

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.

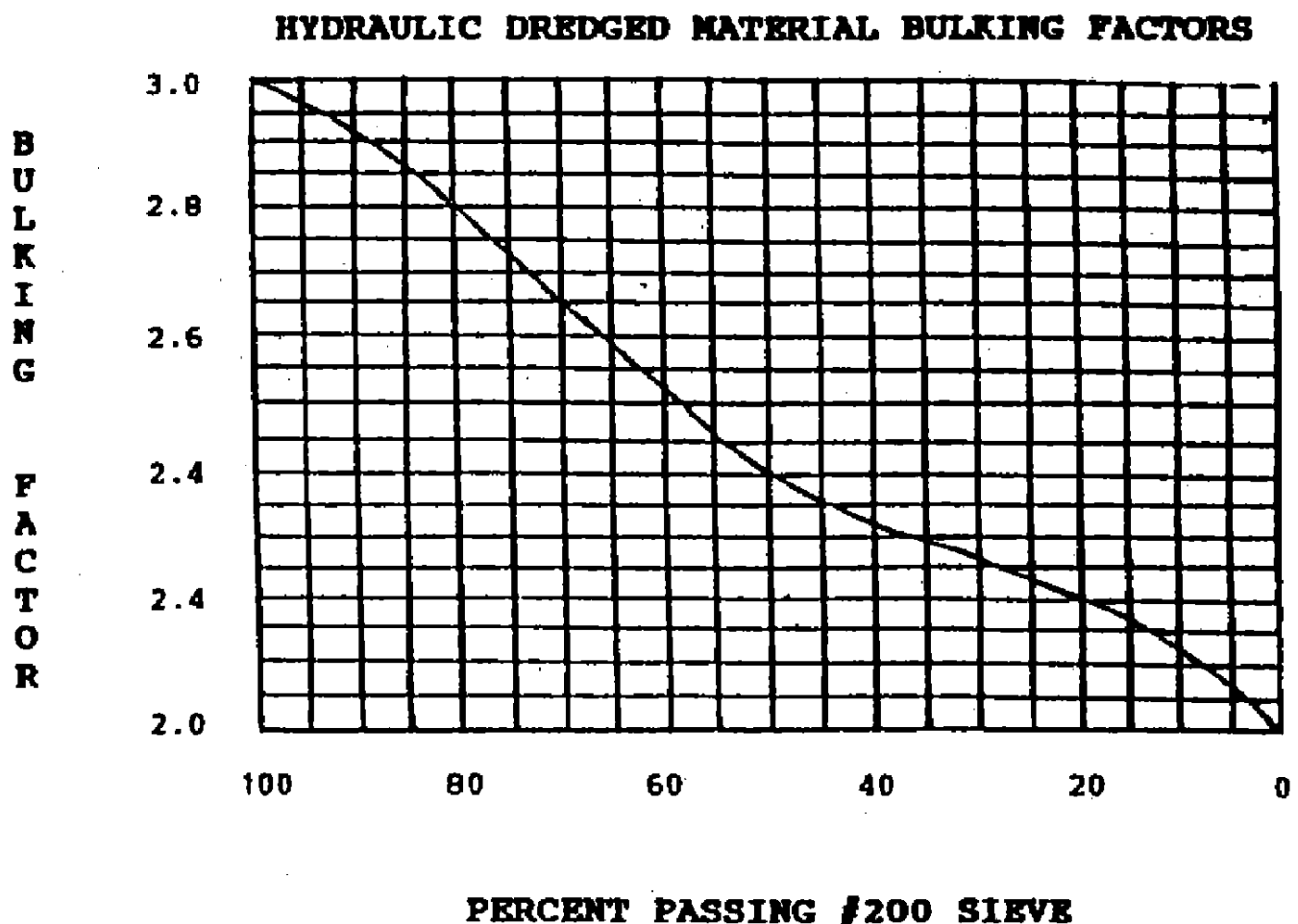
- (1) Dredged material placement facilities shall be designed with the specifications set forth in §B(2)—(12) of this regulation unless otherwise determined by the Department.
- (2) All plans, reports, and supporting documentation shall be dated, sealed, and signed by a professional engineer licensed 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) $V = (Q_d)(B)$, where V equals total disposal volume required in cubic yards, Q_d 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\(3\).](#)