the emergency license;
- (c) Within 30 days after the public comment period ends, the Department shall send to the Administrator in writing:
 - (i) A summary of comments received;
 - (ii) A summary of the public informational hearing, if held;

- (iii) The Department's response to concerns raised in the comments or at the public informational hearing; and
- (iv) The Department's recommendation to ratify, modify, suspend, or revoke the emergency license; and
- (d) After receipt of the Department's written recommendation under [§C\(9\)\(c\) of this regulation](#), the Administrator shall submit an Action Agenda item to the Board with the Administrator's recommendation that the Board ratify, modify, suspend, or revoke the emergency license.

Cross References

[23.02.04.05C](#)

[23.02.04.15F](#)

[23.02.04.16E\(2\)](#)

.07 Nonwater-Dependent Projects on a Pier.

- A. This regulation does not apply to nonwater-dependent projects located on State tidal wetlands in Prince George's County.
- B. The Board may issue an individual license authorizing a nonwater-dependent project on a pier if:
 - (1) The project is on a pier constructed on or after January 1, 2013, and meets the following criteria:
 - (a) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
 - (b) The pier is not attached to residential, institutional, or industrial property;
 - (c) Avoids and minimizes impacts to State tidal wetlands and other aquatic resources;

(d) Is located in either:

- (i) An intensely developed area, where the project is authorized under the local jurisdiction's Critical Area program by a program amendment on or after July 1, 2013; or
- (ii) An area that has been excluded from a local Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;

(e) Is approved by the local planning and zoning authority;

(f) Allows or enhances public access to State tidal wetlands;

(g) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;

(h) Has a height of up to 18 feet unless the project is located at a marina and the Secretary recommends additional height;

(i) Is up to 1,000 square feet in total area;

(j) Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, a leased aquaculture site, or an area with rare, threatened, or endangered species or species in need of conservation; and

(k) Does not adversely impact a fish spawning or nursery area or a historic waterfowl staging and concentration area;

(2) The project is on a pier in existence on or before December 31, 2012, and meets the following criteria:

(a) Satisfies all of the requirements under §B(1)(a)—(i) of this regulation; and

(b) If the project has a temporary or permanent roof or covering, it can be no more than 1,000 square feet in total area; or

(3) The project is for a small-scale renewable energy system and meets the following criteria:

- (a) Involves installing or placing a small-scale renewable energy system that is permitted as a secondary or accessory use;
- (b) Avoids and minimizes impacts to State tidal wetlands and other aquatic resources;
- (c) Is located in either:
 - (i) The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under the local jurisdiction's Critical Area program or by a program amendment on or after July 1, 2013; or
 - (ii) An area that has been excluded from a local Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
- (d) Is approved by the local planning and zoning authority;
- (e) Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, a leased aquaculture site, or an area with rare, threatened, or endangered species or species in need of conservation; and
- (f) Does not adversely impact a fish spawning or nursery area or a historic waterfowl staging and concentration area.

C. A license issued under [§B\(3\) of this regulation](#) may include installing or placing a:

- (1) Solar energy system attached to a pier if the device or equipment associated with that system does not extend more than:
 - (a) 4 feet above or 18 inches below the deck of the pier; or
 - (b) 1 foot beyond the length or width of the pier;
- (2) Solar energy system attached to a piling if there is only one solar panel per boat slip;

- (3) Solar energy system attached to 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;
- (4) 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 channel ward encroachment of the pier;
 - (b) Deleteriously alter long shore drift; or
 - (c) Cause significant individual or cumulative thermal impacts to aquatic resources; or
- (5) 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 12 feet or less;
 - (b) The rotor diameter of the wind turbine is 4 feet or less; and
 - (c) The setbacks of the wind energy system from the nearest property line and from the channel ward 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.

D. Existing Nonwater-Dependent Projects on a Pier.

- (1) A nonwater-dependent project on a pier, where the project was in existence on or before June 30, 1989, may continue to be used.
- (2) A nonwater-dependent project added to a pier on or after July 1, 1989, may continue to be used if it was added in compliance with a wetlands license issued under the law applicable at the time.
- (3) The Board may issue an individual license authorizing an alteration or expansion of an existing nonwater-dependent project on a pier if the final project complies with the requirements of [§B of this regulation](#).

Cross References

[23.02.04.05B](#)

[23.02.04.12F\(1\)](#)

.08 Department's Report and Recommendation.

- A. The Department shall submit a written Report and Recommendation for each application for an individual license to the Administrator that includes the following:
- (1) Name and complete contact information for the applicant, and its agent, if any;
 - (2) Location of the project including the name of the impacted waterbody;
 - (3) Whether the license should be granted;
 - (4) Any conditions under which the license should be granted;
 - (5) Information compiled during site visits, if any;
 - (6) Whether a public informational hearing was required, when it was held, a summary of the public informational hearing, and copies of any documents submitted to the Department;
 - (7) A statement where applicable, that the Department has coordinated review of the application with the Department of Natural Resources, the Maryland Historical Trust, and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
 - (8) Comments submitted by the public or State, federal, or local agencies;
 - (9) List of interested persons;
 - (10) For trenchless technology projects:
 - (a) Design plans and justification for the bore depth; and

- (b) If the trenchless technology project involves a bore greater than 12 inches in diameter, the design plans shall be signed, sealed and dated by a professional engineer licensed in the State of Maryland under [Business Occupations and Professions Article, §14-301, Annotated Code of Maryland](#), who prepared or approved the design plans;
 - (11) For any recommendation to authorize improvements to protect a person's property against erosion using any measures other than a nonstructural shoreline stabilization measure, such as a living shoreline, an explanation of why the Department granted a waiver under [Environment Article, §16-201\(c\), Annotated Code of Maryland](#); and
 - (12) For projects that propose removal of submerged aquatic vegetation, an explanation as to why impacts to that vegetation cannot be avoided.
- B. If the Department has suspended processing an application under [COMAR 26.24.02.02H](#), it shall notify the Board, and, upon request from the Board through its Administrator, cease that suspension and complete its report.

.09 Board Action on Applications for Individual Licenses.

- A. The Board shall grant or conditionally grant, or deny, an individual license upon determining if issuance of the license is:
- (1) Sufficient to the attainment of riparian rights; and
 - (2) Reasonable in accordance with the best interests of the State.
- B. In making its determination, the Board shall:
- (1) Consider the recommendations of the Department, the report of the Board's Administrator, any public testimony at an informational hearing, any documents submitted, and any other relevant information in the record, including any additional oral testimony the Board may elect to hear; and
 - (2) Take into account:
 - (a) The varying ecological, economic, developmental, recreational, and aesthetic values that the project presents; and

- (b) The State's public policy to preserve the wetlands and prevent their despoliation and destruction.

C. Review of Application.

- (1) The Board, through its Administrator, may request the Department to supplement its Report and Recommendation to address specific concerns relevant to determining either the sufficiency of the proposed project or the best interests of the State.
- (2) For any application with interested persons who expressed opposition to the proposed license either in writing to the Department or the Board, or at the public informational hearing, the Board, through its Administrator, shall:
 - (a) Publish the Department's Report and Recommendation, including any supplement, on the Board's website, and
 - (b) Provide notice of that publication to any interested persons.
- (3) Interested persons may submit written comments to the Board after publication of the Department's Report and Recommendation on the Board's website under [§C\(2\)\(a\) of this regulation](#).
- (4) The Administrator shall:
 - (a) Review the Department's Report and Recommendation, including any supplement;
 - (b) Review any comments received within 21 days after publication under [§C\(3\) of this regulation](#), and may review comments received thereafter;
 - (c) Submit a written recommendation to Board members stating whether an individual license should be granted, and specifying any appropriate terms and conditions;
 - (d) Before the Board's action on an individual license, inform the applicant in writing of the following:
 - (i) Any monetary compensation in lieu of mitigation recommended under [Regulation .11 of this chapter](#); and

- (ii) Any compensation recommended under [Regulation .12 of this chapter](#); and
- (e) Make available to Board members all records and documents reviewed and considered in preparing the recommendation submitted under [§C\(4\)\(c\) of this regulation](#) .

.10 Terms and Conditions.

A. All conditions take effect upon license issuance, unless specifically stated otherwise.

B. Standard Conditions.

- (1) A State tidal wetlands license shall carry standard conditions.
- (2) The Board shall approve a template for licenses, including standard terms and conditions, and publish the template on its website.
- (3) The Department and the Administrator may recommend to the Board revisions to the license template.

C. Special Conditions.

- (1) The Department or the Administrator may recommend to the Board special conditions, or other amendments to the license template, for inclusion in a specific State tidal wetlands license.
- (2) Examples of issues that may warrant special conditions include:
 - (a) Marina facility;
 - (b) Trenchless technology;
 - (c) Maintenance dredging; and
 - (d) Cultural resources.
- (3) Examples of special conditions include:

- (a) Mitigation in accordance with [Regulation .11 of this chapter](#);
- (b) Compensation in accordance with [Regulation .12 of this chapter](#);
- (c) Water Quality Certification in compliance with [COMAR 26.24.04](#);
- (d) Soil Erosion and Sediment Control plans as required and approved by the Department, applicable soil conservation district, or other approving authority; and
- (e) Time of year restrictions requiring that a licensed structure be constructed or activity be performed only during certain time periods to assure protection of fish spawning and nursery habitat, shellfish habitat, submerged aquatic vegetation, or historic waterfowl staging and concentration areas, or to avoid public recreational conflicts.

.11 Mitigation.

A. The Department or the Administrator may recommend:

- (1) Mitigation designed to replace the values and functions associated with the wetlands to be impacted as set forth in this regulation and [COMAR 26.24.05.01](#); or
- (2) When mitigation is not feasible, monetary compensation in lieu of mitigation.

B. To make the recommendation under [§A of this regulation](#), the Department or the Administrator shall follow the process in [COMAR 26.24](#), including multiplying the acreage of the lost or adversely impacted State tidal wetlands using the following ratios:

Restoration or In-Kind Creation	
Open water tidal wetlands	1:1
Emergent tidal wetlands	2:1
Scrub-shrub tidal wetlands	2:1
Forested tidal wetlands	2:1
Tidal wetland habitat for rare, threatened, or endangered species, or species in need of conservation	3:1
Submerged aquatic vegetation and natural oyster bars	3:1
Enhancement or Out-of-Kind Creation	
Open water tidal wetlands	2:1
Emergent tidal wetlands	4:1
Scrub-shrub tidal wetlands	4:1
Forested tidal wetlands	4:1

Restoration or In-Kind Creation	
Tidal wetlands habitat for rare, threatened, or endangered species, or species in need of conservation	6:1
Submerged aquatic vegetation and natural oyster bars	6:1

C. If a licensed structure or activity will cause an unavoidable adverse environmental impact or loss of State tidal wetlands, the Board may require:

- (1) Mitigation by conditioning the license on restoring, creating in-kind new tidal wetlands, creating out-of-kind new tidal wetlands, or enhancing existing tidal wetlands, or a combination; or
- (2) Monetary compensation in lieu of mitigation in an amount the Board determines appropriate.

D. Compensation in lieu of mitigation received under this [§C\(2\) of this regulation](#) is deposited into the Tidal Wetlands Compensation Fund.

Cross References

[23.02.04.09C\(4\)\(d\)\(i\)](#)

[23.02.04.10C\(3\)\(a\)](#)

.12 Compensation.

A. Except for any license issued to a governmental unit, the Board may require as a license condition that the licensee pay compensation to the State in an amount the Board deems appropriate for the following activities:

- (1) Filling to make upland;
- (2) Dredging or severance of material unrelated to navigational need; or
- (3) Similar nonriparian use.

B. Except for any license issued to a governmental unit, the Board shall require as a license condition that the licensee pay compensation to the State in an amount deemed appropriate

by the Board for the following:

- (1) Cables, pipelines, or other structures over, on, in, or under State tidal wetlands; and
- (2) Nonwater-dependent projects.

C. Compensation for Filling to Make Upland.

- (1) When the Board requires compensation for filling to make upland, the licensee shall pay a one-time amount equivalent to the fair market value of the upland created or other amount specified by the Board.
- (2) The Administrator shall:
 - (a) Determine the fair market value of the upland created based on the higher of two appraisals obtained by the licensee, after consulting with the Department of General Services; and
 - (b) Make a recommendation to the Board on the compensation amount.

D. Compensation for Dredging or Severance of Materials.

- (1) The Board may not require compensation for dredging projects involving navigational purposes, beach nourishment, removal of bottom contaminants, or displacement of the bottom during archeological investigations.
- (2) When the Board requires compensation for dredging or severance of materials from State tidal wetlands, the licensee shall pay an amount specified by the Board.
- (3) The Administrator shall:
 - (a) Determine an amount based on:
 - (i) A nonrecurring, nonrefundable charge of \$1,000, and a minimum of \$250 or \$1.75 per cubic yard of dredged or severed material, whichever is greater; or
 - (ii) Any other rates specified by the Board; and

(b) Make a recommendation to the Board on the amount of compensation.

E. Compensation for Cables, Pipelines, or Other Structures.

- (1) The Board shall require compensation for cables, pipelines, or other similar structures over, on, in, or under State tidal wetlands.
- (2) The licensee shall pay:
 - (a) A nonrecurring, nonrefundable charge of \$1,000; and
 - (b) A minimum annual compensation rate of \$2.50 per linear foot or an amount specified by the Board.
- (3) Each individual cable, pipeline, or similar structure is subject to the annual compensation requirement.
- (4) The Administrator shall make a recommendation to the Board on the amount of the annual compensation by multiplying \$2.50 by each linear foot by each individual cable, pipeline, or other similar structure.
- (5) Five years after issuing the license and every 5 years thereafter, the Board may adjust the per linear foot annual compensation rate to reflect changes in the Consumer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics.

F. Annual Compensation for Nonwater-Dependent Projects on a Pier.

- (1) Except for small-scale renewable energy system projects as authorized by [Regulation .07B\(3\) of this chapter](#), the Board shall require annual compensation for:
 - (a) Nonwater-dependent projects; and
 - (b) Projects that materially alter or expand the footprint of an existing nonwater-dependent project.
- (2) Calculation of Compensation.

- (a) The Administrator shall make a recommendation to the Board on the annual compensation amount that is based on the most recent data provided by the State Department of Assessments and Taxation in the assessment record for the real property to which the nonwater-dependent project is attached.
- (b) The annual compensation is computed by:
 - (i) Multiplying the total square footage of the nonwater-dependent project by a fraction, the denominator of which is the total square footage of the land area of the real property to which the nonwater-dependent project is attached, and the numerator of which is the assessed land value of the real property to which the nonwater-dependent project is attached; and
 - (ii) Multiplying the rate calculated under [§F\(2\)\(b\)\(i\) of this regulation](#) by a percentage considered appropriate by the Board not to exceed 100 percent.

$$\left[\text{Total sq. ft project area} \times \frac{\text{Assessed Land Value entire parcel to which project is attached}}{\text{Total sq. ft entire parcel to which the project is attached}} \right] \times \text{Board \%}$$

- (c) In determining the appropriate percentage under [§F\(2\)\(b\)\(ii\) of this regulation](#), the Board may consider:
 - (i) The extent to which the nonwater-dependent project is used on a seasonal or year-round basis;
 - (ii) The extent of the economic impact of the nonwater-dependent project on the local jurisdiction;
 - (iii) The nature and extent of the environmental impact of the nonwater-dependent project;
 - (iv) The extent to which the nonwater-dependent project and, if applicable, its roof or covering, are permanent or temporary;
 - (v) Any history of violation of the State Tidal Wetlands Law by the licensee;

(vi) Any real property lease rates for the area for a commercial activity similar to the licensee's or any real property appraisals obtained by the licensee; and

(vii) Any other factor that the Board considers relevant.

G. Compensation received under this regulation is deposited into the Department's Wetlands and Waterways Program Fund.

Cross References

[23.02.04.05C](#)

[23.02.04.09C\(4\)\(d\)\(ii\)](#)

[23.02.04.10C\(3\)\(b\)](#)

[23.02.04.18B\(3\)](#)

.13 Individual License Issuance.

A. Upon the Board's favorable action, the Administrator shall:

- (1) Prepare the individual license in accordance with the Board's action;
- (2) Transmit the license to the applicant for signature; and
- (3) Advise the applicant in writing to sign and return the license to the Administrator, indicating acceptance of the terms and conditions.

B. If an applicant fails within 90 days of transmittal to sign and return an individual license to the Administrator, the Administrator shall notify the applicant in writing that the license is void.

C. Upon receipt of the signed original license, the Administrator shall sign and promptly transmit a copy of the fully signed license to the licensee and the Department.

D. The license is effective when fully signed.

- E. Once issued, the license may be modified, suspended, or revoked by the Board in accordance with Regulations .15, .16, and .18 of this chapter.
- F. Except for dredging or maintenance dredging, a license authorizes continuing use or structural occupation on State lands and waters if all conditions of the license are met.

Cross References

[26.24.02.06A](#)

.14 License Expiration.

A. Duration.

- (1) A general license issued by the Department expires after 3 years, unless extended under [Regulation .15 of this chapter](#).
- (2) An individual license expires after 3 years unless:
 - (a) The Board authorizes a longer initial period for an individual license; or
 - (b) The license is extended under [Regulation .15 of this chapter](#).
- (3) Licenses authorizing periodic maintenance dredging are valid for a maximum period of 6 years.
- (4) An emergency license has a period not to exceed the amount of time necessary to abate or mitigate the emergency.

B. Expiration. When the license expires, the licensee:

- (1) Shall stop any incomplete activities authorized under the license; and
- (2) Except for dredging or maintenance dredging, may continue use or structural occupation on State lands and waters, if all conditions of the license are met.

Cross References

[23.02.04.15B\(1\)](#)

[23.02.04.15B\(2\)](#)

[23.02.04.15C](#)

[26.24.02.06B](#)

.15 License Extension.

- A. The Department may extend a general license if the licensed activity remains an activity listed in [Regulation .05A of this chapter.](#)
- B. The Administrator may extend an individual or an emergency license upon receipt of the licensee's request under [§E of this regulation](#) and a favorable written recommendation by the Department, except for the following licenses:
 - (1) A license for maintenance dredging under [Regulation .14A\(3\) of this chapter;](#) or
 - (2) Individual licenses for which the Board granted a longer initial period under [Regulation .14A\(2\)\(a\) of this chapter.](#)
- C. The Board may extend an individual license for which the Board granted a longer initial period under [Regulation .14A\(2\)\(a\) of this chapter](#) upon receipt of the licensee's request under [§E of this regulation](#) and a favorable written recommendation from the Administrator and the Department.
- D. Extension Period.
 - (1) The Department may grant a one-time extension of a general license for a period up to 3 years.
 - (2) The Administrator may grant a one-time extension of an individual or emergency license for a period up to 3 years.

(3) Additional extensions, beyond the one-time, 3-year extension and extensions under [§B of this regulation](#) may be approved by the Board after a recommendation by the Administrator.

E. A licensee shall request an extension in writing to the Department stating the following:

- (1) Reason the structure or activity could not be constructed or performed within the license period;
- (2) Revised schedule for completion of the structure or activity; and
- (3) Assurances that all other State, federal, and local approvals either have not expired or have been authorized or extended.

F. An expired license may not be extended but requires reapplication under [Regulation .06 of this chapter](#).

G. If a written request for extension is received at least 2 weeks before a license expires, the license will continue to be valid until a final decision is issued by either the Administrator or the Board, whichever is applicable.

Cross References

[23.02.04.14A\(1\)](#)

[23.02.04.14A\(2\)\(b\)](#)

.16 License Modification.

- A. A licensee or the Department may request in writing that the description of the authorized structure or activity or the conditions of an individual or emergency license be modified and shall state the reason for the request.
- B. The Administrator may modify an individual or emergency license if the Department provides a favorable written recommendation and:

(1) The modification is minor; or

(2) The Department determines that the structure or activity or the license conditions require modification to correct adverse environmental impacts.

C. A minor modification means:

(1) A reduction in the scope of the originally authorized work;

(2) Revisions to the project plans or specifications that are nominal and would otherwise be approved, and conditions at the site have not changed since the previous review; or

(3) Waiving or modifying time of year restrictions after consultation with the Department of Natural Resources.

D. After consulting with the Department, the Administrator shall either:

(1) Grant the modification request by revising the original license; or

(2) Deny the modification request in writing, including the reason for the denial and the procedure for appealing the modification denial.

E. After consulting with the Department, the Administrator may:

(1) Recommend approval to the Board of a license modification not qualifying for consideration under [§B of this regulation](#); or

(2) Require the modification to be submitted as a reapplication under [Regulation .06 of this chapter](#).

F. A new license issued after reapplication and approval supersedes the original license.

.17 License Transfer.

A. The Administrator may transfer a license upon receipt of a written request, with supporting documentation, from the new riparian landowner, the licensee's successor in interest, or the new holder of the riparian rights.

- B. The Administrator shall mail the new license to the licensee for signature.
- C. Upon receipt of the signed license, the Administrator shall sign and promptly transmit a copy of the fully signed license to the licensee and the Department.
- D. Terms and conditions of the transferred license remain the same as the original license.

.18 License Suspension or Revocation.

- A. The Board or its designee may suspend or permanently revoke a license when the action is considered to be in the State's interest, after consulting with the Administrator and the Department.
- B. Grounds for suspension or revocation include:
 - (1) Violation of:
 - (a) [Environment Article, Title 16, Annotated Code of Maryland](#) ;
 - (b) [COMAR 26.24](#); or
 - (c) This chapter;
 - (2) Failure of a licensee to comply with the requirements of an administrative action or order of the Department issued under [COMAR 26.24](#) or [26.08.02](#), when appropriate;
 - (3) Failure of a licensee to pay compensation imposed in accordance with [Regulation .12 of this chapter](#);
 - (4) Violation of the license;
 - (5) Misrepresentation in the application or failure to disclose a relevant and material fact;
 - (6) Substantial deviation from the plans, specifications, or terms and conditions of a license;
 - (7) Failure of the licensee to permit a representative of the Department to enter the site to make reasonable inspection at a reasonable hour; or

- (8) Circumstances when the licensee's rights under a license have not vested and receipt of new information, changed site conditions, or amended regulatory requirements necessitate suspension or revocation.

.19 Appeals.

- A. The Administrator shall promptly notify, by certified mail, the applicant and all other interested persons who provided written or oral comments to the Board of the Board's action to grant, deny, modify, suspend, or revoke a license.
- B. Within 30 days after receiving the Board's decision, any person with standing may petition the circuit court in the county where the land is located.
- C. A person has standing to file a petition under [§B of this regulation](#) if the person:
- (1) Meets the threshold standing requirements under federal law; and
 - (2) Is the applicant or participated in the public process through the submission of written or oral comments, unless an opportunity for public participation was not provided.
- D. The Board shall compile the record that was before them and submit it to the circuit court where the petition was filed.
- E. An appeal is a petition for judicial review and shall be conducted in accordance with [Environment Article, Title 1, Subtitle 6, Annotated Code of Maryland](#) [↗](#), and is not a contested case hearing under [State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland](#) [↗](#).

Appendix G:
Tidal Mitigation Trigger Flowchart

Tidal Mitigation Ratio & Mitigation Project Location Selection Flowcharts*

The Tidal Mitigation Ratio flowchart describes how the total compensatory mitigation ratio is calculated. The ratio is determined by considering the impacted tidal resource (1a) and the type of mitigation activity proposed (1b) to determine the final, appropriate mitigation ratio. The mitigation ratio is, then, multiplied by the impacted area to calculate the area of mitigation required.

The Mitigation Project Location Selection flowchart covers the order of preference for mitigation project location selection. Mitigation projects should be designed to replace the values and functions associated with the impacted wetlands.

Refer to the Tidal Mitigation Trigger flowchart to determine if mitigation **may** be required for a specific activity.

Note about projects with multiple resource impacts:

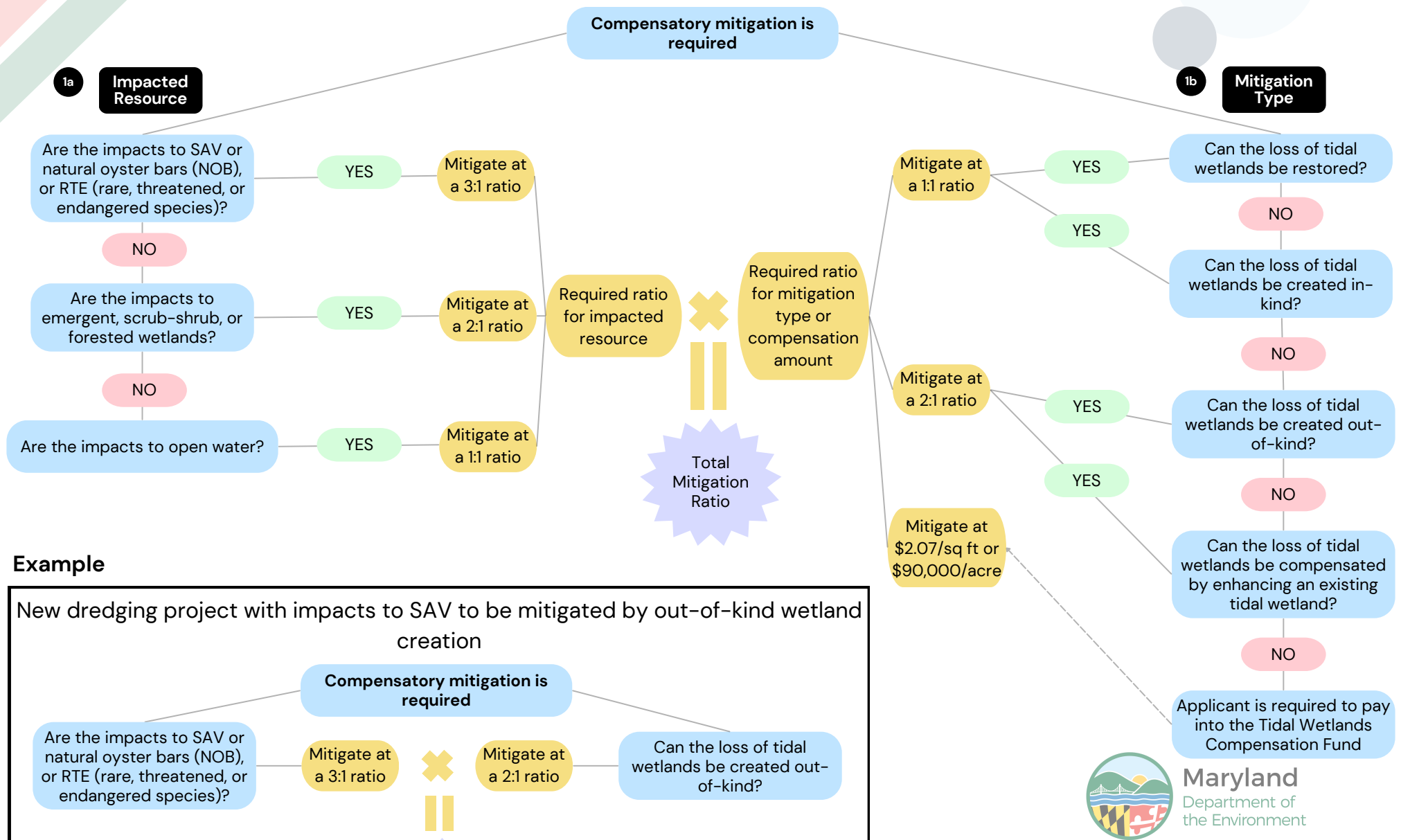
The resource with the highest mitigation ratio takes precedence if within the same area. If multiple resources impact different areas, use their respective ratio to calculate the mitigation area.

*Flowcharts should be used for guidance and planning purposes only. Final agency decisions on an application for a tidal wetlands license or permit are made at the conclusion of the project application review process following all applicable law and regulations.

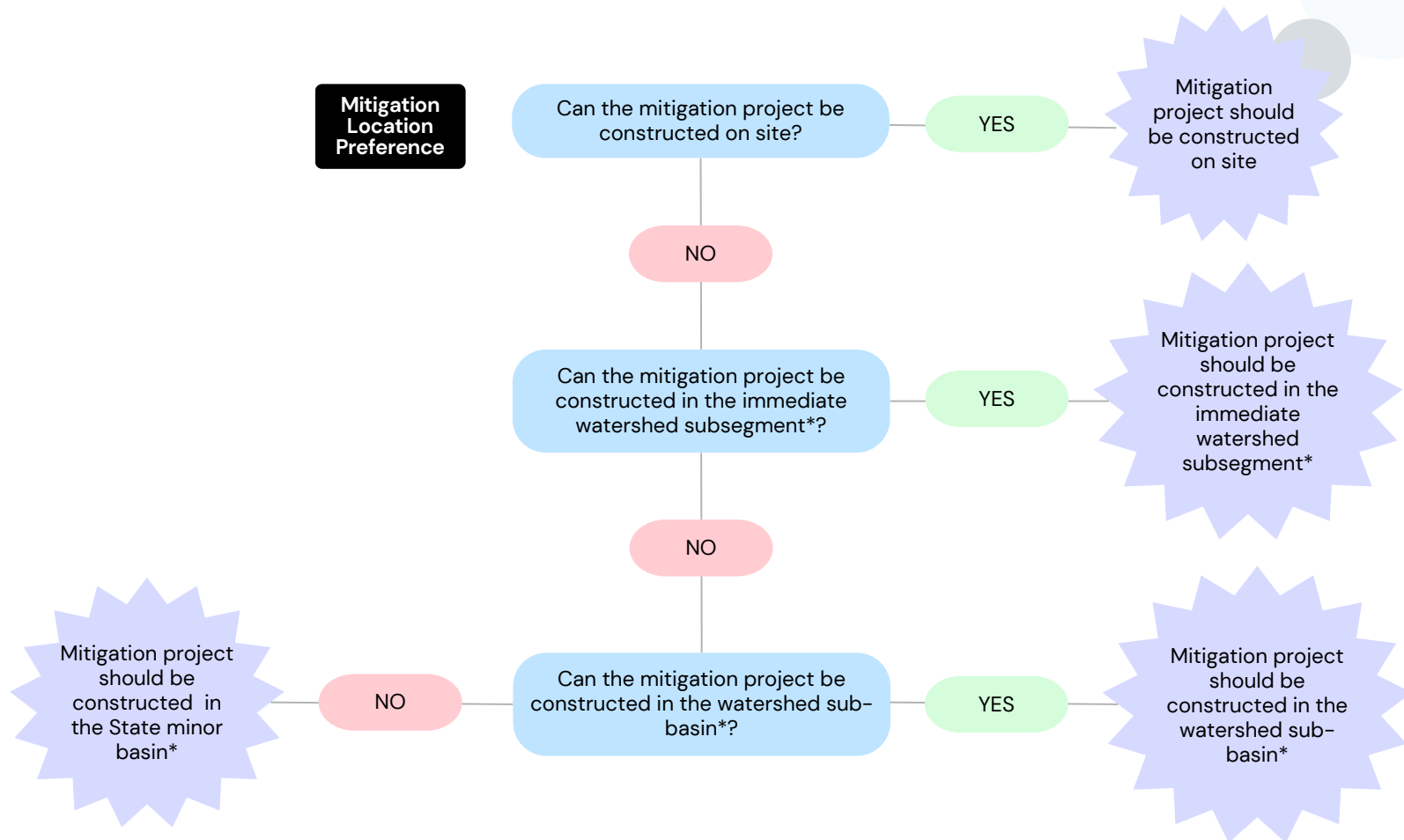


Maryland
Department of
the Environment

Tidal Mitigation Ratio Calculation



Mitigation Project Location Selection



*Watershed Definitions:

Immediate watershed subsegment is within the same 8-digit State watershed as the impact site

Watershed sub-basin is within the same 6-digit State watershed as the impact site

State minor basin is within the same drainage basin as the impact site



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Appendix H:
Guidance for Tidal Wetlands Mitigation Plans

Guidance for Tidal Wetland Mitigation Plans

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This document is meant to serve as a guide for applicants who are required to submit a mitigation plan for a tidal wetlands mitigation project. As outlined in the Code of Maryland Regulation (COMAR) 26.24.05 Tidal Wetlands Mitigation section, a mitigation plan must be submitted to the Maryland Department of the Environment (MDE), Tidal Wetlands Division for approval before the issuance of a Tidal Wetlands license/permit that authorizes the alteration of tidal wetland resources.

The level of detail required by the mitigation plan will vary with both the scale and scope of the impacts and project. Details related to more specific tidal mitigation projects are included in this document.

Disclaimer: This guidance document is meant to fulfill the mitigation plan requirements for MDE project approval. This guide may not necessarily fulfill the requirements of a mitigation plan for tidal impacts as required by the U.S. Army Corps of Engineers (USACE or ACOE). Information needed within mitigation plans for the ACOE should be coordinated with the ACOE reviewer.

1. Introduction/Mitigation Objectives

A brief description of the impact project that includes:

- Location (address and latitude/longitude coordinates)
- Resource type impacted (e.g. shallow water habitat, submerged aquatic vegetation (SAV), natural oyster bar (NOB), etc)
- Amount impacted (square feet/acreage)
 - Include area of each type of resource impacted if more than one

A description of the proposed mitigation site that includes:

- A vicinity map of the mitigation location relative to the impact site
 - Address and latitude/longitude coordinates
 - Whether it is on-site or off-site
 - Whether it is located within the same 8-digit or 6-digit State watershed
- Area proposed to be provided (square feet/acreage)
 - For example: "Minimum of 10 acres", not "will be 10 acres"
- Mitigation type (restoration, creation, enhancement, or other)
- Required mitigation ratio and calculation of the required mitigation area (square feet/acreage)
- How the anticipated functions of the mitigation project will address watershed needs

Broad statement of the intended outcome of the mitigation project

- Discuss what is needed to achieve these goals
- This should consider the replacement or improvement of the acreage and functions of the resources proposed to be impacted by the permit/license.

2. Site Selection

A description of the factors considered during the site selection process

- The factors should include consideration of watershed needs, on-site alternatives where applicable, and practicability of accomplishing an ecologically self-sustainable tidal wetland mitigation project site

A summary of the site search process

- Before an applicant proposes a mitigation site outside the 8-digit State watershed of impact or an out-of-kind mitigation, they must provide a site search approved by the Tidal Wetlands Division. This site search must include:
- Summary of each site
 - Name
 - Location
 - Description:
 - Area in square feet
 - Site characteristics relevant to mitigation

- E.g. open/unforested, no SAV, hydric soils, high water table, adjacent to existing wetlands, etc.
- List of possible mitigation activities
- Justification
 - Provide information about why the site was or was not chosen
- Description of additional correspondence with other entities/agencies who may have potential information about mitigation opportunities
 - E.g. NRCS, county government, environmental consulting firms, etc.

a. Site location preference

As per regulations, the order of preference for a mitigation site location is as follows in order of most to least preferred. Before an applicant can move to the next option on the list, they must document that they were unable to find mitigation in the more preferred location:

- On-site mitigation - adjacent to impacted area or on the same property
- Off-site mitigation:
 - Within the same 8-digit State watershed as the impacted wetland
 - Within the same 6-digit State watershed or 8-digit Federal Hydrologic Unit Code (HUC)
 - Within the adjacent 8-digit HUCs, of the same drainage basin and physiographic region
 - Should only be considered when there is ecological justification that it will replace the lost acreage and function of the impacts

b. Feasible site

A “feasible” site:

- Should appear to be technically feasible for a wetland mitigation project
 - Determined by remote data/online resources
 - E.g. GIS ([Watershed Resources Registry](#), [Coastal Atlas](#), [MDNR MERLIN](#) etc.)
 - Should be technically feasible based on the remote data
 - E.g. a marsh creation site should have shallow water depths, appropriate sunlight for vegetation, adequate separation from navigation channels, firm bottom material, etc.
 - Other factors (adjacent vegetation communities, shoreline conditions for vegetation growth, etc.)
 - E.g. a project proposing Phragmites eradication where there will be remaining areas of adjacent Phragmites is unlikely to be approved, due to low success rates.
 - E.g. an unprotected shoreline experiencing high wave energy is unlikely to have successful vegetation growth
- Have sufficient access for construction equipment
 - Steep slopes or surrounding forest may limit equipment access
 - Access paths should be designed to minimize tree removal

- Areas disturbed for access should be restored at the end of construction (e.g. marsh mats should be removed and elevations restored, wetland vegetation should be planted where damaged, etc.)
- Adequate water depths for work completed offshore by barge

c. Watershed approach for compensatory mitigation

The 2008 Federal Mitigation Rule describes the watershed approach as being a process where mitigation decisions are made that support the sustainability or improvement of watershed aquatic resources. The Mitigation Rule goes on to say “it involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by DA permits. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining compensatory mitigation requirements for DA permits.” The watershed approach has a strong preference for the mitigation being within the same watershed as the impact AND where it is most likely to replace lost functions of the impacted watershed. Mitigation proposals should discuss how the mitigation site was located based on a watershed approach.

Watershed-scale features and development trends should be considered in siting a mitigation project. Consider:

- Watershed needs
- Habitat diversity
- Connectivity
- Present and historic aquatic resource conditions and impacts
- Land use trends
- Adjacent uses (e.g. development pressure, invasive species)

Mitigation goals should address watershed needs for habitat protection, flood management, or water quality improvements as identified in the State Wildlife Action Plan, Habitat Conservation Plan, Watershed Resources Registry, etc.

An environmental justice (EJ) assessment should also be conducted using [MDE's EJ Screening Tool](#). It should explain how the impact and mitigation sites may impact EJ communities defined as “underserved” or “overburdened”.

d. Site connectivity

The site should be well connected within the landscape to provide maximum function. Sites should be connected to existing tidal wetlands or where tidal wetlands previously existed. Mitigation areas not connected to tidal wetlands or tidal waterways are unlikely to be approved.

Sites should address the needs of the watershed, and those that could provide public access, recreation, or education opportunities are also encouraged.

e. Satisfying the requirements of multiple programs

The same mitigation area cannot be used to satisfy both the MDE mitigation requirement and another program requirement (e.g. Critical Area, Forest Conservation, Total Maximum Daily Load, CREP, etc.) unless the impacted area is the same. For example, if the tidal wetland impact resulting in the MDE mitigation requirement also results in a Critical Area requirement, the permit reviewer will determine if the mitigation site can be used for both. Funds obtained from a public grant or sources outside of the permittee/licensee may not be used to fund a mitigation project.

f. Potential impacts to other resources

Mitigation sites should identify potential negative impacts to other relevant resources (e.g. historic properties and cultural resources, federal and state-listed rare, threatened, and endangered species and their habitats, upland forest, shallow open water, tidal/nontidal wetlands, submerged aquatic vegetation, or natural oyster bars). As with the impact project, mitigation site impacts should be avoided or minimized during site selection. MDE will review these impacts and contact appropriate agencies to address these concerns.

g. Likelihood of success

i. Wetland creation

The mitigation site should be designed based on what is appropriate for the proposed location. With the exception of “normal” living shoreline mitigation sites, MDE will require that the design is based on a reference site. These reference sites should be approved by MDE. Having an appropriate reference helps determine at what elevation the vegetation grows successfully. Without knowing the right elevation, there is a risk of having to make major changes to the original plan, including regrading, to ensure native wetland vegetation coverage.

Designed elevations should be within the range of reference elevations for proposed wetland communities (i.e. high marsh and low marsh).

Restoration is generally considered more feasible and sustainable than creation of wetlands. Wetland enhancement projects should only be considered if there is a high likelihood of long-term success without long-term use of herbicides.

Sites are not likely to be successful if there are concerns with surrounding existing or future land use (e.g. pollutant sources, invasive species, future development, consistency with local planning documents, etc.).

ii. Habitat for benthic species

The following is a list of parameters that should be considered for a reef or benthic habitat improvement project:

- Existing benthic communities
- Existing fish species (both resident and migratory)
- Water depth
- Substrate (has to be hard enough so that reefs do not sink from their own weight)
- Slope (reefs are difficult to establish on steep slopes)
- Accessibility for construction

iii. Oyster reefs/seeding

The following is a list of parameters that should be considered for a oyster reef creation project:

- Current or past oyster habitat
- Water depth
- Salinity and flow of the water appropriate for sustaining oyster growth
- Substrate (has to be hard enough so that reefs do not sink from their own weight)
- Slope (reefs are difficult to establish on steep slopes)
- Accessibility for construction
- Sufficient water depths

iv. SAV restoration/creation

Successful SAV restoration/creation projects are difficult to achieve. A crucial rule of thumb is to plant in similar conditions from which the seeds or plants were harvested. It's important to target SAV beds with high genetic diversity to create resilient, restored beds. This can be done by gathering seeds from a few different locations (e.g. collecting seeds 20 meters apart).

The following is a list of parameters that influence SAV establishment and growth:

- Water depth
- Water clarity
- Salinity
- Water velocity and waves
- Temperature
- Sediment organic content and grain size

3. Site Protection Instrument

This is often not required for tidal wetland mitigation sites. However, if a mitigation site is required by the USACE, a site protection mechanism may be required.

4. Baseline Information

A description of both the impact and mitigation sites shall be provided including:

- Historical and existing plant communities
- Hydrology and bottom substrate conditions (sandy and firm vs. mucky and soft)
- Landscape position and topography
- Aquatic ecological communities (which is driven by landscape setting)
- Loss of functions and services of the impact site
- Gain of functions and services of the mitigation site
- Jurisdictional determination
- Existing structures
- Land use conflicts (e.g. airports)
- Photographs of the chosen mitigation site pre-construction

A map should be included showing the location of the mitigation site relative to the impact site or the geographic coordinates for those sites. It should include characteristics appropriate to the type of resource proposed to be created.

An existing conditions plan sheet should also be included with:

- A vicinity map showing the mitigation project location, existing land use, and zoning
- Existing mean high water line (MHWL) and mean low water line (MLWL; referenced to 0.0 ft)
- All existing natural resources, including vegetated wetlands and SAV, on the applicant's property and adjacent riparian properties
 - If existing tidal wetlands vegetation is present, include the mean higher high water line (MHHWL)
 - Existing acreage of vegetated tidal wetlands and wetland type (e.g. emergent, scrub-shrub, forested)
 - Existing acreage of nontidal wetlands and wetland type (e.g. emergent, scrub-shrub, forested)
- Existing water depths marked as contours, including the mean high water line, or spot depths
- Property lines and property lines extended channelward
- Existing or planned easements within or adjacent to the site (e.g. utility easements, Forest Conservation Easements, etc.)
- Forest boundary, specimen trees, relevant structures, fence lines, etc.
- A narrative discussing the current quality and proposed impacts for each aquatic resource (vegetated tidal wetlands, open water, shallow water habitat, natural oyster bar (NOB), submerged aquatic vegetation (SAV), etc.)

a. SAV restoration/creation considerations

Details should be provided regarding the source and type of SAV to be placed in restoration area

- Name of aquatic nursery or greenhouse (if using adult plants)

- Donor bed(s) information (if using seeds)
 - Map of the location (latitude/longitude coordinates)
 - Verification that the donor bed meets the density and stability requirements
 - Donor beds must be at least five years old and have a density of 70-100% as mapped by the Virginia Institute of Marine Science (VIMS)
 - Extent of SAV to be removed (approximate number of seeds, volume of reproductive material (number of bushel baskets, or square meters of bed area from which reproductive material is harvested)). Note that the entire SAV plant should not be harvested from the donor bed - only the reproductive propagules as per the instructions in [*Small-scale SAV Restoration in Chesapeake Bay: A Guide to the Restoration of Submerged Aquatic Vegetation \(SAV\) in Chesapeake Bay and its Tidal Tributaries*](#).
- How many seeds per acre will be used
- Authorization for collecting seeds and/or shoots - copy of permit from MD DNR
- Note: All SAV seeds or mature plants used in SAV restoration in Maryland must be sourced from within the Chesapeake Bay and within the region - ideally within the same creek or river - where the restoration work is to take place.

5. Determination of Mitigation Ratio

The mitigation ratio is determined by the impacted wetland/resource type and the type of mitigation proposed. A brief explanation and a table should be provided to explain how the required mitigation area was calculated.

Example: Project impacts open water habitat and emergent tidal wetlands, and the proposed mitigation project is marsh creation. Additional information about required mitigation ratios can be found here: [Tidal Mitigation](#)

Impacted Area	Mitigation Ratio for Impacted Resource	Mitigation Multiplier (for out-of-kind and enhancement)	Minimum Required Mitigation Area
2,216 sf open water	1:1	Yes (x 2 for out-of-kind)	4,432 sf of marsh creation (2,216 sf x 1 x 2)
104 sf emergent tidal wetlands	2:1	No (in-kind creation)	208 sf of marsh creation (104 sf x 2 x 1)

6. Mitigation Work Plan

The work plan should include detailed written specifications and work descriptions for the project.

a. Wetland creation

It must include:

- The geographic boundaries of the project
- Construction methods
- Timing and sequence of construction
- Methods for establishing the desired plant community
- Plans to control invasive species
- If required, proposed grading plan (including the elevation and slopes of the substrate)

b. Habitat for benthic species

It must include:

- The geographic boundaries of the project
- Reef construction methods
 - Include type of reef (i.e. fishing, nursery, research, interstate, and/or special management zone reefs)
 - Material used
 - Reef characteristics (configuration, profile, interstitial space)
 - Higher complexity of artificial reefs can support high densities of organisms
- Timing and sequence of reef construction
- Amount of oyster spat deployed (if applicable)
- Timing and sequence of oyster spat seeding (if applicable)

c. Oyster reefs/seeding

It must include:

- The geographic boundaries of the project
- Reef construction methods
- Timing and sequence of reef construction
- Amount of oyster spat deployed (if applicable)
- Timing and sequence of oyster spat seeding (if applicable)

d. SAV restoration/creation

It must include:

- The geographic boundaries of the project
- Number of seeds collected
- Timing of seed collection
- Methods for seed processing and storage
- Testing of the seed viability and germination rates

- Methods and timing of seed dispersion

7. Maintenance Plan

a. Wetland creation

Provide a description and schedule of maintenance requirements to ensure the project is set to meet the outlined performance standards.

A Mitigation Monitoring Report (MPP) shall be submitted. This will include the following information:

- Project identifying information (State Agency Interest number, Tidal Wetlands License number, site address, project name)
- Date of inspections
- Project completion date
 - If the project hasn't been completed, please provide a current status of the project and disregard the remaining requirements
- Estimate of percent plant coverage by dominant species
- Photographs showing the current condition of the site
- If performance standards are not met, the MMP should also include a description of the performance standards that are not being met and proposed remediation measures. This may include:
 - A description of limiting factors to plant growth if native vegetation coverage is not met
 - A description of limiting factors to controlling invasive species growth if invasive coverage is not met
 - A description of the remedial actions that will be taken to meet the native coverage and/or invasive coverage requirements

b. Habitat for benthic species

Provide a description and schedule of maintenance requirements to ensure the project is set to meet the outlined performance standards. Note that maintenance may not be required for an artificial reef creation project. However, maintenance activities may be required if there is no increase in biomass on the substrate upon completion of the monitoring period.

c. Oyster reefs/seeding

Provide a description and schedule of maintenance requirements to ensure the project is set to meet the outlined performance standards. Note that maintenance may not be required for an oyster reef creation/seeding project. However, maintenance activities may be required if there is no increase in biomass on the substrate upon completion of the monitoring period. Current State monitoring protocols for oyster reefs require that area be surveyed every three years. Additional oyster spat-on-shell may need to be added periodically to ensure their continued viability.

d. SAV restoration/creation

Provide a description and schedule of maintenance requirements to ensure the project is set to meet the outlined performance standards. When restoring SAV, it may be necessary to add additional seeds in the years following the original planting to achieve restoration success as defined in the performance standards below.

8. Performance Standards

Performance standards are based on the goals of the mitigation site. Please refer to the “Performance Standards and Monitoring Protocol for Tidal Wetland Mitigation” (document coming soon) document for the latest performance standards for tidal wetland mitigation projects.

9. Monitoring Requirements

This section must clearly state what will be monitored so MDE can determine progress towards performance standards. It should describe the methodologies that will be used to monitor performance standards. Monitoring should involve both qualitative (description based on observation) and quantitative (based on sampling and measurement) methods.

There should be a section outlining the monitoring requirements for this project which includes:

- Time and frequency of monitoring activities
- Methods to be used for monitoring
- Parties responsible for conducting the monitoring
- Parties responsible for submitting the mitigation monitoring reports
- Frequency for submitting monitoring reports
- Biological (of invertebrates and fish populations), fishing success, and socioeconomic assessments if creating habitats for benthic species

Mitigation monitoring reports may include supporting documents such as the following:

- Narrative
 - Overview (1 page)
 - Requirements (1 page)
 - Summary Data (~4 pages)
 - Map/Plan (1 page)
 - Conclusion (1 page)
- Supporting data
 - As built
 - Maps
 - Photographs
 - Assessment results
 - Raw data and interpretation

If this project also requires mitigation for the ACOE, please refer to the [following outline](#) and coordinate with the ACOE reviewer.

The first monitoring report is due the year the mitigation planting occurs, unless it occurs after April 15th of that year, in which case, the first monitoring report will not be due until the end of the next year. For each monitoring report, vegetative monitoring shall be conducted between June 15 and September 30, and the site visits should preferably be during a period with normal hydrologic conditions. The outline of what should be included in the monitoring report can be found at [MDE's Wetlands and Waterways Program website](#).

If the permittee/licensee is required in the authorization to submit an as-built report/survey to MDE, it shall be submitted within 60 days following completion of the construction and planting of the mitigation site or as otherwise specified in the authorization. As-built reports/surveys should depict the completed portions of the mitigation site, including a plan view of the constructed/restored wetlands with locations of all the permanent sampling and photo stations, the survey of the finished grades, cross sections of the planting zones and densities. This report will describe the site's performance relative to the performance standards and will be used as a baseline measure for deviations from the approved mitigation plan. It should also include photographs of the completed mitigation site taken from designated photo stations.

For more information on what to include in tidal mitigation monitoring reports, refer to the "Performance Standards and Monitoring Protocol for Tidal Wetland Mitigation" (document coming soon) document.

10. Long-Term Management Plan

Note: This section is only required when the ACOE requires mitigation. Larger mitigation projects may require a more extensive long-term management plan, as deemed appropriate on a site-specific basis, than smaller mitigation projects.

Provide a description of how the mitigation project will be managed after performance standards have been met and mitigation monitoring by MDE has finished to ensure long-term sustainability. Details should be provided on the long-term financing mechanisms and the party responsible for long-term maintenance (long-term steward).

11. Adaptive Management Plan

If an adaptive management plan will be included in the authorization, a description of activities associated with that plan and who will be responsible for implementing it should be provided. Adaptive management is a strategy that addresses any unforeseen changes in site conditions, such as local land use development, heavy storms, rapid spread of invasive species on site, etc. This plan should include a "trigger level" and an associated "potential management response". For example, if 15% of the relative vegetation cover is invasive species during monitoring, then glyphosate will be sprayed late July-October to control for the invasives. This serves as an

action plan should any circumstances negatively impact the site's success during the monitoring period. Some adaptive management techniques will require prior authorization from MDE.

12. Financial Assurances

Note: This section may only be required when the ACOE requires mitigation.

Provide a description of the financial assurances that will be provided to guarantee that the mitigation project will be completed and meet performance standards. For mitigation projects not required by the USACE, a bond may be recommended to ensure project completion. These requirements will vary depending on the project.

13. Other Information

a. Coordination with other agencies

Early in the approval process, coordination with other agencies, such as the Maryland Department of Natural Resources (DNR) Wildlife and Heritage Service, U.S. Fish and Wildlife Service (USFWS), and Maryland Historical Trust (MHT), is recommended to determine if sensitive resources (e.g. Rare, Threatened, or Endangered species or historical artifacts) are present at the proposed mitigation site. Results from this initial review, in the form of scoping letters or iPaC reports, should be provided. Coordination with other agencies for any other issues should also be included.

b. Permits required for a mitigation site

The permittee/licensee is responsible for getting any applicable permits/licenses for the proposed mitigation project. Projects that would impact tidal/nontidal wetlands, wetland buffers, waterways, and floodplains may require another permit from MDE, especially if located off-site. A pre-application meeting can help determine if an authorization is required for the mitigation project. The authorization may have been included in the original permit or as a modification to the original permit. Note: other additional permits, for activities such as grading, erosion and sediment control, stormwater management, Notice of Intent, etc., will also be required.

All required permits/licenses, including any applicable federal, state, or local permits, must be acquired prior to construction of the mitigation site.

c. Additional resources

- i. For more information about artificial reef management guidelines, check out this guide by DNR:
dnr.maryland.gov/fisheries/documents/Maryland_Artificial_Reef_Plan62607.pdf
- ii. Bortone et al. (2000) provide a comprehensive description of fish and invertebrate evaluation methods: [Artificial Reef Evaluation | With Application to Natural Marine Habitat \(taylorfrancis.com\)](https://www.taylorfrancis.com/books/9780429094444/chapters/1-4/bortone-et-al/Artificial-Reef-Evaluation-With-Application-to-Natural-Marine-Habitat)

- iii. For more information about oyster reef creation, check out the webpage created by South Carolina's DNR about building oyster habitats: [Building Oyster Habitats \(sc.gov\)](#)
- iv. For more information about monitoring artificial oyster reefs, check out this resource by the Oyster Restoration Workgroup: [RestorationMonitoring.indb \(oyster-restoration.org\)](#)
- v. For more information about artificial reef management guidelines, check out this guide by NOAA: https://media.fisheries.noaa.gov/dam-migration/noaa_artificial_reef_guidelines.pdf
- vi. All SAV mitigation/restoration should follow the technical guidance described in [Small-scale SAV Restoration in Chesapeake Bay: A Guide to the Restoration of Submerged Aquatic Vegetation \(SAV\) in Chesapeake Bay and its Tidal Tributaries](#), available at the Chesapeake Bay Program's SAV Workgroup webpage at: <https://www.chesapeakebay.net/who/group/submerged-aquatic-vegetation-workgroup> .
- vii. For other information about SAV restoration:
 - 1. www.eastcoastsavcollaborative.com
 - 2. [SAV Monitoring Program \(chesapeakebay.net\)](#)
 - 3. [Chesapeake Bay SAV Watchers Program](#)