

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.

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